



Judges' Quick Reference Guide to the New Jersey Involuntary Commitment Code and Related Rule of Court

(2014 Revisions) • August 2015 Update

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INTRODUCTION

This guide is designed to assist New Jersey judges in applying the state's involuntary commitment code (N.J. Rev Stat § 30.4-27.1 et. seq.) and the related Rule of Court (Rule 4:74-7) in cases where individuals are alleged to be mentally ill and in need of involuntary treatment (whether on an inpatient or outpatient basis) to avert danger to self, others or property. We hope it will prove useful on the bench and in chambers as a quick reference to the applicable statutory requirements.

Our goal was to present the relevant law in outline form that is easier to navigate than the code itself. This is not intended to substitute for consultation of the annotated code in judicial decision-making. (On the contrary, statutory citations are included throughout to aid judges in accessing the relevant law.) We have not attempted to integrate decisional notes that may address statutory ambiguities nor to provide definitions of all terms defined in N.J. Rev. Stat § 30.4-27.2.

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*Treatment Advocacy Center
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WHO MAY INITIATE A PROCEEDING FOR COMMITMENT?

- **GENERAL RULE:** Anyone may, by following court rule and statutory procedure § 30:4-27.10(b), Rule 4:74-7(b)
- **EXCEPTION:** If the subject of the petition is “an inmate who is scheduled for release upon expiration of a maximum term of incarceration,” proceeding must be initiated by the Attorney General or county prosecutor § 30:4-27.10(c)

HOW IS A COMMITMENT PROCEEDING INITIATED? Rule 4:74-7(b)

- **GENERAL RULE:** A party initiates a proceeding by submitting to the court two clinical certificates
 - ◆ Certificates must be in the form prescribed by the Division of Mental Health and Addiction Services and approved by the Administrative Director of the Courts Rule 4:74-7(b)
 - ◆ At least one certificate must be executed by a psychiatrist § 30:4-27.10(b),(c)
 - ◆ Neither certificate may be executed by a relative by blood or marriage of the person § 30:4-27.10(c), Rule 4:74-7(b)(3)(B)

- ◆ Neither certificate may be motivated other than for purposes of care, treatment and confinement
§ 30:4-27.10(c)
- ◆ Certificates must state Rule 4:74-7(b)(3)(A)
 - Person is mentally ill
 - Person presents danger to self, others or property
 - Person is unwilling to accept treatment voluntarily
 - Whether person requires inpatient or outpatient care
 - ▶ if inpatient care is recommended, that the danger posed by the person is “immediate or imminent”
 - ▶ if outpatient care is recommended that, with such care, the person is unlikely to be dangerous within the reasonably foreseeable future
 - That there is no available or appropriate less restrictive alternative

- EXCEPTION: Certain parties ... § 30:4-27.10(a), Rule 4:74-7(b)(1)
 - ◆ A short-term care facility
 - ◆ A special psychiatric hospital
 - ◆ A screening service (when seeking outpatient commitment) or
 - ◆ An outpatient treatment provider (when seeking outpatient commitment)

... initiate proceeding by submitting to the court:

- ◆ One clinical certificate and
- ◆ The screening certificate that authorized admission/assignment of the patient to the initiating party
 - Must be completed by psychiatrist on form prescribed by the Division of Mental Health and Addiction Services § 30:4-27.5
 - Gives person's history and background, including prior admissions to inpatient care § 30:4-27.5
 - Recommends least restrictive environment § 30:4-27.5

- LIMITATIONS ON EXCEPTION:

- ◆ The clinical certificate and the screening certificate shall not be signed by the same psychiatrist unless the psychiatrist has made a “reasonable but unsuccessful” attempt to enlist another psychiatrist
§ 30:4-27.10(a), Rule 4:74-7(b)(3)(B)
- ◆ If the patient is admitted to involuntary hospital treatment without a court order, facility must initiate proceedings within 72 hours § 30:4-27.9(c), Rule 4:74-7(b)(1)
- ◆ If the patient is assigned to outpatient treatment by a screening service without a court order, provider must initiate court proceedings within 72 hours
§ 30:4-27.9(d), Rule 4:74-7(b)(1)

- ATTORNEY GENERAL HAS MULTIPLE OPTIONS TO INITIATE: The Attorney General (or a county prosecutor to whom the A.G. has delegated authority) may initiate a commitment proceeding in any of three ways:
§ 30:4-27.10(d)
 - ◆ By two clinical certificates (see *"General Rule,"* pp. 1-2)
 - ◆ By clinical certificate and screening certificate (see *"Exception,"* pp. 3-4)
 - ◆ By application to the court for an order compelling psychiatric evaluation of the person upon A.G.'s determination that public safety requires initiation of a proceeding. Court shall grant order upon finding of "reasonable cause to believe the person may be in need of treatment"
- EXCEPTION TO A.G. CHOICE: If the person is an inmate scheduled for release, A.G. must initiate by two clinical certificates § 30:4-27.10(c)

WHAT MUST COURT DO UPON RECEIVING A SUFFICIENT APPLICATION FOR COMMITMENT?

- Court determines whether person alleged to require commitment is a minor or an adult
 - ◆ If person is a minor, follow procedures stated in Rule of Court 4:74-7a
- Court immediately reviews application to determine whether there is probable cause to commit § 30:4-27.10(f) (*see pp. 13-15 for criteria*)
- Upon finding probable cause, court sets a date for a court hearing within 20 days and issues a temporary order, assigning the person to the least restrictive environment that is appropriate, pending final disposition §§ 30:4-27.10(g), 30:4-27.12(a), Rule 4:74-7(c)
 - ◆ "Least restrictive environment" requires either § 30:4-27.10(g)
 - Retention in a facility or
 - Assignment to an outpatient treatment provider
 - ◆ If person is currently an inmate scheduled for release from incarceration prior to the commitment hearing date, the temporary order shall direct that, prior to release from incarceration, the person be transferred to the Ann Klein Forensic Center in Trenton (or other

facility “designated for the criminally insane”) and retained there pending disposition § 30:4-27.10(h)

- ◆ Temporary order identifies Rule 4:74-7(c)
 - The hearing date and location
 - Counsel to present the case for commitment (see p. 11)
 - Counsel to represent the patient, if presently unrepresented (see p. 11)
 - Parties to be notified (see “Who Must Receive Notice” below)
 - Mode of service (see p. 9)
 - Date by which notice must be served (see p. 9)

WHO MUST RECEIVE NOTICE OF THE SCHEDULED HEARING?

§ 30:4-27.13(a), Rule 4:74-7(c)(4)

- The patient
- Patient’s next-of-kin and guardian, if any
- Patient’s counsel
- Facility director/outpatient provider responsible for patient under the temporary order
- Adjuster of patient’s county of legal settlement
- Any other individual identified by the court

WHO SERVES NOTICE? § 30:4-27.13(a), Rule 4:74-7(c)(4)

- The attorney presenting the case in favor of commitment

WHEN MUST NOTICE BE SERVED? § 30:4-27.13(a), Rule 4:74-7(c)(4)

- At least 10 days prior to the hearing date

ARE THERE LIMITATIONS ON MODE OF SERVICE? Rule 4:74-7(c)(4)

- Patient must receive personal service

WHAT MUST NOTICE INCLUDE? § 30:4-27.13(a), Rule 4:74-7(c)(4)

- Date, time, location of hearing
- To patient and counsel *only*, copies of:
 - ◆ Clinical certificates and supporting documents
 - ◆ Temporary court order
 - ◆ Statement of patient's rights at hearing (see p. 12)

WHAT DISCOVERY IS ALLOWED? Rule 4:74-7(d)

- Notwithstanding any rule, policy or regulation on confidentiality, patient's counsel or guardian ad litem has right to inspect or copy all medical records related to patient's mental condition
- Court may order independent exam of patient
 - ◆ Costs borne by the party charged with patient's legal settlement

AT THE HEARING, WHO PRESENTS THE CASE IN FAVOR OF COMMITMENT?

- County adjuster, if licensed to practice law. If not, case for commitment presented by assigned county counsel § 30:4-27.12(b)
- The Attorney General or county prosecutor, acting at A.G.'s request, may supersede or co-counsel with the county adjuster/county counsel § 30:4-27.12(c)(1)
- County prosecutor may independently supersede or co-counsel with the county adjuster or county counsel § 30:4-27.12(c)(2)

WHO REPRESENTS THE PATIENT? §§ 30:4-27.12(d), 30:4-27.14(a)

- Patient may not appear without counsel
- Counsel appointed if patient is indigent

WHAT EVIDENCE MUST BE PRESENTED AT THE HEARING?

§ 30:4-27.13(b), Rule 4:74-7(e)

- Psychiatrist on the patient's treatment team shall testify on findings of examination
 - ♦ Exam must have been conducted within 5 days prior to court hearing
 - ♦ Testimony must include clinical basis for finding need to commit

WHAT ADDITIONAL EVIDENCE MAY BE PRESENTED AT THE HEARING? Rule 4:74-7(e)

- Treatment team members shall be permitted to testify § 30:4-27.13(b)
- Witnesses with relevant information shall be permitted to testify, if offered by either party § 30:4-27.13(b)
- Patient's next-of-kin may attend and testify at court's discretion § 30:4-27.13(c)

WHAT ARE OTHER COURT RESPONSIBILITIES? § 30:4-27.13(d)

- Court shall transcribe hearing
- Court shall arrange payment of expenses in same manner as other court proceedings

WHAT ARE THE PATIENT'S RIGHTS AT THE HEARING?

§ 30:4-27.14, Rule 4:74-7(e)

- Right to be represented by counsel (appointed if patient is indigent)
- Right to be present unless court determines conduct or circumstances justify patient's absence
- Right to present evidence
- Right to cross-examine witnesses
- Right to hearing in camera

WHAT IS THE BURDEN OF PROOF? § 30:4-27.15(a)

- Clear and convincing evidence

WHAT MUST THE COURT FIND TO ORDER INVOLUNTARY COMMITMENT? §§ 30:4-27.2(m), 30:4-27.15(a), Rule 4:74-7(f)

That the patient is:

- An adult with mental illness
 - ◆ "Mental illness" defined as § 30:4-27.2(r)
 - A current substantial disturbance of thought, mood, perception or orientation,
 - which significantly impairs judgment or capacity to control behavior or recognize reality,
 - but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability, unless resulting in severe impairment,
 - and is not limited to psychosis

- A danger to self, others or property
 - ◆ “Danger to self” defined as § 30:4-27.2(h)
 - Taking into account the person’s:
 - ▶ history
 - ▶ recent behavior
 - ▶ serious psychiatric deterioration
 - The person’s mental illness has caused either:
 - ▶ threats or attempts at suicide or bodily harm or
 - ▶ inability to satisfy needs for nourishment, essential medical care or shelter
 - ✦ “inability to satisfy needs” shall not be found if the person is able to satisfy such needs with supervision and assistance of willing and available others
 - Probability that the person will sustain substantial bodily injury, serious physical harm or death in the reasonably foreseeable future

- ◆ “Danger to others or property” defined as § 30:4-27.2(i)
 - Taking into account the person’s:
 - ▶ history
 - ▶ recent behavior
 - ▶ serious psychiatric deterioration
 - The person is:
 - ▶ substantially likely to inflict serious bodily harm or cause serious property damage in the near future
 - ▶ unwilling to voluntarily accept appropriate treatment that has been offered
 - ▶ in need of inpatient or outpatient care because other services are not appropriate or available to meet the person’s mental health care needs

WHAT HAPPENS IF THE COURT FINDS THE NEED FOR INVOLUNTARY COMMITMENT ESTABLISHED?

- Court must determine the least restrictive environment appropriate for the patient § 30:4-27.15a(a)
 - ◆ “Least restrictive environment” is that which best addresses § 30:4-27.2(gg)
 - The need for care
 - The need to address dangers to self, others or property
 - The patient’s interest in freedom of movement and self-direction
- If inpatient (hospital) care is found to be the least restrictive environment, the court shall issue an order for admission to a psychiatric facility § 30:4-27.15a(c)
- If outpatient care is found to be the least restrictive environment, the court shall issue an order approving a plan of outpatient treatment § 30:4-27.15a(b)
 - ◆ “Plan of outpatient treatment” defined as a plan § 30:4-27.2(hh), (ii), (jj)
 - For a patient with a history of responding to mental health treatment § 30:4-27.2(jj)
 - Consisting of clinically appropriate care directed to wellness and recovery from mental illness § 30:4-27.2(hh)

- Based on proven or promising treatments
§ 30:4-27.2(hh)
- ◆ Plan may include but is not limited to § 30:4-27.2(hh)
 - Day treatment services
 - Case management
 - Residential services
 - Outpatient counseling and psychotherapy
 - Medication (may not be involuntarily administered)
- ◆ Plan must be prepared:
 - By an outpatient treatment provider designated by the Commissioner of Human Services
§§ 30:4-27.2(ii), (jj), 30:4-27.8(b)
 - In cooperation with facility or court § 30:4-27.8a(a)
 - With reasonable and appropriate efforts to gather relevant information from family or significant others
§ 30:4-27.8a(a)

WHAT HAPPENS IF THE COURT FINDS NEED FOR COMMITMENT NOT ESTABLISHED?

- Court discharges the patient
 - ◆ If no criminal charge or sentence is pending, and the patient had been temporarily committed to the custody of a facility, the patient shall be released from the facility with a discharge plan within 48 hours of the court's verbal order or by the end of the next working day, whichever is later § 30:4-27.15(b)
 - EXCEPTION: If the patient has been acquitted by reason of insanity or found incompetent to stand trial on a criminal charge, the patient may not be discharged without the prosecuting attorney receiving notice and opportunity to be heard § 30:4-27.15(e)
 - ◆ If the discharged patient is an inmate with a pending criminal sentence of incarceration, the patient shall be returned to the appropriate authority to complete the sentence § 30:4-27.15(d)

- Notwithstanding the lack of basis for a final commitment order, the court may discharge the temporarily committed patient subject to conditions, if the court finds
§ 30:4-27.15(c)(1)
 - ◆ The patient's history indicates high risk of re-hospitalization due to failure to follow discharge plans or
 - ◆ Substantial likelihood of danger to self, others or property (*see pp. 13-15*) if the patient does not receive necessary services
- Discharge conditions shall § 30:4-27.15(c)(2)
 - ◆ Be specific
 - ◆ Include recommendations by the facility or outpatient provider to which the patient had been temporarily committed
 - ◆ Be developed with participation of patient
 - ◆ Not exceed 90 days unless court determines otherwise in a case in which the Attorney General or county prosecutor participated
 - If conditions exceed 6 months, court shall set a review hearing date

HOW OFTEN MUST THE COURT REVIEW AN INVOLUNTARY COMMITMENT ORDER? § 30:4-27.16(a), Rule 4:74-7(f)(2)

- Reviews of inpatient commitment orders must be held at least 3, 9 and 12 months from first hearing and annually thereafter but not more often than every 30 days
- Reviews of outpatient commitment orders must be held at least 6, 9 and 12 months from first hearing and annually thereafter but not more often than every 30 days

WHAT OCCURS AT A REVIEW HEARING? § 30:4-27.16, Rule 4:74-7(f)(2)

- The court must determine the least restrictive environment that is appropriate for the patient at the time of the review hearing
- All notice and evidence rules applicable at the initial commitment hearing apply to reviews
 - ◆ **EXCEPTION:** If the testimony of psychiatrist is impractical, and patient's advanced age or mental illness renders it appropriate, a treating physician who has examined the patient within 5 days of the hearing may testify
- If court determines treatment should be continued, court shall issue a new order

HOW IS A PATIENT DISCHARGED FROM INVOLUNTARY COMMITMENT? § 30:4-27.17, Rule 4:74-7(h)

- If, at any point during the period of commitment, the treatment team determines that the patient no longer requires involuntary commitment, the team shall:
 - ◆ Develop a discharge plan
 - ◆ Notify the prosecuting agency and the court at least 10 days prior to discharge
 - ◆ Discharge the patient within 48 hours, if the prosecuting agency declines to file for continued commitment
Rule 4:74-7(h)(1)
- If, within 5 days of receiving notice of the planned discharge, the prosecuting agency files for hearing on the need for continued commitment, the discharge shall be stayed pending hearing and disposition by the court
- If appropriate placement is unavailable, court shall conditionally extend hospitalization and schedule a hearing within 60 days Rule 4:74-7(h)(2)
- If patient is not sooner discharged, further placement reviews shall be held no less frequently than every 6 months Rule 4:74-7(h)(2)
- If appropriate placement becomes available in interval between hearings, patient may be administratively discharged to such placement Rule 4:74-7(h)(2)

HOW MAY A PATIENT CONVERT HIS/HER OWN INPATIENT COMMITMENT STATUS FROM INVOLUNTARY TO VOLUNTARY?

Rule 4:74-7(g)

- Upon receiving patient's request, court sets date for hearing within 20 days
- Standard notice rules apply (*see pp. 8-9*)
- Counsel previously appointed represents patient
- Patient shall be present at hearing unless court is satisfied that patient does not wish to attend
- At hearing, court determines whether patient:
 - ◆ Has capacity to make informed decision
 - ◆ Made decision knowingly/voluntarily

HOW MAY THE TREATMENT TEAM EFFECT TRANSFER FROM INPATIENT COMMITMENT TO OUTPATIENT COMMITMENT?

- If at any point during an inpatient commitment the treatment facility CEO determines that the patient would be better served by an outpatient commitment, the CEO shall notify the court of its recommendation
§ 30:4-27.15a(d)
- Upon receiving the CEO's recommendation, the court shall set a hearing on change in placement, with standard notice rules (*see pp. 8-9*) § 30:4-27.15a(e)

WHAT HAPPENS IF A PATIENT COMMITTED TO OUTPATIENT TREATMENT FAILS TO COMPLY WITH THE COURT ORDER OR THE PROVIDER BELIEVES THE ORDER REQUIRES

MODIFICATION? §§ 30:4-27.9, 30:4-27.17

- The outpatient treatment provider will notify the court, the patient's attorney and the county adjuster and initiate modification of the order, if the outpatient treatment provider finds that:
 - ◆ The plan of outpatient treatment is not adequate to meet patient's needs or
 - ◆ Patient has failed to materially comply with the plan of outpatient treatment
- The outpatient treatment provider shall seek an additional assessment to determine appropriate services
- The outpatient treatment provider shall seek court approval of the modification, with standard requirements of notice (*see pp. 8-9*)

WHAT HAPPENS IF A TEMPORARILY COMMITTED PATIENT SUBJECT TO DISCHARGE CONDITIONS (see p. 18) FAILS TO COMPLY? § 30:4-27.15(c)(3)

- The designated mental health agency staff person shall notify the court, and the court shall issue an order directing that the patient be taken to a screening service for assessment
- A law enforcement officer shall take the patient into custody and transport the patient to a screening facility for such purpose § 30:4-27.6(c)
- The patient shall be returned to a facility if the court determines, in conjunction with the findings of the screening service, that the patient needs to be re-hospitalized
- The court shall hold a hearing within 20 days of the day the patient was returned to the facility to determine if the order of conditional discharge should be vacated