

Health Law Update

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Appellate Court Clarifies Jury Trial Requirement in Involuntary Commitment Cases

The Mental Health and Disabilities Code (405 ILCS 5/1-100, *et. seq.*) (the “Code”) governs the commitment and treatment of persons with mental illnesses and developmental disabilities in Illinois. The Code allows for the involuntary admission on an inpatient basis of an individual “with mental illness who because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or other in physical harm or in reasonable expectation of being physically harmed,” or “is unable to provide for his or her basic physical needs or guard against serious harm without assistance of family or others, unless treated on an inpatient basis.” 405 ILCS 5/1-119(1)-(2). The Code further allows for such admission where the individual with mental illness is refusing treatment or unable to understand his or her need for treatment and, unless treated on an inpatient basis, is reasonably expected to deteriorate to a point where he or she meets the above criteria. 405 ILCS 5/1-119(3).

Because the involuntary restraint of individuals for medical treatment involves substantial due process rights, the Code provides for a series of safeguards designed to standardize the procedure and prevent unnecessary or improper commitments. The safeguards include the patient’s right to a hearing within a specified time frame, and if requested, that the hearing be before a jury. 405 ILCS 5/3-611; 405 ILCS 5/3-802. Section 3-611 of the Code provides that a hearing must be held within five days after a petition for involuntary commitment is filed, excluding weekends and holidays. 405 ILCS 5/3-611. Section 3-800(b) allows continuances, but continuances requested by the state or issued by the court *sua sponte* are limited to 15 days. 405 ILCS 5/3-800(b).

In the recent case *In re James W.*, 2012 IL App. (5th) 100422, the Illinois Appellate Court, Fifth District, held that a 97-day delay in providing a jury hearing was prejudicial to the patient and violated Section 3-611 of the Code. *In re James W.*, 2012 IL App. (5th) 100422, ¶ 29. The case emphasizes the importance of following the statutory periods in matters of involuntary commitment.

The facts reveal that James W. had a long history of mental illness, having been admitted to mental health facilities numerous times beginning in 1986. *Id.* ¶ 2. He had been continuously admitted at the Chester Mental Health Center since December 2003, when he was transferred there from the Illinois Department of Corrections. *Id.* On April 29, 2010, a psychologist at Chester filed a petition for continued involuntary admission, alleging that the respondent suffered from schizophrenia and antisocial personality disorder. *Id.* ¶ 3. The petition further alleged that the respondent lacked awareness of his mental illness and had acted aggressively due to that illness. *Id.*

On May 5, 2010, the matter was called for hearing, during which the respondent requested an independent examination. *Id.* ¶ 4. The circuit court granted the request and moved the hearing to May 19th to allow an examination to take place. *Id.* At the May 19th hearing, the respondent’s attorney informed the circuit court, for the first time, that the respondent desired a hearing before a jury. *Id.* ¶ 5.

The circuit court advised the respondent that there were no juries for mental health available until August, and asked if the respondent understood. *Id.* The respondent replied, “Yeah, I’ll wait.” *Id.* The circuit court asked if the respondent understood that this meant he would remain at Chester until August, and the respondent indicated that he did understand, but then stated, “I ain’t going nowhere noway.” *Id.*

The case was set for a jury hearing on August 23, 2010, which was 97 days after the respondent had requested a jury hearing and 116 days after the petition had originally been filed. *Id.* ¶ 6. Following the hearing on August 23rd, the jury found the respondent was subject to involuntary admission, and the circuit court entered an order admitting the respondent to Chester for 180 days. *Id.*

The respondent appealed, arguing the circuit court failed to comply with the Code’s requirement of a timely hearing. *Id.* ¶¶ 6, 9. The State argued the 97-day delay did not exceed the applicable time, because the respondent had not requested a jury at his first court appearance. *Id.* ¶ 10. In other words, the jury request itself was untimely and therefore waived under the general requirements in the Code of Civil Procedure, and thus, the respondent was not prejudiced by any delay in a jury hearing. *Id.*

The appellate court disagreed, noting the Code of Civil Procedure’s general requirement regarding jury demands in civil trials (735 ILCS 5/2-1105(a)) does not apply in mental health cases. *Id.* ¶ 12 (citing *In Re Dryjanski*, 282 Ill. App. 3d 161, 164, 668 N.E.2d 616, 668 (2d Dist. 1996)). Further, the Code’s provisions entitling mental health respondents to a jury must be liberally construed in favor of granting jury requests. *Id.* ¶ 15 (citing *In Re M.A.*, 293 Ill. App. 3d 995, 999, 689 N.E.2d 138, 141 (1st Dist. 1997)). Thus, in this case, the court found that the respondent timely requested a jury. *Id.* ¶ 15.

The appellate court also held that, due to the lengthy delay, there was inherent prejudice to the patient. *Id.* ¶ 28. The court acknowledged that holding a hearing within 20 days of commitment poses practical problems for both the judicial system and mental health centers. *Id.* ¶ 20. However, while, some amount of delay was necessary to accommodate the respondent’s request for a jury, 97 days was too long. *Id.* ¶ 28. The prejudice to the respondent was self-evident, and there was nothing in the record to indicate the delay “was necessary to accommodate the request for a jury hearing.” *Id.* There was “no attempt” to comply with the statutory provisions. *Id.*

Nor was the appellate court persuaded by the fact that the respondent had agreed to the 97 day delay. He was faced with a “Hobson’s choice” between foregoing two important rights (i.e., the right to a jury or the right to a prompt hearing). *Id.* ¶ 29. Thus, the court found that the respondent did not knowingly and voluntarily agree to the 97-day delay. *Id.*

While the mistake in this case was made by the circuit court (i.e., failing to acknowledge and attempt to comply with the strict statutory periods set forth in the Code), it serves as a reminder to counsel as well. The Code sets forth procedural requirements that seek to ensure the patient’s due process rights are not violated, such as conducting an examination by a qualified professional within 24 hours of admission and preparing a recorded treatment plan within three days of admission. (See 405 ILCS 5/3-610; 405 ILCS 5/3-209). It is important to ensure that the professionals and staff in your clients’ organizations are informed of the internal procedures and the requirements of the Code. It can often be useful to have a single individual or team assigned to ensure compliance with the Code’s procedures. The facility should be able to demonstrate compliance, or, if compliance is not possible, specific and demonstrable reasons for lack of compliance.

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