



STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JANET OLSZEWSKI
DIRECTOR

DATE: October 31, 2003

TO: Fred Shaw, Director
Public Health Legal Preparedness Clearinghouse
Centers for Disease Control

FROM: Denise Chrysler, Director *D.C.*,
Joe Baumann, Policy Analyst *JB*,
Office of Legal Affairs

RE: Legal Authority of Michigan Department of
Community Health to Respond to a SARS Outbreak

This is in response to a telephone call from Karen McKie requesting information about the legal authority of Michigan public health officials to quarantine individuals who test positive for SARS.

The Michigan Public Health Code, MCL 333.1101 *et seq.*, and rules thereunder, 1999 ACS R 325.171 *et seq.*, establish the power and responsibilities of the Michigan Department of Community Health (MDCH) and local public health (LPH) departments to prevent and control the spread of disease. MDCH and LPH officers have numerous powers they may use to control SARS and other diseases and protect the general public.

Issuance of Emergency Orders to Control an Epidemic or an Imminent Danger.

Both MDCH and LPH departments are authorized to issue emergency orders to control an epidemic. In this regard, if the Director of MDCH

determines that control of an epidemic is necessary to protect the public health, the director, by emergency order, may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.

Section 2253.

Similarly, if a LPH officer determines that control of an epidemic is necessary to protect the public health, he or she may issue an emergency order prohibiting the gathering of people and establish procedures to be followed by persons, including a local governmental entity, during the

epidemic to insure continuation of essential public health services and enforcement of health laws. Section 2453(1). An “epidemic” means “any increase in the number of cases, above the number of expected cases, of any disease, infection, or other condition in a specific time period, area, or demographic segment of the population.” R 325.171(g).

Additionally, both MDCH and a LPH official may issue orders to respond to an imminent danger to health or lives. Sections 2251, 2451. “Imminent danger” means “a condition or practice which could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” Sections 2251(4)(a), 2451(3)(a).

Section 2251 provides:

- (1) Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order which shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director’s findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

Section 2451, which applies to local health departments, is identical, except the LPH official’s authority is limited to an imminent threat in an area served by the local health department.

Under conditions of “imminent danger”, in addition to issuing orders, MDCH’s Director (alone) has extensive controlling powers to take full charge of the administration of state and local health laws, rules, regulations and ordinances. Section 2251(3).

Upon the failure of a person to comply promptly with an order issued by MDCH or a LPH official, as applicable, MDCH or the LPH official may petition a court having jurisdiction to restrain a condition or practice causing the imminent danger or to require action to avoid, correct, or remove the imminent danger. Sections 2251(2), 2451(2).

Issuance of a Warning Notice.

Sections 5201 to 5238 of the Public Health Code establish powers, responsibilities, and procedures concerning an individual who is a carrier and a health threat to others. A “carrier” means “[a]n individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.” Section 5201(1)(a). MDCH has promulgated rules that designate and classify serious communicable disease. Although SARS or smallpox are not explicitly listed in the applicable rule, both diseases would fall under subsection (s) of this rule pertaining to the “unusual occurrence, outbreak, or epidemic

of any condition, including nosocomial infections.” Rule 325.172(1)(s).¹ “Health threat to others” means “that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection.” Section 5201(b). “Health threat to others” may be shown by the individual’s behavior, evidence of careless disregard for transmission or exposure of others, or misrepresentation about disease status before engaging in behavior that puts others at risk. *Id.*

Under section 5203, MDCH or the LPH shall issue a warning notice to such an individual requiring that the individual cooperate with MDCH or the LPH department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person’s status as a carrier. The section specifies the form of the warning notice, requirements for service, and contents, including a statement that unless the individual takes the action requested in the warning notice, MDCH or the LPH department shall seek a court order. Absent an emergency, the individual has certain rights, including the right to a hearing, before a court can issue an order. These rights must be stated in the warning notice.

Involuntary Detention and Treatment.

Both MDCH and a LPH department are authorized to “provide for the involuntary detention and treatment of individuals with hazardous communicable disease in the manner prescribed in sections 5201 to 5238 [of the Public Health Code].” Section 2453(2).

If MDCH or the LPH department knows, or has reasonable grounds to believe, that the individual has failed or refused to comply with a warning notice, then MDCH or the LPH department may petition the court for an order. Section 5205 sets out the procedural requirements and the individual’s rights, including the right to a hearing and the right to be represented by an attorney. An attorney is appointed for indigent individuals. The hearing must be set within 14 days of the date the petition was filed. If the court finds that the allegations in the petition are proven by clear and convincing evidence, the court may issue 1 or more of the following orders:

- (a) An order that the individual participate in a designated education program.
- (b) An order that the individual participate in a designated counseling program.
- (c) An order that the individual participate in a designated treatment program.
- (d) An order that the individual undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis.
- (e) An order that the individual notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring.
- (f) An order that the individual cease and desist conduct that constitutes a health threat to others.

¹ Michigan Attorney General Michael Cox recently opined in a formal opinion that, while not explicitly listed, both smallpox and SARS, would fall under subsection (s) of Rule 325.172(1). Atty Gen Op No. 7141 (Issued 10/6/03).

- (g) An order that the individual live part-time or full-time in a supervised setting for the period and under the conditions set by the circuit court.
- (h) Subject to [section 2506(8)], an order that the individual be committed to an appropriate facility for the period and under the conditions set by the circuit court. A commitment ordered under this subdivision shall not be for more than 6 months, unless the director of the facility, upon motion, shows good cause for continued commitment.
- (i) Any other order considered just by the circuit court.

An individual has the right to seek appellate review of an order, however, an order may not be stayed except upon motion for good cause.

The court can enter an order committing an individual to an appropriate facility only if the court considers the recommendation of a commitment review panel appointed by the court that consists of 3 physicians from a list submitted by MDCH. The section sets out criteria for physicians on the review panel – for example, at least two of the physicians shall have training and experience in the diagnosis and treatment of serious communicable diseases and infections. The commitment panel must (1) review the record of the proceeding, (2) interview the individual or document the reasons the individual was not interviewed, and (3) recommend either commitment or an alternative or alternatives to commitment, and document the reasons for the recommendation. There are also provisions for petition and review by a commitment panel as to whether or not the individual’s commitment should be terminated.

The State Court Administrator’s Office (SCAO) within the Michigan Supreme Court promulgates standard forms for use by attorneys and judges that can be found at: <http://courts.michigan.gov/scao/courtforms/infectiousdisease/infindex.htm>. The following SCAO forms are attached for involuntary detention and treatment actions under section 5205 of the Public Health Code: Petition for Treatment of Infectious Disease, Notice of Hearing on Petition for Treatment of Infectious Disease, Order Following Hearing on Petition for Treatment of Infectious Disease, Petition for Continued Commitment for Treatment of Infectious Disease and Order to Reconvene Commitment Review Panel, and Order Following Hearing on Petition for Continued Commitment for Treatment of Infectious Disease.

Emergency Custody, Detention, and Treatment of the Individual.

Section 5207 covers emergency health threats of a carrier to others. To protect the public health in an emergency, upon the filing of an affidavit by MDCH or a LPH officer, the circuit court may order an MDCH representative, LPH officer, or peace officer to take an individual whom the court has reasonable cause to believe is a carrier and is a health threat to others into custody. The order would authorize the transport of the individual to an appropriate emergency care or treatment facility for observation, examination, testing, diagnosis, or treatment and, if determined necessary by the court, temporary detention. If the individual is already institutionalized in a facility, the court may order the facility to temporarily detain the individual.

An order for emergency custody may be issued in an *ex parte* proceeding upon an affidavit of a department representative or a local health officer. An emergency order may be requested and

executed on any day and at any time, and must be served upon the individual who is the subject of the order immediately upon apprehension or detention.

An individual temporarily detained under an emergency order shall not be detained longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, without a court hearing to determine if the temporary detention should continue. Notice of a hearing must be served upon the individual not less than 24 hours before the hearing is held. The notice shall contain certain information, including the factual basis for the detention, the individual's due process rights at a hearing, and the right to counsel, including an indigent individual's right to appointed counsel.

At the hearing, if the court finds, by a preponderance of the evidence, that the individual would pose a health threat to others if released, it may order that the individual continue to be temporarily detained. However, the court's order for temporary detention cannot continue longer than 5 days, unless a petition is filed under section 5205, described above, for involuntary detention or treatment.

The following SCAO forms are attached for emergency actions under section 5207 of the Public Health Code: Petition and Ex Parte Order for Transport and/or Temporary Detention, Affidavit to Accompany Petition for Transport and/or Temporary Detention, Notice of Hearing on Petition for Temporary Detention, and Order Following Hearing on Petition to Continue Temporary Detention.

Conclusion.

We believe that Michigan's Public Health Code provides sufficient power so that public health officials can assure the safety of the public and prevent outbreaks once the existence of a carrier has been identified. Moreover, the provisions of the Public Health Code that cover epidemics and the power of MDCH and LPH department to prevent and control communicable diseases, make it clear that these provisions do not limit their power, or the power of the court, to deal with the prevention and control of communicable diseases and infections. Sections 2253(1), 2453, 5209. Consequently, MDCH and LPH departments may exercise authority under any other federal or state laws – including any emergency preparedness laws – that contain provisions for the protection of the public health and the control of disease.

If you have questions or need further information about Michigan's laws to prevent and control the outbreak of disease, including SARS, please do not hesitate to ask.

cc: Jan Christensen
Ronald J. Styka
David Johnson, M.D.
Matthew Boulton

Attachments

g:\legal affairs\ola assigns\03-032\Memo Shaw CDC re legal auth of MDCH to respond to SARS outbreak

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION AND EX PARTE ORDER FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

PETITION

1. I, _____, am a local health officer
Name (type or print) State Community Health Department representative and make
this affidavit in respect to, _____, who is a minor
Name (type or print) an adult and who resides in
_____ County at _____
Address City
_____ and who is presently found at _____
State Zip Address, location, or facility

2. An emergency exists and there is reasonable cause to believe that the individual is a carrier and a health threat to others for the reasons stated in the attached affidavit.

I REQUEST:

- 3. the individual be taken into custody and transported to _____,
Name of facility
an emergency care or treatment facility, for observation. examination. testing. diagnosis. treatment.
- 4. the individual be detained temporarily at the facility and a hearing be held within the next 72 hours to determine whether temporary detention should continue up to five days, and longer if a petition for treatment of an infectious disease is filed within that five days.

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature Address

Name (type or print) City, state, zip Telephone no.

ORDER

THE COURT FINDS:

- 5. An affidavit has been filed in compliance with Section 5207 of the Public Health Code.
- 6. Reasonable cause exists to believe that there is a substantial likelihood the individual is a carrier and a health threat to others.

(PLEASE SEE OTHER SIDE)

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7. There is an emergency which requires the protection of public health.

IT IS ORDERED:

8. The individual be taken into protective custody by a community health department representative local public health officer peace officer and transported to _____,
 Name of facility
 or to another appropriate emergency care or treatment facility, for
 observation, examination, testing, diagnosis, treatment, and temporary detention.

9. The _____ facility shall detain the individual
 Name of facility
 for no longer than 72 hours, excluding Saturdays, Sundays, and legal holidays, unless otherwise ordered by the court.

10. The person transporting the individual shall promptly notify the court of the facility where the individual has been received and temporarily detained.

11. A copy of this order shall be served upon the individual immediately upon apprehension or detention.

Date

Judge Bar no.

CERTIFICATE OF SERVICE

I certify that immediately upon apprehension/detention of the individual, I personally served on him/her a copy of the this petition and order.

Date

Signature

Title

NOTICE OF TIME OF TEMPORARY DETENTION

TO THE CIRCUIT COURT:

You are notified that the individual was detained at _____
 Place and location

on _____ at _____ m.
 Date Time

Date

Signature

NOTE: This notice must be promptly filed with the circuit court.

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	AFFIDAVIT TO ACCOMPANY PETITION FOR TRANSPORT AND/OR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. I believe _____ to be a carrier of
Name (type or print)

_____ because of the following facts:
specify infectious agent or serious communicable disease or infection

2. I believe the individual is a health threat to others because of the following facts: _____

3. The individual requires the following services at an emergency care or treatment facility: _____

4. An emergency order is necessary because of the following facts: _____

Date

Affiant's signature

Address

Name (type or print)

City, state, zip

Telephone no.

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Notary public

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	NOTICE OF HEARING ON PETITION FOR TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. This court has been requested to continue its ex parte order temporarily detaining you in a facility.
2. A hearing to determine whether temporary detention should continue will be held:
at _____
Location
on _____
Date Time
before Hon. _____
Bar no.

3. The grounds and underlying facts upon which continued detention is sought are set forth in the attached affidavit.
4. You have the right to be present at the hearing and to cross-examine witnesses.
5. You have the right to be represented by an attorney at all stages of the proceedings. If you want an attorney, you should hire one immediately so that s/he will be prepared on the hearing date. If you are unable to pay the cost of an attorney, the court shall appoint an attorney for you.

Date

Court clerk

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION TO CONTINUE TEMPORARY DETENTION	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____

2. A petition and affidavit have been filed by a local health officer Community Health Department representative Bar no.
 asserting that an emergency exists. The court issued an ex parte order for immediate temporary detention of the individual.

THE COURT FINDS:

3. Notice of hearing was given to the individual.

4. The individual is temporarily detained at _____
Name of facility

5. There is is not a preponderance of evidence that the individual would pose a threat to others if not temporarily detained in a facility.

IT IS ORDERED:

6. The individual shall continue to be temporarily detained at _____
Name of facility where presently found
 or other appropriate emergency care or treatment facility.

a. A petition for treatment of infectious disease of the individual has been filed with this court and the facility shall continue temporary detention of the individual until the further order of the court.

b. Unless a petition for treatment of infectious disease of the individual is filed with the court, the facility shall discharge the individual five days from the date of this order.

7. The individual is discharged from the facility.

Date

Judge

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. I, _____, am a local health officer
Name (type or print) State Community Health Department representative
and make this petition in respect to, _____, who is a minor
Name (type or print) an adult and who
resides at _____
Address City State Zip
and who is presently found at _____
Address or location

2. An ex parte detention order was issued by this court on _____
Date

3. The individual is believed to be a carrier as to _____
specify infectious agent or serious communicable disease or infection

4. On _____ a written warning notice was sent to the individual requiring
Date
him/her to cooperate with the Community Health Department or local health department to prevent or control transmission of
_____ which is a serious communicable disease or infection.

The individual has failed or refused to comply with the warning notice.

5. The individual is a health threat to others because of the demonstrated inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to the serious communicable disease or infection. The health threat to others is shown by:

- a. Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.
- b. A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.
- c. Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.
- d. Other: (explain) _____

(PLEASE SEE OTHER SIDE)

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6. This conclusion is based upon:

a. My personal observation of the individual doing the following acts and saying the following things: _____

b. Conduct and statements I have been informed that others have seen or heard: _____

7. An emergency order is not sought and before issuing the warning notice, the following steps were taken to alleviate the health threat to others: _____

I REQUEST:

8. A hearing be held and the court find that the individual is a health threat to others and/or has failed or refused to comply with a warning notice.

9. The court order that the individual:

a. participate in the following designated programs: education. treatment. counseling.

b. undergo tests to verify his/her status as a carrier or for diagnosis.

c. appear at _____ for verification of status, testing, or other purposes consistent with monitoring.

Name of agency or facility

d. cease and desist conduct that constitutes a health threat to others.

e. live part-time or full-time in a supervised setting at _____

Place

f. other: _____

10. The court appoint a commitment review panel and commit the individual to _____

Name of facility

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Attorney signature

Petitioner signature

Name (type or print)

Name (type or print)

Address

Address

City, state, zip Telephone no.

City, state, zip Telephone no.

Approved, SCAO

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	NOTICE OF HEARING ON PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. This court has received the attached petition for treatment of infectious disease.

2. A hearing on the petition will be held:

at _____
Location

on _____
Date Time

before Hon. _____
Bar no.

3. You have the right to be present at the hearing and to cross-examine witnesses.

4. You have the right to be represented by an attorney at all stages of the proceedings. If you want an attorney, you should hire one immediately so that s/he will be prepared on the hearing date. If you are unable to pay the cost of an attorney, the court shall appoint an attorney for you.

5. You and the petitioners may waive in writing notice of hearing and agree to have the court hear the petition immediately.

6. If the petition requests the court to appoint a commitment review panel, you may notify the court that you want a physician of your choice appointed to the panel.

Date

Court clerk

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. A petition has been filed asserting that the above named individual is a carrier and health threat to others.

3. Notice of hearing has been given according to law.

4. A commitment review panel has filed its recommendation for commitment of the individual.
 an alternative to commitment of the individual.

THE COURT FINDS:

5. The allegations of the petition have not been proven by clear and convincing evidence.

6. By clear and convincing evidence that

a. the individual is a carrier of _____, an infectious agent
or serious communicable disease or infection, and the individual is a health threat to others.

b. the individual has failed or refused to comply with the warning notice.

c. the individual was not given a written warning notice because an emergency existed.

IT IS ORDERED:

7. The individual shall

a. participate in education counseling treatment programs at _____
Name of agency or facility

b. present him/herself within 24 hours at _____
Name of agency or facility
_____ and undergo tests to verify his/her status as a carrier or for diagnosis purposes.

c. appear within 24 hours at _____
Name of agency or facility
_____ for verification of status, testing, or other purposes consistent with monitoring.

(PLEASE SEE OTHER SIDE)

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d. immediately and until further order of the court, cease and desist conduct that constitutes a health threat to others,
including but not limited to _____

e. live part-time or full-time in a supervised setting at _____

f. be committed to _____
Name of facility
for not more than 6 months under the following conditions: _____

g. other: _____

8. The petition is dismissed and the individual shall be released from any facility where s/he is being temporarily detained
by court order.

Date

Judge

Approved, SCAO

STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	PETITION FOR CONTINUED COMMITMENT FOR TREATMENT OF INFECTIOUS DISEASE AND ORDER TO RECONVENE COMMITMENT REVIEW PANEL	CASE NO.
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In the matter of _____

1. I am director of the _____
Name of facility

2. The above named individual was committed to this facility for a period of _____ by court order
Number of days or months
dated _____

3. The individual requires continued commitment for the following reasons: _____

I REQUEST that the court issue an order to continue commitment of the individual at the above named facility for a period of _____ and under the conditions set by the court.
Number of days or months

I declare that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature of director

Address

Name (type or print)

City, state, zip

Telephone no.

ORDER

1. Date of Hearing: _____ Judge: _____

IT IS ORDERED:

2. The previously appointed commitment review panel consisting of _____,
_____, and _____

shall reconvene and report to the court in writing within 14 days of the filing of this petition.

3. The panel shall do the following:

- a. Review the petition and any other information considered relevant by the commitment review panel.
- b. Interview the individual, or document the reasons why the individual was not interviewed.
- c. Recommend to the circuit court either termination or continuation of the commitment and document reasons for the recommendation.

Date

Judge

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STATE OF MICHIGAN JUDICIAL CIRCUIT COURT COUNTY	ORDER FOLLOWING HEARING ON PETITION FOR CONTINUED COMMITMENT FOR TREATMENT OF INFECTIOUS DISEASE	CASE NO.
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In the matter of _____

1. Date of Hearing: _____ Judge: _____ Bar no.

2. A petition has been filed asserting that the above named individual requires continued commitment.

3. Notice of hearing has been given according to law.

4. A commitment review panel has filed its recommendation for continued commitment of the individual.
 an alternative to commitment of the individual.

THE COURT FINDS:

- 5. The allegations of the petition have not been proven by clear and convincing evidence. continued commitment.
- 6. By clear and convincing evidence that the individual requires an alternative to commitment.

IT IS ORDERED:

7. The individual shall continue commitment at _____
Name of facility

8. Be released from _____ and participate in the following
Name of facility alternative treatment: _____

9. The petition is dismissed and the individual shall be released from the facility.

Date

Judge Bar no.

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