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Emergency Detention Orders & Psychiatric Emergencies



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Disclosures

Disclosures:

All committee members, speakers, moderator, facilitators and anyone with the ability to control content have no relevant financial interest related to this activity to disclose.

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Roadmap

- I. Purpose of Emergency Detention Orders in Psychiatric Emergencies
- II. Voluntary v. Involuntary Commitment
- III. Criteria for Involuntary Commitment: Mentally Ill and Dangerous OR Gravely Disabled
- IV. Five Types of Involuntary Commitment: (1) Immediate Detention; (2) Emergency Detention; (3) Temporary Commitment; (4) Regular Commitment; (5) Refusal to Release.
- V. Emergency Detention Order Steps and Forms
- VI. Immunity from Liability & Patient Transfers
- VII. HIPAA & Emergency Mental Health Situations
- VIII. Minors Presenting with Psychiatric Emergencies

Purpose of Emergency Detention Orders (EDO's)

Emergency Detention Orders (72-Hour Holds) allow a facility to detain, stabilize, and provide care and treatment on a temporary basis for an individual that is mentally ill and either dangerous or gravely disabled and requires continuing care and treatment.

Types of Commitment

Voluntary Admission

Involuntary Commitment

1. Immediate detention,
2. Emergency detention,
3. Temporary commitment, and
4. Regular commitment.
5. Refusal

Definitions

In Indiana mental illness includes: mental retardation, alcoholism, addiction, to narcotics or dangerous drugs and psychiatric disorders, such as schizophrenia.

- “**Mental illness**” is defined as a “psychiatric disorder that substantially disturbs an individual’s thinking, feeling, or behavior and impairs the individual’s ability to function.” IC 16-14-9.1-1(a)
- “**Dangerous**” means that, as a result of being mentally ill, there is a substantial risk that the individual will harm himself/herself or others.
- “**Gravely disabled**” means that the individual is in danger of coming to harm because he or she is unable to provide for food, clothing, shelter or other essential needs, or, cannot function independently due to a deterioration of reasoning or behavior.

1. Immediate Detention: Law Enforcement 24-Hour Hold

IC 12-26-4-1 *et seq.* A **law enforcement officer**, having reasonable grounds to believe that an individual has a **mental illness**, is **either dangerous or gravely disabled, and is in immediate need of hospitalization and treatment**, may do the following:

- (1) Apprehend and transport the individual to the nearest appropriate facility. The individual may not be transported to a state institution or
- (2) Charge the individual with an offense if applicable. **This type of immediate detention cannot last longer than twenty-four (24) hours.** However, an application for **emergency detention may be filed while the person is being held on an immediate detention.**

Immediate Detention cont.

- The officer must submit a written statement to the facility containing the reasons for immediate detention. This statement will be filed in the individual's records at the facility.
- Either the superintendent of the facility or a physician may provide emergency treatment necessary to preserve the health and safety of the person.
- However, if the superintendent or attending physician believes the person should be held longer, an application for *emergency detention* can be sought. The application must be filed immediately upon the availability of a judge, or within 72 hours of admission to the facility, whichever is earlier.

IC 12-26-4-6

Detaining individual for more than 24 hours; emergency detention application

Sec. 6. If the superintendent or the attending physician believes the individual should be detained for more than twenty-four (24) hours from time of admission to the facility, the superintendent or the physician must have an application filed for emergency detention under IC 12-26-5 immediately upon the earlier of the following:

- (1) A judge becomes available.
- (2) Within seventy-two (72) hours of admission to the facility.

2. Emergency Detention (72-Hour Hold)

Ind. Code 12-26-5-1 *et seq.* **An individual may be detained in a facility for not more than seventy-two (72) hours**, excluding Saturdays, Sundays, and legal holidays, if a written application for detention is filed with the facility. The individual may not be detained in a state institution unless the detention is instituted by the state institution. The application must contain the following:

1. A statement of the applicant's belief that the individual is: **(1) mentally ill and either dangerous or gravely disabled; and (2) in need of immediate restraint.**
2. **A statement by at least one physician that, based on: (1) an examination; or (2) information given the physician; the individual may be mentally ill and either dangerous or gravely disabled.**
 - If a judicial officer authorized to issue warrants approves the application, the application will authorize an officer to take the individual into custody and deliver him or her to a treatment facility.
 - The treating physician must file a report with the court prior to the end of the detention period stating;
 - 1) that the individual has been examined, 2) whether there is probable cause to believe the individual is mentally ill and either dangerous or gravely disabled, and 3) whether continuing care is required. If there is no probable cause reported, the person shall be released. If probable cause is reported, a probable cause hearing will likely be held, unless the court orders a release *sua sponte*, which is unlikely.

3. Temporary Commitment

IC 12-26-6-1 *et seq.* A temporary commitment may be begun upon request of the superintendent holding the patient under an emergency detention, order of the court having jurisdiction over the individual following emergency detention, or filing a petition with a county court having jurisdiction.

A petitioner must be at least eighteen (18) years of age and the petition must include a physician's written statement stating both of the following: (1) The physician has examined the individual within the past thirty (30) days and (2) The physician believes the individual is: (a) mentally ill and either dangerous or gravely disabled; and (b) in need of custody, care, or treatment in an appropriate facility.

- If after hearing on the petition, the individual is found to be mentally ill and either dangerous or gravely disabled and in need of treatment, the court may order detention for no longer than ninety (90) days.
- If the attending physician and facility supervisor find that the individual is no longer mentally ill and dangerous or gravely disabled, they may file a report to that effect with the court and release the individual in advance of expiration of the time period ordered.
- If the individual remains detained for the entire period, only one more hold limited to ninety (90) days may be ordered by the court pursuant to the original petition.

4. Regular Commitment

IC 12-26-6-2 *et seq.* A proceeding for the commitment of an individual who appears to be suffering from a chronic mental illness may be begun by filing with a court having jurisdiction a written petition. The following persons may file the petition: (1) A health officer, (2) A police officer, (3) A friend of the individual, (4) A relative of the individual, (5) The spouse of the individual, (6) A guardian of the individual, (7) The superintendent of a facility where the individual is present, (8) A prosecuting attorney, (9) A third party that contracts with the division of mental health and addiction.

- The petition must include a physician's written statement that sets forth the following: (1) The physician has examined the individual within the past thirty (30) days, (2) The physician believes that the individual is: (a) mentally ill and either dangerous or gravely disabled; and (b) in need of custody, care, or treatment in a facility for a period expected to be more than ninety (90) days.
- If the individual is found in need of treatment, the court may order that the individual be detained for treatment or referred for outpatient treatment until any of the following occur: (1) The individual has been: (a) discharged from the facility; or
- (b) released from the therapy program or (2) The court enters an order: (a) terminating the commitment; or (b) releasing the individual from the therapy program.

5. Refusal to Release

IC 12-26-3-5

The fifth way in which a person can be involuntarily committed is if the person voluntarily commits him or herself and is denied release within twenty-four (24) hours of demanding release due to the attending doctor or facility superintendent's belief that the person is mentally ill and either gravely dangerous and/or gravely disabled .

- A voluntary admission does not guarantee the individual's right to leave at any time. If an individual wants to leave, he/she must give the facility 24 hours' notice. (IC 16- 41-9-7). This gives the facility the chance to make a medical decision on whether it can allow the individual to leave or whether it needs to take steps to legally hold the person.
- If the facility decides to hold the person, it must inform the person and file a petition with the court within five (5) days. (IC 12-26-3-5). Once this has been done, the facility may still legally hold the individual until a hearing.
- The individual should be given the opportunity to appear in court for his/her hearing. However, the facility can petition the court to not allow the individual to appear if his/her appearance in court may be harmful to his/her treatment.

Emergency Detention Orders

- An individual may be detained in an appropriate facility for not more than 72 hours, excluding Saturdays, Sundays, and legal holidays, if a written application for detention is filed with the facility.
- The application must contain a statement of the applicant's belief that the individual is mentally ill and either dangerous or gravely disabled and in need of immediate restraint, as well as a statement by at least one physician that, based on an examination or information given the physician, the individual may be mentally ill and either dangerous or gravely disabled

Overview: How to Obtain an EDO

1. An individual in need of an emergency detention may present in an outpatient or inpatient location of the hospital or may arrive via Law Enforcement with an Immediate Detention in place. Law enforcement will provide written proof of Immediate Detention to the Emergency Department for emergent treatment necessary to preserve the health and safety of the individual detained.
2. A medical evaluation of the patient will be conducted to triage the needs of the patient prior to initiation of the emergency detention. This triage may include social services evaluation.
3. The Emergency Department or attending physician will complete the “***Application for Emergency Detention of Mentally Ill and/or Dangerous Person***” with the assistance of the care team.
4. The Physician or designee will contact the judge(s) for phone notification of the EDO. The EDO Application may be faxed to the judge for review and signature.
5. Upon finalization of the EDO, hospital staff will notify the local Sheriff’s Department of the emergency detention and need for transportation by telephone call and by faxing of the approved EDO to the local Sheriff’s office.

Application for Emergency Detention of Mentally Ill and Dangerous or Gravely Disabled Person

APPLICATION FOR EMERGENCY DETENTION
OF MENTALLY ILL AND DANGEROUS OR GRAVELY DISABLED PERSON
(Please print clearly in black ink.)

1. Name of person to be detained _____

Social Security No. _____ Sex: M F

D/O/B _____
Age _____

Address _____

Street _____

State _____ Zip Code _____ City _____

1. Applicant believes that the person named above is suffering from:

- a psychiatric disorder
- alcoholism
- a developmental disability (mental retardation, etc.)
- addiction to narcotics or dangerous drugs
- other _____

that substantially disturbs the persons thinking, feeling, or behavior, and impair the person's ability to function

[COMPLETE 3 OR 4. COMPLETE BOTH ONLY IF BOTH ARE APPLICABLE.]

1. Applicant believes that the person named above is DANGEROUS to self, or others, and may engage in conduct creating a reasonable belief that the individual may harm self or others, because (be specific):

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Application for Emergency Detention Page 2

1. Applicant believes that the person named above is GRAVELY DISABLED and suffers from:

- an inability to provide for the individual's clothing, shelter or other essential human need; or
- a substantial impairment or an obvious deterioration of the individual's judgement, reasoning, or behavior that results in the individual's inability to function independently.

Please explain (be specific):

2. Applicant believes that the person named above is in need of immediate restraint because:

3. _____ Hospital or Center has been contacted by _____, and that facility has agreed to admit that person.

4. List names, addresses, telephone numbers and relationship of significant family members, or legal representatives if available.

Date

Time

Applicant's status:

- health officer
- police officer
- other: _____

Applicant's Name

Signature

Address

City

State

Zip Code

Telephone



Submit Report Following Emergency Detention

REPORT FOLLOWING EMERGENCY DETENTION

_____, makes this Report to the court before the end of the emergency detention period:

1. _____ was admitted to _____ at _____ o'clock _____M. on _____, 20____, pursuant to an Application for Emergency Detention duly endorsed by a judge, a copy of which is attached.

2. This patient was examined by _____.

COMPLETE PARAGRAPHS 3, 4, or 5, WHICHEVER IS APPLICABLE

3. The examiner(s) found probable cause to believe that this patient is suffering from _____ and is dangerous or gravely disabled and requires continuing care and treatment, as more particularly set forth in the attached Physician's Statement. It is recommended that this patient be detained in this facility pending the hearing. Yes. No.

4. The examiner(s) found no probable cause to believe that this patient meets the criteria for involuntary commitment. The patient was discharged on _____, 20____, and a copy of this Report has been made a part of the patient's record at this facility.

5. On _____, 20____, this patient elected to continue treatment on a voluntary basis.

6. The patient has an attorney. Yes. No. If yes, the attorney's name is _____.

Date

Time

Name

Signature

Address

City

State

Zip Code

Telephone

This Report is not complete without a copy of the Application for Emergency Detention attached. If Paragraph 3 is completed, a Physician's Statement must be attached.

A copy of the Application for Emergency Detention and a copy of this Report (including attachments) were given to the patient on _____, 20____, by _____.

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Physician's Treatment Evaluation



PHYSICIAN'S EMERGENCY STATEMENT

State Form 52745 (9-06) / OGC 0031

1. I, _____, the undersigned physician,

hold a valid license to practice medicine in Indiana, issued by the Medical Licensing Board of Indiana, or

am a medical officer of the United States government who is in Indiana performing official duties.

2. _____ may be mentally ill and dangerous or gravely disabled, as those terms are defined in

IC 12-7-2-130(1), IC 12-7-2-53, or IC 12-7-2-96. I have read the Application for Emergency Detention, and I would add the following comments

concerning the diagnosis and the immediacy of the danger:

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Physician's Treatment Evaluation, page 2

3. The foregoing statement is based upon:

- personal observation of the current crisis, and/or
- an examination of the person whose detention is sought, which examination was performed _____, 20____, and/or
- an ongoing professional relationship with the person whose detention is sought, and/or
- information given to me by _____

4. This statement is made as part of my official duties as an employee / contractor of _____.

If not, explain: _____

Signature of physician	Time	Date (month, day, year)
Printed name of physician	Telephone number of physician ()	
Address (number and street, city, state, and ZIP code)		

Examination and Treatment of Detained Individual under an EDO

IC 12-26-5-3 Examination and treatment of detained individual

Sec. 3. An individual detained under this chapter may be examined and given emergency treatment necessary to do the following:

- (1) Preserve the health and safety of the individual.
- (2) Protect other persons and property.

The Emergency Detention Order, all corresponding forms, and detailed progress notes should be included in the patient's medical record.

Patient Transfers

IC 12-26-11-1 Transfers; facilities to which transfers may be made; best interest of individual transferred or other patients

Sec. 1. The superintendent of a facility to which an individual was committed under [IC 12-26-6](#) or [IC 12-26-7](#) or to which the individual's commitment was transferred under this chapter, may transfer the commitment of the individual to:

- (1) a state institution;
- (2) a community mental health center;
- (3) a community intellectual disability and other developmental disabilities center;
- (4) a federal facility;
- (5) a psychiatric unit of a hospital licensed under [IC 16-21](#);
- (6) a private psychiatric facility licensed under [IC 12-25](#);
- (7) a community residential program for the developmentally disabled described in [IC 12-11-1.1-1\(e\)\(1\)](#) or [IC 12-11-1.1-1\(e\)\(2\)](#); or
- (8) an intermediate care facility for individuals with intellectual disabilities (ICF/IID) that is licensed under [IC 16-28](#) and is not owned by the state;

The End of the 72- Hour EDO Period

IC 12-26-5

- Before the end of the emergency detention period, the superintendent of the facility or the individual's attending physician must make a written report to the court, containing a statement that the individual has been examined and a statement whether there is probable cause to believe that the individual is mentally ill and either dangerous or gravely disabled and requires continuing care and treatment
- If the report states there is not probable cause, the individual will be discharged from the facility. If the report states there is probable cause, the report must recommend that the court hold a hearing to determine whether the individual is mentally ill and either dangerous or gravely disabled and there is a need for continuing involuntary detention, and that the individual be detained in the facility pending the hearing.
- The court must consider and act upon the report within 24 hours of receiving it and may order the individual released or order the individual's continued detention pending a preliminary or final hearing.

Haggerty v. Anonymous Party 1, 998 N.E.2d 286 (Ind. Ct. App. 2013)

A written application for emergency detention of individual was sufficient to render medical facility's detention of individual lawful, under statute allowing for detention of 72 hours or less on written emergency application, where, in application, physician who had examined individual stated that individual had a psychiatric disorder, was an alcoholic, and was threatening to walk a distance of approximately 50 miles to get home despite it being a cold winter night, and that physician believed that individual would kill himself if not restrained.

Immunity from Liability

IC 12-26-2-6 Participation in proceedings or assisting in detention or care of individual; immunity from liability

With regard to individuals who are concerned about their involvement in the above-listed proceedings or patients that are involved in them, **that individuals who are acting in good faith are immune from both civil and criminal liability for their involvement in these areas, whether that be participation in court proceedings or the detention, care or treatment of an individual.**

This means that the individuals involved cannot be held civilly or criminally liable, provided they are performing their job duties without malice, bad faith or negligence.

HIPAA and Mental Health Emergencies

- When a patient poses a serious and imminent threat to his own or someone else's health or safety, HIPAA permits a health care professional to share the necessary information about the patient with anyone who is in a position to prevent or lessen the threatened harm--including family, friends, and caregivers--without the patient's permission. See 45 CFR 164.512(j).
- HIPAA expressly defers to the professional judgment of health care professionals when they make determinations about the nature and severity of the threat to health or safety. See 45 CFR 164.512(j)(4). Specifically, HIPAA presumes the health care professional is acting in good faith in making this determination, if the professional relies on his or her actual knowledge or on credible information from another person who has knowledge or authority.

HIPAA allows health care professionals to disclose some health information without a patient's permission under certain circumstances, including:

- Sharing health information with family and close friends who are involved in care of the patient if the provider determines that doing so is in the best interests of an incapacitated or unconscious patient and the information shared is directly related to the family or friend's involvement in the patient's health care or payment of care. *See* 45 CFR §§ 164.510(b)(1)(i) and 164.510(b)(3).
- Informing persons in a position to prevent or lessen a serious and imminent threat to a patient's health or safety. *See* 45 CFR § 164.512(j)(1)(i).

Management of Minors in Emergency Mental Health Situations

- When a minor evaluated in the hospital's emergency department needs inpatient psychiatric hospitalization, the parent/ guardian cannot refuse admission and must sign all admission paperwork.
- If the parent/legal guardian refuses admission, an emergency report must be filed with the Indiana Child Abuse and Neglect Hotline by the hospital. The Division of Child Services (DCS) will then determine the appropriate disposition of the minor individual. Disposition of the minor individual must be documented on chart after DCS meets with the family and makes the final decision.
- When the parent/legal guardian are in agreement with inpatient psychiatric hospitalization, but minor individual is combative, uncooperative, or not safe for transfer, an emergency court order for transportation can be obtained the local judge

Questions?

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