

**FROM THE COMMITTEE ON
MODEL CIVIL JURY INSTRUCTIONS**

The Committee has adopted the following amended model civil jury instruction effective October 31, 2019.

ADOPTED

M Civ JI 171.02 Mental Illness: Involuntary Treatment—Elements and Burden of Proof

Two requirements must be met for you to find that an individual is a person requiring treatment.

First, the person must be mentally ill. Mentally ill means that the person suffers from a substantial disorder of thought or mood which significantly impairs [his / her] judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

However, mental illness is not the only requirement.

The second requirement is that the person, as a result of that mental illness, is subject to one or more of the following conditions:

- (a) the person can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure [himself / herself] or another person and has engaged in an act or acts or made significant threats that substantially support this expectation, or
- (b) the person is unable to attend to those of [his / her] basic physical needs such as food, clothing or shelter, which must be attended to in order for the person to avoid serious harm in the near future; and the person has demonstrated that inability by failing to attend to those basic physical needs, or
- (c) the person's judgment is so impaired that [he / she] lacks an understanding of [his / her] need for treatment, which has caused [him / her] to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of [his / her] condition, and presents a substantial risk of significant physical or mental harm to [himself / herself] or to others.

An individual who meets both requirements is considered to be “a person requiring treatment.”

The petitioner has the burden of proving by clear and convincing evidence that the respondent is a person requiring treatment.

If you find that the petitioner has met [his / her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

“We find that the respondent is a person requiring treatment.”

If you find that the petitioner has not met [his / her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

“We do not find that the respondent is a person requiring treatment.”

Note on Use

In the case of a hearing on a petition for discharge, this instruction must be modified to show that the alleged person requiring treatment is the petitioner.

If there is evidence of senility, epilepsy, alcoholism or drug dependence, to determine if this instruction should be given, see §401(2) of the Mental Health Code, MCL 330.1401(2).

This instruction should be followed by the definition of clear and convincing evidence in M Civ JI 8.01.

Comment

See MCL 330.1401 for the definition of “person requiring treatment,” and MCL 330.1400(g) for the definition of “mental illness.”

This instruction is designed for use in any of four types of hearings under the Mental Health Code. See MCL 330.1452.

The first type of hearing is initiated by a petition filed in the probate court for involuntary mental health treatment of a person. The hospitalization portion of an initial order may not exceed 60 days. An initial order of assisted outpatient treatment may not exceed 180 days. An initial order of combined hospitalization and assisted outpatient treatment shall not exceed 180 days. The hospitalization portion of the initial order may not exceed 60 days. MCL 330.1472a(1). The person may not be retained beyond the expiration of the initial order without a further hearing.

The second hearing involves a petition by the hospital director or assisted outpatient treatment supervisor that asserts that the person continues to be a person requiring treatment and requests further involuntary mental health treatment for a period of not more than 90 days. MCL 330.1472a(2). The person may not be retained beyond

the expiration of the second order without a third hearing. At the third hearing, the court may issue a continuing order of involuntary mental health treatment for not more than one year. MCL 330.1472a(3). Succeeding continuing orders for involuntary mental health treatment may not exceed one year. MCL 330.1472a(4).

After a continuing (one-year) order of involuntary mental health treatment, the hospital director or alternative treatment program supervisor must review the person's status and report it to the court and notify the person, his or her attorney, his or her guardian, or a person designated by the individual, as well as other enumerated persons every six months. MCL 330.1482, and .1483. If the report concludes that the person continues to require treatment, the person is entitled to challenge it in a hearing on a petition for discharge. MCL 330.1484.

In each of these hearings, the person is entitled to have the question whether he or she requires treatment heard by a jury. MCL 330.1458; *In re Wagstaff*, 93 Mich App 755; 287 NW2d 339 (1979). In each type of hearing, it must be shown that the person is a "person requiring treatment" as that term is defined in the statute. MCL 330.1401. The standard of "person requiring treatment" applies equally to continuing orders and the initial order. *People ex rel Book v Hooker*, 83 Mich App 495; 268 NW2d 698 (1978). The burden is on the petitioner (or the hospital director in the case of a petition for discharge) to meet this standard by clear and convincing evidence. MCL 330.1465; *Addington v Texas*, 441 US 418; 99 S Ct 1804; 60 L Ed 2d 323 (1979).

Once the jury determines that the person is a "person requiring treatment," the judge determines the appropriate treatment, and the person has no right to have the jury determine appropriate treatment or hospitalization. *In re Portus*, 142 Mich App 799; 371 NW2d 871 (1985).

History

Added May 1984. Amended June 2000, July 2012, October 2019.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

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