

MEMORANDUM

TO: Tom Freedman, Mary Smith
FROM: David Hochschild
RE: Civil Commitment
DATE: June 16, 1998

Deciding which criteria are necessary for a person to be involuntarily committed to a mental hospital is primarily a choice made by states rather than the federal government because most mental hospitals are run by states. The battle over how stringent the civil commitment standard should be has been fought between lawyers and psychiatrists for more than thirty years. In the 1970's, it seems that lawyers prevailed. The resulting standard, adhered to by most states, was that involuntary commitment could occur if patients met any of the following three criteria: (1) being suicidal, (2) posing a threat to others or (3) being in dire medical danger.

The main criticism of this rather restrictive set of criteria is that mentally ill people must wait until their condition deteriorates into a crisis before they can get help. However, these strict commitment laws came about as a result of widespread mistreatment of mental patients who were being warehoused in hospitals without adequate resources to treat them.

Today, the definition is being widened by a number of states intent upon finding a way to keep sex offenders confined in mental hospitals after they complete their prison terms. In 1997 the Supreme Court, in a 5-to-4 vote, approved a Kansas law that waters down the ordinary criteria for involuntary civil commitment to allow the detainment of sex criminals based on the standard of being mentally abnormal rather than mentally ill. For obvious reasons, this decision was disturbing to civil liberties advocates who protested the incapacitation of people based on what they might do, rather than what they have done. Five states - Arizona, California, Minnesota, Washington and Wisconsin - have similar laws to Kansas in this regard.

Justice Thomas, in the majority opinion upholding the Kansas law, conceded that successful treatments are not available for all mental illnesses but argued that it is not acceptable to release potentially dangerous patients from hospitals simply because they could not be treated for their afflictions.

In terms of how this ruling and the current state of civil commitment standards might apply to homeless mentally ill veterans, it seems that there is not yet a movement in the states to involuntarily commit mentally ill people who have no record of violent crime. Therefore, mass involuntary commitment of the 50% or so of homeless vets who suffer from mental illness would be unprecedented, at least in the last few decades. Furthermore, a study in the Yale Law and Policy review concluded that patients who seek psychiatric treatment voluntarily generally do much better than those who are sent to treatment by the state.

I'm still researching it and will let you know if I come up with anything else of interest.

Thanks.
I am interested