

Mental Health Procedures Act Civil Commitment Process

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Disclaimer

This presentation of Joel R. Zullinger and Suzanne M. Trinh on the Mental Health Procedures Act represents solely their opinions and does not represent the opinions of the Franklin-Fulton Mental Health/Mental Retardation Administrator or any of the Judges of the 39th Judicial District.

Mental Health Procedures Act (MHPA)

- Found at 50 P.S. §§ 7101 et seq.
- Prior to 1976, Mental Health commitments were controlled by Mental Health and Retardation Act where any two physicians could commit a patient for treatment.
- In O'Conner v. Donaldson, 422 US 567 (1975), the United States Supreme Court held a state may not constitutionally confine, without more, non-dangerous persons who are capable of surviving safely in freedom by themselves or with the help of willing and responsible family members or friends.

History of MHPA

- Passed to establish the required due process procedures for commitment.
- Intent: to assure that severely mentally disabled individuals are provided the care they need for their own health and safety and the safety of others.
- Procedural protections provided expand progressively as deprivation of liberty increases.

Policy of MHPA: Section 7102

- Treatment on a voluntary basis shall be preferred to involuntary treatment.
- The least-restrictive setting consistent with adequate treatment shall be employed.
- Persons who are mentally retarded, senile, alcoholic, or drug-dependent shall receive mental health treatment only if they are also diagnosed as mentally ill, but these conditions of themselves shall not be deemed to constitute mental illness.
- Chronically disabled persons over 70 and who have continuously been hospitalized in a state facility for at least ten years shall not be subject to the procedures of the MHPA.

Mental Health Review Officers (MHRO): Section 7109

- Common Pleas Court may appoint MHRO to hold hearings required by MHPA.
- MHRO shall be members of the bar of the Pennsylvania Supreme Court, without restriction to county of residence.
- Where possible, familiar with the mental health field.
- Where hearing held by MHRO, patient has right to petition Common Pleas Court for *de novo* review.
- No Judge or MHRO shall specify any treatment as part of the commitment order.

Persons Subject to Involuntary Examination & Treatment: Section 7301 (a)

- Mentally disabled and in need of immediate treatment.
- Definition of mentally disabled:
 - Suffering from mental illness – most current Diagnostic and Statistical Manual (DSM);
 - Reduced state of self-control, judgment and discretion in conduct of affairs or social relations, and/or care for their own personal needs;
 - Poses a clear and present danger of harm to others or to himself.

Clear and Present Danger to Others: Section 7301(b)

- Conduct WITHIN THE PAST THIRTY DAYS:
- Inflicted or attempted to inflict serious bodily harm on another;
- Reasonable probability that the conduct will be repeated;
- May be demonstrated by proof of threats of harm and committed acts in furtherance of the threat.

Clear and Present Danger to Self: Section 7301(b)

- Conduct WITHIN THE PAST THIRTY DAYS:
- Unable to satisfy need for food, personal or medical care, shelter, self-protection and safety without care, supervision and assistance of others;
- Reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within thirty days unless adequate treatment were given;
- Person has attempted suicide and there is reasonable probability of suicide without adequate treatment;
- Threats of suicide together with acts in furtherance of the threat;
- Person has substantially mutilated himself or attempted to mutilate himself and there is reasonable probability of mutilation without adequate treatment; or
- Threats of mutilation together with acts in furtherance of the threat.

CROCK RECHIN & WILDER

SIR, THE MEN SAY YOU'RE MENTALLY DISTURBED.

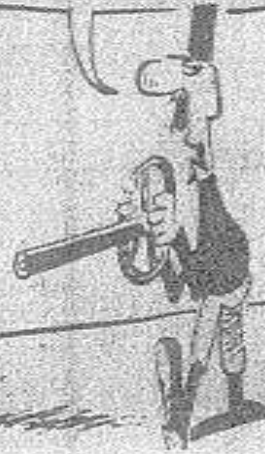


NONSENSE,
HAWTHORNE

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10-26

WOULD I STILL BE DRIVING IF THAT WERE TRUE?



Bob Rechin

Involuntary Emergency Examination and Treatment: Section 7302

- Petitioner can be any third party who has observed behavior consistent with severe mental disability (as defined in §7301).
- A warrant can be issued by County Administrator requiring patient to appear for a psychological evaluation.
- Committed for up to 120 hours on the basis of physician's evaluation and conclusion that inpatient care is needed.
- Treatment is to begin immediately.

Extended Involuntary Treatment: Section 7303

- Applies to patients admitted pursuant to Section 7302.
- Treating facility can petition for extended inpatient treatment with physician's certification that further treatment is necessary.
- Hearing to be held within 120 hours of admission.
- After hearing, involuntary treatment can be ordered for an additional 20 days.
- Requires finding that the patient continues to be severely mentally disabled and needs extended treatment.

Hearing Process: Section 7303

- Informal hearing.
- Conducted by MHRO within 24 hours of filing of application.
- Held at the facility where the patient is located.
- Patient has a right to hear evidence against him, to cross examine witnesses and to present evidence on his own behalf.
- Patient has a right to counsel.
- Patient cannot be called as a witness without his consent.
- Hearsay is permissible, provided MHRO finds indicia of reliability.
- Hearings are open to the public unless the patient requests otherwise.
- Decision rendered at the close of the review.
- Patient may petition for *de novo* hearing before a Common Pleas judge; hearing must be held within 72 hours of petition.

Petition for Court Ordered Treatment: Section 7304

- Applies to patients who are already receiving treatment, whether voluntary or involuntary, and inpatient or outpatient.
- Petitioner can be “any responsible party.”
- Requires an opinion by examining physician that patient is severely mentally disabled and that continued treatment is necessary.
- Informal hearing held (same process as Section 7303).
- Can extend treatment for up to 90 days.
- Involuntary treatment can be inpatient or outpatient, depending on which offers the least restrictive setting that meets the patient’s needs.
- MHRO must consider community resources available to patient before making a decision.

Grounds for Petition: Sections 7304(b) and (c)

- Section 7304(b) – Used to extend involuntary treatment of patients committed under Section 7303.
- Section 7304(c) – Applies to patients who are not receiving involuntary treatment:
 - Patients who voluntarily admit themselves for inpatient treatment must give the facility 72-hours notice before being discharged against physician's recommendation;
 - Physician may petition for involuntary treatment during 72-hour notice period and hearing is held to determine if patient should be subject to involuntary treatment, either inpatient or outpatient.

Provision for Individuals Charged with Specified Crimes: Section 7304(g)

- Section 7304(g) applies to patients where the allegation of severe mental disability is the result of being charged with one of the following crimes:
 - Murder
 - Voluntary manslaughter
 - Aggravated assault
 - Kidnapping
 - Rape
 - Involuntary deviate intercourse OR
 - Arson
- AND patient has been found incompetent to be tried OR has been acquitted because of lack of criminal responsibility,
- THEN patient can be committed involuntarily for up to One Year.

Discharge Procedures for Patients Committed Under Section 7304(g)

- Facility shall petition the court for conditional or unconditional release of patient.
- Notice of the petition shall be given to the patient, the county administrator and the district attorney.
- Within 15 days of petition, the court shall hold a hearing to determine if the person is severely mentally disabled and in need of continuing treatment.
- Court may order an additional one year period of treatment or may allow conditional or unconditional discharge.

Continuing Involuntary Treatment: Section 7305

- Applies to patients are subject to involuntary treatment under Sections 7304(b), (c), or (g).
- Petition filed by county administrator or director of facility where patient is located or being treated.
- Requires a finding that the patient remains severely mentally disabled based upon conduct during most recent period of court-ordered treatment.
- May extend involuntary treatment for an additional 180 days (except Section 304(g) – one year).
- May be renewed as many times as patient continues to be severely mentally disabled.
- Informal hearing held (similar to Section 7303 hearing).

Transfer to More Restrictive Setting: Section 7306

- Generally: patient subject to involuntary treatment may be transferred to any approved facility.
- If committed pursuant to 304(g)(2), unless there is an emergency, the patient may not be transferred unless written notice is given to the committing judge and district attorney and there is no objection within 20 days. If there is an objection and there is not an emergency, a hearing shall be held by the court.
- If the transfer is to a more restrictive setting, there must be a hearing before the MHRO or a judge and a finding that the transfer is necessary and appropriate.

Questions?

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