

FILINGS

Available Standard Forms

1. Affidavit of Mental Illness [R.C. 5122.111]
2. Notification Form for Record Checks (available from BCI)
3. Application for Emergency Admission [R.C. 5122.10] - available from Ohio Department of Mental Health, form DMH-0025)

Forms Filed by the Local Prosecutor

1. Motion For Continuance [R.C. 5122.141(B)]
2. Motion for Change of Place of Detention [R.C. 5122.15(L) or (N)]
3. Application for Continued Commitment [R.C. 5122.15(H)]
4. Motion for Court Ordered Medication and/or Treatment [R.C. 2101.24(A)(1)(u)]

Forms Filed by the Local Board of Mental Health and Addiction Recovery Services (or Designee)

1. Prescreening Investigation Report [R.C. 5122.13]
2. Notice to Court or Agency [R.C. 5122.15(F)(1)] - available from Ohio Department of Mental Health, form DMH-0041

Forms Must Be Created Locally by Probate Court

1. Certificate of Examination [R.C. 5122.11 & R.C. 5122.19]
2. Temporary Order of Detention [R.C. 5122.11]
3. Order Appointing Independent Evaluator [R.C. 5122.14] – may be optional, consult your appellate law
4. Order Referring Affidavit for Screening [R.C. 5122.13]
5. Order Granting Motion for Continuance [R.C. 5122.141(B)]
6. Entry Setting Full Hearing and Ordering Notice [R.C. 5122.12 & 5122.141(A)]
7. Notice to Respondent of Hearing and Service of Rights of an Involuntarily Detained Person [R.C. 5122.05(C) and R.C. 5122.29]
8. Rights of an Involuntarily Detained Person [R.C. 5122.05(C) & R.C. 5122.29]

9. Entry Appointing Counsel for Respondent [R.C. 5122.05(C)(2)]
10. Precepe for Subpoena Duces Tecum
11. Subpoena for Witness
12. Order to Produce Hospital Records (Subpoena Duces Tecum)
13. Decision and Judgment Entry of Commitment After Initial Full Hearing [R.C. 5122.15(C)]
14. Entry Ordering Continued Commitment [R.C. 5122.15(H)]
15. Entry Changing Least Restrictive Setting [R.C. 5122.15(F) & (N)]
16. Entry Granting Motion for Court Ordered Medication and/or Treatment [R.C. 2101.24(A)(1)(u)]

DEFINITIONS (as outlined in R.C. 5122.01 & R.C. 5119)

- A. “Mental illness” means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or capacity to recognize reality, or ability to meet the ordinary demands of life. [R.C. 5122.01(A)]
 - An anti-social personality disorder may qualify as a “mental illness” under Ohio law if the disorder is “substantial” and there is “gross” impairment. *State v. Welch*, 125 Ohio App. 3d 49, 707 N.E. 2d 1133, 1997 Ohio App. LEXIS 5335 (Ohio Ct. App., Portage County 1997)
- B. “Mentally ill person subject to court order” means a mentally ill person who, because of the person’s illness:
 1. Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
 2. Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;

3. Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
4. Would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person;
5.
 - (a) Would benefit from treatment as manifested by evidence of behavior that indicates all of the following:
 - (i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.
 - (ii) The person has a history of lack of compliance with treatment for mental illness and one of the following applies:
 - I. At least twice within the 36 months prior to the filing of an affidavit seeking court-ordered treatment of the person under R.C. 5122.111, the lack of compliance has been a significant factor in necessitating hospitalization in a hospital or receipt of services in a forensic or other mental-health unit of a correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 36 months.

II. Within the 48 months prior to the filing of an affidavit seeking court-ordered treatment of the person under R.C. 5122.111, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others, or threats of, or attempts at, serious physical harm to self or others, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the 48-month period.

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment.

(iv) In view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would likely result in substantial risk of serious harm to the person or others.

(b) An individual who meets only the criteria described in division (B) (5) (a) of this section is not subject to hospitalization. [R.C. 5122.01(B)(1 - 5)]



When the affiant is seeking inpatient treatment, boxes 1 - 4 usually are checked; when the affiant is seeking outpatient treatment, box 5 is checked.

EMERGENCY HOSPITALIZATION

1. **CUSTODY & TRANSPORT FOR MEDICAL EXAMINATION** – Any psychiatrist, licensed clinical psychologist, licensed physician, health officer, parole officer, police officer, or sheriff may take a person into custody if he or she has reason to believe that the person is a mentally ill person subject to court order under *R.C. 5122.01(B)* and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.
 - a. The person should be taken into custody in the least conspicuous manner.
 - b. The person taking the respondent into custody shall explain their name, professional designation, that the custody is not a criminal arrest, and that the person is being taken for examination by mental-health professionals. [*R.C. 5122.10*]
2. **APPLICATION FOR EMERGENCY ADMISSION** – A written statement must be given to the hospital by the transporting party stating the circumstances under which the person was taken into custody and the reasons for the transporting parties’ belief that the person is a mentally ill person subject to court order under *R.C. 5122.01(B)* and that the person represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. [*R.C. 5122.10*]
3. **INITIAL EXAMINATION (CERTIFICATE OF EXAMINATION)** – Persons transported to a hospital shall be examined within 24 hours after arrival at the hospital. [*R.C. 5122.10 & R.C. 5122.19*]
4. **INVOLUNTARY HOLD** – The chief clinical officer may detain a patient for not more than 3 court days (after the initial 24 hours). During the 3 court days, the chief clinical officer may admit the person as a voluntary patient, discharge the patient, or file an AFFIDAVIT with the probate court. [*R.C. 5122.10*] See also, *In re John Doe*, 2002 Ohio 5210 and 150 Ohio App.3d 532.



In some counties, the involuntary hold is referred to as a “pink slip.”



If a hospital uses the Application for Emergency Admission available from the Ohio Dept. of Mental Health (form DMH-0025), the date the application is “approved” by the chief clinical officer may be the date of the beginning of the involuntary hold.



R.C. 5122.141 should be used for the initial hearing before a person is detained.

5. **AFFIDAVIT** – Filed in any county according to form and content specified in *R.C. 5122.111*.
 - a. In the case of emergency hospitalization, the affidavit usually is completed by a psychiatrist.
 - b. An affidavit may be filed by a member of the public presenting to the probate court when the person alleged to be mentally ill resides in the community.
6. **DETENTION ORDER AND NOTICE**
 - a. Probate court issues a temporary order of detention; if hospital outside county, court retains jurisdiction. [*R.C. 5122.11*]
 - b. Person may be observed and treated until the hearing, provided for in *R.C. 5122.141* or *R.C. 5122.15*.
 - c. Any person who is involuntarily detained in a hospital or otherwise in custody under *R.C. 5122*, immediately upon being taken into custody, shall be informed and provided with a written statement that the person may do any of the following:
 - i. Immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a licensed physician, or a

licensed clinical psychologist, to contact any other person or persons to secure representation by counsel, or to obtain medical or psychological assistance, and be provided assistance in making calls if the assistance is needed and requested;

- ii. Retain counsel and have independent expert evaluation of the person's mental condition and, if the person is unable to obtain an attorney or independent expert evaluation, be represented by court-appointed counsel or have independent expert evaluation of the person's mental condition, or both, at public expense if the person is indigent;
- iii. "Independent expert evaluation" means an evaluation conducted by a licensed clinical psychologist, psychiatrist, or licensed clinical physician who has been selected by the respondent or the respondent's counsel. [R.C. 5122.01(P)]
- iv. Have a hearing to determine whether or not the person is a mentally ill person subject to court order. [R.C. 5122.05(C)(1 - 3)]

7. **PRESCREENING INVESTIGATION REPORT** – Within 2 business days, the affidavit is referred to the board of alcohol, drug addiction, and mental health services or community mental health services provider the board designates for investigation. [R.C. 5122.13]

8. **APPOINTMENT OF INDEPENDENT EVALUATOR** – Immediately after acceptance of an affidavit, the court may appoint a psychiatrist, or a licensed clinical psychologist and a licensed physician to examine the respondent. At the first hearing, the psychiatrist, psychologist, and/or physician shall report to the court his or her findings as to the mental condition of the respondent, and need for custody, care, or treatment in a mental hospital. [R.C. 5122.14]

9. **SCHEDULING THE HEARING** - The hearing must be held within 5 court days from the day on which the person is detained or an affidavit is filed, whichever occurs first. The hearing may be

conducted in a hospital in or out of the county. [R.C. 5122.141(B)]

10. **NOTICE OF HEARING** – Upon receipt of an affidavit under R.C. 5122.11, the court shall issue written notice by mail, or, as the court directs, to the following:
- a. The respondent;
 - b. The legal guardian for the respondent, or the spouse of the respondent, or the respondent's parents if a minor, if these persons' addresses are known or can be obtained through exercise of reasonable diligence;
 - c. The person who filed the affidavit;
 - d. Any one person designated by the respondent and if the respondent does not make a selection, to an adult next of kin;
 - e. To respondent's counsel along with a copy of the affidavit and the temporary order of detention;
 - f. The director, chief clinical officer, or designee of the hospital, board, community mental health service provider, or facility to which the person has been committed;
 - g. The board of alcohol, drug addiction, and mental services serving the respondent's county of residence or a services provider designated by the board.

Adult and competent persons, other than the respondent, may waive notice. [R.C. 5122.12]

11. **CONTINUANCE** – A continuance of the hearing may be granted for no more than 10 calendar days from the day on which the person is detained or the affidavit is filed, whichever occurs first. [R.C. 5122.141(B)]


12. **RIGHTS OF THE RESPONDENT AT THE HEARING** –

- a. To attend the hearing and to be represented by counsel of the respondent's choice or by court-appointed counsel if the respondent is indigent.
- b. To subpoena witnesses and documents and to examine and cross-examine witnesses.

- c. To have all relevant documents, information, hospital records, and other evidence.
 - d. To testify, but the respondent may not be compelled to testify. [R.C. 5122.15(A)]
13. **FULL HEARING** – By clear and convincing evidence, court finds respondent mentally ill and subject to court order, court may order respondent, for not more than 90 days, to: See 1 - 6 in R.C. 5122.15(C).
- a. Burden of Proof. See, *Addington v. Texas*, 441 U.S. 418 and *State v. Castrataro*, 2007 Ohio 2764 App. LEXIS 2552 (Ohio Ct. App., Cuyahoga County June 7, 2007).
 - b. “Totality of the Circumstances” – Test is to be used to determine whether an alleged mentally ill person is subject to hospitalization under R.C. 5122.01(B). See, *In re Burton*, 11 Ohio St. 3d 147, 464 N.E. 2d 530, 1984 LEXIS 1123 (Ohio 1984).
 - c. Three-part Test for Involuntary Commitment – See, *In re TB.*, 2006 Ohio 4789, 2006 Ohio App. LEXIS 4639 (Ohio Ct. App., Franklin county, Sept. 12, 2006).
 - i There must be a substantial disorder of thought, mood, perception, orientation, or memory. [R.C. 5122.01(A)]
 - ii The substantial disorder of thought, mood, perception, orientation, or memory must grossly impair judgment, behavior, or capacity to recognize reality, or the ability to meet the ordinary demands of life. [R.C. 5122.01(A)]
 - iii The mentally ill person must be hospitalized for one of the reasons set forth in R.C. 5122.01(B).
 - d. Closed Hearing – The hearing shall be closed to the public. Counsel for the respondent, with the permission of the respondent, may request the hearing be open to the public. For good cause shown, the court may admit persons who have a legitimate interest in the proceedings, but the respondent may object. [R.C. 5122.15(A)(5) & (6)]; [Sup. R. 55]

COMMITMENT OF A PERSON RESIDING IN THE COMMUNITY

1. A person, who resides in the community and is not hospitalized at the time of the hearing, may be found mentally ill and subject to court order prior to being taken into custody. Proceedings have to be initiated under R.C. 5122.11 (i.e., an affidavit must have been filed with the probate court).
2. Pursuant to R.C. 5122.141(A) and (B), an initial hearing, rather than a full hearing which is held when a person is hospitalized, may be conducted and the respondent shall have the right to counsel, notice, and be afforded all other procedural due-process safeguards that apply when a full hearing is held, pursuant to R.C. 5122.15. An initial hearing shall be held within 5 court days from the day on which the respondent is detained or an affidavit is filed, whichever occurs first or within 10 calendar days from the day on which the respondent is detained or the affidavit is filed, whichever occurs first.
3. If a person who resides in the community has been found by the court to be mentally ill and subject to court order, the court may issue an interim order of detention ordering any health or police officer, or sheriff to take the person into custody. See R.C. 5122.10.
 - a. When the interim order of detention is issued, the court must have an agreement from the receiving hospital to admit the respondent or the order may be ineffective.
 - b. The court’s finding of mentally ill and subject to court order must be based on clear and convincing evidence. When a person is at large in the community, the prosecutor may be challenged to find a medical professional to testify as to the person’s current medical condition and mental state.
 - c. An individual who meets only the criteria described in R.C. 5122.01(B)(5)(a) is not subject to hospitalization.



The initial hearing may be waived, but a mandatory full hearing shall be held by the 30th day after the original involuntary detention of the respondent.

[R.C. 5122.141(D & E)]

CONTINUED COMMITMENT HEARINGS

1. A full evidentiary hearing must be held at the end of the first 90-day period of civil commitment, and at least every 2 years thereafter; this hearing may not be waived. [R.C. 5122.15(H)]
2. A full evidentiary hearing must be held every 180 days if requested by respondent or respondent's counsel. [R.C. 5122.15(H)]

FORCED MEDICATION ORDERS

The state's *parens patriae* power can override a mentally ill patient's decision to refuse antipsychotic medication. A person need not be adjudicated incompetent before the state's *parens patriae* power may be legitimately exercised in a forced-medication hearing. A court may issue an order permitting the administration of antipsychotic medication, by hospital employees, against a patient's wishes and without a finding that the patient is dangerous, when the court finds by clear and convincing evidence that:

1. The patient lacks the capacity to give or withhold informed consent regarding treatment;
2. The medication is in the patient's best interest; **AND**
3. No less intrusive treatment will be as effective in treating the mental illness. *Steele v. Hamilton County Community Mental Health Board*, 90 Ohio St. 3d 176, 180, 185, 2000-Ohio 47.

Procedural due-process concerns:

1. An attorney must be appointed to represent the patient;
2. An independent psychiatrist or licensed clinical psychologist and a licensed physician must be appointed to examine the patient, to evaluate the recommended treatment, and to report such findings and conclusions to the court regarding the patient's capacity to give or withhold informed consent, as well as the appropriateness of the proposed treatment;
3. The patient, appointed counsel, and treating physicians must receive notice of all hearings;
4. Patient must be provided the opportunity to be present at all hearings and to present and cross-examine witnesses. *Id.* at 189, 190.

TRANSFERS

1. The director of mental health and addiction services or his or her designee may file a motion with the court to seek an order to transfer an involuntary patient if the transfer is consistent with the medical needs of the patient. [R.C. 5122.15(N) & R.C. 5122.20]
2. If the transfer is to a more restrictive setting, the involuntary patient may request a hearing on the transfer. The hearing shall be held with all the rights of a full hearing under R.C. 5122.15.
3. The hearing shall be held within 10 days of the transfer and may be continued for up to an additional 10 days. [R.C. 5122.20]
4. Written notice of the transfer of an involuntary patient shall be given to the patient's legal guardian, parents, spouse, counsel, and, if none, to the patient's nearest-known relative or friend. [R.C. 5122.20]

DISMISSAL & EXPUNGEMENT

1. Patients may consent to voluntary treatment and court may dismiss case. [R.C. 5122.15(G)(1)]
2. If treatment needs could be met in less restrictive setting, court may dismiss case. [R.C. 5122.15 (F)(2)]
3. Board and treatment provider may recommend the court discontinue court-ordered treatment if respondent fails to comply with treatment plan. [R.C. 5122.15(N)]
4. If a person taken into custody under R.C. 5122.10 or R.C. 5122.11 is released from custody prior to a hearing, the probate court shall expunge any records of the person. [R.C. 5122.09]

CONFIDENTIALITY

All records, other than court journal entries or court docket entries, shall be kept confidential and shall not be released except as otherwise allowed under R.C. 5122.31.

REPORTING CIVIL COMMITMENTS TO BCI



The reporting to BCI of a civil commitment pursuant to R.C. 5122.311 can be accomplished via the Ohio Courts Network (OCN) portal, using the Mental Illness Adjudication Reporting (MIAR) module. In addition to being an efficient paperless-notification method, the MIAR module permits courts to modify and view previously submitted commitment records. For information on using the MIAR module in OCN, contact the OCN Help Desk at OCNHelp@sc.ohio.gov or 614.387.9980.