



James M. Jeffords
Vermont Legislative Research Service
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**Involuntary Hospitalization:
A Look at the Constitutionality of Vermont's Current Law and a Survey of other States**

Over the past fifty years, the policy of civil commitment in the United States has been reduced.¹ Patients once spent long periods or their entire lifetime involuntarily committed, whereas most patients today are discharged after 30 days or less, and many within 72 hours of being admitted. Defined as the legal procedure of admitting a mentally ill person to an institution for psychiatric treatment, civil commitment has become a revolving door for many who experience multiple periods of hospital admission each individual liberty. It intrudes on the fundamental interest in being

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"Patients are subject to detailed regulation of their every activity, and they are forced to submit to various forms of intrusive treatment, including psychotropic medication, which may impose severe and unwanted side effects that are lasting."⁴ Social and occupational stigmas associated with civil commitment also persist long after discharge.⁵ As a result, a wave of reforms across the United States during the 1960s and 70s tried to "balance individuals' due process rights against needs to help and protect persons who are incapable of serving their own best interests, and concerns for safeguarding the community from dangerous or disruptive mental illness."⁶

³ Winick, "Civil Commitment," *Encyclopedia of Psychology & Law*.

⁵ Winick, "Civil Commitment," *Encyclopedia of Psychology & Law*.

⁶ James A. Holstein, "Court Ordered Insanity: Interpretive Practice and Involuntary Commitment," New York: Walter de Gruyter, Inc., 1993.

Constitutionality

One of the most compelling federal laws challenging

and informal rituals at which the judge seems overwhelmingly to defer to the state's expert witnesses." ¹⁵

Vermont's Involuntary Commitment Policy

Vermont Statute Title 18, § 1701 states that the two prerequisites for involuntary treatment are mental illness and dangerousness. The state of Vermont defines mental illness as "a substantial disorder of thought, mood, perception, orientation, or memory, any of which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but shall not include mental retardation." ¹⁶

Title 18 also defines a person in need of treatment as "a person who is suffering from mental illness, and as a result of that mental illness, his or her capacity to exercise self control, judgment, or discretion in the conduct of his or her affairs and social relations is so lessened that he or she poses a danger of harm to himself, to herself, or to others."

(A) A danger or harm to others may be shown by establishing that:

- (i) he or she has inflicted or attempted to inflict bodily harm on another; or
- (ii) by his or her threats or actions he or she has placed others in reasonable fear of physical harm to themselves; or
- (iii) by his or her actions or inactions he or she has presented a danger to persons in her or her care.

(B) A danger or harm to himself or herself may be shown

hospital is located. If the hosp

hospital admitting or discharging an individual shall forthwith make a report thereof to the commissioner and to the court that entered the order for hospitalization or

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psychiatrist who must document probable cause to continue to confine them under a "Certification of Intensive Treatment," then the patient is automatically granted a Certification of Review Hearing.³⁰ This hearing is mostly informal and mainly involves a neutral party evaluating whether or not patients need to be continually hospitalized, so that they are not routinely readmitted.³¹ This hearing must be held within four days of the request to extend the patients hospitalization for the additional 14 days and must either be performed in the presence of a judge or hearing officer.³² In addition to the automatically granted Certification of Review Hearing, California also dictates that patients being held involuntarily must be made aware of their right to a *writ of habeas corpus* hearing.³³ If a *writ of habeas corpus* hearing is requested first, the Certification Review Hearing is bypassed. For this reason, the California Network of Mental Health Clients (CNMHC), an organization contracted by the state of California to represent and advocate for persons held involuntarily, generally advises their clients to first take their Certification of Review Hearing first, and if unsuccessful, then exercise their right to a *writ of habeas corpus* hearing.³⁴

Florida

The Florida Mental Health Act of 1971, more commonly referred to as the "Baker Act", allows for a judge, law enforcement officials, physicians, or mental health professionals to commit a patient for an emergency involuntary examination.³⁵ This examination cannot last longer than 72 hours, during which both a psychiatrist and either a clinical psychiatrist or another psychiatrist must personally evaluate the patient to determine if further hospitalization is considered necessary.³⁶ At this point, the patient may either be released, or the administrators of the facility may file a petition for additional involuntary hospitalization.³⁷ Once filed, "the clerk of the court shall provide copies to the department, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located."³⁸ Immediately after the petition is filed, the patient is appointed with a public defender to represent them and is given complete access to the patient, patient records, and witnesses relevant to the patient's case.³⁹ Subsequently, a hearing must be held within five days of the filing of the petition.⁴⁰ A judge must preside over the hearing, and additionally, they

³⁰ Thomas, Nancy, California Network of Mental Health Clients, "Involuntary Psychiatric Treatment: California's 72 Hour Hold and 14 Day Certification," accessed 24 February 2011, <http://www.disabilityrightsca.org/pubs/502401.pdf>

³¹ Thomas

³² Thomas

³³ Thomas

³⁴ Thomas

³⁵ Florida State Legislature, "394.467 Involuntary inpatient placement, section 2" accessed 3 March 2011, http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300_0399/0394/Sections/0394.467.html

³⁶ Florida State Legislature, "394.467, section 3"

³⁷ Florida State Legislature, "394.467, section 3"

³⁸ Florida State Legislature, "394.467, section 3"

³⁹ Florida State Legislature, "394.467, section 4"

⁴⁰ Florida State Legislature, "394.467, section 6(a)1"

may appoint special magistrate to oversee the hearings as well.⁴¹ If the court decides that a patient is in need of additional hospitalization, they must specify in detail the nature and extent of the patient's mental illness and then they may be held for another six months involuntarily.⁴²

Minnesota

In Minnesota, a written report must be filed with the committing court prior to the patient's final discharge or termination of the commitment.

New York

New York Mental Hygiene Law establishes standards for involuntary commitment, which can take place in one of three ways.⁵² The first is by **Medical Certification**, which requires two physicians examine and certify that the patient needs involuntary treatment in a psychiatric facility. This certification must be accompanied by an application for admission made by someone familiar with the individual (a legal guardian, custodian, next of kin, treating psychiatrist or someone who lives with the person) or by one of a number of government officials. Patients may be kept in a psychiatric center for up to 60 days, though a patient, their relative, friend, or Mental Hygiene Legal Service may apply for a court hearing to appeal the commitment decision. At the end of 60 days, the psychiatric center director must apply to a judge for authorization to retain the individual as an involuntary status patient. The patient must be notified when such an application is

services, advice, and assistanc

involuntary hospitalization. MHLS workers help patients understand and protect their rights. All MHLS services are free of charge.

policies, Vermont's policy app

commitment process offered by many other states. This gap in Vermont policy raises questions of constitutionality, especially whether patients are aware of their right to appeal commitment decisions via preliminary hearings and their right to *habeas corpus*."

States like New York and California offer increased judicial oversight through