



Reductions in Custody – Mentally Ill & Dangerous

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Criteria for Commitment as Mentally Ill & Dangerous

- Definition of a person who has a mental illness and is dangerous to the public (Minn. Stat. 253B.02, subd. 17)

A person:

- (1) who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, and is manifested by instances of grossly disturbed behavior or faulty perceptions; and
- (2) who as a result of that impairment presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.

Commitment as Mentally Ill & Dangerous

- Initial commitment as MI&D
 - Commitment to a secure treatment facility OR to a treatment facility or state-operated treatment program willing to accept the patient under commitment
 - In practice, the default is commitment to a secure treatment facility
 - Patient or others can establish by clear and convincing evidence that a less restrictive state-operated treatment program or treatment facility is available that is consistent with the patient's treatment needs and the requirement of public safety
- After initial commitment as MI&D, a written treatment report must be filed. Then a review hearing is held.
- If the court finds the patient continues to be a person who meets criteria as MI&D, the court shall order the commitment to be for an indeterminate period of time.

Reductions in Custody- Mentally Ill & Dangerous

- Statutory reduction in custody process applies to individuals who are indeterminately civilly committed as MI&D
 - Does not apply to individuals committed only as mentally ill, chemically dependent, or developmentally disabled
 - Similar but different statutory process for individuals committed as sexual psychopathic personalities or sexually dangerous persons
- Minn. Stat. 253B.18, subd. 3 Indeterminate commitment. ... “After a final determination that a patient is a person who has a mental illness and is dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.”

Special Review Board Creation

- Minn. Stat. 253B.18, subd. 4c requires Executive Board to establish one or more panels of the Special Review Board (SRB)
- Each panel consists of three people members experienced in the field of mental illness
 - 1 member must be a psychiatrist or doctoral level psychologist with forensic experience
 - 1 member must be an attorney
 - Third member can be any of the above
- No member can be affiliated with DCT

Special Review Board Purview

- “Reduction in custody” defined at Minn. Stat. 253B.18, subd. 4c(b)- transfer from a secure treatment facility, provisional discharge, full discharge
 - Transfers can also be between a secure treatment facility and DOC
- Petitions objecting to patients being granted pass-eligible status
 - MI&D committed patients who were found not competent to proceed to trial on felony charges or who are found not guilty by reason of mental illness prior to commitment petition
 - MI&D committed patients convicted of a felony immediately prior to or during commitment
 - MI&D committed patients who are subject to a DOC commitment
- Petitions of patients contesting revocation of their transfer or provisional discharge status

Special Review Board Process

- Petition for reduction in custody filed by patient, head of state-operated treatment program, or county/interested person* (*only for pass-eligibility objections)
 - Patients must appear before SRB at least every three years
- Notice of hearing 14 days in advance. Hearings not open to the public.
- SRB must provide written findings of fact and recommendation to the Executive Board within 21 days of the hearing.
- Executive Board must issue an order no later than 14 days after receiving the SRB's written findings of fact and recommendation.

Executive Board Order

- If a majority (or all members) of the SRB does not make a favorable recommendation for a reduction in custody, the Board must deny the petition.
- If a majority (or all members) of the SRB makes a favorable recommendation for a reduction in custody, the Executive Board may grant or deny the petition.
- County, patient, and Executive Board can waive the 30-day waiting period for the order to take effect
- Executive Board order can be fully dispositive. The vast majority of the time, it is dispositive.

Appeal to Commitment Appeal Panel

- Minn. Stat. 253B.19 requires MN Supreme Court to establish Commitment Appeal Panel (CAP)
- Three-judge panels that hear petitions for rehearing and reconsideration of Executive Board orders; de novo review
- CAP cannot consider any petitions for relief other than what the SRB or Executive Board considered. The Executive Board is now a party to the case rather than a decision-maker.
- Majority of the panel rules upon the CAP petition. Underlying Executive Board order is superseded by the CAP's order.
- Secondary right of appeal to the MN Court of Appeals

Questions? Thank you!

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