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CCC 62-9740

17 MAR 1964

MEMORANDUM FOR: MS/PS

ATTENTION:

SUBJECT: Procedures for Commitment of the Mentally Ill in New York State

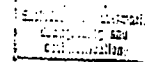
1. You have requested an explanation of the procedures available to the Agency for commitment of mentally ill persons in New York State. There are seven separate but related methods under the Mental Hygiene Law which could be used to commit individuals who are not in confinement on a criminal charge. Each method is discussed in turn.

2. Voluntary Admission. State Mental Hospitals or licensed private institutions for the care and treatment of the mentally ill may receive as a patient any person suitable for care and treatment, who voluntarily makes written application. If the person is under eighteen years of age, the written application shall be made by the parent, legal guardian or next-of-kin. Once a hospital or institution agrees to accept the application, the director of the hospital or institution has the discretion to detain the patient for a period not exceeding fifteen days and thereafter until ten days after receipt of notice in writing from the patient (or the person who made the application for admission of a minor) of his intention to leave. This procedure pursuant to section 71 of the Mental Hygiene Law does not require any court action, but there is the corresponding disadvantage for our purposes that it requires the cooperation of the individual to be committed.

3. Informal Admission. Section 71 also provides for another type of voluntary admission known as "informal admission." Under this method any person may be admitted as a mental patient after making an informal oral or written request. However, one admitted on this procedure is free to leave at any time.

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4. Admission or Commitment of a Person to a Hospital of
Mental Health, or to a Hospital of Community Mental Health Services, or
to a Hospital of Any Other Type. If either a county commissioner of health,
a health officer, a director of community mental health services, or
an attending physician duly designated by any of them is of the opinion
that any person is "dangerous to himself or others and . . . needs
immediate care because of mental illness," he may file a written
request for the commitment of that person. According to section 72
this request, which must be based on a personal examination, must be
filed with the director or physician in charge of a state hospital or
licensed private institution. Additional explanatory medical information
may also be filed at the time of the patient's reception.

5. Commitment under section 72 is a temporary one for sixty
days. However, during this period if the patient will not sign a request
to remain voluntarily, and if the director or physician in charge
recommends that the patient needs further treatment, it is the duty
of the one requesting the admission to cause the patient to be examined
by one or two examining physicians. The statute, section 2 (18)
defines "examining physician" as ". . . a reputable physician, duly
licensed to practice medicine in this state, who shall have been in
the actual practice of his profession for at least three years. . . ." It
is not necessary that he be a psychiatrist or that he have any par-
ticular training in mental disorders. If the patient is then found to be
mentally ill, he may be admitted under the procedures outlined in sections
73, 73a or 74 of the Mental Hygiene Law. These procedures are dis-
cussed hereinafter, but their basic feature is the requirement for court
certification of the patient's mental illness. Should the examining
physician determine that the patient is sane, the latter must be dis-
charged immediately.

6. This procedure allows commitment of an individual against
his will without a court order for up to sixty days. Furthermore,
objections on the part of the family are not alone sufficient to justify
a director of a hospital or institution in refusing to accept a patient
certified pursuant to this section. 1946, Op. Atty. Gen. 273. This

method is widely used and in practice is not strictly confined, in spite of the statutory wording, to patients who might really be dangerous. However, in order to make the commitment permanent there still must be a court certification.

7. Admission on the Certificate of One Physician. An examining physician (not necessarily a psychiatrist) may request the commitment of any person needing care and treatment; the certificate executed by the physician must be dated not more than ten days before the date of admission. In the discretion of the director of the hospital or the institution such person may be detained for a period of sixty days and thereafter until fifteen days after receipt of written notice of the patient's desire and intention to leave. If the director feels that further detention is necessary, he may apply for a court certification.

8. This procedure pursuant to section 73 has one advantage in that the cooperation of the family is not required. Furthermore, a health official does not have to initiate the action. However, it provides only for temporary confinement without the addition of a court certification order. Yet the most difficult aspect of this method is that the patient will not be admitted on the certificate of one physician if there is any objection by the patient or the incompetent's committee, if there is one.

9. Admission on the Certificate of Two Physicians. In the spring of 1960, Governor Nelson Rockefeller signed into law a bill permitting persons diagnosed by two doctors as mentally ill to be sent to State Mental Hospitals against their will for sixty days without a court order. As his reason for signing the bill, Governor Rockefeller declared that "admission to a mental hospital should be a medical matter just as . . . admission to a general hospital." However, some judges and practicing attorneys have attacked this new section 73a on the grounds that it will make it easier to "railroad" helpless aged persons into mental institutions.

10. This new admission procedure requires a petition by a close relative of the patient accompanied by the certificates of two properly qualified medical examiners, at least one of whom must be a psychiatrist. In addition a staff psychiatrist of the institution must also examine

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the patient at the time of the admission and concur with the two medical examiners. Written notice of the application must be given by the institution to the patient within three days of his admission unless the two certifying medical examiners state in writing that such notice would be ineffective or detrimental to the patient. A similar notice must be given to the patient's nearest relative excluding the petitioner; if there is no such relative known to the director of the institution, the notice must be sent to a public welfare officer in the town, city or county where the patient is committed. Those notices must also state the rights of the alleged mentally ill person under section 73a. (see paragraph 11).

11. The patient's hospitalization is limited to sixty days. If further hospitalization is required and there is no objection by the patient or anyone acting in his behalf, the patient must be re-admitted on or before the sixtieth day under one of the other existing admission procedures provided in the Mental Hygiene Law. Either "voluntary admission," "informal admission" or "admission on the certificate of one physician" must be used. However, if the patient is not suitable for admission under these section 71 and section 73 procedures, the director must apply for a court certification order. On the other hand, if the patient or anyone acting on his behalf gives written notice of his intention to leave and the director believes further care and treatment is required, there is no alternative to a request for a court order. Within ten days from the date of the patient's admission, or within five days from receipt of written notice, whichever is the longer period, the director must certify that further treatment is needed and apply for the order.

12. In practice, admission pursuant to section 73a is not as revolutionary as some have charged. Persons have been committed for sixty days against their will without a court order under section 72. At least section 73a requires the cooperation of one close relative who must petition for the admission. Furthermore, although section 72 was designed for persons who were considered "dangerous," it was pointed out above that this has been construed very broadly. Finally, there is one comparison with section 73 which should be noted. Under section 73 a person may not be admitted to an institution against his will; but if he does not object, he will be committed even if all his family

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are opposed. On the other hand, under the procedure of section 73a the objections of the patient are irrelevant during the initial sixty-day period, but at least one close relative must be in favor of his commitment and file a petition to that effect.

13. Admission on Court Certification. In order to make most of the previously discussed procedures for commitment permanent, it is necessary to obtain a court certification. If there is no reason to have the subject committed temporarily first, a court order may be sought directly under section 74. The judge may issue an order based upon a certificate made by two examining physicians, accompanied by a petition presented by "any person with whom an alleged mentally ill person may reside or at whose house he may be, or the father or mother, husband or wife, brother or sister, or the child of any such person, or the nearest relative or friend available, or the committee of such person, or an officer of any well-recognized charitable institution or agency or home, or any public welfare officer of the town, any town or city service officer or commissioner of public welfare, or director of community mental health services, of the city or county in which any such person may be." With such a broad group available to present the petition, courts have rejected those brought by a "neighbor" or a non-in-law when closer relatives were available.

14. Notice of the application of the court order must be served personally upon the subject at least one day before making such application. However, the judge has the discretion to dispense with this requirement if he feels notice would be ineffective or detrimental, and he must dispense with it if the examining physicians state in writing that personal service would in fact be detrimental. Nevertheless, if the petition was not made by the wife, husband, father, mother or nearest relative of the subject, notice must also be served on one of them, if such person is within the county. If such a relative cannot be found within the county, the notice must be served upon the person with whom the subject resides, or at whose home he may be. In their absence, the notice will be given to any friend. Only when no friend can be found will the attempt to serve this second notice (the first going to the subject himself) be dispensed with.

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15. Usually the court will issue an order at this point based on the papers filed. However, any relative or near friend of the alleged mentally ill person may demand a hearing before the judge, who will conduct the session without a jury. Not only may the judge hear the testimony, but he may also examine the subject himself. Furthermore, he may order a further hearing before rendering an opinion.

16. If an order for commitment is granted, it is the duty of the director of the hospital or institution to file copies of the petition, certificate of the examining physicians, the decision of the judge and the order of certification with the State Department of Mental Hygiene and the office of the clerk of the county in which the mentally ill person resides. The judge, however, will order all such papers so filed in the county clerk's office to be copied; they may be exhibited only to the parties to the proceedings, or someone properly interested, upon order of the court. On the other hand, if the order for commitment is refused and the subject is placed in the care and custody of a relative or committee, the latter must file these papers with the clerk of the county where such order is made and retain a certified copy. In this case the documents will not be placed under seal.

17. The order for commitment does not automatically become permanent. The person in charge of the institution to which the patient has been admitted is given another sixty days to determine whether further care and treatment are still needed. If he determines that they are, his findings will be filed in the office of the county clerk. At this point, the judge's order becomes final, and the patient must remain committed until he is discharged. This may occur at any time, and the director may even refuse to receive the patient if he disagrees with the judge that the patient is mentally ill. Such a conflict between the court and the hospital or institution is rare, however.

18. Emergency Admission on Incomplete Court Order. We have seen that under section 72 the statutory standard to be applied is whether the subject "is dangerous to himself or others." For the other procedures described above section 2(3) states the standard to be used by the physicians, psychiatrists, judges and directors of hospitals and institutions. It defines a "mentally ill person" as "any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, or of the community, he requires care and treatment." The statute provides a third standard in section 75 to be applied to maniacs and others who require immediate confinement.

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19. If it would be beneficial for an alleged mentally ill person to receive immediate care and treatment, or there is no other proper place available for his care and treatment, or if he is dangerous by virtue of his mental condition so as to render it necessary for public safety that he be immediately confined, there may be a brief emergency commitment. A certificate executed by two examining physicians and a petition filed as provided in the regular court certification of section 74 must be obtained first. However, no action by a judge is needed.

20. Commitment is good only for ten days. For further confinement a court certification order will be required unless the patient remains voluntarily or is admitted on the certificate of one physician pursuant to section 73.

21. The director in charge of the private institution or state hospital selected by the Commissioner of Mental Hygiene may exercise his discretion and refuse to accept anyone as a patient under this procedure. This does not mean that a maniac will be free to roam the streets, however. The Mental Hygiene Law did not abolish or curtail the common law power of summary arrest and detention without court process of a mentally ill person when it is necessary to prevent him from doing some immediate injury either to himself or to others. Therefore, in an emergency the subject will at least be locked in jail, if not committed to a hospital.

22. Review of Proceedings and Order of Certification. Within thirty days after the making of any final order for commitment, the patient, or any relative or friend in his behalf, may petition for a rehearing and review of the prior proceedings. Likewise a rehearing may be held in cases in which a judge refused to commit a mentally ill person still at large, who was proved to be dangerous to himself or others. If any of these petitions are made by one other than the subject himself or his father, mother, spouse, child or the person with whom he was living, the petitioner must post a bond for the payment of the costs of the rehearing. If the order is sustained, the bond is forfeited.

23. The judge who presides at the rehearing may not be the same one whose order is being contested. Furthermore, at this point the issue of the need for care and treatment is to be presented to a jury. However, it should be emphasized that these rights to review and to trial by jury do not arise until the order becomes final; i.e., until the director

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has, by filing appropriate papers, indicated his belief that commitment for an indefinite time is necessary. The nature of this rehearing is somewhat different than the original proceeding due to the presence of the jury. Medical proof and psychiatric testimony are not so controlling at the rehearing; the test applied by the lay jury is one of "apparent rationality" or "capacity to understand" normal transactions.

24. Obtaining Custody of the Mentally Ill. Before most of the commitment procedures described above can be initiated, there must be an examination of the individual. If he or his family reject requests to conduct an examination, section 81 of the Mental Hygiene Law provides public welfare, health and police officers with the authority to direct such examination. In cities or counties which do not have a psychopathic hospital or a psychopathic ward in a general hospital, the local health officer may direct the public welfare officer to make an application for a court certification order. The latter also has the duty to determine the mental condition of the individual in order to prepare the required certificate of mental illness. The statute does not state how this should be done; but since the public welfare officer has a legal duty, any attempt to prevent him from carrying it out could be defeated by an injunction or other appropriate court order.

25. In New York City or any other political subdivision in which there is a psychopathic hospital or a psychopathic ward in a general hospital it is easier to obtain the required examination. If the person with whom the alleged mentally ill person resides, a relative, any licensed physician, peace officer, health officer, or representative of an incorporated charitable society reports that the subject is apparently mentally ill, it is the duty of the director of the hospital to see that an examination is given. This duty on the director is absolutely mandatory. If he feels that the subject's family might obtain a writ of habeas corpus for the release of the person before the examination is given, he may take the person before a local magistrate who has statutory authority to direct the individual to go to a psychopathic hospital or ward. 1940, Op. Atty. Gen. 353.

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26. There are two other cases in which the help of local law enforcement officials may be secured. If any person, apparently mentally ill, is conducting himself in a disorderly manner, any peace officer may arrest him. It is the duty of the arresting officer to notify a health officer, who in turn will take one of the steps described above to determine the mental condition of the individual. In New York City and in Essex or Albany Counties, the proper health official would be the Director of Community Mental Health Services. Secondly, in New York City or Erie County only, if anyone informs a magistrate that a person is apparently mentally ill, the magistrate must issue a warrant directing a sheriff, marshal or policeman to arrest him and bring him before the court. If the magistrate agrees that the individual is apparently mentally ill, he will certify him to a hospital until the question of his sanity can be determined.

27. There should be no problem in retaining custody of the mentally ill. If commitment is made under sections 71 and 73, the subject's cooperation is a prerequisite anyway. For procedure under section 72 the statute authorizes the various health officials eligible to request the admission of an individual, to take such a person into custody themselves or to direct the local police officials to do so. If a court order is obtained under section 74, the judge may use the police to enforce the order if the mentally ill person or his family refuse to comply with it. Finally, if emergency admission is needed, the police authorities have a common law right to detain a person who is dangerous to himself and society.

28. Discharge of Patients. Commitment of the mentally ill hopefully will not be permanent. The statute in section 87 describes the standards which will be used in determining whether a patient shall be discharged. Directors of state hospitals may discharge a patient not involved in a criminal action who they believe either is recovered, is not mentally ill or is not recovered but whose discharge will not be detrimental to the public or to the patient. If the director is requested to discharge a patient and he refuses, the issue may be brought to court where the judge may direct the discharge.

29. Directors of licensed private institutions may also discharge patients at their discretion. If a patient is recovered or if not recovered

his discharge would not be detrimental to the public or himself, he may be discharged. However, the procedure is different if the director, with the approval of the Commissioner of Mental Hygiene, refuses to discharge a patient upon request. If the committee or family of the patient wish to contest this decision, they may not take the issue directly to court. However, the committee or family can refuse to provide for the patient. In such a situation the director is likely to apply for the transfer of the patient to a state hospital. As described above (paragraph 27), a refusal to discharge one from a state hospital is reviewable in court. Finally, if the Commissioner does not agree with the director's refusal to discharge a patient, he may overrule him and order the release of the patient.

30. Treatment of Aliens and Nonresidents. The procedures for the commitment of mentally ill persons do not apply only to residents of New York State. Any person within the jurisdiction of its courts may be admitted to the state hospitals or private institutions. However, it is the duty of the Commissioner of Mental Hygiene to arrange for the removal of nonresidents to their states of residence and for the deportation of aliens who have been committed.

31. Conclusion. The procedures outlined above must be followed precisely. All of the petitions, certifications, notices, orders, etc., required under the statute must be filed on prescribed forms, which can be found in Bender's Forms for Mental Hygiene Law. Courts are very careful to protect the rights of those alleged to be mentally ill, and a commitment attempt may fail if there is a deviation from the statutory requirements. Furthermore, compliance with the statute is a valid defense in a possible civil suit for false imprisonment.

32. In the most difficult case in which the mentally ill person and all his relatives and friends object to the attempt to commit him, there is no alternative to seeking a court certification order. If the Agency desires him to be committed temporarily first, the cooperation of a health officer should be secured. By proceeding under section 72, the latter could arrange for a commitment for sixty days before the hearing for a court order.

[]
Office of General Counsel

O&I - Addressee

1 - Subj *W. J. S. C. R. Madison, Wisconsin*

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