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The Commitment Procedure In Maryland: Last Stop For The Elderly?

by Anthony J. Agnone

For some time one of the most abused methods of dealing with the mental impairment of many of our elderly citizens in this state had been the use of the commitment procedure. Instead of using the commitment procedure as a last resort in protecting the aged person, it had become a "stop gap" measure for removing from the mainstream of society those elderly citizens who were suffering from an impairment of mental functioning.

There are two ways in which the state can protect the elderly person who needs to be institutionalized—these are through voluntary and emergency commitment procedures.

VOLUNTARY COMMITMENT

Most mental health statutes provide a procedure whereby an individual can commit himself voluntarily on the advice of his family and family physician. The legal issue involved in this situation is whether, taking into consideration his mental condition, the report of his family, and the report of his physician, the consent given by the elderly person is valid. Maryland has gone beyond this point, however. Effective this past July, a person over sixty-five (65) years of age or older may not be voluntarily admitted to a mental health facility unless his admission is recommended by a geriatric evaluation unit. Article 59 §11 (b) of the Maryland Annotated Code provides that "the elderly person may not be admitted unless his condition is such that he is able to understand the nature of his request for admission, is able to request his release, and is capable of giving continuous assent to his retention by the facility." Should the voluntarily committed elderly person decide to revoke his assent to this commitment, Maryland law dictates that the

institution must proceed to satisfy all of the *involuntary* commitment requirements of Article 59 § 12 in order for the health facility to retain custody of the elderly person.

INVOLUNTARY COMMITMENT

Because the involuntary civil commitment statute permits an exercise of the state's police power which deprives the elderly person of his liberty by compelling him to accept confinement and psychiatric treatment, serious social and constitutional questions are raised.

In order to preserve social justice and avoid constitutional due process infirmities, Maryland's involuntary commitment act sets out carefully particularized commitment procedures. These procedures are contained in two sections of Article 59: §12 (involuntary admissions) and §22 (emergency admissions). It is to emergency admissions that the courts and all parties involved should accord the most careful procedural consideration, lest elderly persons be committed unfairly or unnecessarily.

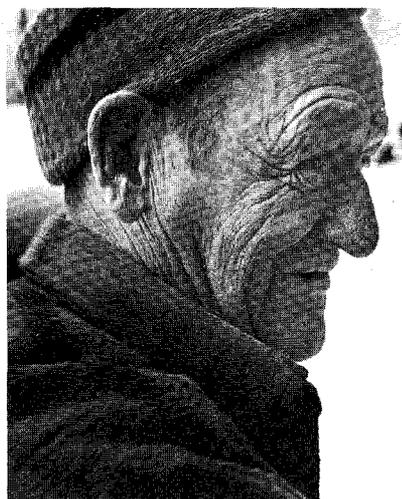


photo by John Clark Mayden

All fifty states as well as the District of Columbia have statutes of this nature. Although the existence of mental illness or disorder is universally required to justify hospitalization, most statutes have only a vague definition of what is "mental illness". Our own state takes an enlightened view. In defining "mental disorder" the legislature attempts to be as specific as it possibly can in an effort to protect our elderly community. The statute defines "mental disorder" in the following manner:

"Mental disorder means the behavioral and other symptoms which to a lay petitioner initiating the emergency admission process indicates a clear disturbance in the mental functioning of another person, and to a physician conducting an examination indicates one or more of the mental disorders described in the 'Diagnostic and Statistical Manual—Mental Disorders' published periodically by the American Psychiatric Association."

Even with a detailed definition of "mental disorder" and the safeguards provided by the statute, the problem of avoiding the unnecessary detention of elderly people still remains. What are these bizarre traits and habits that the aged person must manifest as a requisite for detainment? Once this judgment is made, how can attorneys insure that the elderly person receives the rights to which he is entitled?

The attorney's role in the commitment procedure is: first, to insure that the health facility strictly adheres to the emergency admission statute; second, that the initiation procedure is carried out correctly; and third, that the patient is given notice informing him of his rights under the commitment statute.

Under Maryland's involuntary emergency commitment statute, only a police officer with the rank of sergeant or higher or a duly licensed physician may initiate the procedure. No later than six (6) hours after the elderly person has been taken into custody, he must be examined, released from custody or certified by a physician to have symptoms of a "mental disorder" which give the appearance of clear and imminent danger to himself or others. While this procedure transpires,

the physician, police officer or staff member connected with the procedure must contact the nearest relative and/or interested party as well as the elderly person's attorney to explain the whereabouts of the person and his present and potential status.

Within twenty-four (24) hours from the time the elderly person has been placed in custody, he is entitled to a hearing before a Maryland District or Circuit Court Judge. Although the statute does not require the elderly person's presence at the hearing, his presence is usually beneficial to his cause, and his attorney should insist that he attend the hearing, unless his behavior is likely to be violent or disruptive. His presence has a two-fold purpose: first, the aged person knows his interests are being protected and second, the judge has the opportunity to speak to him and observe his demeanor.

On the basis of all the pertinent data, the court makes a determination of the

existence of probable cause to detain the senior citizen for an additional period of ninety-six (96) hours. At the end of this period, the emergency detention terminates. On the other hand, if the court finds for some reason that further action should not be taken under the petition, the elderly person will be released from custody immediately.

Should the elderly person be committed, his attorney must at this point insist that the facility comply with the patient's "right to treatment." Recently, the Supreme Court of the United States, as well as our Maryland courts, have insisted that elderly people committed to these health facilities can not be "warehoused" indefinitely. It is also the attorney's duty to insure that his elderly client is not "warehoused," by asking for a review of his client's status.

The Maryland Legislature has done its part in creating statutes that protect the elderly person from commitment without

justifiable cause. It is now the duty of attorneys to see that these statutes are followed so that the commitment procedure does not become a last stop for the elderly.



Student Bar Association

The Student Bar Association of the University of Baltimore School of Law has been honored nationally by being named, for the second year in a row, the "Most Outstanding Student Bar Association" among law schools of its size in the country.

The awarding organization, the Law Student Division of the American Bar Association, selected University of Baltimore's SBA from a field of competing SBA's representing American law schools with enrollments of over 1,000.

The top SBA award, however, was but one of three prizes received by the downtown Baltimore law school at last August's American Bar Association convention in Chicago. Also honored was the 1977 "Law Day, U.S.A." program produced by U of B law students, and *The FORUM* Law Journal, a student-published legal magazine.

University of Baltimore's SBA, which includes as members all day and evening students at the state-supported law school, was dubbed "Most Outstanding" on the basis of a 185-page summary of the student organization's activities during the 1976-1977 academic year. The voluminous document, prepared last summer by incoming and outgoing SBA officers, highlights such accomplishments as student monitoring of the law school's unique open exam system, a weekly speakers program offering lunchtime presentations of legal interest, a week-long student-run orientation program for entering law students, the publication of a "Law Students Newsletter," and an annual dinner-dance attended by law students and faculty.

Traveling to Chicago to receive the awards were Gary Crawford, president of the Student Bar Association, and John

Currier, president of the Evening Student Bar Association.

Commenting on the award, Crawford said, "We certainly were surprised that we would be given this award two years in a row. Such action, I think, is unprecedented in Law Student Division history." As a reason, he offered, "We found that many SBA's do relatively little for their students."

To illustrate, Crawford pointed to U of B's student-run week-long orientation program for entering law students. "All that many law schools do for orientation is hold a two-hour session with their deans where you learn how to brief a case."

U of B's televised "Law Day, U.S.A." program, which was produced by students in conjunction with the Bar Association of Baltimore City, captured the first-place award for "Law Day, U.S.A." programs in the ABA's third circuit region, besting all competing law schools of any size in Maryland, Pennsylvania, New Jersey, and Delaware. This is the fourth consecutive year that U of B's program has received that award.

The half-hour program, which was broadcast last April on WBAL-TV, was