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Civil Rights of the Mentally Ill in Ohio

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THE RELATIVELY MODERN CONCEPT of "mental illness" as opposed to "insanity" faces difficult problems, which for historical and legal reasons are not easily solved. One reason is the entirely different attitude the public has taken toward mental illness as compared with other types of illness. Another is the apparently prevalent fear of "railroading," and the legal safeguards thus raised against it, although, on occasion, they have done more harm than good. Still another difficulty presented is the tendency to confuse mental illness with incompetency, with the result that commitment to a mental hospital may unjustly take away the patient's civil rights.[1]

Mental illness is principally a medical problem, but there are basic legal considerations to be observed, and these considerations should not be impatiently brushed aside as "mere technicalities" of legal procedure. On the other hand, legal provisions relating to hospitalization of mental patients should be viewed by legislators, lawyers, and judicial officials as mechanism for prompt and effective care and treatment, for safeguarding civil rights, and for protecting the community. All these aspects are important and undue concern for one aspect should not work to the detriment of the others. Moreover, in actual practice, no legal provision should defeat the purpose for which it was intended.

Amended Substitute Housebill No. 529 has provided Ohio with some greatly needed changes.[2]

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1 Deutsch, The Mentally Ill in America (1949).

2 Birth of Ohio's new mental care law began in August, 1960, when stories in Cleveland newspapers revealed the often vicious injustices under the old statute.

These stories drew the interest of state legislators, who conferred with local judges, medical men and newspapermen. The looseness of the law which allowed these injustices were brought forth in two successive cases. A west-side Cleveland woman in August, 1960, was "framed" into a mental hospital over a neighborhood squabble. Three days later a Garfield Heights man was freed from mental confinement, as perfectly normal, but the victim of a dispute with his estranged wife.

The looseness of the law did not require provisions to check the complaint or to punish the offender adequately.

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This Housebill was enacted for the following reasons. (1) to provide more modern, humane, effective procedures for the total care and treatment of persons presumed to be mentally ill; (2) to provide for maximum opportunity for prompt care and treatment; (3) to provide for protection against emotionally harmful experiences; (4) to provide for protection against unwarranted confinement; (5) to bring Ohio's hospitalization and patient right laws into conformity with modern and approved methods.

For the past few years leading Ohio authorities in the field of mental health had been quite vocal in their criticism of the Ohio Statutes in making commitment and automatic adjudication of incompetence.[3] Section 5123.50 of the Ohio Revised Code was that section which governed the discharge from the hospital and its relation to the restoration of competency. When the patient was discharged as recovered, this operated as a restoration to competency. When discharged as improved, however, it did not operate as such.

It was the opinion of these authorities that the only way the existing situation could be limited and controlled was by completely separating the issues of hospitalization and competency.

Thus the Ohio legislature in revising the pertinent code sections repealed Section 5123.50.

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The victim had no prompt defense against such unwarranted action. Furthermore, the law kept a black mark of "mental commitment" against his name even though he was found innocent.

As the facts became known, public opinion gathered force. The Civil Liberties Union vigorously joined the battle against wrongful detention. So too did the Cleveland Mental Health Association.

Probate judges received previous requests, which had been largely ignored, for more personnel to investigate questionable affidavits. Cleveland medical men, led by an eminent psychiatrist, Dr. Victor M. Victoroff, set up a prestige-laden committee to attempt to work with leading legislators from all over the state. Drafting of the bill was started near the end of the summer.

Housebill 529 was introduced early in the session. About two weeks later a similar measure, Housebill 1002, was introduced. It was decided, as a matter of convenience, to unite the two into a single bill and put all the mental health corrections into the original bill 529.

The primary question was whether to change the legislation a little at a time or go all out for sweeping revisions. After numerous meetings the legislators decided on the all out change.

Amid rumors of early adjournment the bill was rushed through on a 130-to-2 House vote and sent to the Senate. In the Senate it was passed in a 30-to-0 victory.—Cleveland Plain Dealer, October 23, 1961.

[3] Crawfis, Civil Rights and Mental Hospital Administration, 9 Clev.-Mar. L. R. 417, 423 (1960).

The revisions provided by Housebill No. 529 have tended to make the determination of competency a legal problem not to be determined by medical staffs. It has also divorced competency from the issues of hospitalization and discharge.

> "Incompetent" as used in Section 2111.01 (as used in Chapters 2101. to 2131., inclusive, of the Revised Code) means any person who by reason of advanced age, improvidence, or mental or physical disability or infirmity, *chronic alcoholism, mental deficiency, lunacy, or mental illness,* is incapable of taking proper care of himself or his property or fails to provide for his family or for other persons for whom he is charged by law to provide, *or any person confined to a penal institution within this State, or any person indeterminately hospitalized pursuant to Section 5122.36 of the Revised Code.*

To avoid the probability of injustices in the area of commitment, Section 5122.11 was enacted. It reads:

> Sec. 5122.11. Proceedings for the hospitalization of an individual, pursuant to sections 5122.11 to 5122.15, inclusive, of the Revised Code shall be commenced by the filing of an affidavit, in the manner and form prescribed by the division of mental hygiene, with the probate court, either on information or actual knowledge, whichever is determined to be proper by the court, by any person or persons. Any such application may be accompanied, or the probate court may require that such application be accompanied, by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized, or a written statement by the applicant, under oath, that the individual has refused to submit to an examination by a licensed physician. Upon receipt of the affidavit the probate court may, where it has reason to believe that the individual named in the affidavit is likely to injure himself or others if allowed to remain at liberty, or needs immediate hospital treatment, order any health or police officer or sheriff to transport such individual to a hospital or other facility.

Section 5122.15[4] provides that the individual named in the affidavit filed under section 5122.11 of the Revised Code, the

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[4] Probate Judge Frank J. Merrick, presiding judge of the Probate Court, Cuyahoga County, criticized the treatment of mental patients, charging, "for too long we've treated them like criminals."

"This is a problem that is 90% medical and 10% legal," he said. "And it is growing less legal and more medical all the time.

"If someone has an infectious or contagious disease whether he wants to go or not, he is taken to a hospital for treatment when necessary.

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applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The hearing shall be conducted without a jury, in as informal a manner as may be consistent with orderly procedure, by a probate judge. The court will receive all relevant and material evidence which might be offered. This section also allows the individual named in the affidavit a right to secure counsel.

If, on completion of the hearing, the court finds the individual is not mentally ill, it shall order his discharge.

If, upon completion of the hearing, the court finds probable cause to believe the individual mentally ill and in need of treatment, the court may order, for a period not in excess of ninety days:

(a) Such individual to a public hospital;

(b) such individual to a private hospital;

(c) such individual to the veterans' administration or other agency of the United States government;

(d) such individual to a community mental hygiene or health clinic;

(e) such individual to receive private psychiatric care and treatment.

Complementing Section 5122.15 is section 5123.37(F), which among other items provides for the appointment of competent social workers or other investigators to be appointed by the probate court. Again 5123.37(G) allows the probate court to appoint an attorney for an indigent, allegedly mentally ill person pursuant to Sec. 5122.15. When such adjudged individuals are before the court all filing and recording fees shall be waived.

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"Mental problems could be considered in the same light. I see no difference in the threat posed to society whether it be caused by disease of the body or one of the mind.

"Yet, we have had to have a court order to commit someone to a mental institution and forever afterward they were the stigma."

Judge Merrick said these problems should be handled primarily in the hospitals, with the courts having only a "right of review." He said great strides have been made, especially in the new commitment bill (Housebill No. 529). He mentioned the way families have responded to the idea of placing patients into hospitals having to be branded through a commitment —calling it highly encouraging.

"There is a much greater area of cooperation now, when the families are aware that treatment doesn't have to start with the stigma of a commitment," Merrick said.—Cleveland Press, November 16, 1961.

Relative to the patients' rights while confined within the hospital, it would appear that the general policy regarding such matters as correspondence, visiting rights, and use of the telephone, have been satisfactorily administered.

Section 5123.03, governing the correspondence policy, states that patients may freely correspond with their relatives, friends, physicians, and regular legal advisors, and that they may also receive visits from them except when that is termed inadvisable by the superintendent. This section also allows the patient's personal or family physician to be admitted at all times.

Ohio statutes do not provide for restraints. This is due largely to the more modern treatment methods, the most prominent being the tranquilizing drugs.

Section 5123.03 also sets forth the procedure governing operations. "Before proceeding with any major operation which in the judgment of the head of a hospital is advisable or necessary, he should notify the patient and the patient's personal or family physician and the spouse, parent, guardian, or one of the next of kin residing in Ohio if such information is shown by the records on file with the head of the hospital. In cases of grave emergency where the medical staff feels that surgical or other intervention is necessary to prevent serious consequences or death, authority is hereby given to proceed with such measure."

Among the rights which the patient loses are those of the right to buy, sell, or hold property, the right to make contracts, to vote, to hold office, to marry or divorce. Sections 5123.57 and 5125.32 spell out the restrictions of these rights.

One of the most inquired-about civil rights is that involving the question of drivers' licenses. Section 4507.161 allows the former patient, released from the long-term hospital, to assert his driving privileges. It reads: "If the adjudication of competency is pursuant to Section 5122.36 of the Revised Code, the registrar of motor vehicles shall return such license to such person upon receipt of a written statement by the head of the hospital or such agency having custody of such person that such person's mental illness is not an impairment to such person's ability to operate a motor vehicle."

Most inquiries relating to the release of information concerning patients come from physicians, insurance companies and other social agencies. A waiver form signed by the patient is required for the hospital files. It is estimated that better than 50% of the mental patients are voluntary admissions, and there-

District Hospital Map

Ohio has 11 large district hospitals for the care and treatment of the mentally ill. This map shows the location of each and the counties each serves.

In addition to these district hospitals Ohio's mental hygiene program has two state-wide institutions, Lima State Hospital, for the criminally insane, and Mount Vernon State Hospital, for the tuberculosis mentally ill; three institutions for the mentally retarded, Columbus State School, Orient State Institute and Gallipolis State Institute; eight receiving hospitals and one receiving unit for the intensive treatment of the mentally ill, and 26 mental hygiene clinics and guidance centers for the prevention of mental illness.

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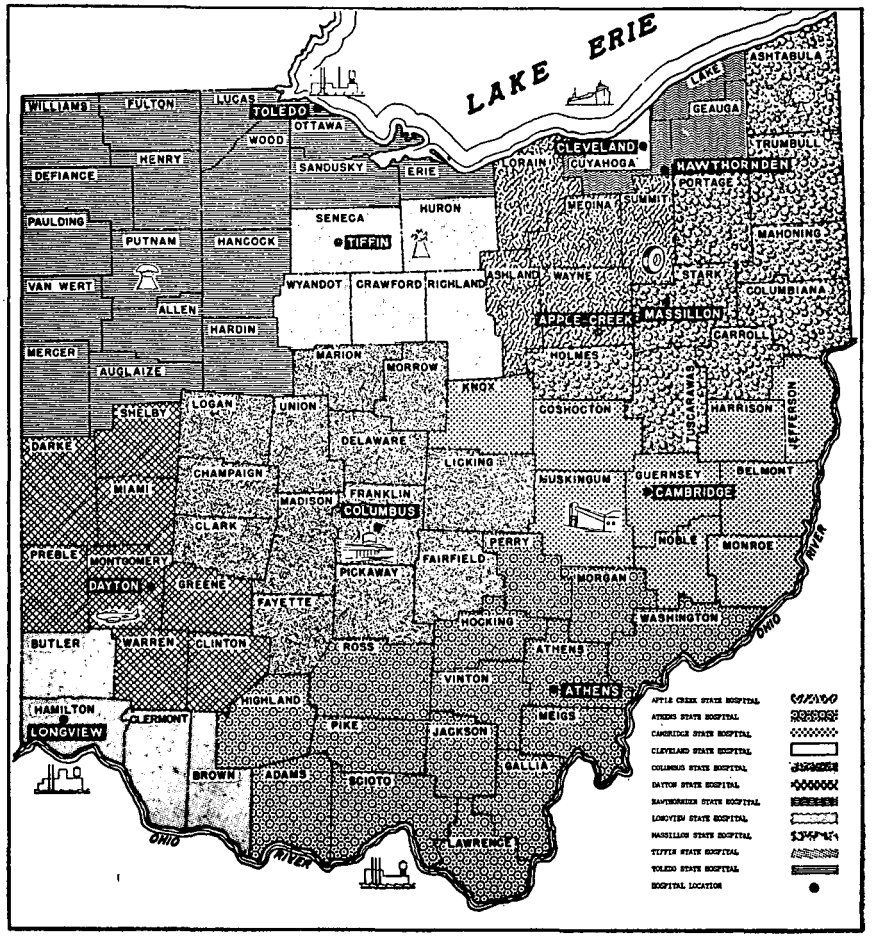

fore the "release" signed by them protects the hospital from breaching of privilege. In the case of the committed patients, the information filed in the probate court is of public record so that the hospital is again protected. However, as a rule, only a minimum of information is released in these cases. If the inquiry is made by another hospital or professional person, complete information will be given.