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PSYCHIATRIC PATIENTS IN THE MISDEMEANANT JUSTICE SYSTEM: THE CURRENT RESPONSE

Alison C. Richards, Special Projects Coordinator
Geraldyne P. Caliste, Research Associate

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Prepared by
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COORDINATING COUNCIL
Mayor Ernest N. Morial, Chairman
Michael Bagneris, Vice Chairman
Frank R. Serpas, Jr., Executive Director

PREFACE

The following report traces the existing misdemeanant justice system responses to a sizeable population of psychiatric patients who currently appear before the NOPD, the Municipal Court and the Orleans Parish Criminal Sheriff's Office in need of treatment. It is generally believed that, for most of these people, criminal justice system contact would be altogether unnecessary if mental health resources were sufficient to serve their needs. In the absence of adequate referral and admissions alternatives in the mental health arena, the criminal justice system serves, in effect, to link many of these psychiatric patients to appropriate treatment services.

This report examines some of the causes of psychiatric patient involvement in the misdemeanant justice process. Many of the contributing factors are related to the mental health system's interpretation and application of state laws governing admission to treatment facilities. The report goes on to describe the handling of these patients in the criminal justice system from the point of arrest on appropriate charges to Municipal Court referrals for civil commitment and care and custody by the Orleans Parish Criminal Sheriff's Office. There is some analysis of the impact of this process on the misdemeanant justice system and on the psychiatric patients themselves. The review also includes references to applicable Louisiana statutes establishing admissions procedures and

providing for the current criminal justice system responses to this population. Further, consideration is given to questions which have arisen as to patients' entitlement to insanity proceedings as defendants in Municipal Court; the responsibility of the state Department of Health and Human Resources to assist petitioners in preparing requests or petitions for patient admissions; and the potential impact of the proposed Mental Health Advocacy Service on the population of psychiatric patients currently handled by the misdemeanant justice system.

This analysis of the involvement of psychiatric patients in the misdemeanant justice system leads to the conclusion that arrest, referral from Municipal Court for civil commitment, and detention by the OPCSO constitute a wholly indirect method of arranging treatment in these cases. This process is burdensome to the already strained resources of the NOPD, Municipal Court and Sheriff's Office and it produces inappropriate labelling and delayed treatment for psychiatric patients.

The recommendations contained in this report primarily call for some reevaluation of the applicable state laws to allow for the Department of Health and Human Resources to assume increased responsibility for this population; to reduce the need for the misdemeanant justice system's attempts to cope with a mental health matter; and to ensure more adequate and appropriate admissions and treatment responses for psychiatric patients without the need for criminal justice system involvement and

treatment delays.

It should be noted that the procedures described herein were being employed by the NOPD, Municipal Court and the Sheriff's Office at the time of this writing. It is likely, however, that by the time this report is published, some modifications will have been implemented by order of the Federal Court, particularly with regard to the process and facilities used by the Sheriff's Office in its custody of psychiatric patients.

The study focuses primarily on that population of persons who are identified as psychiatric patients prior to their entry into the criminal justice system and who inadvertently became involved in this process due to inadequacies in the mental health system. It is increasingly evident, however, that the criminal justice system experiences similar problems in providing for that portion of the appropriately labelled offender population who manifest psychiatric problems after arrest and incarceration. The bulk of this report describes the handling of that first group for whom the criminal justice process functions to arrange mental health treatment, yet, many of the recommendations are applicable to all of the system's psychiatric cases.

Frank R. Serpas, Jr.
Executive Director
CJCC

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A. Origin

There is increasing concern among criminal justice practioners over the involvement of psychiatric patients in the misdemeanant justice process. The criminal justice system has traditionally served as a "catch all" for the problems created by inadequacies in other systems. Due to overcrowding and inadequate staff and funding in the mental health system, growing numbers of persons in need of psychiatric care find themselves inappropriately placed at various points in the criminal justice system. Cases involving psychiatric patients place a considerable burden on the limited resources of the NOPD, the Municipal Court and the Orleans Parish Criminal Sheriff's Office. Moreover, these agencies cannot be expected to have the capability of providing suitable responses to the mental health needs of this population.

The involvement of psychiatric patients in the criminal justice system has been brought about, largely, by a series of policy changes enacted in recent years in the hospital system. Funding cutbacks, civil rights actions and changes in treatment attitudes in the late 1960's resulted in a move toward deinstitutionalization of psychiatric patients and an accompanying decrease in bed space maintained by psychiatric hospitals. The community mental health center concept was introduced to handle the deinstitutionalized treatment of mental patients. In time, community mental health centers were faced with overwhelming case-

loads and the population of psychiatric patients was, for the most part, unmanageable within this restructured mental health system. Further, Charity Hospital serves as a clearinghouse, providing short-term care and referral to long-term institutions. Overcrowding at these long-term facilities, however, often leaves Charity with no referral options. Moreover, as is now evident, the number of patients in need of institutional care has come to exceed the system's bed capacity. Consequently, the criminal justice system is often being called upon to respond to these cases.

B. Criminal Justice System Contact

Increasingly, the NOPD's calls for service consist of complaints involving psychiatric cases. There can be several reasons for the police being the first emergency service contacted. The public, in its awareness of many of Charity Hospital's operational difficulties, may feel that the facility has a limited capacity to respond to such situations. Further, family members often experience anxieties and hysteria during an emergency which prevent the rational choice of an appropriate service, so that the police are called on in various types of crises ranging from criminal offenses to fire, medical, missing persons and mental health emergencies. In response to a call involving a psychiatric patient, police will usually transport the patient directly to a treatment facility or effect an arrest on a charge appropriate to the incident in order to

provide protective custody until treatment can be arranged. Police reports on these incidents are likely to cite the charge on which a person is ultimately arrested without identification of the subject as a psychiatric patient, therefore, the actual incidence of police calls involving psychiatric patients is difficult to ascertain. It has been estimated that approximately 25%, or roughly 200, of the Municipal Court's psychiatric cases each year result from police arrests. This is, of course, exclusive of those cases which do not go to Municipal Court or which do not result in arrest.

Subsequent to arrest, charges are filed in Municipal Court and the Probation Department and Public Defender's Office will initiate proceedings for the patient's admission to a treatment facility through order for custody or judicial commitment. A considerable amount of court time and resources are devoted to the handling of psychiatric patients. Municipal Court judges must often delay the patient's case and even other cases on the docket in order to seek an adequate response for the psychiatric patient. Municipal Court personnel estimated that psychiatric patients patients accounted for over 750 cases in 1978. It is projected that over 1,000 psychiatric cases will appear in Municipal Court in 1981. Approximately 75% of the court's psychiatric patient caseload result from complaints by family members.

Patient's are detained in the custody of the Orleans Parish Criminal Sheriff's Office until their cases are disposed of in Municipal Court. The court will usually assist families in filing a petition for judicial commitment and resolution of that process can take from two to six weeks. The jail stay and labelling as an inmate may produce the most marked effects of the patient's inappropriate involvement in the criminal justice system.

Subsequent sections of this report will detail the current criminal justice system responses to psychiatric patients and their effects on the NOPD, Municipal Court, the Orleans Parish Criminal Sheriff's Office and the psychiatric patients themselves. Procedures and problems in the process are analyzed in light of state laws which govern admission of psychiatric patients to treatment facilities.

II. CURRENT HANDLING OF PSYCHIATRIC PATIENTS IN THE MISDEMEANANT JUSTICE SYSTEM

A. New Orleans Police Department

1. Transport to Treatment Facility

Police calls involving psychiatric patients are likely to consist of incidents where patients are violent. When the patient exhibits behavior which is obviously threatening to himself or others, the police will usually attempt to subdue and transport him to Charity Hospital. This course of action is provided for in LSA-Revised Statute 28:53 (K) which details the procedure for admission by emergency certificate. In accordance with the statute, a police officer may take the subject into custody and transport him to a treatment facility when the officer has reasonable grounds to believe that the person should be involuntarily admitted to a treatment facility based upon his observation that the person appears to be dangerous to himself or others or gravely disabled.

There is some concern over the fact that many patients referred to Charity Hospital under these circumstances are released within hours of their arrival. In LSA-R.S. 28:53 (K), it is provided that the officer's responsibility concludes with the patient's arrival at the facility at which time, the patient is to be immediately examined by a physician who determines whether the patient is to be voluntarily admitted, admitted by emergency certificate, or discharged. It is further mandated, in LSA-R.S. 28:51(A), that directors of treatment facilities shall adhere to the admissions procedures set forth in the statutes subject to the availability

of suitable accommodations. Critics of the current commitment process suggest that these two provisions account for the many premature releases of psychiatric patients who are transported to Charity Hospital by police. The hospital ultimately determines whether the patient will be admitted or released. It is held that the examining physician's diagnosis is determined, largely, by the availability of bed space. If the psychiatric facilities are at or near capacity, the physician's report is likely to indicate that the patient is not in need of or will not benefit from institutional care. This is often considered to be incongrous with the police officer's observations of bizarre and dangerous behavior. Moreover, even when the examining physician recommends admission and treatment of the patient, he can be released if the director feels that there are inadequate accommodations.

The hospital's discharge of patients could stem from concern over the appropriateness of institutionalization based primarily on the observations of a police officer, but LSA-R.S. 28:53(G) ensures protection of the patient's rights in that regard. According to this law, all patients admitted by emergency certificate are to be examined by the coroner within seventy-two hours. The coroner then decides whether to execute a second emergency certificate which is required for the patient's continued confinement. The coroner's examination is more likely to take place when a patient is brought to the hospital under an

emergency certificate issued by an independent physician. That emergency certificate is sufficient to have the patient admitted and his continued confinement is determined by the coroner's examination. When patients are transported by police, however, the initial decision to admit by emergency certificate rests with the hospital and, quite often, the hospital elects to discharge the patient rather than executing the emergency certificate, so that the process is terminated prior to the coroner's examination which would actually serve as a second opinion.

These early discharges are frustrating to police officers in their attempts to secure treatment for psychiatric patients. The officers and the patient's family often feel that the behavior indicates a need for institutional care. Releases in these cases are considered inappropriate, particularly when patients continue to exhibit behavior which is symtomatic of their mental health problems.

2. Arrest

In light of the dilemma faced by Charity Hospital in terms of limited bed space, yet, recognizing the dangerous behavior exhibited by some patients, police are often forced to effect an arrest as a means of removing the subject from the home where he is potentially threatening to himself or others. LSA-R.S. 28:53(K) provides that psychiatric patients taken into protective custody by police, as described above, may only be transported to mental health or substance

abuse treatment facilities. Because these facilities tend to refuse admission to police transports, arrest has become increasingly necessary as a means of providing protective custody for psychiatric patients. The subject is usually charged with some minor offense suited to the circumstance and his behavior. These arrests are in no way abuses of police authority because the subject has committed some offense such as a minor assault, threats or disturbing the peace. This course of action would not be necessary, however, if police had the assurance that their referrals for treatment would be accepted by Charity Hospital. The sole purpose of arrest, in these cases, is to place the patient in protective custody in the secure, supervised environment of the local jail while treatment is sought. While LSA-R.S. 28:53(K) allows for this form of protective custody in substance abuse cases, there is no such provision for the holding of mental patients. According to the statute, when suitable treatment accommodations are not available, the police officer "...may use whatever means or facilities available to protect the health and safety of the person suffering from substance abuse until such time as any of the above facilities becomes available." The statute further provides that such persons placed in protective custody are to be considered inmates for maintenance purposes only. In section 28:50(6), it is explicitly stated that "... no person solely as a result of mental illness or alcoholism or incapacitation by alcohol shall be confined in any jail, prison, correction

facility or criminal detention center." As a result, when police officers see a need to take a psychiatric patient into custody because of dangerous behavior and overcrowding at Charity Hospital, they must make an arrest on a charge appropriate to the patient's behavior because there are no legal allowances for protective custody of this population in corrections facilities. The arrest of the psychiatric patient identifies the subject from that point as a defendant or inmate and introduces the case to the criminal justice system where it must then be processed through to completion.

3. Crisis Control Training

Traditionally, the issue of psychiatric patients in the criminal justice system has evoked major concern among police officers regarding their lack of training to handle such cases. Police Academy courses and field training usually prepare officers to deal with offenders and even victims, but psychiatric patients were considered to belong in the realm of the mental health profession. Due to the lack of training in the area of mental illness, then, there was a tendency for police to handle violent psychiatric patients in much the same manner as violent offenders. This technique was considered by police as well as the public to create unnecessary risks to the patient and to police officers.

The NOPD has recently introduced crisis control training into the curriculum of the Police Academy in an effort to prepare officers to apply more appropriate responses in dealing with psychiatric patients. Crisis control training teaches a non-violent approach to handling violent mental patients. The courses seek to modify the police officers' attitudes toward this population by emphasizing that they are not to be treated as criminals and that the use of force is usually ineffective with psychiatric patients.

The training program focuses on two areas of study. They are (1) Overview of Mental Illness and (2) Crisis Control Techniques. The Overview of Mental Illness, for the most part, prepares officers to recognize the various diagnoses or forms of mental disorders and the symptoms of each. As a result, officers are equipped with some basic knowledge of the types of behaviors to be expected from various categories of psychiatric patients. Crisis Control Techniques range from communication skills to various forms of physical techniques for use in restraining patients. Officers learn the appropriate application of these responses to the different behaviors exhibited by patients.

It is anticipated that all officers in the NOPD will participate in the crisis control training program. The training has been incorporated into the Police Academy curriculum for recruit classes and it is expected to reach all veteran officers through in-service training.

Crisis control training is intended to correct a previous inadequacy by preparing officers to appropriately handle calls involving psychiatric patients. It is expected to reduce the physical risks both to patients and police officers that were often present in such circumstances.

According to Louisiana R.S. 28:53(F), a police officer must transport a patient to a treatment facility at the request of either the director of the facility, the patient's family, or the certifying physician when an emergency certificate has been completed. As a result of crisis control training, officers are expected to be better equipped to respond to such requests.

In those cases where patients are considered to be in need of institutional care and the family contacts the police without benefit of an emergency certificate, the officer's options are still transport to Charity Hospital and arrest. While this new training is likely to improve the NOPD's internal practices with regard to the handling of psychiatric patients, it is not expected to have any impact on relations between the NOPD and Charity Hospital. As a result, there will probably be no decrease in the arrests of psychiatric patients since the problems of the hospital's early releases and refusals to admit based on the physician's initial diagnosis and limited bed space are likely to persist.

B. Municipal Court

1. Order for Custody

Traditionally, Municipal Court cases involving psychiatric patients were handled through order for custody. Under LSA-R.S. 28:53.2(A), an order for custody can be executed by a coroner or judge based on a statement of a police officer or other credible person indicating his belief that the subject is mentally ill and potentially harmful to himself or others. In accordance with this law, the Municipal Court sought admissions ordered by the Coroner of Orleans Parish.

Patients who are arrested on Municipal charges are detained in the custody of the Orleans Parish Criminal Sheriff's Office until their cases are resolved through Municipal Court action or admission to a treatment facility. When an order for custody is granted and the patient is admitted to Charity Hospital, the original Municipal Court charges are either nolle prossed or dismissed.

A disadvantage to the order for custody is that it does not ensure that the patient will receive institutional care. As is the case with the patient transported by police under provisions for emergency certificate, the final determination about admission and treatment rests with the hospital. The patient has been removed from the criminal justice system with the coroner's order for custody, the Municipal Court's disposition of the charges, and the release of the patient from

the Sheriff's custody. As mandated by LSA-R.S. 28:53.2(C), the order for custody remains effective for twenty-four hours from its issuance and it is to be delivered to the director of the treatment facility upon the patient's arrival. The patient is to be immediately examined by a physician who determines if he is to be voluntarily admitted, admitted by emergency certificate, admitted on non-contested status, or discharged. LSA-R.S. 28:51(A) also applies to order for custody so that the director's discharge of patients due to a lack of suitable accommodations is protected by law. The effects of the order for custody procedure are apparently similar to those that result from police referrals. Patients can be released within hours of their arrival at the facility due either to the physician's diagnosis and recommendation for discharge or the hospital's decision to release the patient because of insufficient bed space. While there are obviously some patients who should be released without treatment or with referrals for outpatient care, there are many whose releases are considered premature. Their continued need for institutional care is often manifested in repeated criminal justice system contacts under similar circumstances which again indicate to police or the courts the presence of a mental health rather than a criminal justice problem.

2. Judicial Commitment

Due to the early releases and other problems that result from admitting patients under order for custody, Municipal Court Probation and the Public Defender's Office have begun, in some cases, to assist families in filing petitions in Civil District Court for judicial commitment. The procedure for judicial commitment is covered under LSA-R.S.28:54. which provides that "Any person of legal age may file with the court a petition which asserts his belief that a person is mentally ill or is suffering from substance abuse and that the person is a danger to himself or others or is gravely disabled."

In judicial commitment proceedings, personnel from Municipal Court Probation and the Public Defender's Office are, for the most part, functioning as advocates for the families of psychiatric patients. The patients's arrest on municipal or misdemeanant charges has usually been agreed to by the family as a means of beginning commitment proceedings. The Municipal Court then facilitates that process.

Subsequent to arrest, an affidavit is filed in Municipal Court and the patient is placed in the custody of the Sheriff's Office. Municipal Court proceedings against the patient are suspended while judicial commitment proceedings are instituted. The Municipal Court furnishes the patient's family with a form, drafted by the Public Defender's Office, that is used to file a petition for judicial commitment (see Appendix (D). In

accordance with LSA-R.S. 28:54(A), the petition asserts the petitioner's belief that the respondent is mentally ill and is a danger to himself or others or is gravely disabled. The petition also includes background information provided by the petitioner to indicate that there is probable cause to believe that the respondent is mentally ill. At the request of the Municipal Court judge, the patient is examined by a physician at Charity Hospital. The petition, accompanied by the physician's report providing medical documentation of the patient's illness, is filed in Civil District Court. The patient is to remain in the custody of the Sheriff's Office pending the outcome of the judicial commitment proceedings.

LSA-R.S. 28:55 requires that the Civil Court judge order a judicial hearing when he determines probable cause based on his review of the petition and the physician's report. The hearing is attended by a physician appointed by the court to examine the respondent and an attorney appointed to provide representation to the respondent. At the judicial hearing, evidence is presented and testimony is heard from witnesses who usually consist of the respondent's family. The evidence includes the report of the examining physician initially appointed by the Municipal Court judge. Based on the findings of the judicial hearing, the judge determines whether to order commitment to a treatment facility. When a judicial commitment is ordered in Civil

District Court, the original Municipal Court charges are either nolle prossed or dismissed. The commitment order is not accompanied by a transport order which would specify the agency responsible for delivery of the patient and would allow for some case tracking information. As a result, the Municipal Court will monitor the case to ensure that the patient is admitted to the hospital. He is then removed from the custody of the Criminal Sheriff's Office.

There are several safeguards in the law to prevent inappropriate or indefinite confinement. At the judicial hearing, provided for in LSA-R.S. 28:55, the patient is represented by counsel and testimony can be heard from the respondent's physician and a court appointed physician who have examined the respondent, as well as other relevant witnesses. The respondent's attorney can cross examine all witnesses. Based upon the evidence presented, the court determines if there is "... clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled as a result of substance abuse or mental illness." The court then rules as to whether the respondent shall be committed to a treatment facility. LSA-R.S. 28:56 allows for periodic review by the court of the patient's commitment and responses to treatment and for the patient to appeal his commitment. It is further provided in that section that a patient's status can be changed from involuntary to voluntary as deemed appropriate by the court or the director of the institution. The

director may discharge the patient when, in his opinion, such action is appropriate.

Judicial commitment is currently viewed by some in the criminal justice field as the most effective means available to secure treatment for those patients who, in recent years, have slipped through the cracks in the criminal justice and mental health systems. Although LSA-R.S. 28:51(A) allows the institution to refuse to admit patients on the grounds of a lack of accommodations, there appears to be less of this type of action under judicial commitment procedures.

While provisions for examinations and judicial hearings serve to ensure that judicial commitments are not inappropriately ordered, it is important to note that these procedures make for a rather lengthy process. For those patients who are referred from Municipal Court, the most undesirable effect of this process is the prolonged stay in jail pending the outcome of judicial commitment proceedings. The length of the process is dependent upon actions taken in several systems, including Municipal Court, Civil Court and the Sheriff's Office. The process is estimated to take an average of four weeks.

In the absence of an established advocacy agency for psychiatric patients and their families, Municipal Court Probation and the Public Defender's Office are obviously functioning in that role. The Municipal Court's advocacy function is contrary to the provisions of LSA-R.S. 28:51(C) which holds that "The Department of Health and Human Resources,

through its hospitals, mental health clinics, and similar institutions, shall have the duty to assist petioners and other persons in the preparation of petitions for commitment, requests for protective custody orders and requests for emergency certificates, upon request of such persons." Handling of such cases through the Department of Health and Human Resources would certainly eliminate the need for arrest and Municipal Court processing in cases involving psychiatric patients who would not otherwise be brought into the criminal justice system.

Funds have recently been appropriated for the establishment of the Mental Health Advocacy Service. A review of the statute mandating the creation of the Service and its functions indicates that this agency will be primarily involved in providing legal representation for patients once commitment proceedings have been initiated (See Section III). The law does not prohibit the Service from assuming the advocacy position currently undertaken by Municipal Court Probation and the Public Defender's Office, nor is this task specifically encouraged, so it remains to be seen if the Mental Health Advocacy Service will act on behalf of those patients who must now acquire treatment through arrest and the services of Municipal Court Personnel.

3. Question of Patient's Entitlement to Insanity Proceedings

There is considerable concern by some in the criminal justice system that referral from Municipal Court for judicial commitment proceedings could deprive psychiatric patients in the system of their rights to insanity proceedings. It is argued that, regardless of the circumstances, since these individuals find themselves in the criminal justice system with municipal or misdemeanant charges filed against them, they are entitled to and it is the responsibility of the court to afford them the opportunity to raise the issues of mental incapacity to proceed or a defense of insanity at the time of the offense.

Insanity proceedings are likely to be quite lengthy, to deepen the patient's involvement with the criminal justice process and to extend his jail stay. The effects are most undesirable since it is presumed that the patient should not be viewed as a defendant in the first place, yet, the court must exercise caution to ensure that these patients are not denied certain rights to be afforded them as defendants. The following presentation of the laws governing insanity proceedings provides some background and points up the need for a definitive judgment regarding the applicability of these laws to the Municipal Court's current psychiatric patient caseload. Sections 42-2 and 42-3 of the Municipal Code for the City of New Orleans indicate that regarding procedures and rules of evidence in Municipal Court, appropriate provisions of the

State Code of Criminal Procedure shall apply, therefore, the articles providing for insanity proceedings will be discussed in this section.

Under Articles 641 and 642 of the Louisiana Code of Criminal Procedure, when there is reason to believe that the defendant lacks the capacity to understand the proceedings against him or to assist in his defense, the issue of mental incapacity to proceed can be raised by the defense, the district attorney or the court. Article 643 further holds that once the issue of incapacity to proceed has been raised and there are reasonable grounds to doubt the defendant's capacity to proceed, the court shall order a mental examinaition of the defendant. When a mental examination is ordered, Article 644 mandates the appointment by the court of a sanity commission to examine and report on the condition of the defendant. The defendant can request an independent mental examination by a physician of his choice. From the time that the issue of mental incapacity to proceed is raised all proceedings in the case are suspended, except institution of criminal prosecution, pending the court's disposition of the issue. The determination of the defendant's capacity to proceed is made at a contradictory hearing. The report of the sanity commission, testimony of members of the sanity commission and other pertinent evidence may be presented in the contradictory hearing. The procedure after determination of mental capacity or incapacity is defined in Article 648 as follows:

> "The criminal prosecution shall be resumed if the court determines that the defendant has the mental capacity to proceed. If the court determines that the defendant lacks the mental capacity to proceed, the proceedings shall be suspended and the court shall commit the defendant to a proper state mental institution or a private institution approved by the court for custody, care and treatment as long as the lack of capacity continues."

At any time after the defendant's commitment, a new contradictory hearing can be held if (1) the superintendent of the institution reports to the court that the defendant has regained the capacity to proceed or (2) the district attorney or the defense applies for a resumption of the proceedings on the grounds that the defendant has the mental capacity to proceed. The court may order examinations and reports by a sanity commission or by the superintendent of the mental institution. If the evidence indicates and the court determines that the defendant has the mental capacity to proceed, the proceedings are resumed.

Article 648 of the Louisiana Code of Criminal Procedure stipulates that commitment of a defendant on the basis of mental incapacity to proceed cannot exceed the time of the maximum sentence that could be imposed if the defendant were found guilty of the offense with which he is charged. Under this provision, then, if the superintendent recommends to the court that the defendant will not regain the capacity to proceed in the foreseeable future, the court shall order a contradictory hearing. When it is determined that for the foreseeable future the defendant will

remain incapable of standing trial, the court will order release on probation or commitment to a treatment facility depending upon a further determination in the same contradictory hearing of whether the defendant is a danger to himself or others. The patient remanded to a treatment facility is under civil commitment and the director of the institution must notify the court and the district attorney when the patient is to be discharged.

Articles 650 through 659 provide for the defense to invoke a plea of insanity at the time of the offense. An insanity defense must be initiated through a combined plea of "not guilty and not guilty by reason of insanity." Where the defense of insanity is raised, it is at the court's discretion to appoint a sanity commission to examine the defendant's mental condition at the time of the offense. The court also has the option of ordering an examination of the defendant's current mental capacity to proceed. Examinations and functions of the sanity commission are carried out and reported in accordance with Articles 644 through 646 under Mental Incapacity to Proceed. According to Article 652, the burden of proof in a defense of "not guilty and not guilty by reason of insanity" is borne by the defense.

Article 654 defines the procedures which will ensue when the defendant is acquitted on the grounds of insanity. In this case, the defendant is remanded to the parish jail or to a private mental institution pending a

contradictory hearing. At the hearing, the court determines whether to order commitment to a state or private mental institution or release on probation, depending upon whether the defendant is dangerous to himself or others.

For those defendants who are committed to a mental institution pursuant to Article 654, provisions are made in Article 655 for discharge or release on probation. The action can be initiated by the superintendent of the institution in a report to the court recommending discharge or release based upon his opinion that the patient is not dangerous to himself or others. It is further provided that after at least six months of confinement, the defendant himself may apply for discharge or release on probation. The court will order a report and recommendation from the superintendent of the institution. The court may also appoint members of the original sanity commission or another physician to examine the patient and the defendant or district attorney may retain an additional physician. The court may render a decision based on the reports filed or it may hold a contradictory hearing. At the hearing, the defendant has the burden of proof that he can be discharged or released on probation without danger to himself or others. The court will ultimately decide to (1) discharge the defendant, (2) release the person on probation, or (3) recommit the patient to a mental institution.

Insanity proceedings are usually not conducted in Municipal Court since the court, the city attorney, the public defender and the patient's family are likely to be in agreement regarding judicial commitment and removal of the case from the criminal justice system prior to trial. The Municipal Court's referral for judicial commitment is based, in part, on Article 15 of the Louisiana Code of Criminal Procedure. Article 15(A) is stated as follows:

> "The provisions of this Code, except as otherwise specially provided by other statutes, shall govern and regulate the procedure in criminal prosecutions in city, parish, juvenile and family courts, except insofar as a particular provision is incompatible with the general organization of, or special procedures established or authorized by law for, those courts."

Municipal Court holds that the provisions for insanity proceedings contained in Articles 641 through 661 are incompatible with the general nature of the court. The argument is further based on the fact that there are different standards applied in Civil and Criminal proceedings. Under the Criminal Code, the standard is a test of the individual's knowledge of right and wrong while the standard under civil commitment is based on a determination that the patient is dangerous to himself or others or is gravely disabled. The standard applied in the Criminal Code is believed to be incompatible with the general nature of the Municipal Court.

The Municipal Court sees no violation of the provisions for insanity proceedings because patients' families are simply informed

by Municipal Court Probation and the Public Defender of the judicial commitment option with no efforts to influence these individuals. Municipal Court proceedings are suspended to allow for initiation of the judicial commitment process, but they can be reinstituted as necessary. Further, Municipal Court feels that entitlement to insanity proceedings is linked to prosecution of the case and since prosecution is not sought when judicial commitment is effected, there is no need to raise the issues of incapacity to proceed or insanity at the time of the offense.

The process of referring cases from Municipal Court to Civil District Court for judicial commitment and ultimately dismissing the Municipal Court charges has come into question as a possible deprivation of the defendant's right to a plea of present insanity or insanity at the time of the offense. One Civil Court judge, who handles some judicial commitment cases which originate in Municipal Court, disagrees with the reference to Article 15 as justification for excluding insanity proceedings in these Municipal Court cases. According to this argument, the Municipal Court has created, in practice, an exception to Articles 641 through 661 for those defendants whose arrests apparently resulted from mental illness, but there are no provisions in the Municipal Code and no established procedures in Municipal Court to allow for this exception to the Code of Criminal Procedure

or to acknowledge that insanity proceedings in these cases are not in keeping with the general nature of the court. It is maintained, therefore, that in the absence of specific provisions in the Municipal Code or established procedures to formalize this practice, Article 15 is not applicable in these cases and psychiatric patients who appear in Municipal Court as defendants are entitled to insanity proceedings. Further, it is held that there must be some resolution of the case in Municipal Court before judicial commitment proceedings are initiated and a sanity hearing is necessary to provide some basis for the disposition of these cases in Municipal Court.

The procedures for determining mental incapacity to proceed with trial and insanity at the time of the offense certainly prolong the patient's involvement with the criminal justice system. The many provisions for a sanity commission, mental examinations, reports and contradictory hearings would obviously delay the patient's treatment until some determination regarding commitment is made. For the individual who came to the attention of the criminal justice system by virtue of a mental health matter and was brought into the system in an effort to secure treatment, these proceedings would represent a rather deep and unnecessary involvement in the criminal justice process. Moreover, the expenditure of considerable resources for a case which never really belonged in the system might be considered quite wasteful.

While Municipal Court continues to refer patients for judicial commitment in lieu of insanity proceedings, this practice has never been legally challenged and the question remains as to whether the process represents a deprivation of the defendant's rights. There needs to be a definitive ruling on the legality of excluding insanity proceedings in these cases to ensure the protection of those rights that ensue from the patient's role as a defendant. If it is found that defendants should be entitled to insanity proceedings in Municipal Court, there will be an even more pressing need to provide more adequate treatment responses to these patients prior to their contact with the criminal justice system to avoid a lengthy and inappropriate process.

C. Orleans Parish Criminal Sheriff's Office

1. Current Response

Those psychiatric patients who are arrested are usually charged with some offense appropriate to the circumstance as a means of placing them in protective custody of the Orleans Parish Criminal Sheriff's Office until treatment can be arranged. The patient's jail stay is likely to last until the case is disposed of in Municipal Court through an order for custody or a referral to Civil Court for judicial commitment.

Psychiatric patients involved in Municipal Court proceedings are housed in a hospital facility located in the House of Detention. The hospital unit is staffed by medical personnel, but it does not serve as

a psychiatric facility. The principal reasons for placing mental patients in the hospital area are to separate them from the general jail population and to provide some protective supervision. The more violent psychiatric inmates would be placed in isolation cells. In the event of an emergency involving a psychiatric patient in the custody of the Sheriff's Office, the patient would have to be transported to Charity Hospital. Ironically, at this point, the patient has been labelled an "inmate" and must, therefore, be placed under twenty-four hour guard by the Sheriff's Office during his hospital stay. The Sheriff's Office is also responsible for transporting those patients who are ultimately committed to Charity Hospital through Civil and Municipal Court action.

While LSA-R.S. 28:50(6) prohibits the incarceration of a person solely because of his mental illness, this is exactly what the system is currently forced to do; albeit, with the filing of some charge to create just cause. For the length of time that the patient is confined in jail and awaiting resolution of the judicial process, sorely needed treatment is delayed. This practice must be questioned since it is apparent to most in the criminal justice system that arrest and incarceration are precipitated by the person's mental illness. Preceding sections of this report have indicated the intricacies and possible lengthiness of the Municipal Court's process of securing an order for custody or a judicial commitment. A patient can remain in jail from two to six weeks while the court arranges treatment.

2. Impact

The detention of psychiatric patients places a considerable burden on the resources of the Orleans Parish Criminal Sheriff's Office, particularly in light of the jail's inability to appropriately and adequately serve that population. The Sheriff's Office is obviously not equipped, nor is it to be expected, to provide mental health treatment services for individuals with psychiatric problems. Confinement in the jail's medical facility with no psychiatric treatment is of little benefit to these patients. Further, the use of Sheriff's Office personnel to transport and guard patients in need of emergency care at Charity Hospital constitutes a considerable expense to the jail. In view of the severe jail overcrowding problem faced by the Sheriff's Office, the use of jail space to incarcerate psychiatric patients awaiting placement in treatment facilities serves only to aggravate the problem of insufficient bed space for serious offenders.

The practice of incarcerating psychiatric patients raises the question of the effect that jail confinement might have on the psychiatric problem which originally brought the patient into contact with the criminal justice system. For the individual who, at the point of arrest, is identified as a psychiatric patient in need of treatment, incarceration would seem a rather inappropriate response. One would have to question the effect of delayed treatment and labelling as an "inmate" in such

cases. The arrest of a psychiatric patient is effected when an offense has been committed and an arrest under such circumstances is not illegal. Further, because the patient has been charged with an offense, confinement in jail is not in violation of LSA-R.S. 28:50(6) which prohibits incarceration based solely on an individual's mental illness. Inasmuch as the underlying motivation in most of these cases, however, is to secure treatment for these patients, it appears that their mental illness is the reason for their confinement and that incarceration of these patients, while not necessarily illegal, is contrary to the intent of LSA-R.S. 28:50(6). This practice could place the Sheriff's Office and the NOPD in a rather precarious legal position.

The incarceration of psychiatric patients in need of mental health treatment services is costly to the Sheriff's Office in terms of resources and personnel; raises some legal questions about the rights of the patients involved; and might be expected to have some adverse effects on the mental health of those patients. Obviously, the Orleans Parish Criminal Sheriff's Office cannot be faulted for providing a form of protective custody for these individuals in the absence of adequate responses in the mental health system, yet, diversion of psychiatric patients out of the criminal justice system might be in the best interest of both the Sheriff's Office and the patients themselves.

III. PROPOSED PROGRAMS FOR PSYCHIATRIC PATIENTS

A. Mental Health Advocacy Service

1. Organization and Functions

The Louisiana State Legislature, in 1977, adopted a Mental Health Act to provide for creation of a Mental Health Advocacy Service. Louisiana R.S. 28:64 mandates that the Service "... shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this chapter, including, but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer and discharge." While the law was enacted in 1977, funds for the establishment of the Mental Health Advocacy Service were appropriated only recently in the 1981 session of the Louisiana State Legislature. The service is expected to be in operation by October or November, 1981.

According to Louisiana R.S. 28:64, the service is to be governed by a nine member Board of Directors which will be representative of the faculties of Loyola, Southern, LSU and Tulane Law Schools; Tulane and LSU Medical Schools; the Mental Health Association of Louisiana; the Louisiana State Medical Society; and the Louisiana Bar Association. The Board is to review and approve the Service's annual budget and establish general policy guidelines. The board will not, however, have supervisory power over the conduct of particular cases.

The position of director will be filled by an attorney appointed by the Board to devote full time to the duties of his office. The director's responsibilities will include hiring and training attorneys and other staff and administering programs to carry out the functions of the Mental Health Advocacy Service.

State Law indicates that the Mental Health Advocacy Service will be primarily engaged in providing legal representation to patients to ensure protection of their legal rights under provisions for admission and commitment to treatment facilities. Under the laws governing each form of admission, (LSA-R.S. 28:52 through 28:54) there are provisions for patients to contest commitment and to be represented by the Mental Health Advocacy Service in such proceedings. All patients are entitled to contact the Mental Health Advocacy Service and request legal counsel and representation. In informal voluntary admissions, a patient may leave the treatment facility at any time during the day-shift hours of operation. Patients admitted under voluntary formal admission must be released within seventy-two hours after making a valid written request to the director, unless proceedings are instituted for an emergency certificate or judicial commitment. Patients on non-contested status may object to their admissions at any time by submitting a valid written objection to the director. Again, unless emergency certificate or judicial commitment proceedings are instituted, the patient shall be released within seventy-two hours of the director's receipt of the objection. Under

voluntary admission and non-contested status, where emergency certificate or judicial commitment proceedings have been initiated, the patient may be represented by the Mental Health Advocacy Service in subsequent commitment proceedings. According to LSA-R.S. 28:53(C), patients under emergency certificate may request that the director of the treatment facility contact the Mental Health Advocacy Service. Paragraph (D) provides for the patient under emergency certificate, or his attorney, to demand a judicial hearing to determine if there is probable cause for his continued confinement. Judicial commitment proceedings require that the court conduct a judicial hearing prior to a ruling to determine if there is "... clear and convicing evidence that the patient is a danger to self or others or is gravely disabled." Under LSA-R.S. 28:54 (C), if the patient is not represented, he is entitled to representation in the judicial hearing by a court appointed attorney provided by the Mental Health Advocacy Service.

At the request of patients, the Mental Health Advocacy Service will represent clients in proceedings to admit, continue confinement, or secure the patient's release. Payment for legal counsel provided by the Mental Health Advocacy Service will be determined by the patient's ability to pay.

2. Projected Impact on Problem of Psychiatric Patients in the Criminal Justice System

Apparently, LSA-R.S. 28:64 provides for the Mental Health Advocacy Service to focus primarily on individual case representation of clients involved in commitment proceedings. These services are obviously necessary to protect the legal rights of patients, to ensure due process under the laws governing commitment proceedings and to prevent inappropriate confinement, yet, the many problems which result in and from patients' involvement in the misdemeanant justice system require some advocacy in a broader context in an attempt to effect system wide improvements. While there are no provisions in the law which prohibit the Service from advocating systems improvements on behalf of a population of psychiatric patients, it is premature to speculate on whether the Service will undertake such a function.

The inadequacies in the mental health system and legal loopholes which currently contribute to patients being arrested, detained by the Orleans Parish Criminal Sheriff's Office and responding to Municipal Court charges would have to be addressed through legal or administrative action to clarify and enforce the responsibilities of the mental health and criminal justice systems toward this population. While the law does not specifically address those commitment cases which originate in the misdemeanant justice system, it implies that the functions of the Mental Health Advocacy Service would be introduced only after commitment

procedures have been initiated to provide legal representation to patients in that phase of the process. It might be anticipated, however, that, in time, the Service would begin to react to the number of its cases which originate with arrests and Municipal Court filings and begin to work toward legislative and administrative reforms to decrease the misdemeanant justice system role and increase the responsibility of the hospital system for psychiatric patients. The Service could then address the problems of (1) the hospital's refusal to admit patients referred by police and families; (2) judicial commitment proceedings which originate in Municipal Court and require advocacy services of the Probation Department and the Public Defender's Office; and (3) the question of the patients' rights to insanity proceedings once the charges have been filed in Municipal Court. This type of broad based advocacy is not prohibited by LSA-R.S. 28:64 nor is it specifically encouraged, therefore, the assumption of this responsibility by the Mental Health Advocacy Service will be dependent largely upon the administration of the agency and its orientation.

B. Psychiatric Patient Follow-Up

It has been suggested that the lack of follow-up services for patients released from institutional care contributes to the size of that population which must acquire treatment through the criminal justice system. It is believed that many patients who are no longer in contact

with mental health facilities eventually discontinue medication which might be required for them to remain functional outside of an institutional setting. Further, former patients may experience crises or setbacks which could be handled through outpatient care, but they often fail to seek such services. In these two instances, the individual's condition can deterioriate to a point that would again require institutionalization and because of the problems in the state's admissions procedures, many of these patients appear before the criminal justice system.

The Mental Health Association of Louisiana is planning two programs which should provide much needed follow-up for psychiatric patients. Funds have been granted for the establishment of a Community Care Program to provide caseworker managers who will maintain frequent contact with former mental patients. The caseworker managers will monitor patients' behavior, medication and problems in adjustment. The Mental Health Association of Louisiana is also seeking funding for a statewide psychiatric patient tracking system to maintain information on all former mental patients for use by psychiatric hospitals. These two programs could enhance the mental health system's ability to follow up the cases of psychiatric patients, divert them from the criminal justice system and reduce the need for re-institutionalization.

IV. SUMMARY

A. Conclusions

The previous sections of this report have described the process by which psychiatric patients are handled by the NOPD, the Municipal Court and the Orleans Parish Criminal Sheriff's Office. These functions are virtually thrust upon the criminal justice system as a result of the inadequacies in the hospital system. This analysis of current procedures serves to point up the implications of the problem for both the patient and the criminal justice system.

To reiterate what is apparently the crux of the problem, admission of psychiatric patients to Charity Hospital has become increasingly difficult due to overcrowding throughout the state hospital system and decreased resources. The criminal justice system, then, is a last resort for patients in need of institutional care and it is often within the framework of that system that treatment must be arranged.

A review of the Louisiana statutes governing admission to psychiatric facilities indicates that these measures, in the context of the population in question, serve primarily to excuse the inadequacies of the hospital system. The statutes provide that in procedures for emergency certificate and order for custody, the decision on commitment to the institution ultimately rests with the hospital's examining physician. Many patients who are considered by family, police officers and the court to be in need of institutional care are released based upon the examining

physician's opinion that they will not benefit from treatment. Another principal reason that many patients are not admitted to institutions is embodied in a clause from LSA-R.S. 28:51 which states that:

> "The director of a treatment facility, subject to the availability of suitable accomodations, shall receive for observation, diagnosis, care and treatment any person whose admission is authorized under any of the procedures provided for in R.S. 28:52 through R.S. 28:54 and R.S. 28:64."

Based on this provision, any admission can be refused, and many are, when the hospital claims a lack of suitable accomodations. These provisions not only serve to the create, to some extent, the population for which the misdemeanant justice system currently seeks treatment, but they also pose significant problems for the NOPD, the Criminal Sheriff's Office and Municipal Court in their attempts to serve that population.

The NOPD receives numerous calls for service involving psychiatric patients. A recently introduced program of crisis control training is expected to improve officers' skills for handling such confrontations and to reduce the physical risks to officers and patients involved in these incidents. Ideally, psychiatric patients who are considered dangerous to themselves or others would be transported by police to Charity Hospital as provided for by law. The hospital's tendency, however, is to release these patients within hours of their arrival based on the examining physician's diagnosis or the hospital's lack of bed space. As a result, police find it necessary to arrest patients on suitable charges

and introduce them to the criminal justice process in order to arrange admission to Charity Hospital.

Because the crux of the problem is mental illness and these patients, in the view of criminal justice practioners, should not be prosecuted on charges imposed to place them in custody and secure treatment, the Municipal Court is cast in the role of advocate for the mentally ill and their families. Currently, in response to most cases involving psychiatric patients, Municipal Court Probation works with families of patients to facilitate their applications for judicial commitment. Judicial commitment is apparently the most effective method of gaining admission of these patients to mental institutions. While the emergency certificate and order for custody are dependent upon the judgment of the examining physician, there is no such contingency in the case of judicial commitment. The patient's rights are safeguarded, however, insofar as the ruling on a judicial commitment is preceded by a judicial hearing with testimony from the patient's physician and a court appointed physician where there must be presented clear and convincing evidence that the patient requires institutional care. As is the case in other admission procedures, judicial commitment is subject to the hospital's availability of accommodations but the patients can be retained in the custody of the Sheriff's Office until space becomes available. Municipal Court Probation facilitates this commitment alternative by informing families of

the judicial commitment option and providing them with a form to be used in filing a judicial commitment petition in Civil District Court. When the commitment is effected, the Municipal Court charges are nolle prossed or dismissed and the patient is released from jail and transported to Charity Hospital. While the Municipal Court's advocacy in judicial commitment proceedings is apparently effective in securing treatment and removing patients who are inappropriately placed in the criminal justice system, some question remains as to whether, by virtue of his involvement in the criminal justice system, the patient is entitled to insanity proceedings in Municipal Court if he so desires. There must be some clarification of the court's responsibility in that regard.

In cases involving psychiatric patients, the Orleans Parish Criminal Sheriff's Office is required to serve as caretaker for a population which it is not equipped to adequately accommodate. The jail can only provide a form of protective custody in its hospital facility for patients who actually require treatment for mental illness. The jail overcrowding problem is aggravated by the presence of psychiatric patients in the facility. Further, resources are strained when patients require emergency hospital care and must be guarded during their hospital stays. Most importantly, there is considerable question about the effects of incarceration and criminal justice system labelling on psychiatric patients.

In the absence of adequate responses in the hospital system, these criminal justice agencies are required to depart significantly from their usual procedures to allow for the special needs of psychiatric patients at some expense to their personnel and budgetary resources. Although some modifications are made to accommodate psychiatric patients, the misdemeanant justice system is not designed to adequately serve that population. As a result, patients are subject to arrest, Municipal Court processing, incarceration and labelling as "offenders" while treatment is delayed and attempts are made to arrange admission to a mental health facility.

B. Recommendations

1. LSA - Revised Statute 28:51, which allows Charity Hospital to refuse admission to a psychiatric ward that is populated at capacity, is functional insofar as it guards against overcrowded conditions under which patients cannot receive adequate care. This provision should not be continually relied upon, however, to deny admission to patients who are sorely in need of institutional care. It is obvious from the population of psychiatric patients currently appearing before the misdemeanant justice system that these people require institutional care and that the hospital's current level of accomodations is insufficient to handle that population. If there can be no agreement achieved between the hospital and the criminal justice system, to upgrade the level of services to psychiatric patients, Charity Hospital must be ordered through judicial or legislative action to increase its staff and bed space to accomodate a greater portion of the psychiatric patient population.

2. A significant number of psychiatric patients could be diverted from the misdemeanant justice system with some coordination of police and hospital procedures in handling these cases. Crisis control training will prepare officers to make better informed judgments about a patient's mental capacity and need for institutionalization. Charity Hospital should begin to respect that judgment and to respond automatically with admissions by emergency certificate on police transports unless the results of the

examining physician's evaluation are in strong opposition to institutionalization. Patients admitted by such a procedure would already be protected against inappropriate institutionalization under LSA-R.S. 28:53(G) which requires that all emergency certificates be subject to an examination by the coroner and confirmation by his issuance of a second emergency certificate as a condition of continued confinement. Expansion of the hospital's accomodations, as recommended above, would enhance its capacity to handle the increased caseload expected to result from emergency certificates on police transports.

3. The Municipal Court's attempts to have patients admitted under the coroner's order for custody have been, largely, unsuccessful due to the hospital's refusal to admit based on the physician's examination or insufficient bed space. Consequently, the Municipal Court now refers most psychiatric cases to Civil Court for judicial commitment proceedings. This results in increased caseloads and administrative problems in Civil District Court. In response to the coroner's order for custody, Charity Hospital should immediately grant emergency certificates unless the findings of the physician's examination are strongly opposed to institutional treatment. Implementation of this recommendation should result in greater assurances that patients requiring institutional treatment will receive such care and should produce a decrease in the number of judicial commitment cases referred to Civil District Court. The expanded accomodations recommended in paragraph 1 of this section should

facilitate implementation of this recommendation.

4. The current Municipal Court procedure of referring patient's families to Civil District Court to file judicial commitment petitions has come into question as a possible violation of Sections 42-2 of the Municipal Code and Articles 641 through 661 of the Louisiana Code of Criminal Procedure. Sections 42-2 and 42-3 of the Municipal Code mandate the application in Municipal Court proceedings of the procedures and rules of evidence contained in the state Criminal Code. Articles 641 through 661 of the Louisiana Code of Criminal Procedure provide for the initiation of insanity proceedings when the defendant is believed to be incompetent to stand trial or insane at the time of the offense. There must be a review of this procedure by the City Attorney's Office to culminate in the rendering of a legal opinion on this issue. Such a review should consider the following:

a. Defendant's entitlement to insanity proceedings

   -LSA - Code of Criminal Procedure, Articles 641 through 660.
   -Code of the City of New Orleans, Sections 42-2 and 42-3

b. Provisions for exceptions to the Code of Criminal Procedure

   -LSA - Code of Criminal Procedure, Article 15.

c. Need for an amendment to the Municipal Code to formalize the exception to Article 15 which is currently practiced in Municipal Court.

d. Need for lunacy hearings, regardless of the determination on full insanity proceedings, to provide a sound legal basis for dismissal of Municipal Court proceedings against psychiatric patients before referral to Civil District Court for judicial commitment proceedings.

5. Representatives of Municipal Court Probation and the Public Defender's Office have recently assumed the responsibility of assisting families in filing petitions for judicial commitment. This is necessitated primarily by the failure of Charity Hospital and the Department of Health and Human Resources to fulfill its duty as provided for in LSA - R.S. 28:51. It is mandated therein that the Department of Health and Human Resources, through its various hospitals and mental health agencies, shall assist petitioners in preparing petitions and requests for patient admissions upon their request. It is likely that petitioners are, for the most part, unaware of this service and do not usually request such assistance. The DHHR and its agencies must be mandated, through judicial or legislative action, to effectively inform the public of its duty in this regard and to fulfill that duty by responding to all petitioners' requests for assistance. Efforts to increase DHHR's responsiveness to petitioners should produce a corresponding decrease in the number of charges filed in Municipal Court against psychiatric patients.

6. For psychiatric patients in need of institutional care, jail confinement, for any length of time, is to be considered inappropriate. Further, the Orleans Parish Criminal Sheriff's Office cannot afford to compound its jail overcrowding problems by maintaining a population

which will not be adequately served in jail. All efforts, therefore, must be directed toward minimizing the psychiatric patient population and the length of their stays in the local jail. Implementation of recommendations 1 through 5, above, should contribute significantly to such reductions.

7. Provisions for admission by emergency certificate and order for custody include allowances for the use of private hospital facilities. Under proceedings for admission by emergency certificate, LSA- R.S. 28:53(K) lists the options available for transport of patients taken into protective custody by police. They include public and private general hospitals and public and private mental hospitals. LSA-R.S. 28:53(B) provides that the person held under order for custody "...shall be taken to a community mental health center, a public or private general hospital, coroner's office or a detoxification center." Very little attention has been paid to the potential use of available resources in private general and mental hospitals to absorb the overflow of psychiatric patients from public hospitals. In view of DHHR's limited bed space and the urgent need for removal of psychiatric patients from the custody of the OPCSO, every effort must be made to operationalize these provisions of state law which provide for the use of private hospitals. Construction of new public facilities and renovation of existing ones would require considerable time and expenditures. As an interim measure, therefore, DHHR should begin to develop contractual arrangements with private general

and mental hospitals to augment the services currently available at Charity Hospital. Patients under emergency certificate or order for custody could then be transported to private facilities when necessary as provided for in LSA-R.S. 28:53(K) and 28:532(B). This effort to supplement the resources of the state hospital system should contribute significantly to a reduction in the number of psychiatric patients handled by the criminal justice system. It should also assist the state hospital system in providing feasible treatment alternatives for patients in need of institutional care by simply implementing the applicable provisions of Louisiana's mental health law.

8. The Mental Health Advocacy Service, as provided for in LSA-R.S. 28:64, is expected to provide legal counsel and representation in individual cases of psychiatric patients involved in commitment, admission or appeals procedures. This report has clearly shown that for those patients who must be arrested, incarcerated and charged in Municipal Court, their cases are usually well entrenched in the criminal justice process by the time that admissions procedures begin. The provisions of LSA-R.S. 28:64 suggest that the Mental Health Advocacy Service is not likely to be involved with patients early in the criminal justice process where diversion could be effected. The range and complexity of problems resulting from the presence of psychiatric patients in the misdemeanant

justice system indicate a need for some broad based advocacy on behalf of this population. Inasmuch as LSA-R.S. 28:64 does not specifically prohibit the Mental Health Advocacy Service from engaging in such activity, the Service, upon becoming operational, should undertake such an advocacy role on behalf of the entire psychiatric patient population in the misdemeanant justice system. The aim of this advocacy function should be to ensure implementation of many of the aforementioned recommendations and similar measures; improvements in the mental health system's responses to that population; and reductions in the numbers of psychiatric patients in the misdemeanant justice system.

V. APPENDIX

A. Examination, Admission, Commitment and Treatment of Persons Suffering from Mental Illness and Substance Abuse, Louisiana Statutes Annotated-Revised Statutes 28: 50-28: 64

§ 22.6. Payment for maintenance or treatment

Persons or their responsible relatives who are able to pay all or a part of the cost of their maintenance or treatment or both at the units named in R.S. 28:22 through R.S. 28:22.5 shall reimburse the department to the extent of their ability to pay at rates to be fixed by the department.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "through" for "to"; substituted "department" for "division" in the two places where it occurred; and deleted, at the end, "and the receipts thereof shall be deposited in the Mental Health Research and Training Account established by R.S. 46:663.1 and 663.2 and used by the division as provided herein."

§ 22.7. Geriatric hospitals and units

The department may establish and administer geriatric hospitals or units to receive and care for elderly and infirm persons who have been discharged by a hospital for the mentally ill and for other elderly and infirm persons who are in need of nursing and medical care. Such hospitals or units may be established on sites designated by the department, provided that no such geriatric hospital or unit may be established on any site located more than five air miles from the administrative office of East Louisiana State Hospital or more than one air mile from the administrative office of Central Louisiana State Hospital. Persons admitted to such geriatric hospitals or units or their responsible relatives shall pay the cost of their maintenance and care. The Geriatric hospital at Jackson, Louisiana, known as Villa Feliciana, is created and established, which hospital shall be under the administration of the Office of Hospitals of the Department of Health and Human Resources.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division" in two places; deleted "in quarters constructed by the division" before "provided that"; deleted "Any funds received from this source, as well as any funds made available to them by the Division of Family Services of the Louisiana Health and Human Resources Administration on behalf of patients in these facilities, shall be paid into a fund to be established by the state treasurer and named Villa Feliciana Geriatric Fund" following "maintenance and care"; substituted "Office" for "Division"; and substituted "Department of Health and Human Resources" for "Louisiana Health and Human Resources Administration but shall constitute a separate budget unit."

Acts 1978, No. 786 related generally to reorganization of the Department of Health and Human Resources.

Transfer of Villa Feliciana Geriatric Hospital to the Department of Health and Human Resources, effective July 1, 1977, see R.S. 36:259.

§ 23. Psychopathic departments in state general hospitals

The department shall establish psychopathic departments in state owned general hospitals for the emergency and temporary care of cases of acute mental illness.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division."

§ 24. Repealed by Acts 1978, No. 786, § 7, eff. July 17, 1978.

R.S. 28:24 was repealed by Acts 1978, No. 786, § 7, effective July 17, 1978. Acts 1978, No. 680, § 1, effective September 8, 1978, purported to amend the repealed section to read as follows:

"§ 24. Appointment of service districts for mentally ill persons

"The department may divide the state into service districts for the purpose of determining which mentally ill persons shall be sent to East Louisiana State Hospital, Central Louisiana State Hospital, Southeast Louisiana Hospital, or to other treatment facilities which are established. If necessary, the department may change the groupings of the districts."

Acts 1978, No. 786 related generally to reorganization of the Department of Health and Human Resources.

§ 25. Provisions for close confinement of certain mental patients

At institutions that it may designate, the department may provide facilities for the care and confinement of mental patients who require close confinement in the interest of themselves and of the public.

The department shall designate places of confinement for patients of dangerous tendencies and for those charged with or convicted of a crime or misdemeanor who require special protection and restraint.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division" in the two places where it occurred.

§ 25.1. Establishment of Feliciana Forensic Facility; authorization to establish forensic facilities in New Orleans, Baton Rouge, Shreveport, and Alexandria

A. The forensic unit at East Louisiana State Hospital is hereby declared to be a separate and distinct facility from East Louisiana State Hospital and hereafter shall be known as the Feliciana Forensic Facility.

B. The department may establish additional forensic facilities for the treatment of forensic patients in New Orleans, Baton Rouge, Shreveport, and Alexandria as funds are appropriated by the legislature.

C. The superintendent of any such facility shall admit only those persons committed on recommendation of a sanity commission, persons found not guilty by reason of insanity and persons transferred from state correctional institutions.

D. The department may contract with local law enforcement agencies and the Department of Corrections to provide security personnel for mental health patients placed in such forensic units, or other facilities to which such patients may be temporarily referred for medical treatment.

Added by Acts 1979, No. 763, § 1; Acts 1979, No. 768, § 1. Amended by Acts 1980, No. 687, § 2.

Acts 1979, Nos. 763, § 1 and 768, § 1, enact provisions for R.S. 28:25.1. Act 768 enacts three paragraphs designated as paragraphs "a," "b," and "c." Act 763 enacts a single undesignated paragraph. The provision of Act 763 for Section 25.1 is substantively identical to Subsection A of Section 25.1 as provided by Act 768. Act 763 also amends and reenacts Section 2142 of Title 40 without express mention of Title 40 in the title of the act. Section 25.1 is printed as above pursuant to authority of R.S. 24:253.

1980 Amendment: Added subsec. D, concerning security personnel.

Cross References

Security for mental health patients, see R.S. 15:830.2.

Library References

Asylums ⇐2.
C.J.S. Asylums § 4.

§ 26. Repealed by Acts 1978, No. 680, § 3

Acts 1978, No. 680, § 3, effective September 8, 1978, repealed this section. The repealed section was amended by Acts 1978, No. 786, § 3, effective July 17, 1978, to read as follows:

"§ 26. Residential facilities for the mentally retarded

"The department may establish residential facilities, apart from schools that may be established, where the mentally retarded may be employed in accordance with the provisions of this Chapter and it may rent or purchase property suitable for this purpose. The department shall promulgate the regulations necessary for the management of these facilities.

"The superintendent under whose supervision the facility is managed shall determine the wages to be paid the patient. The department may withhold for not more than two years from the date of discharge wages due the patient upon discharge."

Acts 1978, No. 786 related generally to the reorganization of the Department of Health and Human Resources.

PART III. EXAMINATION, ADMISSION, COMMITMENT, AND TREATMENT OF PERSONS SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE ABUSE

§ 50. Declaration of policy

The underlying policy of this Chapter is as follows:

(1) That mentally ill persons and persons suffering from substance abuse be encouraged to seek voluntary [illegible]

(2) That any involuntary treatment or evaluation be accomplished in a setting which is medically appropriate, most likely to facilitate proper care and treatment that will return the patient to the community as soon as possible, and is the least restrictive of the patient's liberty.

(3) That continuity of care for the mentally ill and persons suffering from substance abuse be provided.

(4) That mental health and substance abuse treatment services be delivered as near to the place of residence of the person receiving such services as is reasonably possible and medically appropriate.

(5) That individual rights of patients be safeguarded.

(6) That no person solely as a result of mental illness or alcoholism or incapacitation by alcohol shall be confined in any jail, prison, correctional facility, or criminal detention center. This shall not apply to persons arrested, charged, or convicted under Title 14 of the Louisiana Revised Statutes of 1950.

(7) That no person shall be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after an earlier treatment.

Amended by Acts 1977, No. 714, § 1; Acts 1979, No. 767, § 1.

Section 3 of Acts 1979, No. 767 (§ 1 of which amended this section) provides that:

"All laws or parts of laws in conflict herewith, except those laws located in Title 14 of the Louisiana Revised Statutes of 1950, are hereby repealed and Section 61 of Title 28 of the Louisiana Revised Statutes is hereby specifically repealed."

1979 Amendment: Added all references to substance abuse; in par. (6) added "or alcoholism or incapacitation by alcohol" and the sentence concerning Title 14 of the Revised Statutes; and added par. (7).

Law Review Commentaries

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

1977 Legislative changes. Sam A. LeBlanc III, 25 La.Bar J. 201 (1977).

§ 51. Procedures for admission

A. The director of a treatment facility, subject to the availability of suitable accommodations, shall receive for observation, diagnosis, care, and treatment, any person whose admission is authorized under any of the procedures provided for in R.S. 28:52 through R.S. 28:54 and R.S. 28:64.

B. The failure by any director to obey an order or judgment committing a patient to a treatment facility shall not be construed as contempt of any court, if it appears that the failure to obey is due to the inability to comply with the order or judgment because medically suitable accommodations for the patient are unavailable.

C. The Department of Health and Human Resources, through its hospitals, mental health clinics and similar institutions, shall have the duty to assist petitioners and other persons in the preparation of petitions for commitment, requests for protective custody orders and requests for emergency certificates, upon request of such persons.

Amended by Acts 1977, No. 714, § 1; Acts 1979, No. 181, § 1, eff. July 3, 1979.

1979 Amendment: Added subsec. C.

Law Review Commentaries

Constitutionally guaranteed rights of mentally ill. Mary Cazalas, 2 Southern U.L.Rev. 9 (1975).

Criminal trial procedure and postconviction procedure—work of Louisiana appellate courts, 1977–1978. Cheney C. Joseph, Jr., 39 La.L.Rev. 933 (1979).

1. Construction and application

Rawls v. Daughters of Charity of St. Vincent De Paul, Inc., C.A.1974, 491 F.2d 141, rehearing denied 494 F.2d 1295 [main volume], certiorari denied 95 S. Ct. 513, 419 U.S. 1032, 42 L.Ed.2d 307.

§ 51.1 Repealed by Acts 1978, No. 680, § 3

See, now, R.S. 28:394 to 28:396.

§ 52. Voluntary admissions; general provisions

A. Any mentally ill person or person suffering from substance abuse may apply for voluntary admission to a treatment facility. The admitting physician may admit the person on either a formal or informal basis, as hereinafter provided.

B. Admitting physicians are encouraged to admit mentally ill persons or persons suffering from substance abuse to treatment facilities on voluntary admission status whenever medically feasible.

C. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status. Any patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus in order to have his admission status changed to voluntary status.

D. No employee of a mental health care program or treatment facility, peace officer, or physician shall state to any person that involuntary admission may result if such person does not voluntarily admit himself to a mental health care program or treatment facility unless the employee, peace officer, or physician is prepared to execute a certificate pursuant to R.S. 28:53 or a petition pursuant to R.S. 28:54.

E. Each person admitted on a voluntary basis shall be informed of any other medically appropriate alternative treatment programs and treatment facilities known to the admitting physician and be given an opportunity to seek admission to alternative treatment programs or facilities.

F. Every patient admitted on a voluntary admission status shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171 and rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

G. No admission may be deemed voluntary unless the admitting physician determines that the person to be admitted has the capacity to make a knowing and voluntary consent to the admission.

Knowing and voluntary consent shall be determined by the ability of the individual to understand:

(1) That the treatment facility to which the patient is requesting admission is one for mentally ill persons or persons suffering from substance abuse;

(2) That he is making an application for admission, and

(3) The nature of his status and the provisions governing discharge or conversion to an involuntary status.

H. Voluntary patients may receive medications or treatment, but no major surgical procedures or electroshock therapy may be performed without the patient's written and informed consent. If it is determined by the director of the treatment facility that a voluntary patient has become incapable of making an informed consent for such procedure, he shall apply to a court of competent jurisdiction for a determination of the patient's specific incompetence to give informed consent for the procedure. If the director in consultation with two physicians determines that the condition of a voluntary patient who is incapable of informed consent is of such critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment is administered, the emergency measures may be taken without the consent otherwise provided for in this Section.

Amended by Acts 1976, No. 614, § 1, eff. Aug. 4, 1976; Acts 1977, No. 714, § 1.

Law Review Commentaries

Constitutionally guaranteed rights of mentally ill. Mary Cazalas, 2 Southern U.L.Rev. 9 (1975).

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

United States Supreme Court

Involuntary commitment [illegible] dangerousness, see O'Connor v. Donaldson, 1975, 95 S.Ct. 2486, 422 U.S. 563, 45 L.Ed.2d 396.

Supplementary Index to Notes

Evidence [illegible] review

10. Judicial commitment

Where daughter, who was confined for treatment pursuant to father's application, requested court hearing seeking release from 60-day maximum coroner confinement, and neither father nor any other authorized person filed petition for judicial commitment against daughter, scope of hearing was restricted to issue of validity of confinement by coroner, and judgment entered in such hearing would be annulled insofar as it ordered judicial confinement beyond scope of coroner's confinement. Matter of Schindler, App. 1976, 336 So.2d 978.

Judicial commitment may be accomplished validly, even though there has been no compliance with this section setting out procedures for coroner's confinement for treatment order. Hickman v. Fletcher, App.1975, 317 So.2d 219, writ denied 321 So.2d 366.

11. Liability

Evidence of plaintiff's history of bizarre and threatening behavior established that defendants acted in good faith and without malice in instituting legal process for her commitment pursuant to an order of the coroner under prior version of this section; her detention was pursuant to legal process instituted in good faith and, therefore, there was no false imprisonment. Humphrey v. Feazel, App.1979, 367 So.2d 897, writ denied 369 So.2d 1365.

Although trial court was correct in concluding, in defamation action brought by person as to whom defendant had sworn out affidavit stating that plaintiff was mentally ill and dangerous to himself or others, that only nominal damages should be awarded, evidence of slight mental anguish and embarrassment suffered by plaintiff was still sufficient to merit amendment of trial court's judgment so as to allow damages of $250 rather than $1. Scott v. Sylvester, App.1975, 318 So.2d 65, writ denied 319 So.2d 445.

14. Review

Where woman was legally confined in state hospital under R.S. 28:53, relating to judicial commitment, at time hearing on habeas corpus proceeding was held, issue as to whether she had previously been unlawfully detained under this section was moot. Hickman v. Fletcher, App.1975, 317 So.2d 219, writ denied 321 So.2d 366.

15. Evidence

Committing authority is not constitutionally required, before commitment of nondangerous person who is suffering from mental illness and who is incapable of caring for himself, to establish that there is no alternative to custodial care, nor is it necessary that statutory authority for involuntary commitment of such persons contain such proviso. Commitment of Malvo, App.1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

§ 52.1. Informal voluntary admission

A. In the discretion of the director, any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis or treatment of a psychiatric disorder or substance abuse may be admitted upon the patient's request without a formal application.

B. Any patient admitted pursuant to this Section shall have the right to leave the treatment facility at any time during the normal day-shift hours of operation, which shall include but not be limited to nine a. m. to five p. m.
Added by Acts 1977, No. 714, § 1.

Law Review Commentaries
Civil commitment and right to treatment. 35 La.L.Rev. 563 (1975).
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

Library References
Mental Health ⇐36.
C.J.S. Insane Persons § 64.

§ 52.2. Formal voluntary admission

A. Any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of a psychiatric disorder or substance abuse and who is deemed suitable for formal voluntary admission by the admitting physician may be so admitted upon his written request.

B. A patient admitted under the provisions of this Section shall not be detained in the treatment facility for longer than seventy-two hours after making a valid written request for discharge to the director unless an emergency certificate is executed pursuant to R.S. 28:53, or unless judicial commitment is instituted pursuant to R.S. 28:54, after making a valid written request for discharge to the director of the treatment facility.
Added by Acts 1977, No. 714, § 1.

Law Review Commentaries
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

Library References
Mental Health ⇐36.
C.J.S. Insane Persons § 4.

voluntary admission status and who does not object to his admission to a treatment facility may be admitted to a treatment facility as a noncontested admission. Such person shall be subject to the same rules and regulations as a person admitted on a voluntary admission status and his treatment shall be governed by the provisions of R.S. 28:52H.

B. A noncontested admission may be made by a physician to a treatment facility in order to initiate a complete diagnostic and evaluative study. The diagnosis and evaluation shall include complete medical, social, and psychological studies and, when medically indicated, any other scientific study which may be necessary in order to make decisions relative to the treatment needs of the patient. In the absence of specified medical reasons, the diagnostic studies shall be completed in fourteen days. Alternative community-based services shall be thoroughly considered.

C. Following a review of the diagnostic evaluation study, the director of the treatment facility shall determine if the person is to remain on noncontested status, is to be discharged, is to be converted to formal or informal voluntary status, or is to be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54. Nothing in this Section shall be interpreted to prohibit the director of a treatment facility from transferring the patient to another treatment facility when it is medically indicated.

D. A person admitted pursuant to this Section may object to his admission at any time. If the person informs a staff member of his desire to object to his admission, a staff member shall assist him in preparing and submitting a valid written objection to the director. Upon receipt of a valid objection, the director shall release the person within seventy-two hours unless proceedings are instituted pursuant to R.S. 28:53 or R.S. 28:54.

E. In no case shall a patient remain on noncontested status longer than three months. Within that time, the patient must be converted to either a formal or an informal voluntary status, or be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54, or be discharged.
Added by Acts 1977, No. 714, § 1. Amended by Acts 1978, No. 782, § 1, eff. July 17, 1978.

1978 Amendment: Added, in paragraph A, "status" before "and who," and added "Such person shall be subject to the same rules and regulations as a person admitted on a voluntary admission status and his treatment shall be governed by the provisions of R.S. 28:52H"; and added paragraph D.

Law Review Commentaries
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

Library References
Mental Health ⇐37.
C.J.S. Insane Persons §§ 8 et seq., 62 et seq.

§ 53. Admission by emergency certificate

A. A mentally ill person or a person suffering from substance abuse may be admitted and detained at a treatment facility for observation, diagnosis, and treatment for a period not to exceed fifteen days under an emergency certificate.

B. Any physician may execute an emergency certificate only after an actual examination of a person alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate medical treatment in a treatment facility because the examining physician determines the person to be dangerous to self or others or to be gravely disabled. Failure to conduct an examination prior to the execution of the certificate will be evidence of gross negligence. The certificate shall state:

(1) The date of the physician's examination of the person, which shall not be more than seventy-two hours prior to the date of the signature of the certificate.

(2) The objective findings of the physician relative to the physical and mental condition of the person, leading to the conclusion that the person is dangerous to self or others or is gravely disabled as a result of substance abuse or mental illness.

(b) dangerous to others; or

(c) gravely disabled.

(5) A statement that the person is unwilling or unable to seek voluntary admission.

The certificate shall be dated and executed under the penalty of perjury, but need not be notarized. The certificate shall be valid for seventy-two hours and shall be delivered to the director of the treatment facility where the person is to be further evaluated and treated.

C. A patient may request the director of the treatment facility to advise the executive director of the mental health advocacy service of his admission and may request representation.

D. Prior to or during confinement, under the provisions of this Title, any person or his attorney shall have the right to demand a judicial hearing to determine if probable cause exists for his continued confinement under an emergency certificate. The hearing shall be held within five days of the filing of the petition. The petition shall be filed in the court of the jurisdiction in which the patient is confined. The hearing shall be held in that court and no other except for good cause shown. If the person is confined, the judge of the court where the petition was filed may hold the hearing at the treatment facility where the person is confined, if in the opinion of the director of the treatment facility it will be detrimental to the patient's health, welfare or dignity, to travel to the court where the petition was filed. Pending the decision of the court, the patient shall remain confined unless the court orders release or a less restrictive status.

E. The attorney of any patient in a treatment facility may review his client's medical record. If deemed essential by the attorney, portions of the record specifically required for proper representation pursuant to this Title, may be copied and given to the patient's attorney. The attorney shall return all copies of his client's medical record to the treatment facility upon completion of their use.

F. An emergency certificate shall constitute legal authority to transport a patient to a treatment facility and shall permit the director of such treatment facility to detain the patient for diagnosis and treatment for a period not to exceed fifteen days, and to return the patient to the facility if he is absent with or without permission during authorized periods of detention. If necessary, peace officers shall apprehend and transport, or ambulance services, under appropriate circumstances, may locate and transport, a patient on whom an emergency certificate has been completed to a treatment facility at the request of either the director of the facility, the certifying physician, the patient's next of kin, the patient's curator, or the agency legally responsible for his welfare. The director of the treatment facility shall notify the patient's nearest relative, if known, or designated responsible party, if any, in writing, of the patient's admission by emergency certificate as soon as reasonably possible.

G. Upon admission of any person by emergency certificate to a treatment facility, it shall be the duty of the director of the treatment facility to immediately notify the coroner of the parish in which the treatment facility is located of the admission giving the following information if known: the person's name, address, date of birth, name of certifying physician, date and time of admission, and the name and address of the treatment facility.

Within seventy-two hours of admission, the person shall be independently examined by the coroner or his deputy who shall execute an emergency certificate, pursuant to Subsection B, which shall be a necessary precondition to the person's continued confinement.

However, in the event that the coroner has made the initial examination and executed the first emergency commitment certificate then a second examination shall be made within the 72 hour period set forth in this Act by any physician at the treatment facility where the person is confined.

If, from his examination, the coroner concludes that the person is not a proper subject for emergency admission, then the person shall not be further detained in the treatment facility and shall be discharged by the director forthwith. When a person is confined in a treatment facility other than a state mental institution, the examining coroner in the parish where the patient is confined shall be entitled to the usual fee paid for this service to the coroner of the parish in which the patient is domiciled or residing. When a person is confined in a state mental institution in a parish other than his parish of domicile or residence, the examining coroner shall be entitled to the fee authorized by law in his parish for the service. In either case, the fee shall be paid and accurate records of such payments kept by the governing authority of the parish in which the patient is domiciled or residing from parish funds designated for the purpose of payment to the coroner.

All coroners shall keep accurate records showing the number of patients confined in their parishes pursuant to this Section.

H. If the patient admitted to a treatment facility pursuant to this Section is a proper candidate for judicial commitment pursuant to R.S. 28:54, the director of the treatment facility, or any interested party, may apply for such commitment under provisions of that Section. Such a patient, hospitalized on an emergency certificate, for whom a petition for judicial commitment has been filed in court may continue to be detained for a further period on order of the court.

I. Every patient admitted by emergency certificate shall be informed in writing at the time of his admission of the procedures of requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171 and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition, a copy of the information mentioned in this Subsection must be posted in any area where patients are confined and treated.

J. Upon the request of a credible person of legal age who is financially unable to afford a private physician or who cannot immediately obtain an examination by a physician, it is the obligation, responsibility and duty of the parish coroner to render or cause to be rendered an actual examination of a person alleged to be mentally ill or suffering from substance abuse and in need of immediate medical treatment because he is dangerous to self or others or gravely disabled. If the coroner is not a physician he shall deputize a physician to perform this duty. To accomplish the examination mandated by this subsection, the coroner is apprehensive that his own safety or that of his deputy may be endangered thereby, he shall issue a protective custody order pursuant to R.S. 28:53.2.

If the coroner or his deputy determines that the above standard is met, he shall execute an emergency certificate and shall transport or cause to be transported the person named in the emergency certificate to a treatment facility. Failure to render an actual examination prior to execution of the emergency certificate shall be evidence of gross negligence.

In any instance where the coroner or his deputy executes the first emergency certificate, the second emergency certificate shall not be executed by the coroner or his deputy, but the second emergency certificate may be executed by any other physician including a physician at the treatment center.

K. Patients admitted by emergency certificate may receive medication and treatment without their consent, but no major surgical procedure, or electroshock therapy may be performed without the written consent of a court of competent jurisdiction after a hearing.

If the director of the treatment facility, in consultation with two physicians, determines that the condition of such a patient is of such a critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment are administered, such emergency measures may be performed without the consent otherwise provided for in this Section.

A peace officer or a peace officer accompanied by an emergency medical service trained physician may take persons into protective custody and

transport him to a treatment facility for a medical evaluation when, as a result of his personal observation, the peace officer or emergency medical service technician has reasonable grounds to believe the person is a proper subject for involuntary admission to a treatment facility because the person is acting in a manner dangerous to himself or dangerous to others, is gravely disabled, and is in need of immediate hospitalization to protect such a person or others from physical harm. The person may only be transported to one of the following:

(a) A community mental health center.

(b) A public or private general hospital.

(c) A public or private mental hospital.

(d) A detoxification center.

(e) A substance abuse clinic.

(f) A substance abuse in-patient facility.

Upon arrival at the treatment facility, the escorting peace officer shall then be relieved of any further responsibility and the person shall be immediately examined by a physician, preferably a psychiatrist, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, or discharged.

In the case of a person suffering from substance abuse and where any of the above facilities are unavailable, the peace officer and emergency medical service technician may use whatever means or facilities available to protect the health and safety of the person suffering from substance abuse until such time as any of the above facilities become available. In taking a person into protective custody the peace officer and emergency medical service technician may take reasonable steps to protect themselves. A peace officer or emergency medical service technician who acts in compliance with this section is acting in the course of his official duty and cannot be subjected to criminal or civil liability as a result thereof.

Under the provisions of this act no person shall be placed in protective custody for a period in excess of seventy-two hours. Any person placed in protective custody under the provisions of this act shall be considered as an inmate for maintenance purposes only.

Amended by Acts 1976, No. 614, § 1, eff. Aug. 4, 1976; Acts 1977, No. 714, § 1; Acts 1978, No. 782, § 1, eff. July 17, 1978; Acts 1979, No. 767, § 1.

Section 3 of Acts 1979, No. 767 (§ 1 of which amended this section) provides that:

"All laws or parts of laws in conflict herewith, except those laws located in Title 14 of the Louisiana Revised Statutes of 1950, are hereby repealed and Section 61 of Title 28 of the Louisiana Revised Statutes is hereby specifically repealed."

1978 Amendment: In subsection D, substituted "for his continued confinement under an" for "or existed for the execution of the," and substituted "shall be filed in" for "may be filed in either the court of the jurisdiction in which the patient resides or"; in subsection G substituted "seventy-two" for "forty-eight" and added the provisions relating to coroners making initial examinations and executing first emergency commitment certificates, payment of coroner's fees and records to be kept by coroners; substantially changed the language of subjection J, which had read: "Upon the request of any person of legal age, if no other physician is immediately available, or if the person making the request is financially unable to afford a private physician, it shall be the duty of the coroner of the parish in which the person is currently located, to conduct the examination and when appropriate, to initiate and complete the emergency certificate. If the coroner is not a physician he shall transport him to a treatment facility listed in Subparagraphs (a), (e) and (f) of Paragraph (28) of Section 2 for a medical evaluation when as a result of his personal observation the peace officer has reasonable grounds to believe that the person is a proper subject for involuntary admission to a treatment facility because of serious mental illness and is in need of immediate hospitalization to protect such person or others from physical harm. Upon arrival at the treatment facility, the person shall be immediately examined by a physician, preferably a psychiatrist, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, or discharged."

1979 Amendment: Purported to amend subsec. A, but made no change therein. In subsec. K the amendment, in the third unnumbered paragraph, substituted "a peace officer accompanied by an emergency medical service trained technician" for "an emergency medical service trained technician accompanied by a peace officer", deleted "or suffering from substance abuse" before "and is injured", and added items (e) and (f) to the list of facilities. The amendment also added to subsec. K the last two unnumbered paragraphs, concerning protective custody for substance abusers.

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

1977 Mental Health Act: Is it enough? Jack E. Hoffstadt, 25 La.Bar.J. 289 (1978).

United States Supreme Court

Involuntary confinement of nondangerous individual in state mental hospital, see O'Connor v. Donaldson, 1975, 95 S.Ct. 2486, 422 U.S. 563, 45 L.Ed.2d 396, on remand 519 F.2d 59.

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1. Validity

This section requiring, before commitment, a showing of mental illness causing person to be dangerous to himself or others and/or incapable of caring for himself or his personal safety affords all constitutional safeguards of substantive due process. Commitment of Malvo, App.1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

Procedures provided in this section for judicial commitment include all required constitutional safeguards and do not deny person committed due process of law or equal protection of the laws in violation of the Fourteenth Amendment. Hickman v. Fletcher, App.1975, 317 So. 2d 219, writ denied 321 So.2d 366.

2. Construction and application

Though the Mental Health Act of 1977 (amending R.S. 28:1 et seq.) sets forth procedural requisites for commitment, it is not susceptible to retrospective application since it is a complete revision of the law of commitment and was intended to and does have substantive effect. Commitment of Askew, App.1978, 359 So.2d 227.

Judicial commitment may be accomplished validly, even though there has been no compliance with R.S. 28:52, setting out procedures for coroner's confinement for treatment order. Hickman v. Fletcher, App.1975, 317 So.2d 219, writ denied 321 So.2d 366.

6. Nature of proceeding

Rawls v. Daughters of Charity of St. Vincent De Paul, Inc., C.A.1974, 491 F.2d 141, rehearing denied 494 F.2d 1296 [main volume], certiorari denied 95 S. Ct. 513, 419 U.S. 1032, 42 L.Ed.2d 307.

Judicial commitment of mentally ill person under this section is neither criminal proceeding nor formal interdiction proceeding affecting property rights of person committed, and is civil exercise of state's police power, and all procedural rules applicable to civil proceedings prevail in such commitment proceeding. Commitment of Malvo, App. 1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

9. Hearing

Under this section, patient has right to participate in hearing and offer evidence in his own behalf and present defense, and, as part of that right, has right to compel attendance and testimony of witnesses and right to independent expert examination regarding his mental illness, and patient is not unconstitutionally deprived of right of confrontation. Commitment of Malvo, App.1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

Where daughter, who was confined for treatment pursuant to father's application, requested court hearing seeking release from 60-day maximum coroner confinement, and neither father nor any other authorized person filed petition for judicial commitment against daughter, scope of hearing was restricted to issue of validity of confinement by coroner, and judgment entered in such hearing would be annulled insofar as it ordered judicial confinement beyond scope of coroner's confinement. Matter of Schindler, App.1976, 336 So.2d 978.

9.5 ____ Time of hearing

Judicial commitment proceeding was not nullified by fact that hearing was not held within period prescribed by this section, where continuance was granted at request of patient's court-appointed attorney in order to allow his recently retained counsel to prepare for hearing. Commitment of Askew, App. 1978, 359 So.2d 227.

11. Evidence

Committing authority is not constitutionally required, before commitment of nondangerous person who is suffering from mental illness and who is incapable of caring for himself, to establish that there is no alternative to custodial care, nor is it necessary that statutory authority for involuntary commitment of such persons contain such proviso. Commitment of Malvo, App.1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

Certificates of two treating physicians together with all mental patient's medical records standing alone, without contradictory proof, furnished at the very least prima facie proof of the matter therein contained and, standing alone, without contradictory proof, was sufficient to support judicial commitment. Id.

Evidence established that woman had been legally committed for treatment in state hospital under this section. Hickman v. Fletcher, App.1975, 317 So.2d 219, writ denied 321 So.2d 366.

13. Improper commitment

Where woman was legally confined in state hospital under this section at time hearing on habeas corpus proceeding was held, issue as to whether she had previously been unlawfully detained under R.S. 28:52, setting out procedures for coroner's confinement for treatment order, was moot. Const. Amend. 14. Hickman v. Fletcher, App.1975, 317 So. 2d 219, writ denied 321 So.2d 366.

16. Jurisdiction

Under R.S. 28:53, as it existed prior to the effecting date of Acts 1977, No. 714, though service and notice requirements were not fully followed in judicial commitment proceeding in that service was made on court-appointed counsel and not on patient personally, district court acquired jurisdiction as result of general appearance through retained counsel when a continuance was requested and denied. Commitment of Askew, App.1978, 359 So.2d 227.

17. Review

Rawls v. Daughters of Charity of St. Vincent De Paul, Inc., C.A.1974, 491 F.2d 141, rehearing denied 494 F.2d 1296 [main volume], certiorari denied 95 S. Ct. 513, 419 U.S. 1032, 42 L.Ed.2d 307.

19. Representation by attorney

District court lacked authority to instruct district attorney to represent petitioners in judicial commitment proceedings. State ex rel. Long v. Hughes, App.1975, 315 So.2d 81.

§ 53.1 Repealed by Acts 1978, No. 680, § 3

R.S. 28:53.1 was repealed by Acts 1978, No. 680, § 3, effective September 8, 1978. The repealed section was amended by Acts 1978, No. 786, § 3, effective July 17, 1978 to read as follows:

"§ 53.1. Judicial commitment of menatlly retarded persons; additional requirement

"A. Before committing any person to the Department of Health and Human Resources for care and treatment for mental retardation, the court shall order an interdisciplinary professional diagnosis and evaluation consisting of complete medical, social, and psychological studies and, when indicated, any other scientific study which may be necessary in order to make valid decisions relative to the service needs of the individual. The interdisciplinary team shall be appointed by the department when requested by the court. At least one member of the evaluation team shall be a qualified mental retardation professional as defined in the rules and regulations of Title XIX of the Social Security Act (42 U.S.C.A. §§ 1396, et seq.).

"B. The court shall use the diagnostic and evaluative report of the interdisciplinary team as expert recommendations and shall commit an individual to the Department of Health and Human Resources for care and treatment for mental retardation only when the report indicates that the needs of the individual can be adequately met by care in facilities available to the department and only when the department has or can provide for the physical space and staff necessary to implement a program specific to the needs of the individual."

Acts 1978, No. 786 related generally to the reorganization of the Department of Health and Human Resources.

The repealed section was derived from Acts 1975, No. 467, § 1. See now, R.S. 28:398.

§ 53.2. Order for custody; grounds

A. Any parish coroner or judge of a court of competent jurisdiction may order a person to be taken into protective custody and transported to a treatment facility or the office of the coroner for immediate examination when a peace officer or other credible person executes a statement under private signature specifying that, to the best of his knowledge and belief, the person is mentally ill or suffering from substance abuse and is in need of immediate treatment to protect the person or others from physical harm. The statement may include the following information:

(a) A statement of facts, including the affiant's observations, leading to the conclusion that the person is mentally ill or suffering from substance abuse and dangerous to himself or others or gravely disabled.

(b) The date and place of any dangerous acts or threats.

(c) The name and surname, if known, of any other person who is in danger.

(d) Facts showing that the person sought has been encouraged to seek treatment and is unwilling to be evaluated on a voluntary basis, and

(e) Facts showing that the affiant has attempted to contact a specific treatment facility or a specific physician in order to obtain an examination of the person sought to be treated.

B. The order for custody shall be in writing, in the name of the state of Louisiana, signed by the district judge or parish coroner, and shall state the following:

(1) The date and hour of issuance and the municipality or parish where issued.

(2) The name of the person to be taken into custody, or if his name is not known a designation of the person by any name or description by which [illegible]

(3) A description of the acts or threats which have led to the belief that the person is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm, and

(4) That the person shall be taken to a community mental health center, a public or private general hospital, a public or private mental hospital, coroner's office or a detoxification center.

C. The order for custody shall be effective for twenty-four hours from its issuance and shall be delivered to the director of the treatment facility by the individual who has transported the person. Upon arrival, the person in custody shall be examined immediately by a physician, preferably a psychiatrist, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, admitted as a non-contested admission, or discharged. The person in custody shall be examined within twelve hours of his arrival at the treatment facility, or be released.

Added by Acts 1978, No. 782, § 1, eff. July 17, 1978.

Law Review Commentaries

Health legislation—work of the legislature, 1978. 39 La.L.Rev. 237 (1978).

§ 54. Judicial commitment; procedure

A. Any person of legal age may file with the court a petition which asserts his belief that a person is mentally ill or is suffering from substance abuse and that the person is a danger to himself or others or is gravely disabled and may thereby request a hearing. The petition may be filed in the judicial district in which the respondent is confined, or if not confined, in the judicial district where he resides or may be found. The hearing shall not be transferred to another district except for good cause shown. A petitioner who is unable to afford an attorney may seek the assistance of any Legal Aid Society or similar agency if available.

B. The petition shall contain the facts which are the basis of the assertion and provide the respondent with adequate notice and knowledge relative to the nature of the proceedings.

C. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, shall assign a place for a hearing upon the petition, and shall cause reasonable notice thereof to be given to the respondent, respondent's attorney and the petitioner. The notice shall inform such respondent that he has a right to be present at the hearing; that he has a right to counsel; that he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the Mental Health Advocacy Service, and that he has the right to cross examine witnesses testifying at any hearing on such application.

D. As soon as practical after the filing of the petition, the court shall review the petition and supporting documents, and determine whether there exists probable cause that the respondent is mentally ill or suffering from substance abuse and that he is a danger to himself or others or is gravely disabled. If the court determines that probable cause exists, the court may appoint the respondent's treating physician if available, or if none, then another physician, preferably a psychiatrist, to examine respondent and make a written report to the court and respondent's attorney on the form provided by the office of mental health of the Department of Health and Human Resources. This report shall set forth specifically the objective factors leading to the conclusion that the person has a mental illness or suffers from substance abuse, the actions or statements by the person leading to the conclusion that the person is dangerous to himself or others or is gravely disabled and in need of immediate treatment as a result of such illness or abuse and why involuntary confinement and treatment are indicated. The following criteria should be considered by the physician:

(1) The respondent is suffering from serious mental illness or substance abuse.

(2) The respondent's condition is likely to deteriorate needlessly unless the respondent is provided appropriate medical treatment.

(3) The respondent's condition is likely to improve if he is provided appropriate medical treatment.

The respondent or his attorney shall have the right to seek an additional independent medical opinion, when necessary, in their discretion. If the respondent is indigent, this opinion may be paid for by the Mental Health Advocacy Service, upon the approval of its executive director.

Reasonable compensation of the appointed examining physicians and all court costs shall be established by the court and ordered paid by respondent or petitioner in the discretion of the court. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the physicians and all court costs shall be paid from funds appropriated to the judiciary, but such court costs shall not exceed the sum of seventy-five dollars.

If the respondent refuses to be examined by the court appointed physician as herein provided, or if the judge, after review of the petition and an affidavit filed pursuant to R.S. 28:53.2, finds that the respondent is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect such person or others from physical harm, or that the respondent's condition may be markedly worsened by delay, then the court may issue a court order for custody of the respondent and a peace officer shall deliver the respondent to a treatment facility designated by the court. The court shall also issue an order to the treatment facility, authorizing detention of the respondent until the commitment hearing is completed, unless he is discharged by the director.

Unless the individual is currently hospitalized or under an emergency certificate, he shall be allowed to remain in his home or other place of residence pending an ordered examination and to return to his home or other place of residence upon completion of the examination. An examining physician may execute an emergency certificate pursuant to R.S. 28:53 if he deems that action appropriate. In such a case, the respondent shall be admitted pursuant to R.S. 28:53 pending the hearing on the petition.

Amended by Acts 1977, No. 714, § 1; Acts 1978, No. 782, § 1, eff. July 17, 1978; Acts 1980, No. 682, § 1.

1978 Amendment: In subsection A, inserted "in the judicial district in which the respondent is confined, or if not confined," and added the provisions concerning transfer of hearings to other districts and petitioners unable to afford attorneys; in subsection C, substituted "the filing of the petition" for "such petition being filed in the court," substituted "eighteen calendar" for "ten working," substituted "shall assign" for "and," and substituted "respondent's attorney and the petitioner" for "and to such relative or relatives and friends of the respondent as the judge deems advisable"; in subsection D, substituted "may appoint the respondent's treating physician if available, or if none, then another physician, preferably a psychiatrist, to examine respondent and make a written report to the court and respondent's attorney or the form provided" for "shall order the respondent to be examined by two physicians selected by the court, one of whom preferably should be a practicing psychiatrist. The physicians shall be licensed to practice medicine in the state of Louisiana, and if possible the physicians should not be connected with the treatment facility to which the commitment is being made, if known. Preferably, such physicians should not be related by blood or marriage to the petitioner, nor to the respondent. No more than one of these physicians shall be a coroner or a member of his staff. The examining physicians shall independently examine the respondent prior to the hearing and shall file written reports with the court concerning their examination. Each such physician shall make his written report on a separate form provided for that purpose," substituted "this report" for "and," added the provisions concerning additional independent medical opinion and substituted the paragraph concerning court orders for custody and the grounds therefor for: "If the respondent refuses to be examined by the court appointed physicians as herein provided, or if there is concern for the petitioner's safety, the court may issue a warrant for the apprehension of the respondent, and a peace officer shall deliver the respondent to a treatment facility. The court shall also issue an order to the treatment facility, authorizing detention of the respondent until the commitment hearing is completed, unless he is discharged by the director."

1980 Amendment: In the paragraph of subsec. D beginning "Reasonable compensation", added "and all court costs" in two instances, and added "but such court costs shall not exceed the sum of seventy-five dollars".

Cross References

Involuntary commitment of mentally retarded persons, see R.S. 28:398.

Juvenile jurisdiction, see LSA-C.J.P. art. 17.

Juvenile proceedings, commitment, see LSA-C.J.P. art. 83 et seq.

Law Review Commentaries

Constitutionally guaranteed rights of mentally ill. Mary Cazalas, 2 Southern U.L.Rev. 9 (1975).

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 642 (1978).

1977 Mental Health Act: Is it enough? Jack E. Hoffstadt, 25 La.Bar J. 289 (1978).

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1. Construction and application

Though the Mental Health Act of 1977 (amending R.S. 28:1 et seq.) sets forth procedural requisites for commitment, it is not susceptible to retrospective application since it is a complete revision of the law of commitment and was intended to and does have substantive effect. Commitment of Askew, App.1978, 359 So.2d 227.

On record, judge did not err in not appointing commission under this section to examine patient before commitment for mental illness. Commitment of Malvo, App.1977, 343 So.2d 1178, certiorari denied 346 So.2d 207.

4. Jurisdiction

Under R.S. 28:53, as it existed prior to the effective date of Acts 1977, No. 714, though service and notice requirements were not fully followed in judicial commitment proceeding in that service was made on court-appointed counsel and not on patient personally, district court acquired jurisdiction as result of general appearance through retained counsel when a continuance was requested and denied. Commitment of Askew, App.1978, 359 So.2d 227.

5. Examining physicians

Petition for judicial commitment of respondents was properly dismissed where no funds existed to provide for cost of appointing two psychiatrists or other physicians to examine respondents as required by this section, and where there was no possibility of obtaining appointment of physicians other than physicians at state hospital where respondents were being confined. Matter of Simon, App.1978, 359 So.2d 709.

6. Communication impairments

Before defendant, deaf mute, could stand trial for aggravated rape, inquiry was necessary to determine whether defendant's communicative abilities could be improved and, if not, State would be required to release defendant. State v. Williams, Sup.1978, 363 So.2d 441.

§ 55. Judicial hearings

A. At the appointed time, the court shall conduct a hearing on the petition. Before the hearing, the respondent may move for a change of venue to the parish of his domicile, which motion shall be granted only for compelling reasons. If the respondent is confined to a hospital, the judge of the court where the petition was filed may hold the hearing on such commitment at the treatment facility where the person is confined, if in the opinion of at least one of the physicians appointed by the court to examine him, it will be detrimental to his health, welfare, or dignity to travel to the court where the petition was filed.

B. The court shall provide respondent a reasonable opportunity to select his own counsel. In the event the respondent does not select counsel and is unable to pay for counsel, or in the event counsel selected by respondent refuses to represent said respondent or is not available for such representation, then the court shall appoint counsel for respondent provided by the mental health advocacy service. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by respondent or petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.

C. The respondent shall have the right to privately retained and paid counsel at any time. However, all respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the mental health advocacy service, the court shall contact the office of the service and request the assignment of an attorney who will be appointed. In cases where the service is unable to provide representation, the court shall select and appoint an attorney to represent the respondent, whose fee shall be set by the court. An attorney appointed to represent a person by a court pursuant to this Title has a continuing duty toward that person even after admission. That duty shall include, but not be limited to, follow-up investigation of the circumstances of the person and representation in subsequent proceedings relating to admission, status, and discharge. The duty shall continue until it is terminated by the court making the appointment.

D. On the day appointed, the hearing shall take precedence over all other matters, except pending cases of the same type. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall admit evidence according to the usual rules of evidence. Witnesses and evidence tending to show that the person who is the subject of the petition is a proper subject for judicial commitment shall be presented first. The respondent or his counsel shall have the right to present evidence and cross examine witnesses who may testify at the hearing. If the respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects. If the respondent or his attorney notifies the court not less than three days before the hearing that he wishes to cross examine the examining physicians, the court shall order such physicians to appear in person or by deposition. The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment. A copy of such transcript shall be furnished without charge, to any appellant whom the court finds unable to pay for the same. The cost of such transcript shall be paid from funds appropriated to the judicial department.

E. If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment to a designated treatment facility which is medically suitable and least restrictive of his liberty. The director shall notify the court in writing when a patient has been discharged or conditionally discharged. The court order shall order a suitable person to convey such person to the treatment facility and deliver respondent, together with a copy of the judgment and certificates, to the director. In appointing a person to execute the order, the court should give preference to a near relative or friend of the respondent. The court may, if it finds it to be in the best interest of the respondent, revoke the certificate or judgement of commitment.

F. Notice of any action taken by the court shall be given to the respondent and his attorney as well as to the director of the designated treatment facility in such manner as the court concludes would be appropriate under the circumstances.

G. Each court shall keep a record of the cases relating to mentally ill persons coming before it under this Title and the disposition of them. It shall also keep on file the original petition and certificates of physicians required by this Section, or a microfilm duplicate of such records. All records maintained in the courts under the provisions of this Section shall be sealed and available only to the respondent or his attorney, unless the court, after hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown.

H. Every patient admitted by judicial commitment shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions should be made to supply him this information. In addition a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

I. A patient confined to a treatment facility by judicial commitment may receive medication and treatment without his consent, but no major surgical procedures or electroshock therapy may be performed without the written authority of a court of competent jurisdiction after a hearing.

If the director of the hospital, in consultation with two physicians, determines that the condition of a committed patient is of such critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment are administered, such measures may be performed without the consent otherwise provided for in this Section.

J. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse from applying for conversion of involuntary or emergency admission status to voluntary admission status. Any patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus to have his admission status changed to voluntary status.

Amended by Acts 1977, No. 714, § 1: Acts 1978, No. 782, § 1, eff. July 17, 1978.

1978 Amendment: In subsection A, substituted "appointed time" for "time appointed," and "only for compelling reasons" for "except for good cause shown"; in subsection E, substituted "respondent" for "person who is the subject of the petition," added "as a result of substance abuse or mental illness, and deleted "there to be confined for the period of the duration of such mental illness or until he is discharged or conditionally discharged" following "liberty".

Law Review Commentaries

Constitutionally guaranteed rights of mentally ill. Mary Cazalas, 2 Southern U.L.Rev. 9 (1975).

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

1977 Mental Health Act: Is it enough? Jack E. Hoffstadt, 25 La.Bar J. 289 (1978).

United States Supreme Court

Standard of proof in commitment proceedings, see Addington v. Texas, 1979, 99 S.Ct. 1804, 441 U.S. 418, 60 LEd2d 323.

§ 56. Judicial commitment; review; appeals

A. All judicial commitments except those for alcoholism shall be reviewed by the court issuing the order for commitment after the first sixty and after one hundred twenty days of commitment and every one hundred eighty days thereafter. A commitment for alcoholism shall expire after forty-five days and the patient, if not converted to a voluntary status, shall be discharged, unless the court, upon application by the director of the treatment facility, finds that continued involuntary treatment is necessary and orders that patient recommitted for a period not to exceed sixty days; provided, that not more than two such sixty day recommitments may be ordered in connection with the same continuous confinement. The director of the treatment facility to which the person has been judicially committed shall issue reports to the court at these intervals setting forth the patient's response to treatment, his current condition, and the reasons why continued involuntary treament is necessary to improve the patient's condition or to prevent it from deteriorating. These reports shall be treated by the court as confidential and shall not be available for public examination, nor shall they be subject to discovery in any proceedings other than those initiated pursuant to this Title.

B. The court may at any time upon application or upon its own motion, order a new hearing to be held in order to determine whether the involuntary status should be continued. Patients committed judicially shall have their cases reviewed in a hearing annually.

C. Notwithstanding an order of judicial commitment, the director of the treatment facility to which the individual is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive. The director may at any time convert an involuntary commitment to a voluntary one should he deem that action medically appropriate. He shall inform the court of any action in that regard. The director may discharge any patient if in his opinion discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged in good faith.

D. A person who is judicially committed shall be allowed to appeal devolutively from the order to the court of appeal. If the lower court finds the individual indigent, it shall allow the appeal to be taken in forma pauperis. Upon perfection of an appeal, it shall be heard in a summary manner, taking preference over all other cases except similar matters.

E. Upon affirmation of the order of commitment, the individual may apply for appropriate writs from the supreme court which shall be heard in a summary manner.

F. Nothing in this Title shall deny the right of habeas corpus, including an application based upon

G. (1) A person who is judicially committed may be conditionally discharged for a period of up to one year by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The terms and conditions of the conditional discharge shall be specifically set forth in writing and signed by the patient. A copy of the conditional discharge shall be given to the patient and explained to him before he is discharged.

(2) If the patient is conditionally discharged by the director, a copy of the conditional discharge shall be sent to the court which judicially committed him. If the patient is conditionally discharged by the court, a copy of the conditional discharge shall be sent to the facility to which the patient has been committed.

(3) If a patient does not comply with the terms and conditions of his conditional discharge, he is subject to any of the procedures for involuntary treatment, including, but not limited to, the issuance of an order for custody, and the execution of an emergency certificate. A conditionally discharged patient who is confined pursuant to any of these involuntary procedures shall have all rights of an involuntary patient, including the right to demand a probable cause hearing, the right to periodic reports and review, and an annual hearing pursuant to Subsections A and B.

(4) An extension of a conditional discharge may be granted upon application by the director of the treatment facility to the court and notification to respondent's counsel of record. The court may grant the extension of the conditional discharge for a period of up to two years. No further extension may be made without a contradictory hearing. The burden of proof is on the director of the treatment facility to show why continued treatment is necessary.

H. All patients presently unrepresented by privately retained counsel and who are the subject of involuntary commitment under any prior statute shall have their cases reviewed by attorneys provided by the mental health advocacy service within one year from the effective date of this Section, or be discharged or be committed again according to the provisions of this Chapter. Amended by Acts 1977, No. 714, § 1; Acts 1978, No. 782, § 1, eff. July 17, 1978; Acts 1979, No. 560, § 1, eff. July 18, 1979; Acts 1979, No. 767, § 1.

Section 3 of Acts 1979, No. 767 (§ 1 of which amended subsec. A of this section) provides that:

"All laws or parts of laws in conflict herewith, except those laws located in Title 14 of the Louisiana Revised Statutes of 1950, are hereby repealed and Section 67 of Title 28 of the Louisiana Revised Statutes is hereby specifically repealed."

1978 Amendment: Rewrote subsection G, which had previously read: "The director or the court may conditionally release a patient for a period not to exceed one year."

1979 Amendments: In subsec. A, Act 767 added the provisions concerning commitment for alcoholism, deleted "medical" following "patient's response to", and substituted "current condition" for "current mental state".

Act 560 designated the prior subject matter of subsec. G as par. (4) of that subsection; deleted, at the beginning of that paragraph, "The director of the treatment facility or the court may conditionally discharge a patient for a period of up to one year"; and added pars. (1) to (3) to subsec. G.

Law Review Commentaries

Constitutionally guaranteed rights of mentally ill. Mary Cazalas, 2 Southern U.L.Rev. 9 (1975).

Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

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3. Scope of hearing

Where daughter, who was confined for treatment pursuant to father's application, requested court hearing seeking release from 60-day maximum coroner confinement, and neither father nor any other authorized person filed petition for judicial commitment against daughter, scope of hearing was restricted to issue of validity of confinement by coroner, and judgment entered in such hearing would be annulled insofar as it ordered judicial confinement beyond scope of coroner's confinement. Matter of Schindler, App.1976, 336 So.2d 978.

§ 57. Admission of minors

A. A minor may be admitted to a treatment facility for treatment of a mental illness or substance abuse as provided in this Section and pursuant to R.S. 28:52 through R.S. 28:54.

B. Any minor sixteen years of age or older may be admitted to a treatment facility under a voluntary admission pursuant to R.S. 28:52 through

R.S. 28:52.2 if the minor executes the application. A minor so admitted shall have the same rights as an adult patient.

C. Any minor may be admitted to a treatment facility for inpatient care and treatment upon application of a parent, curator, or person in loco parentis to the director of a treatment facility if the director finds that the minor has a mental illness of such severity that hospitalization is necessary and that the minor is likely to benefit from inpatient treatment. Within twenty-four hours of admission, the minor shall be examined by a physician who shall set forth in detail in the patient's medical record the reasons for the continued need of confinement and treatment of the minor.

The application for admission may be executed by a parent, curator, or in the absence of a parent or curator, by a person in loco parentis.

D. A minor who is eligible for admission pursuant to Subsection C and who is in such a condition that immediate hospitalization is necessary, may be admitted upon the application of an interested person eighteen years of age or older, when after diligent effort the minor's parent, curator, or person in loco parentis cannot be located. Following the admission of the minor, the director of the treatment facility shall continue efforts to locate the minor's parent, curator, or person in loco parentis. If such person is located and consents in writing to the admission, the minor may be continued to be hospitalized. However, upon notification of the admission, the parent, curator, or person in loco parentis may request the minor's discharge subject to the provisions of Subsection F of this Section.

E. On admission to a treatment facility, the minor shall be informed in writing of the procedures for requesting release and of the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and the rules and regulations applicable to or concerning his conduct while a patient in the program or facility. This information shall also be posted in a prominent place.

F. Objection may be made to the admission of a minor under Subsection C by a parent, curator, or person in loco parentis if the minor is sixteen years of age or older. If the minor informs any staff person of his desire to object to the admission, a staff person shall assist him in preparing and submitting his objection. Upon receipt of a valid objection, the director of the treatment facility shall release such minor within three working days unless proceedings are begun pursuant to R.S. 28:53 or R.S. 28:54.

G. R.S. 28:53 and R.S. 28:54 are applicable in the case of a minor except that the minor may be admitted or committed upon a finding that the minor has a mental illness or suffers from substance abuse of such severity that hospitalization is necessary, that he can benefit from inpatient treatment, and that the treatment facility to which the minor is committed is medically appropriate.

Amended by Acts 1977, No. 714, § 1.

Cross References

Juvenile jurisdiction, see LSA-C.J.P. art. 17.

Law Review Commentaries

1977 Mental Health Act: Is it enough? Jack E. Hoffstadt, 25 La.Bar J. 289 (1978).

United States Supreme Court

Involuntary confinement of nondangerous individual in state mental hospital, see O'Connor v. Donaldson, 1975, 95 S.Ct. 2486, 422 U.S. 563, 45 L.Ed.2d 396.

§ 59. Commitment of prisoners

A. Any person acquitted of a crime or misdemeanor by reason of insanity or mental defect may be committed to the proper institution in the manner provided for judicial commitment by the district court of acquittal and contradictorily with the district attorney.

B. Any person who is determined to lack the capacity to proceed, and who will not attain the capacity to proceed with his trial in the foreseeable future shall be discharged. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment

facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted within seventy-two hours after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court. The superintendent may transfer patients under sentence from one ward to another only upon authority of the committing court.

D. The department shall designate institutions for the care of mental patients committed in accordance with this Section.

Amended by Acts 1977, No. 714, § 1; Acts 1978, No. 782, § 1, eff. July 17, 1978.

1978 Amendment: Divided the prior subject matter of this section into subsections A, C, and D, and added subsection B.

Law Review Commentaries
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

United States Supreme Court
Involuntary transfer of prisoner to mental hospital, see Vitek v. Jones, 1980, 100 S.Ct. 1254.

§ 60. Repealed by Acts 1978, No. 680, § 3

See now, R.S. 28:394.

§ 61. Repealed by Acts 1979, No. 767, § 3

Prior to repeal, this section was amended by Acts 1977, No. 714, § 1 to relate to detention of substance abusers. See now, R.S. 28:56.

§ 63. Physician's standard of care

Any licensed physician exercising that degree of skill and care ordinarily employed, under similar circumstances by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill, shall not be held civilly liable or subject to criminal prosecution for acts arising from his medical opinions, judgments, actions or duties pursuant to any of the provisions of this Part.

Any licensed physician who executes an emergency certificate shall be held to that degree of skill and care ordinarily employed, under similar circumstances by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill.

Any person who acts in good faith to assist in the apprehension or taking into protective custody and examination of a patient will not be subject to civil or criminal penalties. However, a person who willfully advises or participates in the making of a false application or certificate shall be imprisoned with or without hard labor for not more than two years or fined not more than ten thousand dollars, or both.

Any apprehension or taking into protective custody and confinement made by law enforcement officers, ordered by a court or upon the certificate of a physician under the procedures provided in this Title, is hereby declared to be an administrative act relative to the functions of their office, as required by law, and for which act they are specifically granted personal immunity, but not thereby relieved of their official responsibilities.

Added by Acts 1977, No. 714, § 1.

Law Review Commentaries
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L.Rev. 542 (1978).

Library References
Physicians and Surgeons ⇐14(1).
C.J.S. Physicians and Surgeons § 41 et seq.

§ 64. Mental Health Advocacy Service; creation; board of trustees; organization; powers; duties

A. A Mental Health Advocacy Service is hereby created and shall be governed by a board of trustees. The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(y).

The service shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this Chapter, including, but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.

The service shall be governed by a board of trustees consisting of nine members to be made up of the deans of the law schools or their designated faculty members from Loyola University of the South, Southern University and Agricultural and Mechanical College Law Schools and from the medical and law schools of Louisiana State University and Agricultural and Mechanical College and Tulane University of Louisiana, the president of the Mental Health Association of Louisiana or his representative, and a selected member from the Louisiana Medical Society and the Louisiana State Bar Association.

B. Members of the board shall be reimbursed actual expenses incurred in the performance of their duties.

The board of trustees shall:

(1) Appoint a director of the service.

(2) Establish general policy guidelines for the operation of the service to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their legal rights are protected. However, the board shall not have supervisory power over the conduct of particular cases.

(3) Review and evaluate the operations of the service and emphasize special training for attorneys hired by the service.

(4) Review and approve an annual budget for the service.

(5) Review and approve an annual report on the operation of the service and submit such report to the legislature, the governor and the chief justice of the supreme court, and

(6) Approve and authorize contractual arrangements sought by the director.

C. The director shall be an attorney at law licensed to practice in the state. The director shall be qualified by experience to perform the duties of his office. The director shall devote full time to the duties of his office and shall not engage in the private practice of law.

The director shall:

(1) Organize and administer programs to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their rights are protected, subject to the approval of the board of trustees.

(2) Identify the needs of mentally disabled persons for legal counsel and representation within the state and the resources necessary to meet those needs, subject to the approval of the board of trustees.

(3) Institute or cause to be instituted such legal proceedings as may be necessary to enforce and give effect to any of the duties or powers of the service.

(4) Hire and train attorneys and other professional and nonprofessional staff that may be necessary to carry out the functions of the service. All attorneys employed shall be licensed to practice law in Louisiana.

(5) Establish official rules and regulations for the conduct of work of the service, subject to the approval of the board of trustees.

(6) Take such actions as he deems necessary and appropriate to secure private, federal, and other public funds to help support the service, subject to approval of the board of trustees and

(7) The director may contract with organizations or individuals for the provision of legal services for the mentally disabled, subject to the approval of the board of trustees.

D. Any attorney representing a mentally ill person or a respondent as defined herein shall have ready access to view and copy all mental health and developmental disability records pertaining to his client, unless the client objects. If the patient or respondent later retains a private attorney to represent him, the mental health advocacy service shall destroy all copies of records pertaining to his case.

Any attorney representing a mentally ill person or a respondent as defined herein shall have the opportunity to consult with his client whenever necessary in the performance of his duties. A treatment facility shall provide adequate space and privacy for the purpose of attorney-client consultation.

E. Nothing in this Title shall be construed to prohibit a mentally disabled person or respondent to be represented by privately retained counsel. If a service attorney has been appointed by the court and the mentally disabled person or respondent secures his own counsel, the court shall discharge the service attorney.

F. Any respondent or mentally disabled person shall have the right to demand that the records in the possession of his attorney regarding his mental condition be destroyed or returned to the treatment facility, and he shall have the right to assurance by the director that such records have been so destroyed by the mental health advocacy service attorney.

G. The mental health advocacy service shall establish official rules and regulations for evaluating a client's financial resources, for the purpose of determining whether a client has the ability to pay for services received.

A client found to have sufficient financial resources shall be required to pay the service in accordance with standards established by the director. An indigent client shall be provided legal counsel and representation without charge.

Added by Acts 1977, No. 714, § 1. Amended by Acts 1978, No. 782, § 1, eff. July 17, 1978.

1978 Amendment: Added "The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(y)" to the first paragraph of subsection A.

Law Review Commentaries
Louisiana Mental Health Law of 1977: An analysis and a critique. 52 Tulane L. Rev. 542 (1978).

Library References
Mental Health ⇐20.
C.J.S. Insane Persons § 3.

PART IV. TRANSFER, DISCHARGE, LEAVE OF ABSENCE, RETURN OF ESCAPED PATIENTS BOARDING OUT OF PATIENTS, INTERSTATE RENDITION AND DEPORTATION

§ 94. Transfer of patients between institutions

A. Except as otherwise provided in this Subsection, the department may transfer any patient from one mental institution to another. Moreover, the superintendent of an institution may request the department to transfer a patient when he believes that a transfer is necessary.

(1) A patient may be transferred to or from a private mental institution only upon the joint application of the superintendent of that institution and of the legal or natural guardian or the person liable for the support of the patient. However, no private mental institution shall be obligated to retain a patient because of the refusal to sign the application by the guardian or the person liable for support.

(2) A person under sentence or acquitted of a crime or misdemeanor on the ground of mental illness or defect shall be transferred only upon authority of the committing court.

(3) A voluntary patient shall be transferred only with his written consent.

B. The following documents, as applicable, shall accompany a patient upon his transfer:

(1) The transfer order of the department.

(2) Certified copies of the application for admission, the physician's certificate, the report of the commission, and the order of the committing court.

(3) All of the patient's clinical records or a full abstract thereof, including the results of medical, physical, and laboratory examinations.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division" twice in the unnumbered opening paragraph of subsection A and once in paragraph B(1).

§ 97. Discharge by the department

The department may order the examination and the discharge of any patient, except those committed in accordance with R.S. 28:59, if as a result of the examination it believes that the patient should no longer be detained. When a discharge in accordance with this Section is contemplated, the department shall give notice to the superintendent and to the person who caused the patient to be committed, in order that they may state their reasons why the patient should be detained for further treatment.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division" twice, as well as in the section heading.

§ 98.1 Right to release on application of voluntary patients

1. Construction and application
Rawls v. Daughters of Charity of St. Vincent De Paul, Inc., C.A.1974, 491 F.2d 141, rehearing denied 494 F.2d 1296 (main volume), certiorari denied 95 S. Ct. 513, 419 U.S. 1032, 42 L.Ed.2d 307.

§ 100.1. Convalescent status; rehospitalization

The superintendent may release an improved patient on convalescent status when he believes that such release is in the best interests of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by the hospital, including a plan of treatment on an outpatient or nonhospital patient basis. Prior to the end of a year on convalescent status, and not less frequently than annually thereafter, the superintendent shall re-examine the facts relating to the hospitalization of the patient on convalescent status and, if he determines that in view of the condition of the patient hospitalization is no longer necessary, he may discharge the patient and make a report thereof to the department.

Prior to such discharge the superintendent of the hospital from which the patient is given convalescent status may at any time readmit the patient. If there is reason to believe that it is in the best interest of the patient to be rehospitalized, the department or the superintendent may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the direction of a judge of a court of record of the parish in which the patient is resident or present, authorize any health or police officer to take the patient into custody and transport him to the hospital, or if the order is issued by the department, to a hospital designated by it.

Amended by Acts 1978, No. 786, § 3, eff. July 17, 1978.

1978 Amendment: Substituted "department" for "division" in the three places where it occurred.

§ 101. Boarding out patients

Under conditions indicating rehabilitation possibilities, the superintendent, with the consent of the department, may permit patients to board out with responsible persons who may be paid for their care of the patients. This Section does not apply to patients committed in accordance with R.S. 28:59.

A. In determining the amount to be paid, the value of any services to be rendered by the patient while boarding shall be

B. Municipal Criminal Code, The Code of the City of New Orleans, Sections 42-1 through 42-3

CHAPTER 42

MUNICIPAL CRIMINAL CODE[1]

ARTICLE I. GENERAL PROVISIONS.

DIVISION 1. PRELIMINARY PROVISIONS.

Section 42-1. Method of citation.

This Chapter shall be known as the Municipal Criminal Code of the City of New Orleans, Louisiana, 1976. The

1. M.C.S., Ord. No. 6180, §§ 1—3, adopted Dec. 9, 1976, specifically amended the Code by repealing former Ch. 42, §§ 42-1—42-18, 42-20—42-46.3, 42-48—42-100, and adopting in lieu thereof a new Ch. 42, §§ 42-1—42-108 as herein set out. Formerly, Ch. 42 pertained to the same subject matter and had been derived from:

Flynn's Digest 1896, arts. 588, 964, 1153, 1154, 1156, 1337, 1356—1360, 1371, 1381, 1392, 1394, 1437, 3055, 3056
Act 296 of 1952
Code 1956, §§ 42-15, 42-40, 42-46, 42-51, 42-52, 42-53, 42-54, 42-90
M.C.S., Ord. No. 125, §§ 1—3
M.C.S., Ord. No. 184, §§ 1, 2, 5, 6
M.C.S., Ord. No. 290, § 1
M.C.S., Ord. No. 327, §§ 1—3
M.C.S., Ord. No. 482, § 1, 5-29-69
M.C.S., Ord. No. 993, § 1
M.C.S., Ord. No. 1029, § 1
M.C.S., Ord. No. 1436, §§ 1, 2, 4
M.C.S., Ord. No. 1568, § 1, 1-29-59
M.C.S., Ord. No. 1861, § 1, 3-10-60
M.C.S., Ord. No. 1872, § 1, 3-17-60
M.C.S., Ord. No. 2139, §§ 1, 2, 2-23-61
M.C.S., Ord. No. 2965, § 1, 11-12-64
M.C.S., Ord. No. 3064, § 1, 4-15-65
M.C.S., Ord. No. 3179, § 1, 10-7-65
M.C.S., Ord. No. 3395, § 1, 8-18-66
M.C.S., Ord. No. 3563, § 1, 4-13-67
M.C.S., Ord. No. 4052, § 1, 4-10-69
M.C.S., Ord. No. 4076, § 1, 5-22-69
M.C.S., Ord. No. 4092, § 1, 6-12-69
M.C.S., Ord. No. 4126, § 1, 7-31-69
M.C.S., Ord. No. 4147, § 1, 9-11-69
M.C.S., Ord. No. 4162, § 1, 10-9-69
M.C.S., Ord. No. 4211, § 1, 12-23-69
M.C.S., Ord. No. 4250, § 1, 3-12-70
M.C.S., Ord. No. 4377, § 1, 9-17-70
M.C.S., Ord. No. 4437, § 1, 12-18-70
M.C.S., Ord. No. 4438, § 1, 12-18-70
M.C.S., Ord. No. 4485, § 1, 2-4-71
M.C.S., Ord. No. 4500, § 1, 2-18-71
M.C.S., Ord. No. 4616, § 1, 7-22-71

general titles hereunder may be referred to or cited as Articles of the Criminal Code of New Orleans, Louisiana 1976. The specific ordinances hereunder may be referred to or cited as Sections of the Municipal Criminal Code of New Orleans, Louisiana, 1976. (M.C.S., Ord. No. 6180, § 1, 12-9-76.)

Section 42-2. Procedure.

The provisions of the Code of Criminal Procedure of Louisiana shall govern and regulate the procedure in criminal prosecutions and proceedings in the Municipal Court of the City of New Orleans, except that all proceedings shall be initiated by affidavit or summons only, as provided by LSA-R.S. 13:2512. (M.C.S., Ord. No. 6180, § 1, 12-9-76.)

Section 42-3. Evidence.

The trials of all cases in the Municipal Court of New Orleans, and the rules of evidence applicable thereto, shall be the same as those governing the trials of misdemeanors under the Code of Criminal Procedure and Title 15 of the Louisiana Revised Statutes of 1950 as they presently exist, or as they may be hereafter amended. (M.C.S., Ord. No. 6180, § 1, 12-9-76.)

M.C.S., Ord. No. 4724, § 1, 11-18-71
M.C.S., Ord. No. 4760, § 1, 12-22-71
M.C.S., Ord. No. 4761, § 1, 12-22-71
M.C.S., Ord. No. 4815, § 1, 3-29-72
M.C.S., Ord. No. 4852, § 1, 5-18-72
M.C.S., Ord. No. 5059, § 1, 1-4-73
M.C.S., Ord. No. 5153, § 1, 4-26-73
M.C.S., Ord. No. 5241, § 1, 8-23-73
M.C.S., Ord. No. 5242, § 1, 8-30-73
M.C.S., Ord. No. 5360, § 1, 2-14-74
M.C.S., Ord. No. 5556, § 1, 10-24-74
M.C.S., Ord. No. 5845, § 2, 12-11-75
M.C.S., Ord. No. 5916, § 1, 2-19-76
M.C.S., Ord. No. 5930, § 1, 3-4-76
C.C.S., Ord. No. 3284, § 1
C.C.S., Ord. No. 5533, § 1
C.C.S., Ord. No. 5725, § 1
C.C.S., Ord. No. 6113, § 1
C.C.S.,Ord. No. 6039, §§ 1, 2
C.C.S., Ord. No. 7637, § 1
C.C.S., Ord. No. 7809, § 1
C.C.S., Ord. No. 7876, § 1
C.C.S., Ord. No. 14,005, § 1
C.C.S., Ord. No. 14,477, § 1
C.C.S., Ord. No. 14,803
C.C.S., Ord. No. 15,912, § 1
C.C.S., Ord. No. 16,954, §§ 1, 2
C.C.S., Ord. No. 16,955, § 1
C.C.S., Ord. No. 16,956, § 1
C.C.S., Ord. No. 17,983, §§ 4-7, 9-11
C.C.S., Ord. No. 18,389, § 1
C.C.S., Ord. No. 18,523, § 1
N.C.S., Ord. No. 1375, § 1
N.C.S., Ord. No. 1437, §§ 1, 2
N.C.S., Ord. No. 4604, § 1
N.C.S., Ord. No. 5754, §§ 1, 2

C. Application of Code, Louisiana Statutes Annotated-Code of Criminal Procedure, Article 15

CONTINUED

1 OF 2

Art. 14. Oath or affirmation in criminal proceedings; witness

A. If a person refuses to take an oath or to make a sworn statement or affidavit required in connection with any criminal proceedings, he may affirm in lieu of swearing, and his affirmation shall fulfill the requirement and shall have the same legal effect as an oath, sworn statement, or affidavit.

B. Every witness shall be sworn or affirm to speak the truth and nothing but the truth.

Source: *Cf.* C.C.P. Art. 1633.

Official Revision Comment

Paragraph A of this article is broader than its source provision; its application is not limited to witnesses. It covers a person who makes an affidavit as the basis for the issuance of a warrant of arrest, a search warrant, or as a basis for various other proceedings.

Library References

Oath ⇐4. C.J.S. Oaths and Affirmations § 3.

CHAPTER 2. APPLICATION OF CODE

Art.

Art. 15. Courts to which applicable; military not affected

A. The provisions of this Code, except as otherwise specially provided by other statutes, shall govern and regulate the procedure in criminal prosecutions and proceedings in district courts. They also shall govern criminal prosecutions in city, parish, juvenile, and family courts, except insofar as a particular provision is incompatible with the general nature and organization of, or special procedures established or authorized by law for, those courts.

B. This Code shall not affect any power conferred by law upon any court martial, military authority, or military officer to impose or inflict punishment upon offenders.

Source: New; former R.S. 15:582.

Official Revision Comment

(a) Although the 1928 Louisiana Code of Criminal Procedure did not have a provision similar to Paragraph A of this article, its rules were nevertheless regarded as having general applicability. This article codifies the general practice.

(b) The phrase "criminal prosecutions and proceedings" is sufficiently broad to include such pre-trial matters as search warrants, arrest, extradition, preliminary examination, and bail.

(c) The exceptions in the article refer to (1) special procedures provided by other laws for the enforcement of certain statutes, such as tax laws, wildlife laws, livestock laws, etc., (2) special procedures provided or authorized by other laws for particular kinds of courts, such as the informal procedures for traffic violations bureaus of city courts, and (3) incompatibility of provisions of this Code with the nature and organization of municipal, family, or juvenile courts.

(d) Application of this Code to city courts presents a particularly difficult and important problem. Many rules of the Code apply to all criminal prosecutions. Others, by their very nature, are inapplicable to the more informal procedures for the trial of minor cases in city courts. Care is taken, in the various Titles to specify those situations in which a provision is not applicable or is only partially applicable in city court prosecutions. Similarly, the relative authority of district and city courts is clearly stated. Nevertheless, this article provides the general limitation that the code procedures are not applicable insofar as a particular provision may be incompatible with the general nature, organization, or special procedures established for the lower courts.

(e) Paragraph B is a retention of Art. 582 of the 1928 Code. Even without this article, the Code would be of no effect as to the authority of the United States military to try crimes; however, this provision was retained because of its possible utility in connection with proceedings under Revised Statutes, Title 29, Military, Naval, and Veterans' Affairs.

Historical Note

Prior Laws:

Acts 1928, No. 2, § 1, art. 582.

Law Review Commentaries

Courts-martial, applicability of constitutional guarantees and review by civil courts. 25 Tulane L.Rev. 275 (Feb. 1951).

Library References

Militia ⇐21. C.J.S. Militia §§ 24, 25.

D. Petition for Judicial Commitment

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO.

DIVISION " "

DOCKET NO. 1

IN RE: ______________________

DATE FILED: ______________________ ______________________ DEPUTY CLERK

* *

PETITION FOR JUDICIAL COMMITMENT

The petition of ______________________, of legal age, and a resident of the Parish of ______________________, and related to respondent in the following particulars: ______________________, with respect represents:

1.

______________________, hereinafter referred to as the respondent, is a resident of the Parish of ______________________, State of Louisiana, and is currently confined in the clinic of the House of Detention, or the Parish Prison, or Charity Hospital in the City of New Orleans, and is in need of continued treatment.

2.

The respondent, based upon petitioner's knowledge, information and belief, is mentally ill in that respondent is suffering from a psychiatric disorder having substantial adverse effects on respondent's ability to function, as hereinafter indicated.

3.

The respondent's behavior, based upon petitioner's knowledge, information and belief, shows that respondent is dangerous to others in that the behavior displayed supports a reasonable expectation of substantial risk of physical harm upon another person, as hereinafter indicated.

4.

The respondent's behavior, based upon petitioner's knowledge, information and belief, shows that respondent is dangerous to him or herself in that the behavior displayed supports a reasonable expectation of physical or severe emotional harm being inflicted on respondent's own person, as hereinafter indicated.

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5.

Petitioner presents to the Court the following information in order for the Court to make a determination of probable cause:

1. Name of respondent _____, age _____.

2. Past abnormal and/or bizarre behavior of respondent showing inability to function: _____

_____

_____

3. Date of and description of most recent abnormal and/or bizarre behavior of respondent showing inability to function: _____

_____

_____

4. Past abnormal and/or bizarre behavior of respondent showing that respondent is dangerous to others and/or to respondent's own person:

_____

_____

_____

5. Date of and description of most recent abnormal and/or bizarre behavior of respondent showing that respondent is dangerous to others and/or to respondent's own person: _____

_____

_____

6. History of respondent's previous psychiatric diagnosis, prognosis, and/or treatment: _____

_____

7. Date of and description of respondent's most recent psychiatric diagnosis, prognosis and/or treatment: _____

_____

8. History of respondent's previous criminal record: _____

_____

9. Date of and description of respondent's most recent criminal record, and dispostion thereof: _____

_____

6.

As indicated above, respondent was arrested on the date of _____ and charged with the offense of _____, inter alia, for which respondent is presently confined in the House of Detention or the Parish Prison and on the date of _____the judge of the Municipal Court for the City of New Orleans requested that respondent be held and undergo a psychiatric examination.

7.

Respondent, because of his/her condition is unable or unwilling to continue treatment on a voluntary basis.

8.

Any reports which petitioner has in his/her possession from treating physicians, hospitals, clinics, and/or previous emergency certificates, if any exist, are attached to this petition and made a part thereof.

9.

Respondent is not represented by an attorney and it is necessary that the Court appoint an attorney to represent respondent in these proceedings.

WHEREFORE, petitioner prays:

That the court appoint an attorney to represent the respondent; that the court appoint a physician to examine the respondent and report to the court their findings and recommendations; that a certified copy of this petition, after a date has been assigned for a hearing, be served upon respondent, the appointed attorney and all persons requesting service; that after all due proceedings had the respondent be committed to a State hospital as authorized under title 28 of the Louisiana Revised Statutes.

And for all general and equitable relief.

_____
Petitioner,

_____
Street address

_____
City and State

_____
Phone number of petitioner

_____
Date signed

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me, the undersigned authority, personally came and appeared _____, who after being duly sworn, did depose and say:

That affiant is the petitioner in the above and foregoing petition; that all allegations of fact contained therein are true and correct to the best of affiant's knowledge, information and belief.

_____
Affiant

Sworn to and subscribed before me,
this _____day of _____, 1981.

_____, (Title: _____)

O R D E R

Considering the foregoing petition and the supporting documents, and the Court being of the opinion that there exists probable cause that the respondent is mentally ill or suffering from substance abuse and that he/she is dangerous to himself/herself or others or is gravely disabled:

IT IS ORDERED that _____ and _____, physicians duly licensed to practice medicine in the State of Louisiana by the Louisiana State Board of Medical Examiners, be, and they are; hereby appointed to examine respondent and to report their findings, in writing, to this Court.

IT IS FURTHER ORDERED that _____, Attorney at Law, be, and (s)he is, hereby appointed to represent respondent herein.

IT IS FURTHER ORDERED that this matter be set for hearing on _____, at _____ o'clock, __.m. at _____.

IT IS FURTHER ORDERED that the confinement of _____ be continued until the date of this hearing.

New Orleans, Louisiana, _____.

_____
J U D G E

PLEASE SERVE:

1) Respondent _____ (at House of Detention, Parish Prison, or Charity Hospital) in the custody of the Criminal Sheriff)
Street address, number and city and State.
2. Counsel appointed to represent respondent.
3. City attorney for Municipal Court prosecutions, thru City Hall, N.Orleans.
4. Attorney for the Department of Health and Human Resources, State of Louisiana, Louisiana State Building, New Orleans, La.
5. Petitioner _____, at _____, in New Orleans, La.
6. Mr. Charles Foti, Criminal Sheriff, Tulane and Broad Sts, N.Orleans, La.
7. Dr. William Super, Psychiatrist, Charity Hospital at New Orleans, La.

END