



SECTION 12

GENERAL LAWS

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Section 12: Emergency restraint and hospitalization of persons

posing risk of serious harm by reason of mental illness

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Section 12. (a) A physician who is licensed pursuant to section 2 of chapter 112, an advanced practice registered nurse authorized to practice as such under regulations promulgated pursuant to section 80B of said chapter 112, a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112 or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of said chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department. If an examination is not possible because of the emergency nature of the case and because of the refusal of the person to consent to such examination, the physician, qualified psychologist, qualified advanced practice registered nurse or licensed independent clinical social worker on the basis of the facts and circumstances may determine that hospitalization is necessary and may therefore apply. In an emergency situation, if a physician, qualified psychologist, qualified advanced practice registered nurse or licensed independent clinical social worker is not available, a police officer who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a 3-day period at a public facility or a private facility authorized for such purpose by the department. An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information that may assist the admitting physician or qualified advanced practice registered nurse. Whenever practicable, prior to transporting such person, the applicant shall telephone or otherwise communicate with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and to give notice of any restraint to be used and to determine whether such restraint is necessary.

(b) Only if the application for hospitalization under this section is made by a physician or a qualified advanced practice registered nurse specifically designated to have the authority to admit to a facility in accordance with the regulations of the department, shall such person be admitted to the facility immediately after reception. If the application is made by someone other than a designated physician or a qualified advanced practice registered nurse such person shall be given a psychiatric examination by a designated physician or a qualified advanced practice registered nurse immediately after reception at such facility. If the physician or a qualified advanced practice registered nurse determines that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness, the physician or qualified advanced practice registered nurse may admit such person to the facility for care and treatment. Upon admission of a person under this subsection, the facility shall inform the person that it shall, upon such person's request, notify the committee for public counsel services of the name and location of the person admitted. The committee for public counsel services shall immediately appoint an attorney who shall meet with the person. If the appointed attorney determines that the person voluntarily and knowingly waives the right to be represented, is presently represented or will be represented by another attorney, the appointed attorney shall so notify the committee for public counsel services, which shall withdraw the appointment. Any person admitted under this subsection who has reason to believe that such admission is the result of an abuse or misuse of this subsection may request or request through counsel an emergency hearing in the district court in whose jurisdiction the facility is located and unless a delay is requested by the person or through counsel, the district court shall hold such hearing on the day the request is filed with the court or not later than the next business day.

(c) No person shall be admitted to a facility under this section unless the person, or the person's parent or legal guardian on the person's behalf, is given an opportunity to apply for voluntary admission under paragraph (a) of section 10 and unless the person, or the person's parent or legal guardian, has been informed that: (i) the person has a right to such voluntary admission; and (ii) the period of hospitalization under this section cannot exceed 3 days. At any time during such period of hospitalization, the superintendent may discharge such person if the superintendent determines that such person is not in need of care and treatment.

(d) A person shall be discharged at the end of the 3-day period unless the superintendent applies for a commitment under sections 7 and 8 or the person remains on a voluntary status.

(e) Any person may make an application to a district court justice or a justice of the juvenile court department for a 3-day commitment to a facility of a person with a mental illness if the failure to confine said person would cause a likelihood of serious harm. The court shall appoint counsel to represent said person. After hearing such evidence as the court may consider sufficient, a district court justice or a justice of the juvenile court department may issue a warrant for the apprehension and appearance before the court of the alleged person with a mental illness if in the court's judgment the condition or conduct of such person makes such action necessary or proper. Following apprehension, the court shall have the person examined by a physician or a qualified advanced practice registered nurse designated to have the authority to admit to a facility or examined by a qualified psychologist in accordance with the regulations of the department. If the physician, qualified advanced practice registered nurse or qualified psychologist reports that the failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, the court may order the person committed to a facility for a period not to exceed 3 days; provided, however, that the superintendent may discharge said person at any time within the 3-day period. The periods of time prescribed or allowed under this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

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