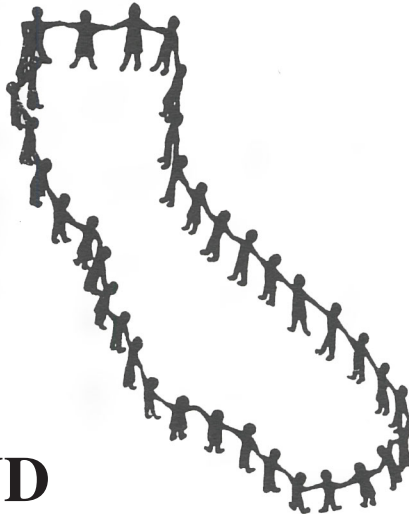


INVOLUNTARY PSYCHIATRIC TREATMENT: CALIFORNIA'S 72-HOUR HOLD AND 14-DAY CERTIFICATION



The purpose of this brochure is to explain two legal holds used to keep patients in psychiatric hospitals involuntarily: the 72-hour hold and the 14-day hold. These involuntary holds are the entry point for many patients into California's mental health system.

During these involuntary holds, patients have legal rights. The rights can be found in the patients' rights handbook and on the patients' rights poster. These holds may lead to other, more long-term holds, which are identified on page 4.

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Originally produced by Nancy Thomas
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A. 72-HOUR HOLD

California law allows police (and certain other designated mental health professionals) to take you into custody if they believe that, due to a mental disorder, you are:

1. A danger to yourself, and/or
2. A danger to others, and/or
3. Gravely disabled. (Grave disability is defined as: “a condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing or shelter.”)

At that time, the person taking you into custody must take reasonable precautions to safeguard your property. Also, he or she must advise you that this is not a criminal arrest, and allow you to gather some personal things to bring with you, and allow you to make a phone call.

Under this law, you are taken to a psychiatric hospital. There, the professional staff may detain you for up to 72 hours if they, too, find that you meet the above criteria (danger to self, danger to others, and/or grave disability due to a mental disorder.)

You must be given written notice of why you are being held. While you are being detained for up to 72 hours, the hospital must evaluate you. This evaluation consists of a multidisciplinary analysis of your medical, psychological, educational, social, financial and legal situation.

A similar law allows the police (or designated others) to take you into custody if they think you meet the above criteria due to chronic alcoholism.

California laws have established the right of involuntary patients to accept or refuse to take psychotropic medications. You can only be given these medications after the doctor has given you written and verbal information about the effects and side effects and you have given your informed consent. However, you may be given the medications involuntarily if there is a specifically

defined emergency or if it is determined **in a hearing** that you lack the ability to make a decision about taking the medication.

The hospital is under no obligation to hold you for the full 72 hours. The psychiatrist should release you prior to the end of the 72 hours if he or she believes that you no longer require evaluation or treatment.

By the end of the 72 hours, one of the following three things will happen:

1. You will have been released, or
2. You will have signed in as a voluntary patient, or
3. You will be put on a 14-day involuntary hold (called “certification for intensive treatment”).

B. FOURTEEN-DAY HOLD

At the end of the 72 hours, if the treating psychiatrist believes that you are still, due to a mental disorder or chronic alcoholism:

1. Dangerous to yourself, and/or
2. Dangerous to others, and/or
3. Gravely disabled,

and he or she believes that you are unwilling or unable to accept voluntary treatment, then he or she may detain you for an additional 14-day period. This is called a “certification for intensive treatment.” At this time, you are entitled to written notice of this fact, including a statement of specific reasons for the psychiatrist’s decisions.

By the end of the 14-day hold, one of these three things will happen:

1. You will have been released (by staff, or at your certification review hearing, or at a writ hearing), or
2. You will have signed in as a voluntary patient, or
3. You may be held for additional period of time:

- a. If you are still considered dangerous to yourself, you may be recertified for another 14-day hold.
- b. If you are still considered dangerous to others, the court may put a 180-day post-certification hold on you. This hold is renewable.
- c. If you are still considered “gravely disabled,” you may either:
 - Be placed on a 30-day hold for additional intensive treatment, or
 - Be placed under Temporary Conservatorship and then a full one-year Conservatorship, which is renewable. In this event, a conservator will make your major life decisions, including where you live and how your money is spent.
 - In some circumstances, after being placed on a 30-day hold, conservatorship papers may be filed. In this case, the Temporary Conservatorship runs concurrently with (at the same time as) the 30-day hold. [Not all counties will put the 30-day hold into effect. Check with your county Patients’ Rights Advocate to find out if your county does.]

C. YOUR DUE PROCESS RIGHTS

Because you are held involuntarily on the 72-hour and 14-day holds, your liberty interest is defined. You are entitled to certain procedures (“due process”) to make sure that these holds are proper, or meet the criteria above. Working with your advocate or lawyer to show that you do not meet the grounds for the hold will result in your release.

1. Certification Review Hearing

When you are certified for an additional 14 days (as well as for an additional 30 days), you are also entitled to notice of your certification review hearing. This informal hearing will be held within four days of the beginning of the certification unless you or your advocate request a brief postponement.

The purpose of this hearing is for a neutral person to review whether it is (was) proper for you to be held for the extra period. The hearing is for your benefit. It insures that patients will not be routinely certified unless they meet the criteria.

You don't have to **request** a certification review hearing. It is automatically scheduled, to guarantee that no patient misses out on a hearing due to an inability to ask for one, intimidation, fear of requesting one, or for any other reason. The hospital, not you, has the burden of justifying why it recommends holding you.

2. Writ of Habeas Corpus Hearing

At the time you are first given the notice of certification described above, you are also entitled to notice about the right to appear before a judge in a legal proceeding called writ of habeas corpus hearing. At this hearing, you are entitled to be represented by court-appointed or private legal counsel who must help you challenge the grounds of the involuntary hold.

A hearing for writ of habeas corpus does not happen automatically. You must make a specific request for one by notifying the person who gave you the certification notice, or any member of the treatment staff at the hospital.

In many counties, patients may make direct contact with the public or private defenders' offices, who will then make arrangements for a hearing. The patients' rights advocate is often available as well to help in making arrangements.

If you ask to file a writ of habeas corpus right at the time of being given notice of certification, the Certification Review Hearing will not take place. Many patients wait to see how things go at the certification review hearing. There are two reasons why this is advisable. First, the certifica-

tion review hearing is generally scheduled as soon as, if not sooner than, a writ hearing. Second, if you lose at the certification review hearing, you can then take advantage of the right to file writ of habeas corpus and end up having two hearings, instead of just one.

If you request a writ of habeas corpus hearing during the 72-hour hold, there will probably not be time for you to go to court during that hold. However, the request should prevent your being transferred to a hospital in another county.

PRACTICAL STRATEGIES

Involuntary treatment can be a very difficult experience, and one hold can slide into another until a patient is held for a long time. If you do not want involuntary treatment, the following actions may help prove that you don't need it:

1. You are not dangerous to yourself:

You don't harm yourself, and you make no *threats* to harm yourself. You participate in ward activities, interact with other patients and staff, and show interest in your food and your grooming.

2. You are not dangerous to others:

You are not belligerent with other patients or with staff, you don't provoke arguments, and you don't let yourself be provoked. Physical violence can erupt from words. You don't hit or threaten to hit others.

You don't interfere with others. You respect the privacy and "space" of others, especially near the nurses' station, seclusion rooms (if there are any), the telephone and TV, and around food.

3. You are not "gravely disabled":

While you are in the hospital, you take advantage of the food, clothing and shelter there. You eat your meals, dress appropriately and, if you can, do your laundry.

You work on a plan to provide for your own food, clothing and shelter. You don't have to prove you can do it alone, only that you have a plan to provide for yourself.

You have family or friends tell the staff member (doctor, counselor, nurse) you are working with how you can provide for yourself and how they will help you. If they can't come in person, they should write these things down in a letter. This information is also important for your patients' rights advocate or lawyer to have. It will help the hearing officer or judge in making his or her decision.

SOURCES:

Welfare & Institutions Code, 1988; "Legal Hearings and Mental Health Facilities" (1988) by Nancy Thomas and Janet Marshall Wilson; "Peer and Self-Advocacy Program Training Manual" (1988) Protection & Advocacy, Inc., by Jean Matulis.

NOTE:

This booklet is based on laws and regulations in effect at the time of publication.

PATIENTS' RIGHTS ADVOCATE OFFICE:

PUBLIC DEFENDER'S OFFICE:

SELF HELP GROUP IN YOUR AREA:

LOCAL BENEFITS COUNSELOR:

PROTECTION & ADVOCACY, INC. (PAI)

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The federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 requires that each state provide an independent advocacy system for persons labelled "mentally ill." PAI is that system in California, and provides information, referrals, and legal assistance to people who have psychiatric disabilities in complaints about abuse, neglect, and rights violations.

THE PEER & SELF-ADVOCACY PROGRAM

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