

# **DUE PROCESS RIGHTS DURING A 14-DAY HOLD**



**PATIENTS' RIGHTS**  
ADVOCACY SERVICES



**MENTAL  
HEALTH  
SYSTEMS**



# **Know Your Rights**





## **What is a 14-day involuntary hold?**

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If you have refused voluntary treatment or it has been determined by the doctor that, due to a mental disorder, you are incapable of giving consent for voluntary treatment and you meet the criteria, you can be placed on a 14-day hold. If this happens, you have certain “due process” rights that must be observed. If you no longer meet the criteria, your psychiatrist may discontinue the 14-day hold.

If you have any questions about the information in this brochure, contact a hospital representative or call the Patients’ Rights Advocacy Services at:

(714) 276-8145

(800) 668-4240

## For what reasons can I be held for involuntary treatment?

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There are three criteria for holding a person under Welfare and Institutions Code 5250 (14-day involuntary treatment period). They are:

1. **Danger to self:** This means it has been determined by the doctor at the facility that, due to a mental disorder, you either have a deliberate intention to injure yourself or a disregard for personal safety to the point where injury is imminent. The danger must be present, immediate, substantial, physical, and demonstrable.

The criteria may include:

- Words or actions showing intent to commit suicide or inflict bodily harm on yourself.
- Words or actions indicating gross disregard for personal safety (e.g., wandering about in heavy traffic).
- Words or actions indicating a specific plan for suicide.
- Means available to carry out suicide plan (e.g., pills, firearms present or available).

2. **Danger to others:** It has been determined by the doctor at the facility that, due to a mental disorder, you intend to either cause harm to a particular individual or intend to engage in dangerous acts with gross disregard for the safety of others.

The criteria may include:

- Verbal and/or physical threats of physical harm against particular individuals.

- Attempts to harm certain individuals.
- Means available to carry out threats or repeated attempts (e.g., firearms or other weapons).
- “Said that you would” or attempts to engage in dangerous activity.

3. **Gravely disabled:** It has been determined by the doctor that, as a result of a mental disorder, you are unable to provide for your basic personal needs, such as food, clothing or shelter.

The criteria may include:

- Signs of malnourishment or dehydration.
- Inability to articulate a plan for obtaining food.
- No food available in the house or at hand, if not in a house. Irrational beliefs about food that is available (i.e., it's poisoned, inedible, etc.).
- Destruction or giving away of clothing to the point where you can not clothe yourself.
- No reasonable plan to obtain shelter (i.e., family members or friends are unwilling to take you home before the doctor releases you from the hospital, no plan for other shelter, no place else to go, etc.).

## What are my rights if I am placed on a 14-day hold?

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- You maintain all your rights listed in the Patients' Rights handbook except the right to sign yourself out of the hospital.

- You have the right to be informed of your status as an involuntary patient.
- You have the right to file a Writ of Habeas Corpus. If you do not request a writ, you must be scheduled for a Certification Review Hearing within four days from the time you were placed on the 14-day hold.
- If probable cause is found in the Certification Review Hearing and you disagree with this decision, you have the right to file for a Writ of Habeas Corpus.
- You maintain the right to refuse treatment with anti-psychotic medication. You can be medicated without consent if it is an emergency. “Emergency” means a situation in which action to impose treatment over your objection is immediately necessary for preservation of your life or the, prevention of serious bodily harm to yourself or others and it is impracticable to first obtain consent.
- You can be treated against your consent with anti-psychotic medication after a court hearing is held and it is determined you do not have the capacity to refuse medication as a form of medical treatment.
- You have the right to be represented at the capacity hearing by legal counsel. The Public Defenders office will represent you unless you wish to hire your own private attorney.

## **What is a Certification Review (a.k.a. Probable Cause) Hearing?**

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The hearing is an informal hearing that is automatically held at the facility where you are being treated if you have not requested a Writ of Habeas Corpus. The hearing will take place within four days from the date you were placed on the

14-day hold. If you and your advocate feel you need more time to prepare for the hearing, you can request that the hearing be postponed for up to 48 hours. The purpose of this hearing is for a neutral person to review whether probable cause exists for you to be held up to 14 days for involuntary treatment. The criteria of “Danger to Self,” “Danger to Others” or “Gravely Disabled” due to a mental disorder are used to make the decision.

## **What is a Writ of Habeas Corpus?**

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A Writ of Habeas Corpus is a legal request for release from a facility or institution. The writ will entitle you to a hearing in Superior Court. You will have a court date set within two working days from the time you file for a writ. You will be assigned an attorney from the Public Defender’s Office. (If you wish to pay for your own private attorney, you may do so.) An investigator from the Public Defender’s Office will come to the facility where you are being treated, review your chart, and interview you. On the day of the writ hearing, you will be transported to Superior Court by the Marshal’s Office, where a judge will hear from the hospital representative and from you and/or your attorney. The judge will make his/her decision to release you or to continue the involuntary 14-day treatment period. If you withdraw your writ before going to court, a Certification Review Hearing will be held within 4 days of being certified. You can request a writ by asking any staff member or going to the Nurses’ Station and requesting a writ be filed.

**Note:** You should be aware that if you file for a writ before the Certification Review Hearing is held, you will not be allowed a Certification Review Hearing. You will receive only the one writ hearing. If you wait to file after the Certification Review Hearing, you will receive both the hearing and the writ.

## Preparing for a hearing

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You can take some action on your own to prepare for a hearing before the advocate reviews your case with you.

If you are being held as a danger to yourself, you can show that you are no longer a danger to yourself by:

- Not making any attempts to harm yourself or making any threats to harm yourself.
- Participating in ward activities, interacting with other patients and staff.
- Going to the dining room and eating your meals.
- Taking showers and showing interest in your grooming.

If you are being held as a danger to others, you can show that you are no longer a danger to others by:

- Not being verbally abusive to other patients or staff and staying out of arguments (physical violence can start with words).
- Respect the privacy and physical space of others, especially near the telephone, TV, and around other patients' food.
- If there is activity going on near the seclusion room, stay away from the area. There may be volatile activity going on and you do not need to be involved.

If you are being held as gravely disabled, show that you are no longer gravely disabled by:

- Taking advantage of the food, clothing, and shelter at the facility.
- Eating your meals and dressing appropriately.



Work on plans to provide for your own food, clothing and shelter. You do not have to prove that you can do it alone; only that you have a plan for how to provide for yourself.

Contact family members and friends that would be willing to assist you if you were released by the hearing officer. Be sure that they understand that it is not the doctor or hospital that would be releasing you. Check to see if they would be willing to come to the hearing and state they are willing to assist you if released. If they cannot come to the hearing, they should write a Letter stating they are willing to provide assistance and send or FAX it to you at the facility.

## **Who will be present at the Certification Review Hearing?**

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In most cases, there are three other people present at the hearing:

**Hearing Officer:** The Hearing Officer is the person who will preside over the hearing and make the determination if the hospital has proven that the criteria have been met to hold you for the 14-day treatment period.

**Hospital Representative:** In most cases, this is a person on the staff of the hospital where you are being treated. He/she will present the evidence to the Hearing Officer justifying why the hospital recommends holding you for the 14-day treatment period. The hospital, not you, has the burden of justifying why it recommends holding you for involuntary treatment. The hospital must also present any historical information on the course of your illness that has been provided by your family, significant other or therapist in the community. (AB1424)

**Advocate:** This is a patients' rights advocate from the Mental Health Association. The advocate will review your chart

and interview you before the hearing. The advocate is present at the hearing to give you support, assist you in presenting your case, and uphold your rights during the hearing. (If you have a private attorney, you may have him/her attend the hearing.)

**Others:** You have the right to request that family members, and/or friends attend the hearing. In addition, you have the right to determine if family members and friends will participate in the hearing.

## **What will happen at the hearing?**

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The Hearing Officer, after considering the information given at the hearing, will make one of the following decisions:

1. You do not meet the criteria stated in the certification and cannot be held for involuntary treatment. You may leave the facility, or you may have the option to stay as a voluntary patient if you choose to do so.
2. That the hospital demonstrated that you do meet the criteria stated on the certification and that you can be held for involuntary treatment.

The Hearing Officer's decision will be given to you orally before you leave the hearing room. You may also request a copy of the decision in writing.

## **What can I do if I disagree with the Hearing Officer's decision?**

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If the Hearing Officer finds that the facility has shown probable cause for the involuntary hold, you can file a writ of habeas corpus. You can file a writ by going to the nurses' station and requesting that a writ be filed. The law

states that the staff must file for a writ on your behalf if you request it.

- You may file a request for a Writ of Habeas Corpus hearing if you are being involuntarily detained on a 14-day hold.
- The purpose of this hearing is to challenge the grounds of your involuntary hold.
- Writ hearings are not automatic. You must go to the Nurses' Station and request one. A member of the treatment staff will fill out the form and notify the court for you.
- Your hearing has to occur within 2 court days from the day you make the request. The hospital will arrange transportation to the court with the Sheriff's Department.
- The hearing will take place at the county courthouse and will be a matter of public record.

You will be represented by a Public Defender who will meet with you to help you prepare for your case. You can contact the Public defender at 1-877-494-7788.

## **At the Hearing**

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- A judge will listen to the information from the hospital representative and from you and your Public Defender and he/she will decide if you are a Danger to Yourself, a Danger to Others, or Gravely Disabled.
- Your Public Defender will help you present information on your behalf to challenge the hold.
- The Hospital and/or Doctor will have to prove that you meet the criteria for the hold, if they cannot do

this, then the judge may release you from your hold. If you wish to receive treatment at the hospital as a voluntary patient, you may still request to do so.

## **Preparing for Your Hearing**

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- Gravely disabled means that you cannot provide for your basic personal needs, such as food, clothing or shelter due to a mental illness.
- If your hold includes Gravely Disabled, it may be helpful to be prepared with answers to the following questions:

1. **My monthly income is** \$ \_\_\_\_\_ .

I get my money from: \_\_\_\_\_ .

2. **I plan to live at this address:**

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

3. **I will provide for my food this way:**

\_\_\_\_\_

I will spend this amount of money on food: \$ \_\_\_\_\_

4. **I will provide for my clothing this way:**

\_\_\_\_\_

I will spend this much on clothing: \$ \_\_\_\_\_

- 5. There are the people who will help me, they are listed below:**

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(Attach a note from this person that says that they are willing to provide food, clothing and shelter for you. Make sure it states how to reach them.)

- 6. If I need treatment, I am willing to get treatment from this person or agency.**

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- 7. I can get to my meetings and appointments this way.**

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The answers to these questions will also help your Public Defender if you are being held as a Danger to Yourself.

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If you have any questions or complaints regarding your rights, contact your advocate at:

**MHS Patients' Rights  
Advocacy Services**

600 West Santa Ana Blvd., Suite 805  
Santa Ana, CA 92701

(714) 276-8145  
(800) 668-4240

Fax: (714) 242-1579

**Hours of Operation**

Monday through Friday  
8 AM – 5 PM.

[mhsinc.org/pras](http://mhsinc.org/pras)