

Mental Health Sections – Chapter 123 – Civil & Criminal Commitments

CPCS Mental Health Litigation Division: 617-988-8341

Section	What is it?	Where heard?	Who is the attorney?	Length of Commitment
7/8	Civil commitment of alleged mentally ill & dangerous person to facility – petition filed by facility where person is held.	Court where facility is located	MHLD trial attorney or private counsel assigned by CPCS MHLD	Initial commitment = up to 6 months, recommitment on new petition = up to 1 year
8B	Court order for mental health treatment of a committed person who is incompetent to make treatment decisions, <i>aka</i> “Rogers order.”	Court where facility located	MHLD trial attorney or private counsel assigned by CPCS MHLD	Order expires when commitment ends or sooner if District Court terminates the 8B based on a new hearing during the commitment period.
10/11	Voluntary/Conditional voluntary admission	No Hearing - Application for admission by client or parent of a minor directly to the facility	Client has right to consult with an attorney prior to signing - call MHLD or MHLAC for advice about rights	Most admissions are “conditional voluntary” - patient must give 3 days’ written notice of intent to leave; facility may petition for commitment under §7-8
12(a)	Application by authorized person for a 3-day involuntary admission to a mental health facility of person alleged to be mentally ill and dangerous.	. A section 12(a) is used to “restrain” the person in the community to transport them for a psychiatric evaluation under 12(b). Often brought to an emergency room.	No attorney for 12(a) unless held in an emergency department longer than 3 business days. (MHLD may appoint counsel to meet with client if notified of detention)	Not a commitment, person is “restrained” – often in the ER –for evaluation of whether they meet the criteria for a 3-day involuntary admission under 12(b). Statute has no stated time limit on 12(a) “detention” but the BMC Appellate Division held that the 3 business days allowed under 12(b) admission begin to run when the person is picked up pursuant to 12(a). MHLD will assign counsel if the client is held in ER for more than 3 days.
12(b)	Three-day involuntary admission for evaluation. Follows 12(a) application and is the examination and actual admission to a facility.	No pre-detention hearing. Section 12(b) is an admission to a locked mental health facility. Emergency hearing available same day or next day if client requests it after admission.	Upon client’s request, following admission under 12(b), client can request mental health attorney by calling (617) 988-8341.	3 business days, longer if commitment petition is filed
12(e)	Emergency commitment to facility, for observation and evaluation on petition of any person and after examination by a designated physician.	Any District Court	Attorney of the Day (if no certified Mental Health Attorney is available)	3 business days, longer if commitment petition is filed.

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[Mental Health Proceedings in Massachusetts: A Manual for Defense Counsel](#)

10/11/19

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15(a)	Outpatient examination for competency to stand trial and/or criminal responsibility by qualified physician or psychologist, <i>usually the court clinician</i> .	Court of Criminal Charges	Defense Attorney should be present for the evaluation	Not a commitment, this is a screening evaluation by court clinician with the resulting possibilities being either 1) competent; 2) incompetent; or, 3) in need of further evaluation. See 15(b).
15(b)	Further evaluation of client's competency to stand trial and/or criminal responsibility is completed during a twenty day court ordered hospitalization at either a facility or the Bridgewater State Hospital.	Court of Criminal Charges	Defense Attorney of the underlying criminal case.	Not more than 20 days, extendable for not more than an additional 20 days under exceptional circumstances
15(c)	Report by a clinician to the court after the conclusion of the 15(b) evaluation which states the clinician's opinion on competency and the clients need for further inpatient treatment	Court of Criminal Charges	Defense Attorney of the underlying criminal case.	Not a commitment. Not a commitment Petition. Not a finding or adjudication of the client's competency or criminal responsibility, just the opinion of the reporting clinician.
15(d)	Competency to Stand Trial Hearing / Competency to Stand Trial Finding of the Court with jurisdiction over the underlying criminal charge.	Court of Criminal Charges	Defense Attorney of the underlying criminal case.	Not a commitment If the Commonwealth and the Defendant agree on the issues of the defendant's competency, then no hearing is necessary, but the court still must make a finding. Either party may request a competency hearing at any time DEFENSE SHOULD NOT STIPULATE TO A FINDING OF IN COMPETENCY WITHOUT CLIENT'S CONSENT
15(e)	After a finding of guilty on a criminal charge but prior to sentencing, an order for outpatient exam, with possibility of a subsequent order for an inpatient exam, for "aid in sentencing". There can also be a subsequent commitment pursuant to 15 (e).	Court of Criminal Charges	Defense Attorney (should be the attorney who represented client for trial or plea which lead to conviction)	If inpatient, 40 days for observation in facility; facility can petition for commitment during period of observation. Commitment under 15 (e) is for up to 6 months.

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Note to 15(a) - 15(d)	<p>If the court finds the person is not competent, then:</p> <p>1) the criminal charges can be dismissed;</p> <p>2) the client can be released on bail or returned to jail, pending restoration to competency;</p> <p>3) the client can be ordered for further inpatient observation under 16(a);</p> <p>4) the client can be committed to either a DMH facility or the Bridgewater State Hospital but only based on a <u>Petition</u> filed by DMH, DOC or DA; and after a § 16(b) hearing for which mental health counsel is appointed and has at least 2 days to prepare.</p> <p>5) the client <u>cannot</u> be summarily committed based upon an oral or written “Motion”; and,</p> <p>5) the client <u>cannot</u> be committed without a hearing or counsel on the 16(b) Commitment Petition. See, G.L. 123 §5.</p>	Court with jurisdiction of the criminal case	Defense Attorney of the underlying criminal case.	<p>Not a commitment and the assigned attorney should not assent to commitment at this stage.</p> <p><i>If in need of advice or assistance please contact CPCS Mental Health Litigation Division.</i></p>
16(a)	Hospitalization for observation and examination of a defendant after a finding of incompetency or a not guilty by reason of mental illness or mental defect (NGRI) verdict to determine need for further involuntary inpatient treatment.	Court of Criminal Charges	Defense Attorney of the underlying criminal case	Not more than 40 days <i>BUT</i> the combined periods under §§15(b) and 16(a) may not exceed 50 days
16(b)	Commitment Petition of a defendant found incompetent to stand trial (see 15(d)) or NGRI. May be filed by DMH; Bridgewater State Hospital; or District Attorney.	Court of Criminal Charges* *Standing Order allows for <u>District Court</u> 16(b) Petitions to be heard by Court with jurisdiction over the facility. However, all Superior Court 16(b) Petitions must be heard by the Superior Court	MHLD trial attorney or private counsel assigned by CPCS MHLD	Up to 6 months. Note that under 16(b) “the petition for commitment of an untried defendant shall only be heard if the defendant is found incompetent to stand trial or if the criminal charges are dismissed after commitment.”
16(c)	Recommitment of defendant found incompetent or NGRI to DMH or Bridgewater	Court where DMH facility or BSH located	MHLD trial attorney or private counsel assigned by CPCS MHLD	Up to 1 year

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17(b)	Incompetent defendant can request opportunity to offer defense on the merits. See <i>Commonwealth v. Hatch</i> , 438 Mass 618 (2003)	Court of Criminal Charges	Defense Attorney of the underlying criminal charge	Case can be dismissed or charges can remain pending but defendant cannot be convicted
18(a) First five sentences	Commitment for observation and examination of pretrial detainee or sentenced prisoner filed by a person in charge of place of detention to determine the prisoner’s need for inpatient hospitalization	Pretrial detainee: Court of criminal charges Custodial sentenced prisoner: Court of place of detention	No attorney appointed on the observation and evaluation portion of the statute	30 days
18(a) Sentences six and seven	Petition for commitment of a prisoner who is allegedly mentally ill, dangerous and in need of inpatient hospitalization. The term “prisoner” for purposes of this statute includes both pre-trial defendants as well as individuals serving either county or state prison sentence.	Court with jurisdiction over the DMH facility or the Bridgewater State Hospital in all instances except for the first 6-month commitment of a pre-trial detainee in a Superior Court case.	MHLD trial attorney or private counsel assigned by CPCS MHLD	Initial commitment is for up to 6 months, followed by possible recommitments for up to 1 year. Section 18 commitments for prisoners who are serving a sentence terminates when the sentence wraps, however, at that time DMH or DOC may seek a section 7 & 8 “civil” commitment.
35	Petition can be filed by family, police, or others based on allegation of alcohol or substance use disorder and likelihood of serious harm as a result of the AUD/SUD.	District or Juvenile Court, but court will transfer rather than rejecting if filed in the “wrong” court.	Attorney of the day if no MHLD panel attorney is available. In the Matter of G.P. , 473 Mass. 112 (2015)	Up to 90 days at DPH approved § 35 facility or Men’s Alcohol and Substance Abuse Center at MCI/Plymouth operated by the DOC .

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