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Information Report on Involuntary Civil Commitment

City Club of Portland (Portland, Or.)

INFORMATION REPORT ON

INVOLUNTARY CIVIL COMMITMENT

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

Civil commitment is the judicial mechanism by which a mentally ill person can be required to undergo treatment. A comprehensive review of Oregon's civil commitment laws was conducted by the state Task Force on Civil Commitment of Mentally Ill Persons during 1985 and 1986. As a result of this review, the Task Force recommended and the 1987 Oregon Legislature adopted HB 2324 which changed Oregon's civil commitment laws for the chronically mentally ill.

This information report briefly describes the history of civil commitment law in Oregon, outlines the changes made by the 1987 Legislature, and presents the concerns that remain following passage of this new law.

II. HISTORY

Oregon's policies for dealing with the mentally ill mirrored those of other states. Civil commitment has had the twin goals of controlling the dangerous and helping the needy.

With the discovery of psycho-active drugs in the 1950's to treat mental illness, many people living in hospitals could be returned to the community if support services were available. After decades of focusing on institutional treatment, Oregon adopted in the 1970's a policy of "deinstitutionalization," treating mentally ill patients in community-based programs rather than in institutions. The goal has been to decrease the use of state hospital beds and provide local alternatives.

In 1973, two important mental health bills passed the Oregon Legislature. First, the Community Mental Health Program Act established comprehensive mental health programs which combined the resources of local communities and state hospitals. A second bill extended conditional protection to the mentally ill by changing the involuntary commitment laws. Under the 1973 legislation, the state had to prove not only that a person was mentally ill, but also that the person was a danger to self or others or was unable to provide for basic personal needs before commitment could occur.

The Governor's Task Force on Mental Health was created in 1979 to study the needs of the chronically mentally ill. Its report led to passage of the Omnibus Mental Health bill by the 1981 legislature. This bill established a priority system for treating the mentally ill.

By the early 1980's, the failure to create community mental health centers that met the needs of the chronically and severely mentally ill became apparent. Local treatment tended to be administered to those most able to access it, leaving the most difficult patients untreated. This included many who were likely to need civil commitment.

Many mentally ill people in Oregon are not in treatment programs. As a result, their illness deteriorates and they continue to cycle through the mental health system. In the past, families of the chronically mentally ill have watched this deterioration, but could not intervene until the person became dangerous to self or others or could not care for his or her own basic needs. Passage of HB 2324 is an attempt to allow intervention before a chronically mentally ill person becomes dangerous or unable to care for him or herself.

III. 1987 LEGISLATIVE ACTIONS

The 1987 Legislature enacted House Bill 2324 which revised both the procedural and substantive provisions of the civil commitment law. This law took effect on January 1, 1988. The most significant modifications are:

A. Definition of Mental Illness

Under previous law, there were two bases on which a person was subject to commitment. A person must be found to be mentally ill and either (1) a danger to self or others or (2) unable to provide for basic personal needs.

The 1987 legislation adds a third basis for commitment. A person must meet four criteria:

1. be diagnosed as chronically mentally ill,
2. have a history of two commitments to a state hospital in the past three years,
3. exhibit symptoms or behavior substantially similar to those that led to one or more of the hospitalizations, and
4. unless treated, will continue, to a reasonable medical probability, to physically or mentally become dangerous to self or others or be unable to provide for basic personal needs.

The purpose of this new basis for commitment is to permit earlier intervention by allowing commitment before the condition of a chronically mentally ill person deteriorates to the point where the person becomes dangerous or is unable to care for basic personal needs. This new basis allows commitment on the basis of predicted, rather than present, behavior.

B. Court Ordered Investigation

The new law continues the procedure whereby the court appoints an investigator to assess the situation once a notification of mental illness had been filed. If the investigator determines that there is "probable cause," a full hearing is conducted before a circuit court judge.

The role of the court-appointed investigator has been significantly expanded by the 1987 legislation. The investigator is now permitted to interview the allegedly mentally ill person's family without that person's consent, whereas in the past, consent was required. The court-appointed investigator is also authorized to review any and all relevant medical records. The investigator is now expressly required to be available as a witness or for cross examination at the commitment hearing if the investigator's report is introduced as evidence in the case.

C. Privileged Communication

Under prior law, the general rules of evidence including the rules of privilege applied to communications made in connection with the commitment process. The effect was that allegedly mentally ill persons could prevent health care professionals including hospital staff and court investigators from testifying about statements made by allegedly mentally ill persons.

Under the new law, statements made to physicians and psychotherapists before the hearing are admissible. The intent is to provide judges with a better understanding of the allegedly mentally ill person's condition. However, an allegedly mentally ill person must be given a warning by health professionals and law enforcement personnel that observations of the person by staff of the facility where the person is in custody may be used as evidence in subsequent court proceedings.

D. Counsel for State Interests

Under prior law, the judge conducting the commitment hearing was authorized to designate counsel to assist the court, but was not required to do so. In Multnomah County, it was the practice of the court not to designate counsel. The new law requires that counsel be present to "represent the interests of the state." The purpose of this change is to facilitate the presentation of evidence.

E. Outpatient Treatment Options

The new law clarifies the forms of outpatient treatment that can be ordered by the court. After the person has been found to be mentally ill, the forms of outpatient treatment are as follows: (1) "conditional release" to the charge of a third party such as a relative; (2) outpatient commitment supervised by the Mental Health Division; and (3) a "trial visit", i.e., supervised outpatient care following a period of hospitalization. The individual's conduct is closely monitored and the person is institutionalized if the terms of outpatient treatment are violated.

F. Limitations of Liability

The new law extends provisions which insulate individuals who are involved in the commitment process from civil

liability. Anyone involved in initiating, investigating, examining, prosecuting, or placing a hold on an individual is immune from liability so long as they act in good faith, with probable cause, and without malice. Individuals who supervise a person who is receiving outpatient care are immune from liability unless they are guilty of willful neglect.

G. Summary

The new law expands the criteria for civil commitment and facilitates the development and presentation of evidence. The level of funding will determine whether the new law will actually affect the mentally ill.

IV. FUNDING FOR MENTAL HEALTH PROGRAMS

A "critical mass" funding package of over $6 million for the 1987-89 biennium became available January 1, 1988. The money is earmarked for the "risk pool" of clients who meet the new commitment criteria of having had two commitments to state hospitals in the past three years and exhibiting signs of deteriorating mental condition. The intent is that these funds will be used to prevent further deterioration and thereby decrease the need for repeat hospitalizations. Each county will write a specific contract for services to the clients under its jurisdiction. For example, Multnomah County has been allocated $1.6 million to provide services for the approximately 150 clients identified as "high risk" by the above criteria.

V. CONCERNS CONTINUE

Concerns and questions continue despite passage of the new legislation. Some concerns are:

A. Should civil commitments be based on predicted, rather than actual, behavior? Does this new standard compromise the civil rights of the mentally ill?

B. Current public policy emphasizes "deinstitutionalization." Will the new civil commitment process actually channel funds away from community-based programs and back into institutions?

C. Under the new law, will admissions into mental health programs increase regardless of the availability of adequate funds for programs?

D. What will be the impact on public budgets of the expanded role of the court investigator and the addition of counsel?

E. When the mentally ill who are subject to civil commitment have "dual diagnoses" (e.g., mental illness and substance abuse), how will their disparate needs be met?

F. Will the changes mandated by the 1987 Legislature prevent the "turnstile" phenomenon in state hospitals?

G. How will funds be allocated between the potentially-dangerous and the immediately dangerous mentally ill?

H. Will potential testimony by physicians and staff regarding statements made by the allegedly mentally ill persons undermine the health professional/client relationship?

The intent of HB 2324 is to provide more humane care of chronically mentally ill persons who are again deteriorating. The success of such laws depends upon appropriate levels of funding.

Respectfully submitted,

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CITY CLUB
HUMAN SERVICES STANDING COMMITTEE
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