

Civil Commitment

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Disclosures

Neither I nor my spouse/partner has a relevant financial relationship with a commercial interest to disclose.

Case

Mr. Jones is a 30-year-old man with a diagnosis of schizophrenia. He had his first psychotic break during his second year of law school. He eventually graduated and passed the bar but became increasingly symptomatic during his first year in practice. His symptoms include auditory hallucinations and paranoid ideation focused on a former client. He has sent threatening communications to the client, warning that he will “do what he needs to do” to end their surveillance and harassment of him. Mr. Jones lives on the street, much to the dismay of his parents. He has been brought to the hospital on multiple occasions by police and EMS. At each of these visits, his diagnosis was noted, as was his refusal of hospitalization or medication. Mr. Jones denies that there is anything wrong with him. Relying on his legal education, he insists that he is not committable. He notes that he is aware of the doctors’ diagnosis and does not agree, is not suicidal and has no desire to harm anyone and just wants to be left alone by the people who are harassing him. He has previously taken the medication they are offering and had side effects he found intolerable. He notes that his health is good and that he has been able to provide for himself on the street and is healthy. On all but two occasions, he convinces the evaluating clinicians that he has the capacity to make his own decisions and is not a danger to himself, others, or gravely disabled.

Mr. Jones’ parents consult you in an effort to get him hospitalized.

Involuntary Commitment

- Old standard: Need for treatment (*Parens patriae* model)
- “New” standard: Dangerousness (Police Powers model)
 - To self
 - To others
 - Inability to care for self
- Constitutes “a massive curtailment of liberty.” (Humphrey v. Cady, 1972)
 - Requires procedural Due Process
 - Clear criteria required
 - Notice, right to counsel, present and confront witnesses
- Minimum standard of proof = “clear and convincing evidence.” (Addington v. Texas, 1979)

Involuntary Commitment

- A “hard problem”:
 - Balancing individual rights and public interests
 - Autonomy as the ethical trump card: Alan Stone, M.D.
- Different jurisdictions have different processes and terminology
 - Rights driven approach
 - Variations on the rights driven approach
 - Efforts to address the hard problem and the erosion of the rights driven approach

Involuntary Commitment

- Typical system
 - Temporary/emergency involuntary hospitalization
 - On petition of one or more individuals (clinicians of multiple types, law enforcement)
 - Usually 72 hours, but it varies
 - Missouri: 96 hours
 - Connecticut: up to 10 days
 - “Conditional voluntary” admission
 - Civil commitment:
 - By a judge,
 - Sometimes a jury, and
 - Sometimes a Mental Health Commission? Judge &/or jury
 - For an extended period, e.g. 6 months/12 months

Rights driven approach

- Massachusetts
 - Temporary involuntary hospitalization
 - On petition of one or more individuals (clinicians of multiple types, law enforcement)
 - Failure to hospitalize would create a likelihood of serious harm by reason of mental illness
 - "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. 72 hours, but it varies
 - Conditional voluntary admission must be offered
 - Civil commitment:
 - By a judge
 - Likelihood of serious harm proven "beyond a reasonable doubt"
 - For an extended period: 6 months/12 months

Rights driven approach

- District of Columbia: Variation
 - Temporary involuntary hospitalization
 - Officer/agent of DBH, LE officer, qualified clinician may take a person into custody without a warrant and transport them to a facility and apply for admission for emergency observation and diagnosis if they have
 - Reason to believe the person is mentally ill, and
 - Because of the illness is likely to injure himself or others if he is not immediately detained
 - Admit for up to 48 hours or petition court for continued detention up to 7 days
 - Option for a hearing
 - “Likely to injure self or others” includes risk of being arrested, involved in altercation — imminent danger to self or others not required
 - Civil commitment: outpatient or inpatient
 - Petition filed with the Commission on Mental Health (DC Code §21-541) with certificate of MD or psychologist that patient has been examined; criteria met within 7 days
 - Commission must recommend after a hearing. Commission composed of magistrate judge (Commissioner) and 2 clinicians not affiliated with DBH
 - If person does not accept, can request trial by judge or jury
 - DC Superior Court Judge commits for up to a year.

Rights driven approach: Nuances

- Utah: 26B-5-332. Involuntary commitment under court order if
 - (A) the proposed patient has a mental illness;
 - (B) because of the illness the proposed patient poses a substantial danger to self or others;
 - (C) the proposed 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 possible risks of accepting or rejecting treatment;**
 - (D) There is no appropriate less-restrictive alternative to a court order of civil commitment; and
 - (E) The local mental health authority can provide the proposed patient with treatment that is adequate and appropriate for the patient's conditions and needs, or
- Charged with a crime....

The pendulum swings back...

- States are free to enact their own civil commitment laws and apply their own definitions of dangerousness
- So long as they do not violate established Supreme Court precedents
 - Mental illness or disorder (defined by the state), e.g. sexually dangerous persons
 - Dangerousness (defined by the state)
 - Risk of being arrested
 - Risk of provoking others
 - Inability to make rational decisions
 - Must provide due process
 - Minimum standard of proof: clear & convincing evidence

Outpatient commitment: New York

- Standard process/criteria for emergency hospitalization and civil commitment
 - Inability to care for self
 - Danger to self or others
 - Inability to safely live in the community without supervision
- Assisted Outpatient Treatment (Kendra's Law):
 - Court ordered treatment in the community for individuals with severe mental illness who are at risk of relapse, violence to self or others, or hospitalization due to nonadherence to treatment
 - Operated at the county level
- Nationwide
 - 48 states + DC have AOT laws (Connecticut and Massachusetts do not)
 - Level of funding and success rates vary

California

Community Assistance, Recovery, and Empowerment (CARE) Act

- Court-ordered treatment, services, support, and a housing plan for eligible people
 - 18 years and older
 - Have untreated severe mental illnesses (schizophrenia or other psychotic disorder)
 - Not currently clinically stabilized
- Criteria
 - Unlikely to survive safely in the community without supervision and respondent's condition is deteriorating, or
 - Respondent needs services and supports to prevent relapse or deterioration that would likely result in grave disability or serious harm to the respondent or others
- Participation in a CARE plan or agreement must be the least restrictive alternative and likely to benefit the respondent
- Long list of people eligible to file a petition

The anosognosia trend

- As a specified element of being
 - “Gravely disabled”
 - Dangerous,
 - Treatment refusal
 - Lack of capacity (?)
- Examples of states that have gone this route
 - Arkansas
 - Idaho
 - Oklahoma
 - Michigan
 - Arizona
 - Texas
 - Utah
 - And arguably, New York and California

Is Mr. Jones committable?

- It depends
 - On the facts of his case
 - On geography

Thank You!

