

CHAPTER 7: COMMITMENT AND ASSESSMENT

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COMMITMENT AND ASSESSMENT

Commitment to DYS


One possible disposition for the youth is commitment to DYS. Commitment to DYS means that the court has ordered the youth to be accountable to DYS until a certain age. A youth charged as a delinquent is committed to DYS until age 18.¹ A youth charged as a Youthful Offender, defined below, is committed until age 21.²

Commitment to DYS may involve DYS taking physical custody of the youth for all or part of the length of the commitment, but DYS never assumes legal custody.³

Typically, committed youth reside at a secure program for a period determined by DYS and then live in a residential or community program on a grant of conditional liberty, discussed in the chapter of this book entitled ‘Grant of Conditional Liberty.’

During commitment to DYS, the youth’s parent or legal guardian maintains legal custody over the youth (unless a parent cannot be found and no legal guardian has been appointed).⁴


While commitment to DYS typically terminates when a youth turns 18 (unless the youth is adjudicated a Youthful Offender), DYS has the authority, when it believes that discharge of the youth would pose a physical danger to the public, to apply to the committing court for approval of an order of extended control beyond the youth’s 18th birthday but no later than the 21st birthday.⁵ This process, called an “extension of commitment,” is discussed in the chapter of this book entitled “Discharge from DYS.”⁶

 **Tip for families:** Commitment to DYS is different from commitment of a person with mental illness to a mental health facility. Mental health admission and commitment are discussed briefly in the chapter of this book entitled “Overview of Rights During Confinement.” Commitment to DYS should also be distinguished from being placed in the custody of the Department of Children and Families (DCF), which some people refer to as “commitment to DCF,” although it isn’t really a commitment.

Placement upon commitment

After the youth is committed to DYS custody, he will travel in a sheriff’s van to a DYS facility. DYS will then place the youth a residential

unit to await the next available bed in an assessment unit.⁷ The wait on the residential unit is usually one to two days.⁸ Once the youth is placed in an assessment unit, he will remain there until his staffing (discussed below).

 **Tip for families:** When the youth arrives at the assessment unit, he will be strip searched, as discussed further in the chapter entitled “Overview of Rights During Confinement.” It is also important to note that the youth may not bring medication into the assessment unit, which is also discussed further in the chapter entitled “Overview of Rights During Confinement.”

In the assessment unit, the youth is assigned a DYS community caseworker who will assess the youth’s needs. The assignment of the caseworker should occur within three days of commitment.⁹ The caseworker should contact a committed youth by telephone at a minimum within two business days of the caseworker being assigned.¹⁰ The caseworker should meet with the youth face to face within five business days of commitment.¹¹

This assignment is important as the caseworker will work with the youth through the assessment period, the staffing meeting, and classification process.

Assessments of committed youth

After commitment, DYS will conduct a series of assessments.

Intake screening

DYS performs an intake screening of all committed youth as DYS does of all detained youth.¹²

Medical evaluation

In addition, if the committed youth has not had a complete medical evaluation (because he had not remained in detention for sufficient time for such evaluation to be completed), he will have that evaluation on the assessment unit. DYS regulation requires that this evaluation occur within 30 days of commitment to DYS.¹³ However, DYS will complete the evaluation within 30 continuous days of confinement to DYS (so a youth who has been detained prior to commitment may have the evaluation completed prior to the regulatory deadline).¹⁴

Full assessment


DYS must evaluate each committed youth when he enters DYS custody in order to determine what services the youth needs.¹⁵ DYS's goal is to complete this assessment within 30 days of a youth's placement on an assessment unit.¹⁶ However, DYS allots a 30 to 45 day period for completion.¹⁷

To meet this requirement, DYS conducts a full assessment of the committed youth once on the assessment unit.¹⁸ Assessment consists of an examination of topics including: medical, dental, psychiatric, behavioral, substance abuse and educational history; family involvement; prior juvenile record; and review of risk factors relating to offending.¹⁹ As part of this assessment, the DYS clinical staff complete:


- a mental health assessment called a Massachusetts Youth Screening Instrument, Second Version (MAYSI-2);
- a substance/alcohol abuse assessment called a Substance Abuse Subtle Screening Instrument (SASSI);
- a risk-needs assessment called a Youth Level of Services Inventory/Case Management Inventory (YLS/CMI); and
- a bio-psycho-social inventory.²⁰

With respect to the YLS/CMI, the assessment identifies both “risk factors” and “needs.” The “risk factors” that are identified will be addressed by caseworkers, residential staff, and clinical staff and will be incorporated in treatment plans.²¹ The “needs” determined by the YLS/CMI will provide re-entry staff a guide of services/supports that need to be in place prior to a client's return to the community.²²


The task of assembling the case history is overseen by the youth's community caseworker (or, if available, a case historian). The case history is a document with multiple sections on various aspects of the youth's history, compiling the above topics of examination. Because the information gathered will be used to identify appropriate services, the caseworker or case historian will try to assemble as much information as possible during this process. Once compiled, the caseworker presents the case history at the youth's staffing meeting where the treatment team uses it to develop an individualized treatment plan.²³

 **Tip for families:** Encourage your child to behave well on the assessment unit and to participate in the assessment process. Your child's relationship with his DYS treatment team begins during assessment and should be a productive one that produces a helpful treatment plan. However, if your child's lawyer is appealing your child's

case in court, your child should not discuss the facts surrounding the incident in the assessment process. If you or your child has questions, contact your child's lawyer.


 **Tip for families:** Since time spent on an assessment unit does not count toward treatment time and services in the assessment unit are more limited than on treatment units, parents should carefully monitor the assessment process and get involved if it appears that there are delays. DYS's goal is to complete the assessment in 30 days. It should be possible to complete an assessment within 30 to 45 days and DYS normally does so. However, delays could occur if DYS is unable to obtain needed records, such as clinical and educational documents, from community record holders. Before the end of the 30 to 45 days, check in with your child's DYS caseworker to discuss how the assessment process is progressing. If 45 days have already passed and your child has not moved from the assessment unit, ask your child's caseworker why he has not yet moved. If the explanation you receive is not reasonable, ask the caseworker or caseworker supervisor to help you resolve the delay. If you are unable to resolve the delay within DYS, consider seeking advocacy assistance.


As part of the initial assessment, DYS should interview a youth's parents or legal guardian.


 **Tip for families:** DYS is interested in having as much family cooperation as possible during the assessment. When speaking with DYS, be truthful in your answers. However, think carefully before disclosing certain information. For example, inform DYS about developmental delays, mental health hospitalizations, diagnoses, medication, and cognitive/learning issues. However, be aware that if you disclose possible criminal conduct, especially of a sexual nature, you may be exposing your child to further criminal prosecution or the sex offender registry. It is usually a good idea to discuss this information with your child's attorney before deciding to share it with anyone else. It is never appropriate to lie, but parents are not obligated to respond to all questions posed by evaluators and can choose not to answer a question or questions.

Providing records to DYS


During the assessment period, parents and legal guardians should work with the youth's lawyer to make sure DYS receives copies of the youth's school records, mental and physical health records, and any other information that would be useful to determine the youth's needs.²⁴

 **Tip for families:** If your child receives special education services, make sure DYS is aware of that fact during the assessment process. Provide DYS with copies of your child's Individualized Education Program (IEP). If your child has an IEP, he has the right to receive special education services while in DYS custody. (If your child has not yet been found eligible for special education services, but you believe he may be eligible, ask the local school district or Special Education in Institutional Settings (SEIS) (discussed later in this book) to arrange for a special education evaluation (if he hasn't had an evaluation) or a team meeting (if he already has had an evaluation).) All DYS facilities should have special education teachers. Insist that DYS place your child in a program where his educational needs will be met. Additionally, keep in mind that your child's school district retains responsibility to implement the whole IEP. (For more about the educational rights of children with special needs and the responsibilities of various entities to deliver special educational services to DYS-involved youth, see the section on Special Education below.)


 **Tip for families:** You might want to keep a copy of the records that you provide to DYS. You may want to reference them during your child's commitment or provide additional copies to DYS or program staff.


 **Tip for families:** If your child's lawyer arranged for a clinical evaluation during the course of representation, discuss with the lawyer whether that evaluation should be shared with DYS.


The reports of evaluations completed by the juvenile court clinic are court-ordered and therefore belong to the juvenile court.²⁵ These reports only may be released upon the order of a juvenile court judge although lawyers representing children typically receive copies for purposes of the court case.²⁶ In addition, if a youth is committed to DYS, the clinical portions of the report are released to DYS for assessment and planning purposes, consistent with an agreement between the juvenile courts and DYS, so that DYS may fulfill its statutory obligations to assess and care for its clients.²⁷

 **Tip for families:** You may certainly request to speak with the court clinician about the substance of the report. If you believe that the report might be helpful to you, your child's doctor or another person, you may ask your child's lawyer to request that the judge order its release to a specified party. The court clinician also can recommend the report's release in the report itself, so if you are part of the evaluation (or even if you are not), you can ask the court clinician

to consider including that recommendation, particularly if it would be helpful for your child's clinical care, or other purpose.²⁸

 **Tip for families:** Be cautious about releasing these records and any other clinical records to individuals who do not have a professional obligation to keep information confidential. For example, be cautious before releasing records to schools. Information in reports may be used against your child, may be dispersed through informal discussions, or may relate to other family members.

 **Tip for families:** It also is important for you to participate in the assessment process, as well as in the subsequent staffing. The assessment process is where the thinking happens that results in the decision issued at the staffing. It is therefore important to get involved at this stage and not simply wait for the staffing meeting. And, it is important for your child's lawyer to be involved during this time as well.

 **Tip for families:** You should request a copy of your child's DYS Case History so that you may verify its accuracy and understand the DYS assessment of your child. A parent, legal guardian or attorney has the right to receive a copy of this document (and any other document contained in a youth's DYS records) by making an oral or written request. If you make the request orally, be prepared to present proper identification. If you make the request in writing, submit it by certified mail, return receipt requested. Keep a copy of all your correspondence with DYS.

Endnotes

- 1 Mass. Gen. L. ch. 119, § 58.
- 2 Mass. Gen. L. ch. 119, § 58.
- 3 See Mass. Gen. L. ch. 120, § 12.
- 4 Mass. Gen. L. ch. 120, § 23.
- 5 Mass. Gen. L. ch. 120, §§ 16-19.
- 6 44 Mass. Practice Series, Juvenile Law, § 36 (2nd ed.)
- 7 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 8 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).
- 9 DYS panel presentation, “What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?” Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006).
- 10 DYS, Case Management Reference Guide (Aug. 2006) at 17.
- 11 DYS, Case Management Reference Guide (Aug. 2006) at 17.
- 12 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 13 109 CMR 11.22(1).
- 14 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).
- 15 Mass. Gen. L. ch. 120, § 5(a)-(c) (the statutory provision terms this evaluation an “examination”).
- 16 Communication of Edward Dolan, Department of Youth Services to MHLAC (Jan. 17, 2008).
- 17 DYS, Case Management Reference Guide (Aug. 2006) at 18; DYS website, <http://www.mass.gov/dys>, Programs and Services at the Department of Youth Services (DYS), Clinical Services Provided by DYS.
- 18 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 19 Mass. Gen. L. ch. 119, §§ 68A, 68C, 69; Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 20 DYS panel presentation, “What Happens to Your Client after Commitment to DYS? What is Your Role as an Advocate for a Client Committed to DYS?” Victims, Violence, and the Juvenile Justice System: What to Do When Problems + Solutions = New Problems, 8th Annual Juvenile Justice Conference (Boston, Nov. 10, 2006); DYS panel presentation, “Overview of DYS” in An Overview of DYS Advocacy, Juvenile Justice Center (June 6, 2007); DYS, Case Management Reference Guide (Aug. 2006) at 18. Currently, DYS is reviewing the federally approved GAINS substance abuse screening tool which may replace the SASSI. DYS, Case Management Reference Guide (Aug. 2006) at 18, n.1.
- 21 DYS, Case Management Reference Guide (Aug. 2006) at 25.
- 22 DYS, Case Management Reference Guide (Aug. 2006) at 25.
- 23 See 109 CMR 11.22(1).
- 24 14B Mass. Practice Series, Summary of Basic Law, § 14.75 (3rd ed.).
- 25 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007).
- 26 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007).
- 27 Correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007). The working relationship between the juvenile court clinics and DYS is set forth in a Memorandum of Understanding between these two entities. For a copy

of this document, contact DYS or the Director of Court Clinic Services, Administrative Office of the Juvenile Court, at 617-788-6550.

28 This tip is based upon information contained in correspondence from Robert Kinscherff, Department of Mental Health to MHLAC (Mar. 2007).

