

Delaware State Guidance

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Statutory basis and key terms

Delaware Code Title 16, Part V

Follow this link to read the Statutes in full here:

Key definitions and abbreviations

“Credentialed mental health screener” (CMHS) means:

- A psychiatrist; *or*
- A licensed mental health professional;
- An unlicensed mental health professional who works under the direct supervision of a psychiatrist;
- A physician with a valid State of Delaware license to practice medicine; *or*
- A physician with a valid license to practice medicine who works in a United States Department of Veterans Affairs Medical Center, located in the State of Delaware; *and*
 - Who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition.

“Dangerous to others” means that, due to a mental condition, there is a substantial likelihood that the person will inflict serious bodily harm upon another person within the immediate future. This determination must consider a person’s history, recent behavior, and any recent act or threat.

“Dangerous to self” means that, due to a mental condition, there is a substantial likelihood that the person will imminently sustain serious bodily harm. This determination must consider a person’s history, recent behavior, and any recent act or threat.

“Mental Condition” means a current, substantial disturbance of thought, mood, perception, or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality. This does not include simple alcohol intoxication, behaviors related to drug use, dementia from nontraumatic causes or other medical conditions, Alzheimer’s disease, or intellectual disability, unless it results in the described severity of impairment. The term “mental condition” is not limited to “psychosis” or “active psychosis,” but includes all conditions causing the described severity of impairment.

“Serious bodily harm” means physical injury that creates a substantial risk of death, significant and prolonged disfigurement, significant impairment of health, or significant impairment of the function of any bodily organ.

“Emergency detention” and **“emergently detained”** mean the process by which an adult who appears to have a mental condition that makes them dangerous to self or others, and who is unwilling to be voluntarily admitted to a facility for assessment or care, is involuntarily

detained for such assessment and care for 24 hours in a designated facility because less restrictive options are not appropriate.

“Hospital” means the [Delaware Psychiatric Center](#) and any hospital in this state which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions 18 years of age or older. “Hospital” shall also mean any hospital in this state which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions under 18 years of age.

“Appropriately noticed” is not defined in statute, but presumably encompasses the notices required by 16 Del. C. §§ [5007](#) and [5014](#), including notice of procedural rights and the right to appeal.

“Designated transport personnel” means personnel designated by the Secretary of the Department of Health and Social Services to transport individuals with mental conditions to and from needed health-care services provided in hospitals and designated psychiatric treatment facilities. This includes peace officers, private ambulance staff, state employees, and contracted transportation staff.

Emergency evaluation

Criteria for emergency evaluation

The person has an apparent mental condition and is likely a danger to self or others.

Who can initiate an emergency evaluation?

Any person can initiate emergency evaluation, and the process differs based on whether the initiator is a credentialed mental health screener (see definitions) or juvenile mental health screener, or any other person.

Any person

How? Notify a peace officer or a CMHS or juvenile mental health screener and request assistance for a person who they believe meets the criteria.

What do they initiate? Observation by peace officer or CMHS to determine whether the person meets criteria.

Where does the proposed patient go? Nowhere until the individual is found to meet criteria.

What's the time limit for the response? No time limit specified.

What happens? If the peace officer, CMHS, or juvenile mental health screener determines the person meets the criteria, a peace officer will promptly take emergency custody of the person. The observation must be documented in writing and include a description of the behavior and symptoms that led to emergency detention. If initiated by a peace officer, the peace officer will initiate a screening by a CMHS, generally by transporting the person to an emergency room. A CMHS must agree with the peace officer's determination to continue emergency detention.

What's next? The person will be admitted to the designated psychiatric treatment facility for psychiatric observation, assessment, acute treatment, and recommendations for referrals for other services.

A psychiatrist will review all documentation and examine the individual to determine whether they meet criteria.

If the examining psychiatrist finds that the individual does not meet the criteria, the psychiatrist will certify these findings and discharge the individual.

If the examining psychiatrist finds that the individual meets the criteria for further care and treatment and that such required care cannot be provided in an outpatient setting, the psychiatrist must immediately initiate the involuntary hospitalization process (see "Provisional hospitalization" below).

Time duration of the hold? 24 hours from arrival at designated psychiatric treatment facility.

Who decides whether to continue to a hearing? The examining psychiatrist.

Is there a form? ["Emergency Detention" Form](#)

Credentialed mental health screener (CMHS) or juvenile mental health screener

How? Have reasonable belief that the person meets criteria based on observation.

What do they initiate? Written verification of belief that the person meets criteria and completion of the emergency detention form. This documentation shall include the CMHS's rationale for detention, with specific information regarding the apparent mental condition and dangerous behaviors observed.

Where does the proposed patient go? Remains at present location awaiting transport.

What's the time limit for the response? No time limit specified.

What happens? Once the emergency detention form is completed, the Department of Health and Social Services (DHSS) will direct designated transportation personnel to transport the person to a designated psychiatric treatment facility for an evaluation.

What's next? The person will be admitted to the designated psychiatric treatment facility for psychiatric observation, assessment, acute treatment, and recommendations for referrals for other services.

A psychiatrist will review all documentation and examine the individual to determine whether they meet criteria.

If the examining psychiatrist finds that the individual does not meet the criteria, the psychiatrist will certify these findings and discharge the individual.

If the examining psychiatrist finds that the individual meets the criteria for further care and treatment and that such required care cannot be provided in an outpatient setting, the psychiatrist must immediately initiate the involuntary hospitalization process (see "Provisional hospitalization" below).

Time duration of the hold? 24 hours from arrival at designated psychiatric treatment facility.

Who decides whether to continue to a hearing? The examining psychiatrist.

Is there a form? ["Emergency Detention" Form](#)

Provisional hospitalization

Criteria for provisional hospitalization

The person is emergently detained (see "Emergency evaluation" above); *and*

- Based on a psychiatrist's examination, the person:
 - Appears to have a mental condition;
 - Has been offered voluntary inpatient treatment and has declined, or lacks the capacity to knowingly and voluntarily consent to such care and treatment;
 - Because of their mental condition, there are clear signs that they pose a present threat of being dangerous to self or to others; *and*
 - Has been considered for less restrictive alternatives, which have been found clinically inappropriate at the present time.

Who can initiate provisional hospitalization?

Only the examining psychiatrist in a designated psychiatric treatment facility (see “Emergency evaluation” above) can initiate provisional hospitalization.

How? File the written certification of the examining psychiatrist with the Delaware Health and Social Services Division of Substance Abuse and Mental Health (DSAMH).

Required documentation? The psychiatrist’s certificate must state what behaviors and symptoms the psychiatrist’s opinion is based upon.

What’s next? The individual will be provisionally admitted to the hospital for further observation, assessment, and clinically appropriate treatment.

The hospital must try to evaluate the person to assess their psychological and physical needs.

If at any point during this provisional admission, an examining psychiatrist determines the person no longer meets the criteria, they shall certify this in writing, and the hospital must immediately discharge the person.

If the patient has not been discharged by the hospital by the end of the 48-hour provisional admission period, the hospital must file a verified complaint for involuntary civil commitment (see “Inpatient Treatment” below).

Who decides whether to continue to a hearing? The detaining hospital.

Is there a form? [Provisional Admission Form](#)

Inpatient treatment

Criteria for inpatient treatment

The person is provisionally admitted to a hospital (see “Provisional Hospitalization” above); *and*

- All of the following:
 - The person has a mental condition;
 - The person is dangerous to self or others;
 - Less restrictive alternatives are clinically inappropriate at the time of the hearing;
and
 - The person has declined voluntary inpatient treatment or lacks the capacity to knowingly and voluntarily consent to inpatient treatment.

Who can initiate inpatient treatment?

The hospital where the person is provisionally admitted (see “Provisional Hospitalization”).

How? Filing a verified complaint in the [Superior Court](#) or in the Family Court.

Required documentation?

- Copy of the emergency detention certificate.
- Copy of the provisional admission certificate.
- Notarized statement indicating that a hospital official has reviewed each complaint.

What’s next? The court must schedule a probable cause hearing as soon as possible, and no later than eight working days after the complaint is filed, to decide whether the person should remain involuntarily held.

Upon completion of the hearing, if the court decides there is probable cause, it must schedule a full commitment hearing as soon as possible, and no later than eight working days after the probable cause hearing. The court may also appoint an independent psychiatrist or other qualified expert to examine the person and testify. The person and their lawyer must be notified of the hearing.

If the court does not find probable cause for inpatient commitment but finds the person meets the criteria for outpatient commitment (see “Outpatient Treatment” below), it may order that treatment as long as proper notice was given.

Upon completion of the full commitment hearing, if the court determines, by clear and convincing evidence, that the person meets criteria, it will enter an order for inpatient treatment not to exceed three months.

Who issues the treatment order? The Court.

Who makes discharge decisions? The hospital certifies the discharge order and notifies the court.

Is there a form? Unclear.

Outpatient treatment

Referred to as “outpatient treatment over objection.”

Criteria for outpatient treatment

In a probable cause hearing (see “Inpatient Treatment” above) the court found probable cause did not exist for involuntary inpatient commitment, but the individual meets all the following:

- 18 years or older;
- Has a documented mental condition;
- Is reasonably expected to become dangerous to self or others or otherwise unlikely to survive safely in the community without treatment;
- Refusing to voluntarily participate in the recommended treatment plan or lacks the capacity to determine whether such treatment is necessary;
- Documented history of not adhering to recommended treatment, or poses an extreme threat of danger to self or others based on recent actions that have either:
 - Resulted in a deterioration of functioning that was observed to be dangerous to their health and safety; or
 - Resulted in a deterioration of functioning that was observed to be imminently dangerous to self or others, including but not limited to suicidal ideation, violent threats, or violence toward others.
- Less restrictive treatment options are clinically inappropriate, or evidence shows that the person is not likely to adhere to such options.

Who can initiate outpatient treatment?

Only the court can initiate outpatient treatment, based on the criteria listed above.

When can outpatient treatment be court ordered? From a probable cause hearing for involuntary civil commitment.

How? If, in a court hearing to determine probable cause for involuntary inpatient commitment, the court determines probable cause does not exist for inpatient treatment, but the individual meets the criteria for outpatient treatment by clear and convincing evidence.

Required documentation? The court must clearly explain the facts and legal reasons that show the person meets every requirement for outpatient commitment.

Who issues the treatment order? The Court.

Who supervises the treatment plan? Department of Health and Social Services.

How long can the first treatment order last? Not to exceed three months.

What’s the renewal process? No renewal process specified.

What's the discharge process? An individual may be discharged at any time by the treating psychiatrist if the psychiatrist determines the individual no longer meets the criteria. The psychiatrist shall certify this in writing and notify the court. Once the court receives it, the case will be dismissed.

Is there a form? Unclear.