



## IMPROVED Civil Court-Ordered Treatment Responses



The Civil Probate Workgroup began working with a select group of national experts in 2019 and includes psychiatrists, professors, attorneys, judges, and other court leaders. The group's purpose is to rely on cutting edge brain and behavioral research to develop a model law for civil and criminal approaches to optimizing outcomes for persons with mental illness. The final product will be released later in the year, but the approach and concepts have been settled upon and are part of the recommendations of the National Judicial Task Force to Examine State Courts' Response to Mental Illness. Those recommendations are summarized below.

### **EARLIER INTERVENTION**

The civil justice system must be modified to permit earlier intervention in the course of a person's mental illness. Waiting for a crisis to occur too often leads to contact with law enforcement and other undesirable outcomes that often follow. The standard for ordering involuntary treatment must recognize the need for and value of intervening when an individual lacks the capacity to recognize the need for treatment and is refusing needed treatment.

### **OUTPATIENT TREATMENT AS THE PREFERRED REMEDY**

Hospital stays for mental illness are short and do not provide the time or support needed to promote recovery and prevent relapse. Most mental health care is most appropriately provided in the community; therefore, courts should order that involuntary treatment be provided in an outpatient setting, unless outpatient treatment will not provide reasonable assurances for the safety of the individual or others or would not meet the person's treatment needs.

## PROCEDURAL REFORMS

Current processes to certify that a person needs treatment are often cumbersome and slow. While it is appropriate for a psychiatrist or psychologist to make treatment decisions after a court enters an order authorizing treatment, it is unnecessary to use these scarce resources to make a preliminary determination that a person requires clinical evaluation.

A clinical certificate from an independent qualified mental health professional should be sufficient to briefly hold a person in a treatment facility pending a hearing, and the testimony of an independent qualified mental health professional should be sufficient for a court to order treatment.

Qualified mental health professionals may include psychiatrists, psychiatric nurse practitioners, advance practice nurses with psychiatric training, physician's and physician assistants with psychiatric training, psychologists, and others defined in state laws as qualified to conduct emergency psychiatric assessments.

When a hearing is held, the court should consider conducting it remotely. The individual should have the right to attend the hearing in person.

## PATHWAY FOR EMERGENCY PSYCHIATRIC ASSESSMENT AND INTERVENTION

Currently, when petitions for mental health treatment are filed, individuals often remain in the hospital for days waiting for the hearing. This time is rarely clinically productive, and the individual's condition often worsens. A streamlined pathway to emergency psychiatric assessment and intervention that does not require an initial judicial process should be considered. This process would permit treatment for up to five days. Persons could then be transitioned to voluntary outpatient treatment unless their condition continued to require court-ordered treatment. At that time, a petition could be filed with the court.



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