

Violations of the Rights of the “Mentally Ill” in the District of Columbia

by
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The United States Constitution is the document upon which the country was founded. It outlines the powers and procedures of the government as well as its duties to protect personal liberties. There is no mention in the Constitution that the rights guaranteed to citizens are limited to those citizens who are “of sound mind.” Yet, mentally ill persons are routinely deprived of the rights that are specifically assured to them in the Constitution. One example of this is the emergency hospitalization procedure of mentally ill persons in the District of Columbia, in which the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights of these people are violated. For the purposes of this paper, “involuntary commitment” and “emergency commitment” will be used interchangeably and considered to be one in the same.

An “accredited” officer or agent of the Department of Mental Health, any officer authorized to make arrests in the District of Columbia, a physician, or “qualified psychologist” may take a person into custody if he believes that the person is mentally ill and, because of this illness, is likely to injure himself or others if he is not immediately detained. This detention does not involve a warrant, but an application is made that states the circumstances surrounding and the reasons for the detention. (DC Code 21-521). An example of such an application is located in Appendix I.

The first section of this statute is the foundation for the constitutional violations against the rights of the “mentally ill.” Firstly, the emergency hospitalization of persons is not prescribed a specific jurisdiction. Considering the number of people with the authorization to make arrests in the District of Columbia, it should be concerning that any police officer or federal agent could detain someone on a *belief* that he or she is mentally ill.

The major issue here (as well as a major portion of this example) is due process, as outlined by the Fifth and Fourteenth Amendments. These people are detained without a warrant and without actually having committed a crime. In addition, the fact that they have been previously diagnosed with mental illness often serves as sufficient proof that they are mentally ill. This violates the double jeopardy clause of the Fifth Amendment if being mentally ill is viewed as an offense. This assumption would not be unfounded considering a person’s liberty is compromised because of it.

After being taken into custody, a person is generally brought to the Comprehensive Psychiatric Emergency Program (CPEP) to be examined by a psychiatrist. The psychiatrist then writes a Certificate of Psychiatrist that states that he has examined the person; that it is his opinion that the person has symptoms of mental illness; is likely to injure himself or others unless immediately detained; and that hospitalization is the least restrictive form of treatment available to prevent such harm. The person then may be admitted and detained to a psychiatric hospital for “emergency observation and diagnosis.” (DC Code 21-522) An example of such a certificate is located in Appendix II.

A note should be made here that refusal of examination can be used as proof of mental illness. If a person does not speak with the psychiatrist, he may label the person as “selectively mute.” When contributing to an involuntary hospitalization, this violates the Fifth’s Amendments’ protection against self-incrimination. Though it may be arguable if demonstrating signs of mental illness is comparable to committing a criminal act, the end result of both are the same: the forced detention of the person in a facility that dictates his or her daily actions and enforces compliance.

The person may be held at a psychiatric hospital for 48 hours unless the administrator of the hospital has filed a written petition with the court to authorize continued detention for a period not exceeding seven days. (DC Code 21-523) At St. Elizabeth’s Hospital, this petition is generally filed automatically. In response to this petition, the court either orders continued hospitalization or orders the person’s “immediate release.” In considering the petition, the court considers the reports of the agent or officer that made the application for hospitalization, the certificate of psychiatrist, and “any other relevant information.” (DC Code 21-524) An Order Authorizing Continued Hospitalization for Emergency Observation is located in Appendix III.

It is important to note that the person being detained is not specifically mentioned in the court’s consideration. In fact, the persons have no notice of the petition until after continued hospitalization is ordered. There is a Sixth Amendment breach here in that the person is not informed of the nature and cause of the accusations against him and is barred from confronting witnesses.

Once the person is hospitalized, they may request a Probable Cause Hearing, which is held within 24 hours after the request is received by the court. The hearing must be requested within seven days after the Order Authorizing Continued Hospitalization for Emergency Observation is filed or the right to request this hearing is forfeited. (DC Code 21-525).

If a hearing is not requested or is lost, a Commission Hearing may be requested or is automatically scheduled for the person about two or three weeks after the admission date. The Commission's purpose is to determine if the person is mentally ill and likely to harm himself or others as a result of mental illness. The Commission must also determine if hospitalization is the "least restrictive means" in which this "harm" could be avoided. If this is the case, the person then has the choice to accept commitment or request a jury trial. (DC Code 21-544)

If a trial is lost (meaning involuntary commitment is further ordered), the person may only be committed for a period of one year. (DC Code 21-544). At least sixty days before the end of the commitment, the chief administrator of the mental health facility may petition the Commission for a renewal of commitment. If commitment is renewed, it may only be for an additional year, but can be renewed again indefinitely. The person is not entitled to an appeal on his case until after renewed commitment has been granted. (DC Code 21-545)

As the commitment of the person could be continued indefinitely, there is a violation of the person's Eighth Amendment right to protection against cruel and unusual punishment. Though comparisons have been made to the criminal justice system in the present analysis, an important distinction must be made here. There are no indeterminate

sentences in the criminal justice system. One may be sentenced to life imprisonment, but this sentence is relatively determinate. However, where a person is detained without even being accused of committing a crime their “sentence” can be extended for as long as the hospital administrator finds necessary, assuming court approval is granted. The violation of constitutional rights here is less than subtle.

An additional point that must be made is that the person’s treating psychiatrist, as well as any previous psychiatrist, psychologist, or physician, may testify in these proceedings. The issue here is that the doctor may testify without consent of the party involved. This is a clear and obvious breach of confidentiality. Though confidentiality is not a specific right assured by the US Constitution, the right to privacy has been inferred through the First, Fourth, Fifth, and Ninth Amendments. Confidentiality is also the basis of a patient-doctor relationship.

After consideration of the abuses of the “mentally ill,” one might question the rationale of society, through its representatives, in these actions. Thomas Szasz (1963) suggests that social disturbance is the issue resolved by this process. If a person asserts ideas, beliefs, or sensations that threaten society, a social disturbance is created. Thus, the deprivation of liberty of a person for mental health reasons is based on the person’s thoughts and behavior, not criminal actions. This is an important distinction to make because it leads to the violation of one the basic constitutional rights.

The First Amendment’s freedom of speech is a protection that is held dearly to many Americans, yet the violation of this right is the basis for involuntary commitment. Persons that are committed generally have not committed crimes, nor are they thought to have done so. The basis for their commitment is therefore their own personal expressions.

These expressions should receive the utmost protection, but are actually exploited to remove socially undesirable persons from society.

This paper has explored the involuntary, or “emergency,” commitment process in the District of Columbia. Throughout the process, almost all of the constitutional amendments in the Bill of Rights are violated. Perhaps what is more disturbing is that these persons are not criminals; they are rejects from society. Society has deemed the behaviors of these people as unacceptable and developed a process to remove them from sight and consideration. However, these persons do not disappear; they spend years of their lives in mental institutions, such as St. Elizabeth’s Hospital. It is extremely saddening and distinctly outrageous that a minority group could be so blatantly abused.

Bibliography

District of Columbia Official Code: 2001 Edition.

Szasz, T. (1963). Law, Liberty, and Psychiatry. New York: The Macmillan Company.

The United States Constitution.

Note: Some of the information regarding the law and their practical workings presented in this paper was gained from personal experience as a student investigator at the Mental Health Division of the Public Defender Service of the District of Columbia.

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APPLICATION FOR EMERGENCY HOSPITALIZATION BY: PHYSICIAN OR
 PSYCHOLOGIST OF THE PERSON, OFFICER OR AGENT OF D.C. DEPARTMENT OF
 HUMAN SERVICES OR AN OFFICER TO MAKE ARRESTS

Appendix I

TO: Administrator, St. Elizabeth Hospital
 I. [Redacted] state

PHYSICIAN OR PSYCHOLOGIST OF THE PERSON: That I am a physician _____ or qualified psychologist _____ (check one); that I am not related by blood or marriage to the alleged mentally ill person; that I am not financially interested in the hospital in which said person is to be detained; that the statements are based on my personal observation and examination of said person not more than 72 hours prior to the making of this application, and further (CHECK APPROPRIATE BOX (1) OR (2) BELOW).

1. That I am licensed under the laws of the District of Columbia; that I am not professionally or officially connected with the hospital in which said person is to be detained; and having reason to believe

2. That I am employed by the United States or District of Columbia; and having reason to believe

OFFICER OR AGENT, DHS: That I am a duly accredited officer or agent of the Department of Human Services of the District of Columbia; and having reason to believe

POLICE: That I am an officer authorized to make arrests in the District of Columbia; and having reason to believe that

[Redacted]
 (Name, address and age of person to be hospitalized)

is mentally ill and, because of such illness, is likely to injure self and/or others if not immediately detained, hereby make application under the provisions of Title 21, § 521, D.C. Code, for the admission of said person to the above-named hospital for emergency observation and diagnosis, and request that said person be examined by a psychiatrist or qualified psychologist on duty for said hospital.

1) STATE CIRCUMSTANCES UNDER WHICH PERSON WAS TAKEN INTO CUSTODY (Use reverse side if needed)

Writer rec'd an emergency T/C from pt daughter R. requesting a H/V, for as reported pt hasn't taking her medications in several days, actively hallucinating

2) STATE FACTS WHICH LEAD YOU TO BELIEVE PERSON IS MENTALLY ILL (Use reverse side if needed)

throwing objects throughout the house verbally abusive toward family members without provocations. As observed pt appears to be confused, disoriented, hyperactive and

3) STATE FACTS WHICH LEAD YOU TO BELIEVE PERSON IS LIKELY TO INJURE SELF AND/OR OTHERS AS A RESULT OF THE MENTAL ILLNESS (Use reverse side if needed)

very suspicious. Pt has a history of mental illness, Dx 295.94. Pt appears to have decompensated & may require further psychiatric intervention & medical clearance

05/24/92

Date

[Redacted Signature]
 Signature and Rank or Professional Title of Applicant

EPRD-WI 727-0117

Business Address (Precinct or Service)

1105 E St, S.E

Telephone Number

- Pt appears to be a danger to self & others.

Appendix II

Superior Court of the District of Columbia

TYPE OR
PRINT

CERTIFICATE OF PSYCHIATRIST UNDER TITLE 21, SECTION 522, D.C. Code

I hereby certify that I am a psychiatrist on duty at ST. ELIZABETHS HOSPITAL

Hospital that I have examined (name of patient) _____
for whose admission to the above-named hospital for emergency observation and diagnosis application has been made under the provisions of Title 21, Section 522, D.C. Code; that I am of the opinion that said patient has symptoms of mental illness and, as a result thereof, is likely to injure self and/or others unless immediately hospitalized.

TENTATIVE DIAGNOSIS:

1 Schizophrenia Chronic undifferentiated-type with acute exacerbation

NAMES AND ADDRESSES OF SPOUSE, PARENT, NEAREST RELATIVE, LEGAL GUARDIAN OR OF PERSON ACCOMPANYING PATIENT (other than applicant):

MENTAL STATUS (Describe Symptoms of Mental Illness) (Use reverse side if needed):

It is a 62-year old B/F having problems with uncooperative behavior. He seems to respond to questions directly, but as reactions - muttering and talking to herself, responding to internal stimuli.

STATE FACTS WHICH SUPPORT YOUR OPINION THAT THE ABOVE-NAMED PATIENT IS LIKELY TO INJURE SELF OR OTHERS UNLESS IMMEDIATELY HOSPITALIZED (Use reverse side if needed):

Pt got agitated at the house and started throwing things and verbally abusing the family. She still getting easily agitated and may get aggravated easily.

PSYCHIATRIC HISTORY AND DATES:

Has been a patient at South Centre

Saleha Akhtar
(Signature of Psychiatrist)

(Saleha Akhtar)

5-24-92

Appendix III

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION
MENTAL HEALTH BRANCH

MAY 26 11 47 AM '92

FILED

RECEIVED
MAY 27 1992

In the Matter of:

[Redacted Name]

Mental Health No. [Redacted]

Respondent PUBLIC DEFENDER SERVICE
MENTAL HEALTH DIVISION
F-62

ORDER AUTHORIZING CONTINUED HOSPITALIZATION
FOR EMERGENCY OBSERVATION

Upon consideration of the Petition for Continued Hospitalization for Emergency Observation, and the attachments filed by the Administrator of Saint Elizabeths/ _____ Hospital, it is,

ORDERED that the hospitalization of the above-named Respondent is continued for emergency observation and diagnosis for a period of seven days from the time this order is entered, unless the Respondent is sooner discharged from the Hospital by the Administrator; and it is further

ORDERED that the Respondent be informed, by service of a copy of this order, that, upon request, the Respondent is entitled to a hearing before the court within twenty-four hours after receipt by the Court of the request; and it is further

ORDERED that _____ is appointed counsel for the Respondent, to represent the Respondent in this matter before the Commission on Mental Health and before the Court.

5/27/92
Emer.
Hovener
MSURE

Date

Judge

- White - Clerk's File
- Blue - Hospital Attorney
- Green - Marshal's Copy
- Canary - Hospital Copy
- Pink - Counsel Copy
- Goldcard - Patient's Copy

Form FD (12-2882) / Aug. 88

8-4372 w-229

MENTAL HEALTH
MENTAL HOSPITALIZATION

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

May 26 9 35 AM '92

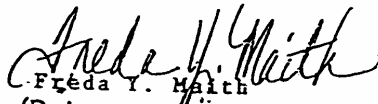
IN THE MATTER OF :
[REDACTED] : MENTAL HEALTH NO. [REDACTED]
AGE :
62 :
PATIENT :

PETITION FOR ORDER AUTHORIZING CONTINUED HOSPITALIZATION OF
PATIENT FOR EMERGENCY OBSERVATION

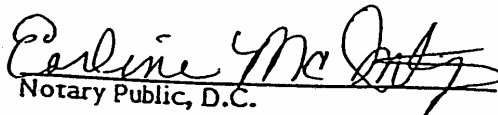
Comes now the petitioner, Robert Keisling, M.D., Chief
Clinical Officer, Commissioner on Mental Health Services at Saint
Elizabeths Campus, Washington, D.C., and represent to the court as
follows:

1. That the above-named patient was admitted to Saint Elizabeths
Campus on May 24, 1992 @ 12 p.m. under Title 21,
Section 522, District of Columbia Code, the emergency
hospitalization provision. Robert Keisling, M.D., Chief Clinical
Officer, requests the court to enter an order authorizing the
continued hospitalization for emergency observation and diagnosis,
for a period not to exceed seven (7) days from the time such order
is entered.

2. For the information of the court, admission records indicate said patient's relatives were unknown. On admission patient's address was [REDACTED], Washington, D.C.


Freda Y. Maith
(Delegated Authority of
Robert Keisling, M.D.,
Chief Clinical Officer
Commissioner on Mental Health Services

Subscribed and Sworn to before me this 26th day of May, 1992, A.D.


Carline McIntyre
Notary Public, D.C.

My commission expires February 28, 1993