

MENTAL HEALTH CODE (EXCERPT)

Act 258 of 1974

COURT HEARINGS

330.1451 Court hearings; applicable provisions.

Sec. 451. Court hearings convened under authority of this chapter are governed by sections 452 to 465, except that sections 453(2), 453a, and 455(3) to (11) do not apply to a petition seeking only assisted outpatient treatment.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.

330.1452 Court hearing; date; receipt of certain documents.

Sec. 452. (1) The court shall fix a date for every hearing convened under this chapter. Except as provided in subsection (2), the hearing shall be convened promptly, but not more than 7 days after the court's receipt of any of the following:

(a) A petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist.

(b) A petition for a determination that an individual continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist.

(c) A petition for discharge filed under section 484.

(d) A demand or notification that a hearing that has been temporarily deferred under section 455(6) be convened.

(2) A hearing for a petition under section 434(7) shall be convened not more than 28 days after the filing of the petition, unless the petition was filed while the subject of the petition was an inpatient at a psychiatric hospital, in which case the hearing shall be convened within 7 days of the filing of the petition.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1976, Act 346, Imd. Eff. Dec. 21, 1976;—Am. 1982, Act 402, Imd. Eff. Dec. 28, 1982;—Am. 1986, Act 118, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017;—Am. 2018, Act 593, Eff. Mar. 28, 2019.

330.1453 Court hearing; notice.

Sec. 453. (1) The court shall cause notice of a petition and of the time and place of any hearing to be given to the subject of the petition, his or her attorney, the petitioner, the prosecuting or other attorney provided for in section 457, the hospital director of any hospital in which the subject of a petition is hospitalized, the spouse of the subject of the petition if his or her whereabouts are known, the guardian, if any, of the subject of the petition, and other relatives or persons as the court may determine. Notice shall be given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing.

(2) Within 4 days of the court's receipt of the documents described in section 452(1)(a), the court shall cause the subject of the petition to be given a copy of the petition, a copy of each clinical certificate executed in connection with the proceeding, notice of the right to a full court hearing, notice of the right to be present at the hearing, notice of the right to be represented by legal counsel, notice of the right to demand a jury trial, and notice of the right to an independent clinical evaluation.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.

330.1453a Alternatives to hospitalization; preparation of assessment report.

Sec. 453a. Upon receipt of documents described in section 452, the court shall order a report assessing the current availability and appropriateness for the individual of alternatives to hospitalization, including alternatives available following an initial period of court-ordered hospitalization. The report shall be prepared by the community mental health services program, a public or private agency, or another individual found suitable by the court. In deciding which individual or agency should be ordered to prepare the report, the court shall give preference to an agency or individual familiar with the treatment resources in the individual's home community.

History: Add. 1996, Act 588, Imd. Eff. Jan. 21, 1997.

330.1454 Legal counsel; appointment; waiver; preferred counsel; compensation; system for providing representation; consultation with subject of petition before court hearing; certificate.

Sec. 454. (1) Every individual who is the subject of a petition is entitled to be represented by legal counsel.

(2) Unless an appearance has been entered on behalf of the subject of a petition, the court shall, within 48 hours after its receipt of any petition together with the other documents required by section 452, appoint

counsel to represent the subject of the petition, except that if an individual has been hospitalized, counsel shall be appointed within 24 hours after the hospitalization.

(3) If, after consultation with appointed counsel, the subject of a petition desires to waive his or her right to counsel, he or she may do so by notifying the court in writing.

(4) If the subject of a petition prefers counsel other than the initially appointed counsel, the preferred counsel agrees to accept the appointment, and the court is notified of the preference by the subject of the petition or the preferred counsel, the court shall replace the initially appointed counsel with the preferred counsel.

(5) If the subject of a petition is indigent, the court shall compensate appointed counsel from court funds in an amount that is reasonable and based upon time and expenses.

(6) The supreme court may, by court rule, establish the compensation to be paid for counsel of indigents and may require that counsel be appointed from a system or organization established for the purpose of providing representation in proceedings governed by this chapter.

(7) Legal counsel shall consult in person with the subject of a petition at least 24 hours before the time set for a court hearing.

(8) Legal counsel for the subject of a petition under section 452(1)(a) who is hospitalized pending the court hearing shall consult in person with the individual for the first time not more than 72 hours after the petition and 2 clinical certificates have been filed with the court.

(9) After the consultation required in subsection (7) or (8), counsel promptly shall file with the court a certificate stating that he or she personally has seen and has consulted with the subject of a petition as required by this section.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1982, Act 178, Imd. Eff. June 14, 1982;—Am. 1986, Act 118, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.

330.1455 Right to be present at all hearings; waiver; exclusion of subject by court; stipulation to entry of treatment order; meeting; request to defer hearing; continuing jurisdiction during deferral period; treatment as formal voluntary patient; effect of refusing treatment or requesting hearing; participation in outpatient treatment; notice to convene hearing.

Sec. 455. (1) The subject of a petition has the right to be present at all hearings. This right may be waived by a waiver of attendance signed by the subject of a petition, witnessed by his or her legal counsel, and filed with the court or it may be waived in open court at a scheduled hearing. The subject's right to be present at a hearing is considered waived by the subject's failure to attend the hearing after receiving notice required by section 453 and any applicable court rule, providing the subject has had an opportunity to consult with counsel as required under section 454. The court may exclude the subject from a hearing if the subject's behavior at the hearing makes it impossible to conduct the hearing. The court shall enter on the record its reasons for excluding the subject of a petition from the hearing. The subject's presence may be waived by the court if there is testimony by a physician or licensed psychologist who has recently observed the subject that the subject's attendance would expose him or her to serious risk of physical harm.

(2) The subject of the petition under section 434, after consultation with counsel, may stipulate to the entry of any order for treatment.

(3) The subject of a petition under section 434 who is hospitalized pending the court hearing, within 72 hours after the petition and clinical certificates have been filed with the court, shall meet with legal counsel, a treatment team member assigned by the hospital director, a person assigned by the executive director of the responsible community mental health services program or other program as designated by the department, and, if possible, a person designated by the subject of the petition, in order to be informed of all of the following:

(a) The proposed plan of treatment in the hospital.

(b) The nature and possible consequences of commitment procedures.

(c) The proposed plan of treatment in the community consisting of either an alternative to hospitalization or a combination of hospitalization and assisted outpatient treatment with hospitalization not to exceed 60 days.

(d) The right to request that the hearing be temporarily deferred, with a continuing right to demand a hearing during the deferral period. The deferral period shall be 60 days if the individual chooses to remain hospitalized, or 180 days if the individual chooses outpatient treatment or a combination of hospitalization and outpatient treatment.

(4) The person designated by the subject of the petition under subsection (3) may be any person who is

willing and able to attend the meeting, including a representative of an advocacy group or the recipient rights adviser of the hospital.

(5) The hospital in which the subject of a petition under section 434 is hospitalized shall notify the participants of the meeting required by subsection (3).

(6) The subject of a petition under section 434 may file with the court a request to temporarily defer the hearing for not longer than 60 days if the individual chooses to remain hospitalized, or 180 days if the individual chooses outpatient treatment or a combination of hospitalization and outpatient treatment. The request shall include a stipulation that the individual agrees to remain hospitalized and to accept treatment as may be prescribed for the deferral period, to accept and follow the proposed plan of treatment as described in subsection (3)(c) for the deferral period, or to accept and follow the proposed plan for outpatient treatment, and further agrees that at any time the individual may refuse treatment and demand a hearing under section 452. The request to temporarily defer the hearing shall be on a form provided by the department and signed by the individual in the presence of his or her legal counsel and shall be filed with the court by legal counsel.

(7) Upon receipt of the request and stipulation under subsection (6), the court shall temporarily defer the hearing. During the deferral period, both the original petition and the clinical certificates remain valid. If the hearing is convened, the court may require additional clinical certificates and information from the provider. The court shall retain continuing jurisdiction during the deferral period.

(8) Upon receipt of a copy of the request to temporarily defer the hearing under subsection (6), if the individual has agreed to remain hospitalized, the hospital director shall treat the individual as a formal voluntary patient without requiring the individual to sign formal voluntary admission forms. If the individual, at any time during the period in which the hearing is being deferred, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease, the hospitalized individual shall remain hospitalized with the status of the subject of a petition under section 434, and the court shall be notified to convene a hearing under section 452(1)(d).

(9) Upon receipt of a copy of the request to temporarily defer the hearing under subsection (6), if the individual has agreed to participate in an alternative to hospitalization in the community, the hospital director shall release the individual from the hospital to the outpatient treatment provider. If the individual, at any time during the deferral period, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease and the court shall be notified to convene a hearing under section 452(1)(d). Upon notification, the court shall, if necessary, order a peace officer to transport the individual to the hospital where the individual shall remain until the hearing is convened. The individual shall be given the status of the subject of a petition under section 434.

(10) If the individual has remained hospitalized and if, not earlier than 14 days nor later than 7 days before the expiration of the deferral period, the hospital director believes that the condition of the individual is such that he or she continues to require treatment, and believes that the individual will not agree to sign a formal voluntary admission request or is considered by the hospital not to be suitable for voluntary admission, the hospital director shall notify the court to convene a hearing under section 452(1)(d).

(11) If the individual is participating in an alternative to hospitalization in the community as described in subsection (3)(c) and if, not earlier than 14 days nor later than 7 days before the expiration of the deferral period, the executive director of the community mental health services program responsible for the treatment that is an alternative to hospitalization believes that the condition of the individual is such that he or she continues to require treatment, and believes that the individual will not agree to accept treatment voluntarily or is considered by the outpatient treatment program provider not suitable for voluntary treatment, the executive director shall notify the court to convene a hearing under section 452(1)(d).

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1982, Act 178, Imd. Eff. June 14, 1982;—Am. 1986, Act 118, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017;—Am. 2018, Act 593, Eff. Mar. 28, 2019.

330.1456 Place of hearing; change of venue.

Sec. 456. (1) Hearings may be held in such quarters as the court directs; either within or without the county in which the court has its principal office, in a hospital or other convenient place. Whenever practicable, the court shall convene hearings in a hospital.

(2) The subject of a petition, any interested person, or the court on its own motion may request a change of venue because of residence, convenience to parties, witnesses, or the court, or the individual's mental or physical condition.

History: 1974, Act 258, Eff. Nov. 6, 1974.

330.1457 Participation of prosecuting attorney; exception.

Sec. 457. The prosecuting attorney of the county in which a court has its principal office shall participate,

in person or by assistant, in hearings convened by the court of his or her county under this chapter, or he or she may permit the prosecuting attorney or assistant prosecuting attorney from another county to participate on his or her behalf, except that a prosecutor need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the court the case for requiring treatment or for a finding of incompetence.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1996, Act 395, Imd. Eff. Oct. 8, 1996.

330.1458 Jury.

Sec. 458. The subject of a petition may demand that the question of whether he requires treatment or is legally incompetent be heard by a jury. A jury shall consist of 6 persons to be chosen in the same manner as jurors in civil proceedings.

History: 1974, Act 258, Eff. Nov. 6, 1974.

330.1459 Documents, witnesses, and cross-examination; rules of evidence.

Sec. 459. (1) The parties in a proceeding under this chapter have the right to present documents and witnesses and to cross-examine witnesses.

(2) The court shall receive all relevant, competent, and material evidence which may be offered. The rules of evidence in civil actions are applicable, except to the extent that specific exceptions have been provided for in this chapter or elsewhere by statute or court rule.

History: 1974, Act 258, Eff. Nov. 6, 1974.

330.1460 Investigation by counsel; evidence.

Sec. 460. Counsel for the subject of a petition shall be allowed adequate time for investigation of the matters at issue and for preparation, and shall be permitted to present the evidence that counsel believes necessary to a proper disposition of the proceedings, including evidence as to alternatives to hospitalization.

History: 1974, Act 258, Eff. Nov. 6, 1974.

330.1461 Testimony or deposition of physician or psychologist required; waiver; examinations; presence of attorney during deposition; cross-examination of deponent; waiver.

Sec. 461. (1) An individual may not be found to require treatment unless at least 1 physician or licensed psychologist who has personally examined that individual testifies in person or by written deposition at the hearing.

(2) For a petition filed under section 434(7), that does not seek hospitalization before the hearing, an individual may not be found to require treatment unless a psychiatrist who has personally examined that individual testifies. A psychiatrist's testimony is not necessary if a psychiatrist signs the petition. If a psychiatrist signs the petition, at least 1 physician or licensed psychologist who has personally examined that individual must testify. The requirement for testimony may be waived by the subject of the petition. If the testimony given in person is waived, a clinical certificate completed by a physician, licensed psychologist, or psychiatrist must be presented to the court before or at the initial hearing.

(3) The examinations required under this section for a petition filed under section 434(7) shall be arranged by the court and the local community mental health services program or other entity as designated by the department.

(4) A written deposition may be introduced as evidence at the hearing only if the attorney for the subject of the petition was given the opportunity to be present during the taking of the deposition and to cross-examine the deponent. This testimony or deposition may be waived by the subject of a petition. An individual may be found to require treatment even if the petitioner does not testify, as long as there is competent evidence from which the relevant criteria in section 401 can be established.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1976, Act 346, Imd. Eff. Dec. 21, 1976;—Am. 1982, Act 402, Imd. Eff. Dec. 28, 1982;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017;—Am. 2018, Act 593, Eff. Mar. 28, 2019.

330.1462 Continuance or adjournment; grounds.

Sec. 462. (1) Requests for continuances for any reasonable time shall be granted for good cause.

(2) Unless the subject of a petition or his or her attorney objects, the failure to timely notify a spouse, guardian, relative, or other person determined by the court to be entitled to notice shall not be cause to adjourn or continue a hearing.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1463 Independent clinical evaluation by physician, psychiatrist or psychologist; compensation; use by subject of petition.

Sec. 463. (1) If requested before the first scheduled hearing or at the first scheduled hearing before the first witness has been sworn on a petition, the subject of a petition in a hearing under this chapter has the right at his or her own expense, or if indigent, at public expense, to secure an independent clinical evaluation by a physician, psychiatrist, or licensed psychologist of his or her choice relevant to whether he or she requires treatment, whether he or she should be hospitalized or receive treatment other than hospitalization, and whether he or she is of legal capacity.

(2) Compensation for an evaluation performed by a physician or a licensed psychologist shall be in an amount that is reasonable and based upon time and expenses.

(3) The independent clinical evaluation described in this section is for the sole use of the subject of the petition. The independent clinical evaluation or the testimony of the individual performing the evaluation shall not be introduced into evidence without the consent of the subject of the petition.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1982, Act 402, Imd. Eff. Dec. 28, 1982;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2016, Act 320, Eff. Feb. 14, 2017.

330.1464 Persons entitled to copies of court orders.

Sec. 464. Copies of court orders issued pursuant to this chapter shall be given to the individual who is the subject of the order; to the individual's guardian, if a guardian has been appointed; to the individual's attorney; to the executive director of the community mental health services program; and to the hospital director of any hospital in which the individual is or will be a patient.

History: 1974, Act 258, Eff. Nov. 6, 1974;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1464a Order of involuntary hospitalization or combination of hospitalization and assisted outpatient treatment; entering or removing order from law enforcement information network; applicability of section to order of involuntary treatment for substance use disorder.

Sec. 464a. (1) Upon entry of a court order directing that an individual be involuntarily hospitalized under this chapter or that an individual involuntarily undergo a program of combined hospitalization and assisted outpatient treatment under this chapter, the court shall immediately order the department of state police to enter the court order into the law enforcement information network. The department of state police shall remove the court order from the law enforcement information network only upon receipt of a subsequent court order for that removal.

(2) The department of state police shall immediately enter an order described in subsection (1) into the law enforcement information network or shall immediately remove an order from the law enforcement information network as ordered by the court under this section.

(3) This section does not apply to an order of involuntary treatment for substance use disorder under chapter 2A.

History: Add. 1994, Act 339, Eff. Apr. 1, 1996;—Am. 2014, Act 200, Imd. Eff. June 24, 2014;—Am. 2018, Act 593, Eff. Mar. 28, 2019.

330.1465 Clear and convincing evidence required.

Sec. 465. A judge or jury shall not find that an individual is a person requiring treatment unless that fact has been established by clear and convincing evidence.

History: 1974, Act 258, Eff. Nov. 6, 1974.