

§ 122C-232. Judicial determination.

(a) When an incompetent adult is admitted to a 24-hour facility where the incompetent adult will be subjected to the same restrictions on freedom of movement present in the State facilities for the mentally ill, or to similar restrictions, a hearing shall be held in the district court in the county in which the 24-hour facility is located within 10 days after the day the incompetent adult is admitted to the facility. A continuance of not more than five days may be granted upon motion [of] any of the following:

- (1) The court.
- (2) Respondent's counsel.
- (3) The responsible professional.

The Commission shall adopt rules governing procedures for admission to other 24-hour facilities not falling within the category of facilities where freedom of movement is restricted; these rules shall be designed to ensure that no incompetent adult is improperly admitted to or remains in a facility.

(a1) Prior to admission, the facility shall provide the incompetent adult and the legally responsible person with written information describing the procedures for court review of the admission and the procedures for discharge.

(a2) Within 24 hours after admission, the facility shall notify the clerk of court of the county in which the facility is located that the incompetent adult has been admitted and that a hearing for concurrence in the admission must be scheduled. At the time the facility provides notice to the court to schedule a hearing for concurrence, the facility shall notify the clerk of the names and addresses of the legally responsible person and the responsible professional and provide a copy of the legally responsible person's written application for evaluation or admission of the incompetent adult and the facility's evaluation of the incompetent adult.

(b) In any case requiring the hearing described in subsection (a) of this section, no petition is necessary; the written application for voluntary admission shall serve as the initiating document for the hearing. The court shall determine whether the incompetent adult is mentally ill or a substance abuser and is in need of further treatment at the facility. Further treatment at the facility should be undertaken only when lesser measures will be insufficient. If the court finds by clear, cogent, and convincing evidence that these requirements have been met, the court shall concur with the voluntary admission of the incompetent adult and set the length of the authorized admission for a period not to exceed 90 days. If the court finds that these requirements have not been met, it shall order that the incompetent adult be released. A finding of dangerousness to self or others is not necessary to support the determination that further treatment should be undertaken.

(c) Unless otherwise provided in this Part, the hearing specified in subsection (a) of this section, including the provisions for representation of indigent incompetent adults, all subsequent proceedings, and conditional release are governed by the involuntary commitment procedures of Part 7 of this Article.

(d) In addition to the notice of hearings and rehearings to the incompetent adult and his or her counsel required under Part 7 of this Article, notice shall be given by the clerk to the legally responsible person or a successor to the legally responsible person. The legally responsible person or a successor to the legally responsible person may also file with the clerk of court a written waiver of the right to receive notice. (1975, c. 839; 1977, c. 756; 1979, c. 171, s. 1; 1983, c. 889, ss. 1, 2; 1985, c. 589, s. 2; 2018-33, s. 18.)