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Legal Tools To Respond to Mental Health Crises

By Carolyn Reinach Wolf, Sarah Chussler, and Jamie A. Rosen



New York, along with many states across the country, has seen a rise in the number of individuals in need of emergent mental health services during the COVID-19 pandemic. The lack of available resources and/or services is a common theme when discussing mental health. Mental health attorneys support and advocate for individuals, families and mental health or health care institutions, helping them to navigate and maximize the legal resources currently available under the Mental Hygiene Law (MHL).¹ To remain a strong advocate for clients and their loved ones who may suffer from a mental illness, attorneys in all practice areas should be familiar with several of the mental health related legal tools. It is important to speak with an attorney well-versed in the mental health field to ascertain all of the options available when such a situation presents itself.

When Is Inpatient Treatment Appropriate?

Inpatient hospitalization may be crucial for the safety and stabilization of an individual suffering a mental health crisis. In New York, Mental Hygiene Law Article 9 (MHL) is the principal statute governing the inpatient hospitalization of mentally ill individuals. Psychiatric hospitalizations may be voluntary or involuntary. An individual can be hospitalized if an incident occurs, or when the individual demonstrates a pattern of behavior that poses a substantial risk of harm to self and/or to others. Hospitalization allows a psychiatrist or other mental health professional to evaluate the individual for any medical and mental health issues and establish his or her diagnosis and treatment plan.

MHL § 9.13 provides for voluntary hospitalization. A voluntary patient may submit a request in writing to be discharged, commonly referred to as a 72-hour letter. The

individual must be released within the 72-hour period unless the hospital applies to the court for an involuntary admission.

Common involuntary admissions include 15-day emergency admissions pursuant to MHL § 9.39, or an involuntary admission for 60 days from the initial date of admission upon an application and upon the certification of two examining physicians pursuant to MHL § 9.27.

What if There Are Safety Concerns for the Allegedly Mentally Ill Person?

If an individual in the community is suffering from a mental illness and is engaging in dangerous behavior which poses an immediate risk, 911 and/or the mobile crisis team, which provide outreach services (including evaluation, assessment and stabilization) in the community,² should be contacted.

In New York, family members and other concerned individuals may also make an application to the court for a mental health warrant.³ A mental health warrant proceeding, which is a civil proceeding, involves petitioning the court to issue a warrant to bring the individual to court for a hearing. The court then determines whether the individual poses a serious risk of harm to themselves and/or others. The court can direct that the individual be remanded to a psychiatric emergency room for immediate evaluation not to exceed 72 hours.⁴

What if There Are Safety Concerns for a Client and/or Family Member?

New York family courts have jurisdiction over a proceeding concerning acts which constitute disorderly conduct, harassment, stalking, menacing, reckless endanger-

ment, or other acts between members of the same family or household. The purpose of this civil proceeding is to stop verbal or physical abuse, end the family disruption and obtain protection. Obtaining an Order of Protection involves filing a Family Offense Petition, requesting that the family court issue an Order of Protection, which may include a provision directing an individual to “stay away” from a person, house, school, and/or place of business, refrain from communication and/or refrain from committing a family offense. The family court also has the authority to issue an “exclusion order” allowing the police to forcibly remove an individual from the household.⁵

What if an Individual Does Not Want To Engage in Outpatient Treatment?

Assisted Outpatient Treatment (AOT) is a valuable tool for mentally ill individuals who refuse support services in the community and are frequently hospitalized. Commonly referred to as Kendra’s Law in New York, this program provides for court-mandated community treatment for individuals with a history of non-compliance. A mentally ill individual’s parent, spouse, sibling, or child over the age of 18 may apply for AOT or refer an individual to the local county AOT program. To be eligible for AOT, the person must be 18 years of age or older, suffering from a mental illness, unlikely to survive safely in the community without supervision, and have a history of lack of compliance with treatment for mental illness.⁶ AOT services include an Assertive Community Treatment Team or Intensive Case Management, as well as psychiatric medication and monitoring of such treatment. An AOT treatment plan may also include other mental health and/or substance use disorder services which ensure safety and stability in the community, such as random toxicology testing, and/or a representative payee to manage social security benefits. The goal is to prevent “a relapse or deterioration”⁷ that would likely lead to an inpatient admission.

When the stability, safety, and well-being of an individual with a mental illness are at risk, it is critical to understand some of the legal avenues available. Family members, caregivers and the attorneys involved in the case of a mentally ill individual must be familiar with the various mental health legal tools designed to protect and support that individual as well as their loved ones.

Endnotes

1. N.Y. Mental Hygiene Law, § 9 (MHL).
2. *Id.* § 31.27.
3. *Id.* § 9.43.
4. *Id.* At any time during the 72-hour period, the patient may, if appropriate, be admitted as a voluntary or involuntary patient.
5. N.Y. Family Court Act, Article 8.
6. MHL § 9.60(c).
7. *Id.* § 9.60 (a).



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