

# STATE STANDARDS FOR ASSISTED TREATMENT

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TREATMENT  
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## Alabama

### For inpatient:

ALA. CODE § 22-52-10.4

(a). A respondent may be committed to inpatient treatment if the probate court finds, based upon clear and convincing evidence that:

(i) the respondent is mentally ill;

(ii) as a result of the mental illness the respondent poses a real and present threat of substantial harm to self and/or others;

(iii) the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and

(iv) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.

(b) If the probate judge finds that no treatment is presently available for the respondent's mental illness, but that confinement is necessary to prevent the respondent from causing substantial harm to himself or to others, the order committing the respondent shall provide that, should treatment for the respondent's mental illness become available at any time during the period of the respondent's confinement, such treatment shall be made available to him immediately.

### For outpatient:

ALA. CODE § 22-52-10.2. A respondent may be committed to outpatient treatment if the probate court finds, based upon clear and convincing evidence that:

(i) the respondent is mentally ill;

(ii) as a result of the mental illness the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and

(iii) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.

## Alaska

### For inpatient:

ALASKA STAT. § 47.30.755(a). "[M]entally ill and as a result is likely to cause harm to self or others, or is gravely disabled."

### For outpatient:

ALASKA STAT. § 47.30.795. Involuntary outpatient care for committed persons.

(a) A respondent who was originally committed to involuntary inpatient care under AS 47.30.700 - 47.30.915 may be released before the expiration of the commitment period if a provider of outpatient care accepts the respondent for specified outpatient treatment for a period of time not to exceed the duration of the commitment, and if the professional person in charge, or that person's professional designee, finds that:

(1) it is not necessary to treat the respondent as an inpatient to prevent the respondent from harming self or others; and

(2) there is reason to believe that the respondent's mental condition would improve as a result of the outpatient treatment.

ALASKA STAT. § 47.30.915(10). "likely to cause serious harm" means a person who

(A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting, or threatening that harm;

(B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person; or

(C) manifests a current intent to carry out plans of serious harm to that person's self or another

ALASKA STAT. § 47.30.915(7). "gravely disabled" means a condition in which a person as a result of mental illness

(A) is in danger of physical harm arising from such complete neglect of basic needs for food, clothing, shelter, or personal safety as to render serious accident, illness, or death highly probable if care by another is not taken; or

(B) will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of the person's previous ability to function independently.

## Arizona

### **For both inpatient and outpatient:**

ARIZ. REV. STAT. § 36-540 (A). "If the court finds by clear and convincing evidence that the proposed patient, as a result of mental disorder, is a danger to self, is a danger to others, is persistently or acutely disabled or is gravely disabled and in need of treatment, and is either unwilling or unable to accept voluntary treatment . . . ."

ARIZ. REV. STAT. § 36-501(5). "Danger to others" means that the judgment of a person who has a mental disorder is so impaired that he is unable to understand his need for treatment and as a result of his mental disorder his continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

ARIZ. REV. STAT. § 36-501(6). "Danger to self" means:

(a) Behavior which, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(b) Behavior which, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior which establishes only the condition of gravely disabled.

ARIZ. REV. STAT. § 36-501(16). "Gravely disabled" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because he is unable to provide for his basic physical needs.

ARIZ. REV. STAT. § 36-501(33). "Persistently or acutely disabled" means a severe mental disorder that meets all the following criteria:

(a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(b) Substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

## Arkansas

### **For both inpatient and outpatient:**

ARK. CODE ANN. § 20-47-207(c). A person shall be eligible for involuntary admission if he or she is in such mental condition as a result of mental illness, disease, or disorder that he or she poses a clear and present danger to himself or herself or others;

(1) As used in this subsection, "a clear and present danger to himself or herself" is established by demonstrating that:

(A) The person has inflicted serious bodily injury on himself or herself or has attempted suicide or serious self-injury, and there is a reasonable probability that such conduct will be repeated if admission is not ordered; or

(B) The person has threatened to inflict serious bodily injury on himself or herself and there is a reasonable probability that such conduct will occur if admission is not ordered; or

(C) The person's recent behavior or behavior history demonstrates that he or she so lacks the capacity to care for his or her own welfare that there is a reasonable probability of death, serious bodily injury, or serious physical or mental debilitation if admission is not ordered; and

(2) As used in this subsection, "a clear and present danger to others" is established by demonstrating that the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another, and there is a reasonable probability that such conduct will occur if admission is not ordered.

## California

### **For inpatient and outpatient via conservatorship:**

CALIF. WELF. & INST. CODE § 5250. If a person is detained for 72 hours under the provisions of Article 1 (commencing with Section 5150), or under court order for evaluation pursuant to Article 2 (commencing with Section 5200) or Article 3 (commencing with Section 5225) and has received an evaluation, he or she may be certified for not more than 14 days of intensive treatment related to the mental disorder or impairment by chronic alcoholism, under the following conditions:

(a) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and has found the person is, as a result of mental disorder or impairment by chronic alcoholism, a danger to others, or to himself or herself, or gravely disabled.

(b) The facility providing intensive treatment is designated by the county to provide intensive treatment, and agrees to admit the person. No facility shall be designated to provide intensive treatment unless it complies with the certification review hearing required by this article. The procedures shall be described in the county Short-Doyle plan as required by Section 5651.3.

(c) The person has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.

(d)

(1) Notwithstanding paragraph (1) of subdivision (h) of Section 5008, a person is not "gravely disabled" if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

(2) However, unless they specifically indicate in writing their willingness and ability to help, family, friends, or others shall not be considered willing or able to provide this help.

(3) The purpose of this subdivision is to avoid the necessity for, and the harmful effects of, requiring family, friends, and others to publicly state, and requiring the certification review officer to publicly find, that no one is willing or able to assist the mentally disordered person in providing for the person's basic needs for food, clothing, or shelter."

CALIF. WELF. & INST. CODE § 5008(h)(1) "gravely disabled" means either of the following:

(A) A condition in which a person, as a result of a mental disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter.

(B) A condition in which a person, has been found mentally incompetent under Section 1370 of the Penal Code and all of the following facts exist:

(i) The indictment or information pending against the defendant at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.

(ii) The indictment or information has not been dismissed.

(iii) As a result of mental disorder, the person is unable to understand the nature and purpose of the proceedings taken against him or her and to assist counsel in the conduct of his or her defense in a rational manner.

For outpatient via assisted outpatient treatment\*

5346. (a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

(1) The person is 18 years of age or older.

(2) The person is suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

(3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.

(4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:

(A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment.

(6) The person's condition is substantially deteriorating.

(7) Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.

(8) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150.

(9) It is likely that the person will benefit from assisted outpatient treatment.

\* Standard only applies in counties that have adopted provisions established by Assembly Bill 1421 (2002) (a.k.a. Laura's Law); otherwise mandated outpatient treatment only permitted via conservatorship process.]

## Colorado

### For both inpatient and outpatient:

COLO. REV. STAT. § 27-10-111(1). "The court or jury shall determine that the respondent is in need of care and treatment only if the court or jury finds such person mentally ill and, as a result of such mental illness, a danger to others or to himself or gravely disabled . . . ."

COLO. REV. STAT. § 27-10-102(5)

(a) "Gravely disabled" means a condition in which a person, as a result of mental illness:

(I) Is in danger of serious physical harm due to his inability or failure to provide himself the essential human needs of food, clothing, shelter, and medical care; or

(II) Lacks judgment in the management of his resources and in the conduct of his social relations to the extent that his health or safety is significantly endangered and lacks the capacity to understand that this is so.

(b) A person who, because of care provided by a family member or by an individual with a similar relationship to the person, is not in danger of serious physical harm or is not significantly endangered in accordance with paragraph (a) of this subsection (5) may be deemed "gravely disabled" if there is notice given that the support given by the family member or other individual who has a similar relationship to the person is to be terminated and the mentally ill individual:

(I) Is diagnosed by a professional person as suffering from any one of the following: Chronic schizophrenia; a chronic major affective disorder; a chronic delusional disorder; or other chronic mental disorder with psychotic features; and

(II) Has been certified, pursuant to this article, for treatment of such disorder or has been admitted as an inpatient to a treatment facility for treatment of such disorder at least twice during the last thirty-six months with a period of at least thirty days between certifications or admissions; and

(III) Is exhibiting a deteriorating course leading toward danger to self or others or toward the conditions described in paragraph (a) of this subsection (5) with symptoms and behavior which are substantially similar to those which preceded and were associated with his hospital admissions or certifications for treatment; and

(IV) Is not receiving treatment which is essential for his health or safety.

## Connecticut\*

### For inpatient\*:

CONN. GEN. STAT. ANN. § 17a-498(c). If, on such hearing, the court finds by clear and convincing evidence that the person complained of has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, it shall make an order for his or her commitment, considering whether or not a less restrictive placement is available, to a hospital for psychiatric disabilities to be named in such order, there to be confined for the period of the duration of such psychiatric disabilities or until he or she is discharged or converted to voluntary status pursuant to section 17a-506 in due course of law.

CONN. GEN. STAT. ANN. § Sec. 17a-495(a). "dangerous to himself or herself or others" means there is a substantial risk that physical harm will be inflicted by an individual upon his or her own person or upon another person, and "gravely disabled" means that a person, as a result of mental or emotional impairment, is in danger of serious harm as a result of an inability or failure to provide for his or her own basic human needs such as essential food, clothing, shelter or safety and that hospital treatment is necessary and available and that such person is mentally incapable of determining whether or not to accept such treatment because his judgment is impaired by his psychiatric disabilities.

\* *Connecticut does not have an assisted outpatient treatment law.*

## Delaware

### For both inpatient and outpatient:

DEL. CODE ANN. tit. 16, § 5010. As a result of the hearing to determine mental illness, the court shall make specific findings: . . . (2) That based upon clear and convincing evidence, the involuntary patient is a mentally ill person in which case the court shall enter an order of disposition, which disposition shall be effective for a period not to exceed 3 months. In determining the disposition of the involuntary patient the court shall consider all available alternatives, including inpatient confinement at the hospital, and shall order such disposition as imposes the least restraint upon the involuntary patient's liberty and dignity consistent both with affording mental health treatment and care with protecting the safety of the involuntary patient and the public.

DEL. CODE ANN. tit. 16, § 5001(6). "Mentally ill person" means a person suffering from a mental disease or condition which requires such person to be observed and treated at a mental hospital for the person's own welfare and which both

(i) renders such person unable to make responsible decisions with respect to the person's hospitalization, and

(ii) poses a real and present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to property if not given immediate hospital care and treatment.

## District of Columbia

### For both inpatient and outpatient:

D.C. CODE ANN. § 21-545(b). If the court or jury finds that the person is mentally ill and, because of that illness, is likely to injure himself or other persons if allowed to remain at liberty, the court may order his hospitalization for an indeterminate period, or order any other alternative course of treatment which the court believes will be in the best interests of the person or of the public.

# Florida

## **For inpatient:**

FLA. STAT. ANN. § 394.467(1). Criteria - A person may be involuntarily placed for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she is mentally ill and because of his or her mental illness:

1.

a. He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or

b. He or she is unable to determine for himself or herself whether placement is necessary; AND

2.

a. He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

## **For outpatient:**

FLA. STAT. ANN. § 394.4655(1) A person may be ordered to involuntary outpatient placement upon a finding of the court that by clear and convincing evidence:

(a) The person is 18 years of age or older;

(b) The person has a mental illness;

(c) The person is unlikely to survive safely in the community without supervision, based on a clinical determination;

(d) The person has a history of lack of compliance with treatment for mental illness;

(e) The person has:

1. At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving facility or treatment facility as defined in s. 394.455, or has received mental health services in a forensic or correctional facility. The 36-month period does not include any period during which the person was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;

(f) The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;

(g) In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);



- (h) It is likely that the person will benefit from involuntary outpatient placement; and
- (i) All available less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

*Florida reformed its Baker Act in June, 2004 to allow for assisted outpatient treatment. The revised law is effective on January 1, 2005.*

## Georgia

### **For inpatient:**

GA. CODE ANN. § 37-3-1(9.1). "Inpatient" means a person who is mentally ill and:

(A)

(i) Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or

(ii) Who is so unable to care for that person's own physical health and safety as to create an imminently life-endangering crisis; and

(B) Who is in need of involuntary inpatient treatment.

### **For outpatient:**

GA. CODE ANN. § 37-3-1(12.1). "Outpatient" means a person who is mentally ill and:

(A) Who is not an inpatient but who, based on the person's treatment history or current mental status, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;

(B) Who because of the person's current mental status, mental history, or nature of the person's mental illness is unable voluntarily to seek or comply with outpatient treatment; and

(C) Who is in need of involuntary treatment.

## Hawaii

### **For inpatient:**

HAW. REV. STAT. § 334-60.2. A person may be committed to a psychiatric facility for involuntary hospitalization, if the court finds:

(1) That the person is mentally ill or suffering from substance abuse.

(2) That the person is imminently dangerous to self or others, is gravely disabled or is obviously ill; and

(3) That the person is in need of care or treatment, or both, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization.

### **For outpatient:**

HAW. REV. STAT. § 334-121. A person may be ordered to obtain involuntary outpatient treatment if the family court finds that:

(1) The person is suffering from a severe mental disorder or from substance abuse; and

(2) The person is capable of surviving safely in the community with available supervision from family, friends, or others; and

(3) The person, at some time in the past:

(A) has received inpatient hospital treatment for a severe mental disorder or substance abuse, or

(B) has been imminently dangerous to self or others, or is gravely disabled, as a result of a severe mental disorder or substance abuse; and

(4) The person, based on the person's treatment history and current behavior, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others, and

(5) The person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment; and

(6) There is a reasonable prospect that the outpatient treatment ordered will be beneficial to the person.

HAW. REV. STAT. § 334-1. "Dangerous to others" means likely to do substantial physical or emotional injury on another, as evidenced by a recent act, attempt or threat.

"Dangerous to property" means inflicting, attempting or threatening imminently to inflict damage to any property in a manner which constitutes a crime, as evidenced by a recent act, attempt or threat.

"Dangerous to self" means the person recently has threatened or attempted suicide or serious bodily harm; or the person recently has behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded.

"Gravely disabled" means a condition in which a person, as a result of a mental disorder,

(1) is unable to provide for that individual's basic personal needs for food, clothing, or shelter;

(2) is unable to make or communicate rational or responsible decisions concerning the individual's personal welfare; and

(3) lacks the capacity to understand that this is so.

"Obviously ill" means a condition in which a person's current behavior and previous history of mental illness, if known, indicate a disabling mental illness, and the person is incapable of understanding that there are serious and highly probable risks to health and safety involved in refusing treatment, the advantages of accepting treatment, or of understanding the advantages of accepting treatment and the alternatives to the particular treatment offered, after the advantages, risks, and alternatives have been explained to the person.

# Idaho

## **For inpatient:**

IDAHO CODE § 66-329(k). If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the proposed patient:

- (1) is mentally ill; and
- (2) is, because of such condition, likely to injure himself or others, or is gravely disabled due to mental illness;

the court shall order the proposed patient committed to the custody of the department director for an indeterminate period of time not to exceed one (1) year.

## **For outpatient:**

IDAHO CODE § 66-339A. A person may be committed to outpatient treatment for a period of up to one (1) year if, after a court hearing conducted substantially similar to the one outlined in section 66-329, Idaho Code, the court determines, on the basis of clear and convincing evidence that:

- (1) The person is diagnosed as having a mental illness; and
- (2) The person, without the requested treatment:
  - (a) Is likely to cause harm to himself or to suffer substantial mental or emotional deterioration, or become gravely disabled, or
  - (b) Is likely to cause harm to others; and
- (3) The person lacks capacity to make an informed decision concerning his need for treatment; and
- (4) The person has previously been hospitalized for treatment of mental illness and has by history substantially failed to comply on one (1) or more occasions with the prescribed course of treatment outside the hospital; and
- (5) A treatment plan has been prepared which includes specific conditions with which the patient is expected to comply, together with a detailed plan for reviewing the patient's medical status and for monitoring his or her compliance with the required conditions of treatment; and
- (6) There is a reasonable prospect that the patient's disorder will respond to the treatment proposed in the treatment plan without having to be involuntarily committed to an inpatient facility if the patient complies with the treatment requirements specified in the court's order; and
- (7) The physician or treatment facility which is to be responsible for the patient's treatment under the commitment order has agreed to accept the patient.

IDAHO CODE § 66-317. Definitions.

(k) "Likely to injure himself or others" means either:

- (1) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or
- (2) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.

(l) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility.

(m) "Gravely disabled" means a person who, as the result of mental illness, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety.

## Illinois

### **For both inpatient and outpatient:**

405 ILL. COMP. STAT. 5/1-119. Person subject to involuntary admission; subject to involuntary admission § 1-119.

"Person subject to involuntary admission" or "subject to involuntary admission" means:

(1) A person with mental illness and who because of his or her illness is reasonably expected to inflict serious physical harm upon himself or herself or another in the near future which may include threatening behavior or conduct that places another individual in reasonable expectation of being harmed; or;

(2) A person with mental illness and who because of his or her illness is unable to provide for his basic physical needs so as to guard himself or herself from serious harm without the assistance of family or outside help.

In determining whether a person meets the criteria specified in paragraph (1) or (2), the court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness.

## Indiana

### **For both inpatient and outpatient (see below for additional outpatient criteria):**

IND. CODE ANN. § 12-26-6-8(a) [temporary commitment, up to 90 days] and IND. CODE ANN. § 12-26-7-5(a) [regular commitment, beyond 90 days]. "If at the completion of the hearing . . . an individual is found to be mentally ill and either dangerous or gravely disabled . . ."

### **For outpatient:**

IND. CODE ANN. § 12-26-14-1. If a hearing has been held under IC 12-26-6 or IC 12-26-7 and the court finds that the individual is:

(1) mentally ill and either dangerous or gravely disabled;

(2) likely to benefit from an outpatient therapy program that is designed to decrease the individual's dangerousness or disability;

(3) not likely to be either dangerous or gravely disabled if the individual complies with the therapy program; and

(4) recommended for an outpatient therapy program by the individual's examining physician;

the court may order the individual to enter a therapy program as an outpatient.

IND. CODE ANN. § 12-7-2-53. "Dangerous", for purposes of IC 12-26, means a condition in which an individual as a result of mental illness, presents a substantial risk that the individual will harm the individual or others.

IND. CODE ANN. § 12-7-2-96. "Gravely disabled", for purposes of IC 12-26, means a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual:

(1) is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or

(2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently.

## Iowa

### **For both inpatient and outpatient:**

IOWA CODE § 229.1(15). "Seriously mentally impaired" or "serious mental impairment" describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:

a. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.

b. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.

c. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.

IOWA CODE § 229.1 (14). "Serious emotional injury" is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.

## Kansas

### **For both inpatient and outpatient (see below for additional outpatient criteria):**

KAN. STAT. ANN. § 59-2946(f)

(1) "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder.

(2) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's mental disorder:

(a) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or

(b) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

**Additional criteria for outpatient:**

KAN. STAT. ANN. § 59-2967(a). An order for outpatient treatment may be entered by the court at any time in lieu of any type of order which would have required inpatient care and treatment if the court finds that the patient is likely to comply with an outpatient treatment order and that the patient will not likely be a danger to the community or be likely to cause harm to self or others while subject to an outpatient treatment order.

## Kentucky

**For both inpatient and outpatient:**

KY. REV. STAT. ANN. § 202A.026. No person shall be involuntarily hospitalized unless such person is a mentally ill person:

- (1) Who presents a danger or threat of danger to self, family or others as a result of the mental illness;
- (2) Who can reasonably benefit from treatment; and
- (3) For whom hospitalization is the least restrictive alternative mode of treatment presently available.

KY. REV. STAT. ANN. § 202A.011(2). "Danger" or "threat of danger to self, family or others" means substantial physical harm or threat of substantial physical harm upon self, family, or others, including actions which deprive self, family, or others of the basic means of survival including provision for reasonable shelter, food or clothing;

## Louisiana

**For both inpatient and outpatient:**

LA. REV. STAT. ANN. § 28:55(E)(1). If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment.

LA. REV. STAT. ANN. § 28:2(3). "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

LA. REV. STAT. ANN. § 28:2(4). "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

LA. REV. STAT. ANN. § 28:2(10). "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect

himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

## Maine\*

### For inpatient\*:

ME. REV. STAT. ANN. tit. 34-B, § 3864(6)(A). The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

- (1) Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm;
- (2) That inpatient hospitalization is the best available means for treatment of the patient; and
- (3) That it is satisfied with the individual treatment plan offered by the hospital to which the applicant seeks the patient's involuntary commitment.

ME. REV. STAT. ANN. tit. 34B, § 3801(4). "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person himself as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm to himself and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable;

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable.

\* *Maine does not have an assisted outpatient treatment law.*

## Maryland\*

### For inpatient\*:

MD. CODE ANN., HEALTH-GEN. § 10-632(e)(2).

- (i) The individual has a mental disorder;
- (ii) The individual needs in-patient care or treatment;
- (iii) The individual presents a danger to the life or safety of the individual or of others;
- (iv) The individual is unable or unwilling to be voluntarily admitted to the facility;
- (v) There is no available less restrictive form of intervention that is consistent with the welfare and safety of the individual; and

(vi) If the individual is 65 years old or older and is to be admitted to a State facility, the individual has been evaluated by a geriatric evaluation team and no less restrictive form of care or treatment was determined by the team to be appropriate.

*\*Maryland does not have an assisted outpatient treatment law.*

## Massachusetts\*

### For inpatient\*:

MASS. GEN. LAWS ANN. ch. 123, § 8(a). After a hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at a facility or shall not renew such order unless it finds after a hearing that

- (1) such person is mentally ill, and
- (2) the discharge of such person from a facility would create a likelihood of serious harm.

MASS. GEN. LAWS ANN. ch. 123, § 1. "Likelihood of serious harm",

- (1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm;
- (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or
- (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

*\* Massachusetts does not have an assisted outpatient treatment law.*

## Michigan

### For both inpatient and outpatient:

MICH. COMP. LAWS ANN. § 330.1401. As used in this chapter, "person requiring treatment" means (a), (b), or (c):

- (a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself or herself or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- (c) An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself or herself or others. This individual shall receive involuntary mental health treatment initially only under the provisions of sections 434 through 438 of this act.



# Minnesota

## **For inpatient:**

MINN. STAT. ANN. § 253B.09(1) "If the court finds by clear and convincing evidence that the proposed patient is a mentally ill, mentally retarded, or chemically dependent person and after careful consideration of reasonable alternative dispositions . . . it finds that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive treatment program or alternative programs which can meet the patient's treatment needs . . . ."

## **For outpatient:**

MINN. STAT. ANN. § 253B.065(5)

(a) A court shall order early intervention treatment of a proposed patient who meets the criteria under paragraph (b). The early intervention treatment must be less intrusive than long-term inpatient commitment and must be the least restrictive treatment program available that can meet the patient's treatment needs.

(b) The court shall order early intervention treatment if the court finds all of the elements of the following factors by clear and convincing evidence:

(1) the proposed patient is mentally ill;

(2) the proposed patient refuses to accept appropriate mental health treatment; and

(3) the proposed patient's mental illness is manifested by instances of grossly disturbed behavior or faulty perceptions and either:

(i) the grossly disturbed behavior or faulty perceptions significantly interfere with the proposed patient's ability to care for self and the proposed patient, when competent, would have chosen substantially similar treatment under the same circumstances; or

(ii) due to the mental illness, the proposed patient received court-ordered inpatient treatment under section 253B.09 at least two times in the previous three years; the patient is exhibiting symptoms or behavior substantially similar to those that precipitated one or more of the court-ordered treatments; and the patient is reasonably expected to physically or mentally deteriorate to the point of meeting the criteria for commitment under section 253B.09 unless treated.

MINN. STAT. ANN. § 253B.02(13)(a). A "person who is mentally ill" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:

(1) a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment; or

(2) an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;

(3) a recent attempt or threat to physically harm self or others.

(4) recent and volitional conduct involving significant damage to substantial property.

MINN. STAT. ANN. § 253B.02(17). A "person mentally ill and dangerous to the public" is a person

(a) who is mentally ill; and

(b) who as a result of that mental illness 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. A person committed as a sexual psychopathic personality or sexually dangerous person as defined in subdivisions 18a and 18b is subject to the provisions of this chapter that apply to persons mentally ill and dangerous to the public.

*Note: The distinction made between a person committed as a "mentally ill person" and a "person mentally ill and dangerous to the public" is that the latter is not permitted to transfer to voluntary status per 253B.10(5). Both satisfy conditions for assisted treatment.*

## Mississippi

### **For both inpatient and outpatient:**

MISS. CODE ANN. § 41-21-73(4). "If the court finds by clear and convincing evidence that the proposed patient is a mentally ill . . . person and, if after careful consideration of reasonable alternative dispositions . . . the court finds that there is no suitable alternative to judicial commitment. . . . A nonresident of the state may be committed for treatment or confinement in the county where such person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative or the provision of home health services.

For persons committed as mentally ill... the initial commitment shall not exceed three (3) months."

MISS. CODE ANN. § 41-21-61(e). "Mentally ill person" means any person who has a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which

(i) is manifested by instances of grossly disturbed behavior or faulty perceptions; and

(ii) poses a substantial likelihood of physical harm to himself or others as demonstrated by

(A) a recent attempt or threat to physically harm himself or others, or

(B) a failure to provide necessary food, clothing, shelter or medical care for himself, as a result of the impairment.

"Mentally ill person" includes a person who, based on treatment history and other applicable psychiatric indicia, is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness to himself or others when his current mental illness limits or negates his ability to make an informed decision to seek or comply with recommended treatment.

## Missouri

### For both inpatient and outpatient:

MO. ANN. STAT. 632.350(5) " At the conclusion of the hearing, if the court or jury finds that the respondent, as the result of mental illness, presents a likelihood of serious harm to himself or to others, and the court finds that a program appropriate to handle the respondent's condition has agreed to accept him, the court shall order the respondent to be detained for involuntary treatment in the least restrictive environment for a period not to exceed ninety days or for outpatient detention and treatment under the supervision of a mental health program in the least restrictive environment for a period not to exceed one hundred eighty days."

MO. ANN. STAT. § 632.005(9). "Likelihood of serious harm" means any one or more of the following but does not require actual physical injury to have occurred:

(a) A substantial risk that serious physical harm will be inflicted by a person upon his own person, as evidenced by recent threats, including verbal threats, or attempts to commit suicide or inflict physical harm on himself. Evidence of substantial risk may also include information about patterns of behavior that historically have resulted in serious harm previously being inflicted by a person upon himself;

(b) A substantial risk that serious physical harm to a person will result or is occurring because of an impairment in his capacity to make decisions with respect to his hospitalization and need for treatment as evidenced by his current mental disorder or mental illness which results in an inability to provide for his own basic necessities of food, clothing, shelter, safety or medical care or his inability to provide for his own mental health care which may result in a substantial risk of serious physical harm. Evidence of that substantial risk may also include information about patterns of behavior that historically have resulted in serious harm to the person previously taking place because of a mental disorder or mental illness which resulted in his inability to provide for his basic necessities of food, clothing, shelter, safety or medical or mental health care; or

(c) A substantial risk that serious physical harm will be inflicted by a person upon another as evidenced by recent overt acts, behavior or threats, including verbal threats, which have caused such harm or which would place a reasonable person in reasonable fear of sustaining such harm. Evidence of that substantial risk may also include information about patterns of behavior that historically have resulted in physical harm previously being inflicted by a person upon another person;

## Montana

### For both inpatient and outpatient *(except that if the court relies exclusively on criteria in (1)(d), only outpatient may be ordered)*:

MONT. CODE ANN. § 53-21-126(1). If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:

(a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the

point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

MONT. CODE ANN. § 53-21-127 (7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility and may not require commitment at the state hospital.

MONT. CODE ANN. § 53-21-102(9)(a). "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

## Nebraska

### For both inpatient and outpatient:

NEB. REV. STAT. § 71-925(1). The state has the burden to prove by clear and convincing evidence that (a) the subject is mentally ill and dangerous and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in section 71-908, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment.

NEB. REV. STAT. § 71-908. Mentally ill and dangerous person means a person who is mentally ill. . . and because of such mental illness... presents:

(1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or

(2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

## Nevada\*

### For inpatient\*:

NEV. REV. STAT. § 433A.310(1). "If the district court finds, after proceedings for the involuntary court-ordered admission of a person to a . . . mental health facility: . . . (b) That there is clear and convincing evidence that the person . . . is mentally ill and, because of that illness, is likely to harm himself or others if allowed his liberty, the court may order the involuntary admission of the person for the most appropriate course of treatment."

NEV. REV. STAT. § 433A.115 "Mentally ill person" defined.

1. As used . . . unless the context otherwise requires, "mentally ill person" means any person whose capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his personal needs is diminished, as a result of a mental illness, to the extent that he presents a clear and present danger of harm to himself or others, but does not include any person in whom that capacity is diminished by epilepsy, mental retardation, Alzheimer's disease, brief periods of

intoxication caused by alcohol or drugs, or dependence upon or addiction to alcohol or drugs, unless a mental illness that can be diagnosed is also present which contributes to the diminished capacity of the person.

2. A person presents a clear and present danger of harm to himself if, within the next preceding 30 days, he has, as a result of a mental illness:

(a) Acted in a manner from which it may reasonably be inferred that, without the care, supervision or continued assistance of others, he will be unable to satisfy his need for nourishment, personal or medical care, shelter, self-protection or safety, and if there exists a reasonable probability that his death, serious bodily injury or physical debilitation will occur within the next following 30 days unless he is admitted to a mental health facility . . . and adequate treatment is provided to him;

(b) Attempted or threatened to commit suicide or committed acts in furtherance of a threat to commit suicide, and if there exists a reasonable probability that he will commit suicide unless he is admitted to a mental health facility . . . and adequate treatment is provided to him; or

(c) Mutilated himself, attempted or threatened to mutilate himself or committed acts in furtherance of a threat to mutilate himself, and if there exists a reasonable probability that he will mutilate himself unless he is admitted to a mental health facility . . . and adequate treatment is provided to him.

3. A person presents a clear and present danger of harm to others if, within the next preceding 30 days, he has, as a result of a mental illness, inflicted or attempted to inflict serious bodily harm on any other person, or made threats to inflict harm and committed acts in furtherance of those threats, and if there exists a reasonable probability that he will do so again unless he is admitted to a mental health facility . . . and adequate treatment is provided to him.

*\* Nevada does not have an assisted outpatient treatment law.*

## New Hampshire

### **For inpatient and outpatient:**

N.H. REV. STAT. ANN. § 135-C:34. Involuntary Treatment Standard. - The standard to be used by a court, physician, or psychiatrist in determining whether a person should be admitted to a receiving facility for treatment on an involuntary basis shall be whether the person is in such mental condition as a result of mental illness as to create a potentially serious likelihood of danger to himself or to others.

N.H. REV. STAT. ANN. § 135-C:27.

I. As used in this section "danger to himself" is established by demonstrating that:

(a) Within 40 days of the completion of the petition, the person has inflicted serious bodily injury on himself or has attempted suicide or serious self-injury and there is a likelihood the act or attempted act will recur if admission is not ordered;

(b) Within 40 days of the completion of the petition, the person has threatened to inflict serious bodily injury on himself and there is likelihood that an act or attempt of serious self-injury will occur if admission is not ordered; or

(c) The person's behavior demonstrates that he so lacks the capacity to care for his own welfare that there is a likelihood of death, serious bodily injury, or serious debilitation if admission is not ordered.

(d) The person meets all of the following criteria:

(1) The person has been determined to be severely mentally disabled in accordance with rules authorized by RSA 135-C:61 for a period of at least one year;

(2) The person has had at least one involuntary admission, within the last 2 years, pursuant to RSA 135-C:34-54;

(3) The person has no guardian of the person appointed pursuant to RSA 464-A;

(4) The person is not subject to a conditional discharge granted pursuant to RSA 135-C:49, II;

(5) The person has refused the treatment determined necessary by a mental health program approved by the department; and

(6) A psychiatrist at a mental health program approved by the department has determined, based upon the person's clinical history, that there is a substantial probability that the person's refusal to accept necessary treatment will lead to death, serious bodily injury, or serious debilitation if admission is not ordered.

II. As used in this section "danger to others" is established by demonstrating that within 40 days of the completion of the petition, the person has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another.

## New Jersey\*

### For inpatient\*:

N.J. STAT. ANN. § 30:4-27.2(m). "In need of involuntary commitment": means that an adult who is mentally ill, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to be admitted to a facility voluntarily for care, and who needs care at a short-term care, psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.

N.J. STAT. ANN. § 30:4-27.2(r). "Mental illness" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

N.J. STAT. ANN. § 30:4-27.2(h). "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical debilitation or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy his need for nourishment, essential medical care or shelter if he is able to satisfy such needs with the supervision and assistance of others who are willing and available.

N.J. STAT. ANN. § 30:4-27.2(i) "Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

\* *New Jersey does not have an assisted outpatient treatment law.*

## New Mexico\*

### For inpatient\*:

N.M. STAT. ANN. § 43-1-11(C). Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:

- (1) as a result of a mental disorder, the client presents a likelihood of serious harm to himself or others;
- (2) the client needs and is likely to benefit from the proposed treatment; and
- (3) the proposed commitment is consistent with the treatment needs of the client and with the least drastic means principle.

N.M. STAT. ANN. § 43-1-3(M). "likelihood of serious harm to oneself" means that it is more likely than not that in the near future the person will attempt to commit suicide or will cause serious bodily harm to himself by violent or other self-destructive means, including but not limited to grave passive neglect;

N.M. STAT. ANN. § 43-1-3(N). "likelihood of serious harm to others" means that it is more likely than not that in the near future the person will inflict serious, unjustified bodily harm on another person or commit a criminal sexual offense, as evidenced by behavior causing, attempting or threatening such harm, which behavior gives rise to a reasonable fear of such harm from the person;

\* *New Mexico does not have an assisted outpatient treatment law.*

## New York

### For inpatient:

60-day involuntary treatment based on medical certification:

N.Y. MENTAL HYG. LAW § 9.05(b) A certificate, as required by this article, must show that the person is mentally ill . . . [and] the condition of the person examined is such that he needs involuntary care and treatment in a hospital . . . .

N.Y. MENTAL HYG. LAW § 9.37(a) The director of a hospital, upon application by a director of community services or an examining physician duly designated by him or her, may receive and care for in such hospital as a patient any person who, in the opinion of the director of community services or the director's designee, has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is likely to result in serious harm to himself or herself or others.

If a hearing on the patient's need for treatment during the 60-day involuntary treatment:

N.Y. MENTAL HYG. LAW § 9.31(c). If it be determined [by the court] that the patient is in need of retention, the court shall deny the application for the patient's release. If it be determined that the patient is not mentally ill or not in need of retention, the court shall order the release of the patient.

N.Y. MENTAL HYG. LAW § 9.01. As used in this article: "in need of care and treatment" means that a person has a mental illness for which in-patient care and treatment in a hospital is appropriate. "in need of involuntary care and treatment" means that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgment is so impaired that he is unable to understand the need for such care and treatment.

N.Y. MENTAL HYG. LAW § 9.01. "need for retention" means that a person who has been admitted to a hospital pursuant to this article is in need of involuntary care and treatment in a hospital for a further period.

N.Y. MENTAL HYG. LAW § 9.01. "likelihood to result in serious harm" or "likely to result in serious harm" means

(1) a substantial risk of physical harm to the person as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to himself or herself, or

(2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

Case Law. Although not explicitly in the state's code, a strong majority of the New York courts addressing the issue have held that in order to retain a patient for involuntary psychiatric care under New York law a hospital must establish that the patient is (1) mentally ill; (2) in need of continued, supervised care and treatment; and (3) that the patient poses a **substantial threat of physical harm** to himself and/or others. E.g., *Anonymous v. Carmichael*, 727 N.Y.S.2d (N.Y. App. Div. 2001)

**For outpatient:**

N.Y. MENTAL HYG. LAW § 9.60(C). Criteria for Assisted Outpatient Treatment. A patient may be ordered to obtain assisted outpatient treatment if the court finds that:

(1) The patient is eighteen years of age or older; and

(2) The patient is suffering from a mental illness; and

(3) The patient is unlikely to survive safely in the community without supervision, based on a clinical determination; and

(4) The patient has a history of lack of compliance with treatment for mental illness that has:

(I) At least twice within the last thirty-six months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition or;

(II) Resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition; and

(5) The patient is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment pursuant to the treatment plan; and

(6) In view of the patient's treatment history and current behavior, the patient is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the patient or others as defined in section 9.01 of this article; and

(7) It is likely that the patient will benefit from assisted outpatient treatment; and

(8) If the patient has executed a health care proxy as defined in article 29-C of the Public Health Law, that any directions included in such proxy shall be taken into account by the court in determining the written treatment plan.



# North Carolina

## **For inpatient:**

N.C. GEN. STAT. § 122C-268(j). To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings.

N.C. GEN. STAT. § 122C-3(11). "Dangerous to himself or others" means:

a. "Dangerous to himself" means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or

3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. "Dangerous to others" means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

## **For outpatient:**

N.C. GEN. STAT. § 263. (d) After the conclusion of the examination the physician or eligible psychologist shall make the following determinations:

(1) If the physician or eligible psychologist finds that:

a. The respondent is mentally ill;

b. The respondent is capable of surviving safely in the community with available supervision from family, friends, or others;

c. Based on the respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and

d. The respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision to seek voluntarily or comply with recommended treatment.

The physician or eligible psychologist shall so show on the examination report and shall recommend outpatient commitment.

N.C. GEN. STAT. § 122C-271. Disposition.

(a) If an examining physician or eligible psychologist has recommended outpatient commitment and the respondent has been released pending the district court hearing, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined in G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision to seek voluntarily or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

(b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that the respondent is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of the respondent's illness limits or negates the respondent's ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days.

## North Dakota

### **For inpatient and outpatient:**

N.D. CENT. CODE § 25-03.1-07. A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined that the individual is a person requiring treatment.

N.D. CENT. CODE § 25-03.1-02( 12). "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:

a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;

b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;

c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or

d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors.

## Ohio

### For both inpatient and outpatient:

OHIO REV. CODE ANN. § 5122.15(C). If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by court order, the court shall order the respondent for a period not to exceed ninety days to any of the following [placement options include state or private psychiatric facilities and assisted outpatient treatment].

OHIO REV. CODE ANN. § 5122.01(B). "Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of the person's illness:

- (1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or
- (4) Would benefit from treatment in a hospital for his mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.

## Oklahoma

### For both inpatient and outpatient:

OKLA. STAT. ANN. tit. § 43A-1-103(13)(a). "Person requiring treatment" means either:

- (1) a person who because of a mental illness of the person represents a risk of harm to self or others,
- (2) a person who is a drug- or alcohol-dependent person and who as a result of dependency represents a risk of harm to self or others, or
- (3) a person who appears to require inpatient treatment:
  - (a)
    - (i) for a previously diagnosed history of schizophrenia, bipolar disorder, or major depression with suicidal intent, or
    - (ii) due to the appearance of symptoms of schizophrenia, bipolar disorder, or major depression with suicidal intent, and
  - (b) for whom such treatment is reasonably believed will prevent progressively more debilitating mental impairment.

## Oregon

### For both inpatient and outpatient:

OR. REV. STAT. § 426.005(1)(d). "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(C) A person who:

(i) Is chronically mentally ill, as defined in ORS 426.495;

(ii) Within the previous three years, has twice been placed in a hospital or approved inpatient facility by the division under ORS 426.060;

(iii) Is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either or both subparagraph (A) or (B) of this paragraph.

## Pennsylvania

### For both inpatient and outpatient:

50 PA CONS. STAT. ANN. § 7304(a). A person who is severely mentally disabled and in need of treatment, as defined in section 301(a), may be made subject to court-ordered involuntary treatment upon a determination of clear and present danger under section 301(b)(1) (serious bodily harm to others), or section 301(b)(2)(i) (inability to care for himself, creating a danger of death or serious harm to himself), or 301(b)(2)(ii) (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

50 PA. CONS. STAT. ANN. § 7304(f). "Upon a finding by clear and convincing evidence that the person is severely mentally disabled and in need of treatment and subject to subsection (a), an order shall be entered directing treatment of the person in an approved facility as an inpatient or an outpatient, or a combination of such treatment . . . ."

50 PA. CONS. STAT. ANN. § 7301.

(a) Whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself.

(b) Determination of Clear and Present Danger.

(1) Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable

probability that such conduct will be repeated. If, however, the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal responsibility on charges arising from conduct involving infliction of or attempt to inflict substantial bodily harm on another, such 30-day limitation shall not apply so long as an application for examination and treatment is filed within 30 days after the date of such determination or verdict. In such case, a clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm.

(2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

(i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii) the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide; or

(iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.

## Rhode Island

### **For both inpatient and outpatient\*:**

R.I. GEN. LAWS § 40.1-5-8(j). If the court at a final hearing finds by clear and convincing evidence that the subject of the hearing is in need of care and treatment in a facility, and is one whose continued unsupervised presence in the community would, by reason of mental disability, create a likelihood of serious harm, and that all alternatives to certification have been investigated and deemed unsuitable, it shall issue an order committing the person to the custody of the director for care and treatment or to an appropriate facility.

R.I. GEN. LAWS § 40.1-5-2

(7)(i). "Likelihood of serious harm" means:

(A) A substantial risk of physical harm to the person himself or herself as manifested by behavior evidencing serious threats of, or attempts at, suicide,

(B) A substantial risk of physical harm to other persons as manifested by behavior or threats evidencing homicidal or other violent behavior, or

(C) A substantial risk of physical harm to the mentally disabled person as manifested by behavior which has created a grave, clear, and present risk to his or her physical health and safety.

(ii) In determining whether there exists a likelihood of serious harm the physician and the court may consider previous acts, diagnosis, words or thoughts of the patient. If a patient has been incarcerated, or institutionalized, or in a controlled environment of any kind, the court may give great weight to such prior acts, diagnosis, words, or thoughts.

(8). "Mental disability" means a mental disorder in which the capacity of a person to exercise self control or judgment in the conduct of his or her affairs and social relations, or to care for his or her own personal needs, is significantly impaired.

*Note: The Rhode Island law does not specify independent criteria for commitment to outpatient treatment and yet it considers court-ordered outpatient treatment to be an "alternative to certification."*

## South Carolina

### **For both inpatient and outpatient:**

S.C. CODE ANN. § 44-17-580. If, upon completion of the hearing and consideration of the record, the court finds upon clear and convincing evidence that the person is mentally ill, needs treatment and because of his condition:

- (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or
- (2) there is a likelihood of serious harm to himself or others, it shall order in-patient or out-patient treatment at a mental health facility, public or private, designated or licensed by the Department of Mental Health.

S.C. CODE ANN. § 44-23-10

- (1) "Mentally ill person" means a person afflicted with a mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care, treatment or hospitalization;
- (2) "Likelihood of serious harm" means because of mental illness there is (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

## South Dakota

### **For both inpatient and outpatient:**

S.D. CODIFIED LAWS § 27A-1-2. A person is subject to involuntary commitment if:

- (1) The person has a severe mental illness;
- (2) Due to the severe mental illness, the person is a danger to self or others; and
- (3) The individual needs and is likely to benefit from treatment.

S.D. CODIFIED LAWS § 27A-1-1

(4) "Danger to others," a reasonable expectation that the person will inflict serious physical injury upon another person in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of serious physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out;

(5) "Danger to self,"

(a) A reasonable expectation that the person will inflict serious physical injury upon himself or herself in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or

(b) A reasonable expectation of danger of serious personal harm in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's severe mental illness.

## Tennessee\*

### For inpatient\*:

TENN. CODE ANN. § 33-6-501. "Substantial likelihood of serious harm" defined - Standards for commitment to involuntary care and treatment.

(a) IF AND ONLY IF

(1)

(A) a person has threatened or attempted suicide or to inflict serious bodily harm on such person, OR

(B) the person has threatened or attempted homicide or other violent behavior, OR

(C) the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR

(D) the person is unable to avoid severe impairment or injury from specific risks, AND

(2) there is a substantial likelihood that such harm will occur unless the person is placed under involuntary treatment, THEN

(3) the person poses a "substantial likelihood of serious harm" for purposes of § 33-6-103 and this section.

\* *Tennessee does not have an assisted outpatient treatment law.*

## Texas

### For inpatient:

TEX. HEALTH & SAFETY CODE ANN. § 574.034. Order for Temporary Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is mentally ill; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

TEX. HEALTH & SAFETY CODE ANN. § 574.035. Order for Extended Mental Health Services.

(a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is mentally ill;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to himself;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Article 46.02, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

**For outpatient:**

TEX. HEALTH & SAFETY CODE ANN. § 574.034. Order for Temporary Mental Health Services

(b) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is mentally ill;

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and



(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment.

TEX. HEALTH & SAFETY CODE ANN. § 574.035. Order for Extended Mental Health Services.

(b) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the patient; and

(2) the jury, or the judge if the right to a jury is waived, finds from clear and convincing evidence that:

(A) the proposed patient is mentally ill;

(B) the nature of the mental illness is severe and persistent;

(C) as a result of the mental illness, the proposed patient will, if not treated, continue to:

(i) suffer severe and abnormal mental, emotional, or physical distress; and

(ii) experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(D) the proposed patient has an inability to participate in outpatient treatment services effectively or voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period which immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that make impossible a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure for at least 60 consecutive days during the preceding 12 months.

## Utah

### **For both inpatient and outpatient:**

UTAH CODE ANN. § 62A –15– 631(10). The court shall order commitment of an individual who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (9)(e), the court finds by clear and convincing evidence that:

(a) the proposed patient has a mental illness;

(b) because of the proposed patient's mental illness he poses a substantial danger, as defined in

Section 62A-15-602, of physical injury to others or himself, which may include the inability to provide the basic necessities of life such as food, clothing, and shelter, if allowed to remain at liberty;

(c) the patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(d) there is no appropriate less-restrictive alternative to a court order of commitment; and

(e) the local mental health authority can provide the individual with treatment that is adequate and appropriate to his conditions and needs. In the absence of the required findings of the court after the hearing, the court shall forthwith dismiss the proceedings.

§ 62A-15-602 (13) "Substantial danger" means the person, by his or her behavior, due to mental illness:

(a) is at serious risk to:

(i) commit suicide,

(ii) inflict serious bodily injury on himself or herself; or

(iii) because of his or her actions or inaction, suffer serious bodily injury because he or she is incapable of providing the basic necessities of life, such as food, clothing, and shelter;

(b) is at serious risk to cause or attempt to cause serious bodily injury; or

(c) has inflicted or attempted to inflict serious bodily injury on another.

§ 62A-15-602 (12) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

## Vermont

### **For both inpatient and outpatient (called "non-hospitalization"):**

VT. STAT. ANN. tit. 18, § 7611. No person may be made subject to involuntary treatment unless he is found to be a person in need of treatment or a patient in need of further treatment.

VT. STAT. ANN. tit. 18, § 7101(17). "A person in need of treatment" means a person who is suffering from mental illness and, as a result of that mental illness, his capacity to exercise self-control, judgment, or discretion in the conduct of his affairs and social relations is so lessened that he poses a danger of harm to himself or others;

(A) A danger of harm to others may be shown by establishing that:

(i) he has inflicted or attempted to inflict bodily harm on another; or

(ii) by his threats or actions he has placed others in reasonable fear of physical harm to themselves; or

(iii) by his actions or inactions he has presented a danger to persons in his care.

(B) A danger of harm to himself may be shown by establishing that:

(i) he has threatened or attempted suicide or serious bodily harm; or

(ii) he has behaved in such a manner as to indicate that he is unable, without supervision and the assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration or serious physical debilitation or disease will ensue unless adequate treatment is afforded;

VT. STAT. ANN. tit. 18, § 7101(16). "A patient in need of further treatment" means:

(A) A person in need of treatment, or

(B) A patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his condition will deteriorate and he will become a person in need of treatment.

## Virginia

### For inpatient:

VA. CODE ANN. § 37.1-67.3(I). After observing the person and obtaining the necessary positive certification and any other relevant evidence which may have been offered, if the judge finds specifically

(i) that the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and

(ii) that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to institutional confinement and treatment . . . ."

### For outpatient:

VA. CODE ANN. § 37.1-67.3(J). After observing the person and obtaining the necessary positive certification and any other relevant evidence which may have been offered, if the judge finds specifically

(i) that the person presents an imminent danger to himself or others as a result of mental illness or has been proven to be so seriously mentally ill as to be substantially unable to care for himself, and

(ii) that less restrictive alternatives to institutional confinement and treatment have been investigated and are deemed suitable, and if, moreover, the judge finds specifically that

(i) the patient has the degree of competency necessary to understand the stipulations of his treatment,

(ii) the patient expresses an interest in living in the community and agrees to abide by his treatment plan,

(iii) the patient is deemed to have the capacity to comply with the treatment plan,

(iv) the ordered treatment can be delivered on an outpatient basis, and

(v) the ordered treatment can be monitored by the community services board or designated providers,

the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to § 37.1-134.21, or such other appropriate course of treatment as may be necessary to meet the needs of the individual."

## Washington

### For inpatient:

WASH. REV. CODE ANN. § 71.05.240. "[I]f the court finds . . . that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, find that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department."

### For outpatient:

WASH. REV. CODE ANN. § 71.05.240. "If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less

restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment . . . ."

WASH. REV. CODE ANN. § 71.05.020(19). "'Likelihood of serious harm' means:

(a) A substantial risk that:

(i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts."

WASH. REV. CODE ANN. § 71.05.020(14). "'Gravely disabled' means a condition in which a person, as a result of a mental disorder:

(a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or

(b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety"

WASH. REV. CODE ANN. § 71.05.020(16). "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

WASH. REV. CODE ANN. § 71.05.020(32). "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

## West Virginia

**For both inpatient and outpatient:**

W. VA. CODE § 27-5-4(j).

(1) "[T]he individual is mentally ill and because of illness is likely to cause serious harm to himself or herself or to others if allowed to remain at liberty or is addicted and is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county."

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual.

W. VA. CODE §27-1-12.

(a) "Likely to cause serious harm" means an individual is exhibiting behaviors consistent with a medically recognized mental disorder . . . and as a result of the mental disorder . . . :

(1) The individual has inflicted or attempted to inflict bodily harm on another; or

- (2) The individual, by threat or action, has placed others in reasonable fear of physical harm to themselves; or
- (3) The individual, by action or inaction, has presented a danger to others in his or her care; or
- (4) The individual has threatened or attempted suicide or serious bodily harm to himself or herself; or
- (5) The individual is behaving in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless adequate treatment is afforded.
- (b) In making the "likely to cause serious harm" determination, judicial, medical, psychological and other evaluators and decisionmakers should utilize all available information, including psychosocial, medical, hospitalization and psychiatric information and including the circumstances of any previous commitments or convalescent or conditional releases that are relevant to a current situation, in addition to the individual's current overt behavior.

## Wisconsin

### **For both inpatient and outpatient:**

WIS. STAT. ANN. § 51.20(1)(a)1. The individual is mentally ill, drug dependent or developmentally disabled and is a proper subject for treatment.

WIS. STAT. ANN. § 51.20(1)(a)2. The individual is dangerous because he or she does any of the following:

- a. Evidences a substantial probability of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.
- b. Evidences a substantial probability of physical harm to other individuals as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm. In this subd. 2. b. , if the petition is filed under a court order under s. 938.30 (5) (c) 1. or (d) 1. , a finding by the court exercising jurisdiction under chs. 48 and 938 that the juvenile committed the act or acts alleged in the petition under s. 938.12 or 938.13 (12) may be used to prove that the juvenile exhibited recent homicidal or other violent behavior or committed a recent overt act, attempt or threat to do serious physical harm.
- c. Evidences such impaired judgment, manifested by evidence of a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury to himself or herself. The probability of physical impairment or injury is not substantial under this subd. 2. c. if reasonable provision for the subject individual's protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual is appropriate for protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4) . The subject individual's status as a minor does not automatically establish a substantial probability of physical impairment or injury under this subd. 2. c. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by a person other than a treatment facility, does not constitute reasonable provision for the subject individual's protection available in the community under this subd. 2. c.
- d. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he or she is unable to satisfy basic needs for nourishment, medical care, shelter or safety without prompt and adequate treatment so that a substantial probability exists that death, serious physical injury, serious

physical debilitation or serious physical disease will imminently ensue unless the individual receives prompt and adequate treatment for this mental illness. No substantial probability of harm under this subd. 2. d. exists if reasonable provision for the individual's treatment and protection is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services, if the individual is appropriate for protective placement under s. 55.06 or, in the case of a minor, if the individual is appropriate for services or placement under s. 48.13 (4) or (11) or 938.13 (4) . The individual's status as a minor does not automatically establish a substantial probability of death, serious physical injury, serious physical debilitation or serious disease under this subd. 2. d. Food, shelter or other care provided to an individual who is substantially incapable of obtaining the care for himself or herself, by any person other than a treatment facility, does not constitute reasonable provision for the individual's treatment or protection available in the community under this subd. 2. d.

e. For an individual, other than an individual who is alleged to be drug dependent or developmentally disabled, after the advantages and disadvantages of and alternatives to accepting a particular medication or treatment have been explained to him or her and because of mental illness, evidences either incapability of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives, or substantial incapability of applying an understanding of the advantages, disadvantages and alternatives to his or her mental illness in order to make an informed choice as to whether to accept or refuse medication or treatment; and evidences a substantial probability, as demonstrated by both the individual's treatment history and his or her recent acts or omissions, that the individual needs care or treatment to prevent further disability or deterioration and a substantial probability that he or she will, if left untreated, lack services necessary for his or her health or safety and suffer severe mental, emotional or physical harm that will result in the loss of the individual's ability to function independently in the community or the loss of cognitive or volitional control over his or her thoughts or actions. The probability of suffering severe mental, emotional or physical harm is not substantial under this subd. 2. e. if reasonable provision for the individual's care or treatment is available in the community and there is a reasonable probability that the individual will avail himself or herself of these services or if the individual is appropriate for protective placement under s. 55.06 . Food, shelter or other care that is provided to an individual who is substantially incapable of obtaining food, shelter or other care for himself or herself by any person other than a treatment facility does not constitute reasonable provision for the individual's care or treatment in the community under this subd. 2. e.

## Wyoming

### **For inpatient and outpatient (see below for additional outpatient criteria):**

WYO. STAT. ANN. § 25-10-110(j). "If, upon completion of the hearing and consideration of the record, the court or the jury finds by clear and convincing evidence that the proposed patient is mentally ill the court shall consider the least restrictive and most therapeutic alternatives . . . ."

WYO. STAT. ANN. § 25-10-101(a)(ix). "Mental illness" and "mentally ill" mean a physical, emotional, mental or behavioral disorder which causes a person to be dangerous to himself or others and which requires treatment

WYO. STAT. ANN. § 25-10-101(a)(ii). "Dangerous to himself or others" means that, as a result of mental illness, a person:

(A) Evidences a substantial probability of physical harm to himself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or

(B) Evidences a substantial probability of physical harm to other individuals as manifested by a recent overt homicidal act, attempt or threat or other violent act, attempt or threat which places others in reasonable fear of serious physical harm to them; or

(C) Evidences behavior manifested by recent acts or omissions that, due to mental illness, he is unable to satisfy basic needs for nourishment, essential medical care, shelter or safety so that a substantial

probability exists that death, serious physical injury, serious physical debilitation, serious mental debilitation, destabilization from lack of or refusal to take prescribed psychotropic medications for a diagnosed condition or serious physical disease will imminently ensue, unless the individual receives prompt and adequate treatment for this mental illness. No person, however, shall be deemed to be unable to satisfy his need for nourishment, essential medical care, shelter or safety if he is able to satisfy those needs with the supervision and assistance of others who are willing and available.

**Additional outpatient criteria:**

WYO. STAT. ANN. § 25-10-110(j)(ii). "If the court finds that the proposed patient does not require continuous inpatient hospitalization, would be more appropriately treated in an outpatient treatment program or a combination of outpatient and inpatient treatment or will be able to appropriately control his illness by following a prescribed treatment plan, the court shall consider such treatment options. If the court finds that the proposed patient does not require continuous hospitalization and the funding is available, it shall consider conditional outpatient treatment . . . and may designate an outpatient care provider, including mental health centers."