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Pennsylvania Standard For Involuntary Civil Commitment Of The Mentally Ill: A Clear And Present Danger?

INTRODUCTION

The standard currently used in Pennsylvania to determine whether a mentally ill individual should be involuntarily committed to treatment was enacted in 1976. This standard, along with procedures to initiate and continue commitment, was enacted to replace a law that had been passed only ten years before, but which had been found constitutionally deficient. This comment

1. The Mental Health Procedures Act, Pa. Stat. Ann. tit. 50 §§ 7101-7503 (Purdon Supp. 1988), does not contain a definition of mental illness. However, the Act does exclude mental retardation, senility, alcoholism, and drug addiction from the term mental illness, unless these conditions are accompanied by another condition considered a mental illness. Id. at § 7102.


[A]ny mental illness, mental impairment, mental retardation, or mental deficiency, which so lessens the capacity of a person to use his customary self-control, judgment and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under care as provided in this act. It shall include conditions and terms heretofore defined as ‘insanity,’ ‘unsoundness of mind,’ ‘lunacy,’ ‘mental disease,’ ‘mental disorder,’ ‘feeble-minded,’ ‘moron,’ ‘idiot’ and ‘imbecile.’ This term shall not include senility, unless mental illness or mental retardation is superimposed.


2. This comment concerns only involuntary commitment and does not address the issue of voluntary commitment which is governed under Pa. Stat. Ann. tit. 50 §§ 7201-7206 (Purdon Supp. 1988).


7. Goldy v. Beal, 429 F. Supp. 640 (M.D. Pa. 1976). In Goldy, the plaintiff, an involuntarily committed resident of a state hospital, brought a class action alleging that the Pennsylvania standards for involuntary commitment violated the civil rights of such persons. Id. at 642. The court ruled that the Pennsylvania standard was unconstitutionally vague and
will focus on the current standard for involuntary civil commitment,\textsuperscript{8} how the Pennsylvania courts have applied this standard,\textsuperscript{9} the problems posed by such a standard,\textsuperscript{10} and whether the standard should be changed.\textsuperscript{11}

THE STATUTORY STANDARD FOR INVOLUNTARY CIVIL COMMITMENT

The Pennsylvania Mental Health Procedures Act was passed by the legislature on July 9, 1976, and went into effect sixty days later.\textsuperscript{12} This Act sets forth a standard for determining which mentally ill persons are subject to involuntary civil commitment,\textsuperscript{13} and also sets forth procedures for the involuntary civil commitment of these persons.\textsuperscript{14} The statute defines those persons subject to civil commitment as individuals who are severely mentally disabled and in need of immediate treatment.\textsuperscript{15} A severe mental disability is present, according to the statute, when mental illness diminishes the individual’s self-control, judgment and discretion in the areas of caring for her affairs, conducting social relationships or satisfying personal needs to such an extent that she poses a “clear and present danger of harm to others or himself.”\textsuperscript{16}

The legislature did not leave the term “clear and present danger” open to broad judicial interpretation; instead, it established

\begin{itemize}
  \item \textsuperscript{8} The scope of this comment includes only civil commitments and does not address the issue of mentally ill persons charged and/or convicted of crimes.
  \item \textsuperscript{9} This comment will provide only a representative sample of cases. See infra notes 71 to 160 and accompanying text.
  \item \textsuperscript{10} See infra notes 161 through 175 and accompanying text.
  \item \textsuperscript{11} See infra notes 176 to 193 and accompanying text.
  \item \textsuperscript{12} PA. STAT. ANN. tit. 50 §§ 7301-7503 (Purdon Supp. 1988).
  \item \textsuperscript{13} Id. at § 7301.
  \item \textsuperscript{14} Id. at §§ 7302-7305.
  \item \textsuperscript{15} Id. at § 7301(a). The statute states, in pertinent part: “Whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment.” Id.
  \item \textsuperscript{16} Id. The statute reads, in part:
    \begin{quote}
      A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself.
    \end{quote}
\end{itemize}
criteria that must be met to determine that the individual poses a clear and present danger to herself or others. A clear and present danger to others is shown if it is proven that the individual has, within the past thirty days, attempted to inflict, or has inflicted, serious bodily harm on another person, and that there exists a reasonable probability that she will do so again. Although it must be shown that harm was inflicted or attempted, threats or acts are not explicitly required to make such a showing; however, they may be used as proof.

To determine if an individual poses a clear and present danger to herself, the statute looks for objective evidence of harmful behavior which the individual has directed toward herself. Thus, it must be established that the individual: 1) is unable to provide for basic personal needs, such as food, shelter, medical care, or to provide for her personal safety, and that it is reasonably probable that, within thirty days, this inability will result in death, serious bodily injury, or physical debilitation; 2) the individual has at-

17. Id. at § 7301(b).
18. Id. at § 7301(b)(1). The section reads: "Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated." Id.
19. Id. In pertinent part, the statute states: "For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm." Id. (emphasis added).
20. Id. at § 7301(b)(2). This section reads as follows:
   (2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:
   (i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or
   (ii) the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide; or
   (iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.
21. Id. at § 7301(b)(2)(i).
tempted suicide and it is reasonably probable that she will commit suicide unless treated; 2 or 3) the individual has substantially mutilated herself, or has attempted substantial self-mutilation, and it is reasonably probable that mutilation will occur without treatment.

PROCEDURE FOR COMMITMENT

The statute employs the aforementioned standard in its procedures for civil commitment. These procedures are set forth in a series of steps that must be taken to commit an individual for a specified period of time. Although this comment is primarily concerned with the standard for involuntary commitment, rather than the procedures for such commitment, an understanding of the procedures will be helpful in assessing the problems involved in applying the standard and in determining the possible need for a change in the standard.

First, the statute provides for emergency examination and treatment for a period not to exceed 120 hours (5 days). An emergency examination may be authorized under the following conditions: 1) physician certification that such an examination is necessary, or 2) personal observation of the individual by a physician, police officer or mental health authority that constitutes reasonable grounds to believe the individual is ill and in need of treatment.

22. Id. at § 7301(b)(2)(ii). For purposes of this section, suicide threats or steps taken to commit suicide are sufficient to establish an attempted suicide. Id.

23. Id. at § 7301(b)(2)(iii). For purposes of this section, threats of mutilation are sufficient to establish the behavior necessary for commitment. Id.

24. Id. at §§ 7302-7305.

25. Id.

26. Id. at § 7203.

27. Id. at § 7302(a)(1). This section states, in pertinent part:

Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant.

28. Id. at § 7302(a)(2), which states in part:

Upon personal observation of the conduct of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment, and physician or peace officer, or anyone authorized by the county administrator may take such person to an approved facility for an emergency examination. Upon arrival, he shall make a written statement setting forth the grounds for believing the person to be in need of such examination.

Id.
An individual taken to a mental health facility for an examination pursuant to these provisions must be examined within two hours to determine whether she meets the clear and present danger standard. If the individual is found to meet the standard, treatment may begin immediately and can continue for up to 120 hours. The mentally ill individual has the right to be informed of the reason for the examination and to communicate with others, including the right to use the telephone.

If the individual needs additional treatment and will not consent to such treatment, an application for extended involuntary treatment may be filed by the staff of the mental health facility with the court of common pleas. Within twenty-four hours of the filing

29. *Id.* at § 7302(b). This section states:
A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 7301 and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application.

30. *Id.* at § 7302(d). This part of the statute reads as follows:
A person who is in treatment pursuant to this section shall be discharged whenever it is determined that he no longer is in need of treatment and in any event within 120 hours, unless within such period:
(1) he is admitted to voluntary treatment pursuant to section 7202 of this act; or
(2) a certification for extended involuntary emergency treatment is filed pursuant to section 7303 of this act.

31. *Id.* at § 7302(c). Section 7302(c) provides:
Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall be requested to furnish the names of parties whom he may want notified of his custody and kept informed of his status.
The county administrator or the director of the facility shall:
(1) give notice to such parties of the whereabouts and status of the person, how and when he may be contacted and visited, and how they may obtain information concerning him while he is in inpatient treatment; and
(2) take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure.

32. *Id.* at § 7303(a). This section states:
Application for extended involuntary emergency treatment may be made for any person who is being treated pursuant to section 7302 whenever the facility determines
of such an application, a judge or a mental health review officer must conduct an informal hearing. The individual has a right to counsel at this hearing and counsel must be appointed by the court, unless the individual desires and can afford private representation.

At the informal hearing, the judge or mental health review officer must inform the individual of the nature of the proceedings. The judge or review officer must then consider evidence concerning whether the individual meets the clear and present danger standard, and in particular, must review the necessity for continued involuntary treatment. The reasons for continued involuntary treatment must be given, in lay terms, by a physician who has ex-

that the need for emergency treatment is likely to extend beyond 120 hours. The application shall be filed forthwith in the court of common pleas, and shall state the grounds on which extended emergency treatment is believed to be necessary. The application shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person.

Id.

33. Id. at § 7303(b). A mental health review officer is defined in the Act as an individual authorized by the court to conduct proceedings. Id. at § 7109(a). The qualifications of mental health review officers are defined in the Act. Such an individual "shall be members of the bar of the Supreme Court of Pennsylvania, without restriction as to the county of their residence and where possible should be familiar with the field of mental health. Law-trained municipal court judges may be appointed mental health review officers." Id.

34. Id. at § 7303(b), which reads:
Upon receiving such application, the court of common pleas shall appoint an attorney who shall represent the person unless it shall appear that the person can afford, and desires to have, private representation. Within 24 hours after the application is filed, an informal hearing shall be conducted by a judge or by a mental health review officer and, if practicable, shall be held at the facility.

Id.

35. Id.

36. Id. at § 7303(c). Section 7303(c) reads:
(c) INFORMAL CONFERENCE ON EXTENDED EMERGENCY TREATMENT APPLICATION. — (1) At the commencement of the informal conference, the judge or the mental health review officer shall inform the person of the nature of the proceedings. Information relevant to whether the person is severely mentally disabled and in need of treatment shall be reviewed, including the reasons that continued involuntary treatment is considered necessary. Such explanation shall be made by a physician who examined the person and shall be in terms understandable to a layman. The judge or mental health review officer may review any relevant information even if it would be normally excluded under rules of evidence if he believes that such information is reliable. The person or his representative shall have the right to ask questions of the physician and of any other witnesses and to present any relevant information. At the conclusion of the review, if the judge or the review officer finds that the person is severely mentally disabled and in need of continued involuntary treatment, he shall so certify. Otherwise, he shall direct that the facility director or his designee discharge the person.

Id.

37. Id.
amined the individual.38

In reviewing the evidence, including the physician’s recommendations, the judge or mental health review officer is not bound by strict rules of evidence, and may review any evidence she finds reliable.39 The due process rights of the individual are protected by allowing the individual or counsel to examine the doctor and any other witnesses, and to present any other relevant evidence.40

If after reviewing all of the relevant evidence the judge or mental health review officer finds that the individual meets the clear and present danger standard, she must file a certification in writing that includes, inter alia, findings regarding the necessity for continued treatment; an explanation of the appropriateness and adequacy of the treatment; a description of the treatment; and an explanation of the individual’s right to petition for release and the right to counsel.41 A copy of this certification must be served on counsel and other designated persons.42 The duration of additional treatment under this certification is a maximum of twenty days, with the proviso that the individual will be discharged from treatment if she is no longer severely mentally disabled and in need of treatment before the twenty day period expires.43 If the certifica-

38. Id.
39. Id.
40. Id.
41. Id. at § 7303(d). This provision reads:
(d) CONTENTS OF CERTIFICATION. — A certificate for extended involuntary treatment shall be made in writing upon a form adopted by the department and shall include:
(1) findings by the judge or mental health review officer as to the reasons that extended involuntary emergency treatment is necessary;
(2) a description of the treatment to be provided together with an explanation of the adequacy and appropriateness of such treatment, based upon the information received at the hearing;
(3) any documents required by the provisions of section 7302;
(4) the application as filed pursuant to section 7303(a);
(5) a statement that the person is represented by counsel; and
(6) an explanation of the effect of the certification, the person’s right to petition the court for release under subsection (g), and the continuing right to be represented by counsel.

Id.

42. Id. at § 7303(e), which reads: “The certification shall be filed with the director of the facility and a copy served on the person, such other parties as the person requested to be notified pursuant to section 7302(c), and on counsel.” Id.

43. Id. at § 7303(f) and (h). Section 7303(f) provides: “Upon the filing and service of a certification for extended involuntary emergency treatment, the person may be given treatment in an approved facility for a period not to exceed 20 days.” Id. Section 7303(h) states:
(h) DURATION OF EXTENDED INVOLUNTARY EMERGENCY TREATMENT. — Whenever a person is no longer severely mentally disabled or in need of immediate treatment and, in any event, within 20 days after the filing of the certification, he shall be discharged,
tion is made by a mental health review officer, rather than a judge, the individual has the right to have it reviewed by the court of common pleas.\textsuperscript{44}

The Act also provides for involuntary treatment not to exceed ninety days.\textsuperscript{45} The procedure to be followed in cases involving such commitments varies, depending upon whether the individual is currently undergoing involuntary treatment.\textsuperscript{46} If the individual is undergoing such treatment, a written petition setting forth reasonable grounds to indicate that the individual is a clear and present danger to herself or others\textsuperscript{47} must be filed by the director of the facility treating the individual, or the county mental health administrator, with the court of common pleas.\textsuperscript{48} The petition must contain the name of the examining physician and that physician's

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\item unless within such period:
\item (1) he is admitted to voluntary treatment pursuant to section 7202; or
\item (2) the court orders involuntary treatment pursuant to section 7304.
\end{itemize}

\textit{Id.}

\textsuperscript{44} Id. at § 7303(g). This section provides:
In all cases in which the hearing was conducted by a mental health review officer, a person made subject to treatment pursuant to this section shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person's counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

\textit{Id.}

\textsuperscript{45} Id. at § 7304. Section 7304(a) states:
(a) Person\textsuperscript{s} for whom application may be made. — (1) A person who is severely mentally disabled and in need of treatment, as defined in section 301(a), may be made subject to court-ordered involuntary treatment upon a determination of clear and present danger under section 7301(b)(1) (serious bodily harm to others), or section 7301(b)(2)(i) (inability to care for himself, creating a danger of death or serious harm to himself), or 7301(b)(2)(ii) (attempted suicide), or 7301(b)(2)(iii) (self-mutilation).

\textit{Id.}

\textsuperscript{46} Id. at § 7304(b) and (c).

\textsuperscript{47} Id. at § 7304(b)(2). This section of the statute provides:
The petition shall be in writing upon a form adopted by the department and shall include a statement of the facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment. The petition shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person. It shall also state that the person has been given the information required by subsection (b)(3).

\textit{Id.}

\textsuperscript{48} Id. at § 7304(b)(1). Section 7304(b)(1) states: "Petition for court-ordered involuntary treatment for persons already subject to treatment under section 7305 may be made by the county administrator or the director of the facility to the court of common pleas." \textit{Id.}
Involuntary Civil Commitment

opinion of the mental state of the individual. A copy of the petition, along with an explanation of the proceedings and the individual's rights, must be served upon the individual, her attorney and other persons designated by the individual. A hearing must be held within five days of the filing of the petition; however, treatment can continue during the time between the filing of the petition and the hearing.

If the individual is not currently undergoing involuntary treatment, any responsible person may file with the court of common pleas a petition that sets forth reasonable grounds to indicate that the individual presents a clear and present danger to herself or others. If there was an examination by a physician, the petition must give the physician's name and her opinion concerning the mental state of the individual in question. The court must then determine if the petition contains reasonable cause to believe the individual is a clear and present danger to herself or others. If the court makes such a determination, an attorney must be appointed to represent the individual.

49. Id. at § 7304(b)(2).
50. Id. at § 7304(b)(3), which states:
   (3) Upon the filing of the petition the county administrator shall serve a copy on the person, his attorney, and those designated to be kept informed, as provided in section 7302(c), including an explanation of the nature of the proceedings, the person's right to an attorney and the services of an expert in the field of mental health, as provided by subsection (d).

Id.
51. Id. at §§ 7304(b)(4) and (5). Section 7304(b)(4) reads: "A hearing on the petition shall be held in all cases, not more than five days after the filing of the petition." Id. Section 7304(b)(5) states: "Treatment shall be permitted to be maintained pending the determination of the petition." Id.
52. Id. at § 7304(c)(1). This section states: "Any responsible party may file a petition in the court of common pleas requesting court-ordered involuntary treatment for any person not already in involuntary treatment for whom application could be made under subsection (a)." Id.
53. Id. at § 7304(c)(2). Section 7304(c)(2) provides:
The petition shall be in writing upon a form adopted by the department and shall set forth facts constituting reasonable grounds to believe that the person is within the criteria for court-ordered treatment set forth in subsection (a). The petition shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person.

Id.
54. Id. at § 7304(c)(3). This section provides:
Upon a determination that the petition sets forth such reasonable cause, the court shall appoint an attorney to represent the person and set a date for the hearing as soon as practicable. The attorney shall represent the person unless it shall appear that he can afford, and desires to have, private representation.

Id.
A hearing must be held within a reasonable period of time\textsuperscript{55} and a copy of the petition must be served upon the individual at least three days prior to the hearing.\textsuperscript{56} The individual must also be informed that an attorney has been appointed for her and that she has the right to the assistance of a mental health professional.\textsuperscript{57} A psychiatric examination, at which counsel may be present, will be ordered upon motion by either party or the court itself.\textsuperscript{58} The report of this examination must be provided to the court and counsel within forty-eight hours of the date of the hearing.\textsuperscript{59} Treatment cannot be authorized prior to the hearing.\textsuperscript{60}

Various due process protections are built into the hearing process under this section of the statute.\textsuperscript{61} These protections include, \textit{inter alia}, the right to counsel and the assistance of a mental health professional, to be court appointed, if necessary; the right to confront and cross-examine witnesses; the right to a public hearing; and the right to refuse to testify against one’s self.\textsuperscript{62} These

\begin{itemize}
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Id. at § 7304(c)(4). This section reads:
  The court, by summons, shall direct the person to appear for a hearing. The court may issue a warrant directing a person authorized by the county administrator or a peace officer to bring such person before the court at the time of the hearing if there are reasonable grounds to believe that the person will not appear voluntarily. A copy of the petition shall be served on such person at least three days before the hearing together with a notice advising him that an attorney has been appointed who shall represent him unless he obtains an attorney himself, that he has a right to be assisted in the proceedings by an expert in the field of mental health, and that he may request or be made subject to psychiatric examination under subsection (c)(5).
\item \textsuperscript{57} Id. This assistance will be provided without expense. Id. at § 7304(d).
\item \textsuperscript{58} Id. at § 7304(c)(5). Section 7304(c)(5) provides:
  Upon motion of either the petitioner or the person, or upon its own motion, the court may order the person to be examined by a psychiatrist appointed by the court. Such examination shall be conducted on an outpatient basis, and the person shall have the right to have counsel present. A report of the examination shall be given to the court and counsel at least 48 hours prior to the hearing.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id. at § 7304(c)(6), which states: “Involuntary treatment shall not be authorized during the pendency of a petition except in accordance with section 7302 or section 7303.”
\item \textsuperscript{61} Id. at § 7304(e).
\item \textsuperscript{62} Id. at § 7304(e). Section 7304(e) reads as follows:
  (e) HEARINGS OF PETITION FOR COURT-ORDER INVOLUNTARY TREATMENT. — A hearing on a petition for court-ordered involuntary treatment shall be conducted according to the following:
  (1) The person shall have the right to counsel and to the assistance of an expert in mental health.
  (2) The person shall not be called as a witness without his consent.
\end{itemize}
provisions apply to both those who are undergoing involuntary treatment when proceedings are instituted and those who are not.\textsuperscript{63} A decision must be issued within forty-eight hours of the close of the record.\textsuperscript{64} If the decision orders treatment, it must be the least restrictive type of treatment,\textsuperscript{65} and may not exceed ninety days.\textsuperscript{66}

(3) The person shall have the right to confront and cross-examine all witnesses and to present evidence in his own behalf.
(4) The hearing shall be public unless it is requested to be private by the person or his counsel.
(5) A stenographic or other sufficient record shall be made, which shall be impounded by the court and may be obtained or examined only upon the request of the person or his counsel or by order of the court on good cause shown.
(6) The hearing shall be conducted by a judge or by a mental health review officer and may be held at a location other than a courthouse when doing so appears to be in the best interest of the person.
(7) A decision shall be rendered within 48 hours after the close of evidence.

\textit{Id.} 63. \textit{Id.}
64. \textit{Id. at} § 7304(e)(7).
65. \textit{Id. at} § 7304(f). This section provides:
Upon a finding by clear and convincing evidence that the person is severely mentally disabled and in need of treatment and subject to subsection (a), an order shall be entered directing treatment of the person in an approved facility as an inpatient or an outpatient, or a combination of such treatment as the director of the facility shall from time to time determine. Inpatient treatment shall be deemed appropriate only after full consideration has been given to less restrictive alternatives. Investigation of treatment alternatives shall include consideration of the person’s relationship to his community and family, his employment possibilities, all available community resources, and guardianship services. An order for inpatient treatment shall include findings on this issue.

\textit{Id.} 66. \textit{Id. at} § 7304(g). Section 7304(g) states:
(g) **DURATION OF COURT-ORDERED INVOLUNTARY TREATMENT.** — (1) A person may be made subject to court-ordered involuntary treatment under this section for a period not to exceed 90 days, excepting only that: Persons may be made subject to court-ordered involuntary treatment under this section for a period not to exceed one year if the person meets the criteria established by clause (2).
(2) A person may be subject to court-ordered involuntary treatment for a period not to exceed one year if:
(i) severe mental disability is based on acts giving rise to the following charges under the Pennsylvania Crimes Code: murder (sec. 2502); voluntary manslaughter (sec. 2503); aggravated assaulted (sec. 2702); kidnapping (sec. 2901); rape (sec. 3121(1) and (2)); involuntary deviate sexual intercourse (sec. 3123(1) and (2)); arson (sec. 3301); and
(ii) a finding of incompetency to be tried or a verdict of acquittal because of lack of criminal responsibility has been entered.
(3) If at any time the director of a facility concludes that the person is not severely mentally disabled or in need of treatment pursuant to subsection (a), he shall discharge the person provided that no person subjected to involuntary treatment pursuant to clause (2) may be discharged without a hearing conducted pursuant to clause (4).
If the decision is issued by a mental health review officer, rather than a judge, the decision must be reviewed by the court of common pleas.\(^6\)

After the expiration of the ninety day period, additional involuntary treatment may be ordered if it is deemed necessary.\(^8\) The

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\(^6\) In cases involving involuntary treatment pursuant to clause (2), whenever the period of court-ordered involuntary treatment is about to expire and neither the director nor the county administrator intends to apply for an additional period of court-ordered involuntary treatment pursuant to section 7305, or at any time the director concludes that the person is not severely mentally disabled or in need of treatment, the director shall petition the court which ordered the involuntary treatment for the unconditional or conditional release of the person. Notice of such petition shall be given to the person, the county administrator and the district attorney. Within 15 days after the petition has been filed, the court shall hold a hearing to determine if the person is severely mentally disabled and in need of treatment. Petitions which must be filed simply because the period of involuntary treatment will expire shall be filed at least ten days prior to the expiration of the court-ordered period of involuntary treatment. If the court determines after hearing that the person is severely mentally disabled and in need of treatment, it may order additional involuntary treatment not to exceed one year; if the court does not so determine, it shall order the discharge of the person.

\(^8\) This is not expressly stated in § 7304, but it is found in § 7109(b), as follows: In all cases in which the hearing is conducted by a mental health review officer, a person made subject to treatment shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person’s counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

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\(^{67}\) The Pennsylvania Superior Court in *In re Chambers*, 282 Pa. Super. 327, 422 A.2d 1140 (1980), held that as section 7304 provided that an individual be committed upon order of a court, and as a mental health review officer could issue only a certification and not an order, the court of common pleas had to issue a commitment order in § 7304 cases. *Id.* at 331-32, 422 A.2d at 1141-42.

\(^{68}\) This section reads as follows:

\(a\) At the expiration of a period of court-ordered involuntary treatment under section 7304(g) or this section, the court may order treatment for an additional period upon the application of the county administrator or the direction of the facility in which the person is receiving treatment. Such order shall be entered upon a hearing on findings as required by sections 7301(a) and (b), and the further finding of the need for continuing involuntary treatment as shown by conduct during the person’s most recent period of court-ordered treatment. The additional period of involuntary treatment shall not exceed 180 days; provided that persons meeting the criteria of section 7304(g)(2) may be subject to an additional period of up to one year of involuntary treatment. A person found dangerous to himself under section 7301(b)(2)(i), (ii) or (iii) shall be subject to an additional period of involuntary full-time inpatient treatment only if he has first been released to a less restrictive alternative. This limitation shall not apply where, upon application made by the county administrator or facility
Involuntary Civil Commitment statute contains procedures similar to those previously described for ordering this additional treatment.  

JUDICIAL APPLICATION OF THE STANDARD

Since the enactment of the Mental Health Procedures Act, the Pennsylvania appellate courts have reviewed a number of lower court decisions concerning involuntary civil commitments. Therefore, the courts have had an opportunity to determine the proper application of the clear and present danger standard in involuntary commitment proceedings. However, in doing so the courts have stayed strictly within the confines of the statutory language and have not attempted to carve out unique judicial interpretations.

In various cases, courts have indicated what type of behavior meets the clear and present danger standard. In Commonwealth ex. rel. Platt v. Platt, appellant’s husband had her involuntarily committed under section 7302. After the commitment period expired, further commitment was sought under section 7303. At the informal hearing required under section 7303, appellant’s husband testified that she threw a jar in the bathroom, breaking it, and that she screamed at him. Appellant’s son testified that she had thrown a chair at one of the children, which although missing the child, shattered against a wall. Also, the son stated that she had burned some of his brother’s possessions and struck or attempted to strike the children on various occasions. Owing to various objections, the testimony of a psychiatrist was not presented.

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69. Id.
70. This comment covers only a representative sampling of these cases.
72. Id. at 281, 404 A.2d at 412.
73. Id.
74. Id. at 291, 404 A.2d at 417.
75. Id. at 291, 404 A.2d at 417-18.
76. Id. at 291, 404 A.2d at 418.
77. Id. at 292, 404 A.2d at 418. The appellant’s psychiatrist appeared at the informal hearing, but did not testify as appellant’s counsel threatened him with legal sanctions if he testified. These threatened legal sanctions were based on appellant’s counsel’s contentions that this testimony would violate the patient-physician privilege. Id. at 285, 404 A.2d at 414-15. Therefore, the only medical evidence presented was a physician’s certificate appended to the original petition for commitment. Id. at 291, 404 A.2d at 418.
Following this hearing, the mental health review officer ordered a twenty day commitment and Mrs. Platt appealed. The court of common pleas affirmed the decision and Mrs. Platt sought a review by the Pennsylvania Superior Court. In reviewing the record, the superior court found that the lay testimony presented established that Mrs. Platt was a clear and present danger to others, but that as lay testimony alone could not support a commitment, a remand was required to obtain the medical testimony required by the statute.

_in re Condry_ is another superior court case in which the court agreed that appellant met the clear and present danger standard, but vacated the commitment order on other grounds. Condry had originally voluntarily admitted himself to a state hospital for treatment of his mental illness; however, he then wished to be discharged. At that point, the staff of the hospital filed a petition for involuntary treatment under section 7302. A subsequent section 7303 petition was also filed by the hospital staff.

At a hearing held on this petition, a psychiatrist from the hospital testified concerning appellant’s mental state. The mental health review officer issued an order committing Condry to the hospital for up to twenty days of treatment. Pursuant to the statute, Condry requested a review of this order by the court of common pleas. The court refused to review the order, thereby upholding the commitment order.

78. *Id.* at 281, 404 A.2d at 413.
79. *Id.* Appellant also filed applications for a stay pending appeal with the court of common pleas and the superior court, both of which were denied. *Id.*
80. *Id.* at 291-92, 404 A.2d at 418. The court also dealt with appellant’s arguments that her husband and her psychiatrist should have been barred from testifying because of privilege. The court held that a spouse is competent to testify in commitment proceeding as it is not an adversary proceeding to which interspousal privilege would apply, and that a spouse’s observations of the other’s behavior do not constitute communications protected by the privilege. *Id.* at 282-84, 404 A.2d at 413-14. The court also held that the physician-patient privilege does not apply in mental health proceedings. *Id.* at 284-90, 404 A.2d at 414-17.
82. *Id.* at 136-37, 450 A.2d at 138-39. The court vacated the commitment order as the certification order did not include, as required by the statute, a description of the treatment to be provided. *Id.* at 137, 450 A.2d at 139.
83. *Id.* at 134, 450 A.2d at 137.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.* at 134, 450 A.2d at 137-38.
88. *Id.* at 134, 450 A.2d at 138.
89. *Id.* at 134, 450 A.2d at 137.
The Pennsylvania Superior Court then heard Condry's appeal in which he alleged, *inter alia*, that there was insufficient evidence to justify commitment. In rejecting Condry's contention, the court apparently relied upon the testimony of the psychiatrist with respect to Condry's mental condition. In its opinion, the court summarized his testimony, noting that the doctor diagnosed appellant's condition as paranoid schizophrenia. The court further noted that the doctor testified that Condry believed that the staff of the hospital were KGB agents or communists and that he acted accordingly, for example, by refusing to eat because he believed that the food was poisoned. Also, the psychiatrist stated that the appellant did not care for his personal hygiene needs. This testimony persuaded the court that Condry was a clear and present danger to himself. However, because the certification did not include a description of the treatment to be provided as required by section 7303(d)(2), the commitment order was vacated.

Several years later, the superior court in *In re S.O.*, again found that appellants met the clear and present danger standard, but found the commitment procedure deficient. However, rather than vacate the order, the court affirmed the commitment and ordered that all future cases comport with the procedure set forth in its opinion.

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90. *Id.* at 136, 450 A.2d at 138-39.
91. *Id.* at 136, 450 A.2d at 139.
92. *Id.* at 134, 450 A.2d at 137.
93. *Id.*
94. *Id.*
95. *Id.* at 136, 450 A.2d at 139.
96. *Id.* at 137, 450 A.2d at 139. See supra notes 41 for the complete text of § 7303(d)(2).
98. *Id.* at 232-35, 492 A.2d at 736-37. In discussing the importance of due process in commitment proceedings, the court stated:

[I]t must be remembered that the mental condition of the person in no way diminishes his right to due process. We must reiterate the principle that the Act was intended 'to create a treatment scheme under which a patient's procedural protections expand progressively as deprivation of his liberty gradually increases.' *In re C.B.*, supra at 181, 452 A.2d at 1374. Without ascribing to the court or to appellee ill will or in fact any negative intent, it would appear that the rights of the appellants herein have been treated as a de minimis matter. As this Court held in Blaker, supra, 'It is not enough to find... that appellant 'was truly in need of the services offered by [the] mental health system..." *Id.* at 398, 446 A.2d at 980. Where procedural requirements are not fulfilled the commitment is unlawful.

*Id.* at 233-34, 492 A.2d at 737.
99. *Id.* at 234-35, 492 A.2d at 737. The court determined that appellants' rights must be balanced against their need for treatment in determining what relief to grant and stated:
This case involved two individuals, R.T. and S.O., both of whom were challenging recommitment orders issued under section 7305.\textsuperscript{100} The court held that in recommitment proceedings it must be established that the behavior justifying the initial commitment had occurred, although that behavior need not have recurred prior to the recommitment proceedings.\textsuperscript{101} The court then reviewed the evidence concerning the original commitments and determined that both R.T. and S.O. met the standard.\textsuperscript{102} R.T. met the standard because he was diagnosed as a schizophrenic, and throughout the original commitment and recommitment proceedings he was experiencing violent auditory and visual hallucinations.\textsuperscript{103} He had threatened to kill his mother and police officers while on leave from the hospital.\textsuperscript{104} It was also determined that S.O., a chronic schizophrenic, presented a clear and present danger to herself because she lived in an abandoned house without heat or other utilities.\textsuperscript{105} This lack of heat resulted in S.O. losing several toes to frostbite.\textsuperscript{106} There was also evidence that S.O. had exhibited abnormal behavior by running in and out of traffic and walking down the middle of a street filled with traffic.\textsuperscript{107}

The court noted that this behavior was more than merely unconventional, as alleged by appellants, as it threatened the safety of

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Especially in dealing with the mentally ill, custom and practice have in the past allowed society to look benignly at treatment which can only be described as barbarous. It is no less true now that habit necessarily provides no reliable indicium of anything more than the expedient unless it conforms precisely to the requirements of legislation designed to safeguard both the rights and the lives of those so affected. We cannot, in exercising our paternalistic impulses, forget that due process requirements must be met to assure compliance with legal standards related to the restriction of liberty. We do not mean to denigrate good intentions, but only to make clear that more is required than a sincere desire to help. Assistance must be rendered properly, or in a larger sense, this carefully balanced system will fail.

On the other hand, the same restraint of liberty which prevents us from shouting 'fire' in a crowded theater, prohibits as well the exercise of 'liberty' by those to whom it is in fact anathema, spelling certain, although possibly slow, destruction. It is this consideration which must affect most strongly our determination of appropriate relief.

\textit{Id.} at 234-35, 492 A.2d at 737.
100. \textit{Id.} at 219-20, 492 A.2d at 729.
101. \textit{Id.} at 232, 492 A.2d at 736.
102. \textit{Id.} at 232-33, 492 A.2d at 736.
103. \textit{Id.} at 232, 492 A.2d at 736.
104. \textit{Id.}
105. \textit{Id.} at 233, 492 A.2d at 736.
106. \textit{Id.}
107. \textit{Id.}
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appellants and others, thereby satisfying the statutory standard.\textsuperscript{108} In affirming the commitment orders, the court recognized that the appellants’ need for treatment outweighed the procedural irregularities, but also insured that these procedural deficiencies would not be tolerated in the future.\textsuperscript{109} Thus, the court recognized that the policy embodied in the involuntary commitment statute may not always be best served by strict adherence to procedure.\textsuperscript{110} This case contrasts with Condry, and perhaps reflects an evolution through experience in the courts’ consideration of such cases.

In \textit{Commonwealth v. Rommett},\textsuperscript{111} the superior court refined the standard as it applies to recommitment proceedings.\textsuperscript{112} Rommett was originally involuntarily committed in February, 1986, because of violent behavior she exhibited toward her family.\textsuperscript{113} She was re-committed three times before the proceeding at issue.\textsuperscript{114} At the last recommitment hearing, Rommett’s psychiatrist testified that she exhibited assaultive behavior toward him, and that she was suffering from delusions, poor impulse control and paranoia resulting from schizophrenia.\textsuperscript{115} The doctor opined that Rommett’s violent behavior would recur if treatment ceased.\textsuperscript{116} On the basis of this testimony, Rommett was recommitted for additional treatment.\textsuperscript{117} She appealed from that order.\textsuperscript{118}

In her appeal, Rommett argued that the evidence presented was not sufficient to meet the clear and present danger standard because it did not prove that she had attempted to inflict or had inflicted serious bodily injury on someone within thirty days prior to the hearing.\textsuperscript{119} The court rejected this argument, pointing out that the statute provides that in recommitment proceedings it is not necessary to show that an overt act had occurred within thirty days of the recommitment hearing.\textsuperscript{120} The court recognized that the proper question in such proceedings was whether Rommett’s condition indicated that there was a clear and present danger to

\textsuperscript{108} \textit{Id.} at 231-33, 492 A.2d at 736.
\textsuperscript{109} \textit{Id.} at 234-35, 492 A.2d at 737.
\textsuperscript{110} \textit{Id.}
\textsuperscript{112} \textit{Id.} at 44-46, 538 A.2d at 1341.
\textsuperscript{113} \textit{Id.} at 43, 538 A.2d at 1340.
\textsuperscript{114} \textit{Id.} at 43, 538 A.2d at 1340-41.
\textsuperscript{115} \textit{Id.} at 44, 538 A.2d at 1341.
\textsuperscript{116} \textit{Id.}
\textsuperscript{117} \textit{Id.}
\textsuperscript{118} \textit{Id.} at 43, 538 A.2d at 1340.
\textsuperscript{119} \textit{Id.} at 44-45, 538 A.2d at 1341-42.
\textsuperscript{120} \textit{Id.} at 45-46, 538 A.2d at 1342.
others, and not whether overt manifestations of this behavior had occurred.\textsuperscript{121} Further, the court held that although under the statute the circumstances leading to the original commitment had to be shown to have occurred, the facts leading to the first commitment did not have to be relitigated as long as the individual's history documented this behavior, unless the original commitment was being challenged during recommitment proceedings.\textsuperscript{122}

The court then found that Rommett met the clear and present danger standard upon original commitment and that she continued to manifest violent behavior during her hospitalization, thereby supporting a recommitment.\textsuperscript{123} Also, the court noted that the doctor's diagnosis and prognosis of her condition supported recommitment.\textsuperscript{124}

In contrast to the cases where it was found that the individual presented a clear and present danger to herself or others are the cases which determine that the individual does not meet the standard. An examination of several of these cases, as compared to the previous cases, illustrates the serious type of mental illness that must be present for an individual to meet the standard. Also, these cases illustrate the difficulty the courts have in determining which individuals pose a clear and present danger.

In \textit{Commonwealth ex. rel. Gibson v. DiGiacinto},\textsuperscript{125} the appellant had been involuntarily committed to Easton Hospital under section 7302.\textsuperscript{126} He subsequently escaped from the hospital, but was apprehended and admitted to Allentown State Hospital, from which he was later discharged.\textsuperscript{127} Several weeks after his discharge, he was arrested on various charges, and after pleading guilty to some of the charges, was examined by a psychiatrist, who recommended further treatment.\textsuperscript{128} A petition for involuntary commit-

\textsuperscript{121} Id. at 45, 538 A.2d at 1341.
\textsuperscript{122} Id. at 46, 538 A.2d at 1342.
\textsuperscript{123} Id. at 46-47, 538 A.2d at 1342.
\textsuperscript{124} Id. In making this conclusion the court stated: "In addition, her diagnosis as a paranoid schizophrenic with delusions that others are threatening her, together with the prognosis that her assaultive behavior would continue without further treatment, support the trial court's findings." Id.
\textsuperscript{125} 497 Pa. 66, 439 A.2d 105 (1981).
\textsuperscript{126} Id. at 67, 439 A.2d at 105. Appellant's original commitment stemmed from his behavior in a youth home. Id.
\textsuperscript{127} Id. at 68, 439 A.2d at 105.
\textsuperscript{128} Id. at 68, 439 A.2d at 105-06. Appellant was charged with burglary, criminal mischief and criminal attempt to commit arson. The latter charge was dismissed and Gibson pled guilty to the remaining charges. The psychiatric examination was in connection with the pre-sentence report. Id. at 68, 439 A.2d at 106.
Involuntary Civil Commitment was filed, and at a hearing before a mental health review officer, Gibson was ordered to be committed to Farview State Hospital for up to ninety days.\textsuperscript{129} This finding was reviewed and affirmed by the court of common pleas.\textsuperscript{130}

Gibson appealed to the superior court, which affirmed the lower court's determination in an opinion by Judge Hester.\textsuperscript{131} The Pennsylvania Supreme Court granted review and overturned the commitment order.\textsuperscript{132} The supreme court held that the evidence was insufficient to prove that Gibson was a clear and present danger to himself or others.\textsuperscript{133} In making its determination regarding clear and present danger, the superior court had relied on testimony to the effect that while incarcerated Gibson had been found with a burning paper in his cell, had fashioned a crude weapon from a coat hanger and had refused psychotropic medication.\textsuperscript{134} The supreme court held that this behavior did not rise to the level necessary to satisfy the clear and present danger standard.\textsuperscript{135} The court came to this conclusion despite the fact that a psychiatrist testified that Gibson was a schizophrenic suffering from paranoid delusions, and that he posed a clear and present danger to himself and others.\textsuperscript{136}

The decision in \textit{Gibson} is important in several respects. First of all, it illustrates that an individual may suffer from a serious mental illness, such as schizophrenia, and still not meet the standard for involuntary commitment. As the supreme court recognized, the statute requires either an overt act that illustrates a clear and present danger to self or others, or behavior that illustrates an inability to care for one's self to such an extent that it threatens health or life.\textsuperscript{137} Mere manifestations of a mental illness

\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{132} \textit{Gibson}, 497 Pa. at 66, 439 A.2d at 105.
\textsuperscript{133} Id. at 70-71, 439 A.2d at 107.
\textsuperscript{134} Id. at 70-71, 439 A.2d at 106.
\textsuperscript{135} Id. at 70-71, 439 A.2d at 107. The court in so finding, stated:
\textsuperscript{136} Id. at 68, 439 A.2d at 106.
\textsuperscript{137} Id. at 70, 439 A.2d at 107.
are not enough to meet the standard even if they are accompanied by a psychiatrist's opinion.\textsuperscript{138}

This last point is significant as it contrasts with the superior court's opinion in this case, which relied heavily upon the physician's testimony. It also contrasts with the superior court's opinion in Platt, where the court determined that similar behavior by Platt met the statutory standard.\textsuperscript{139} It is interesting to speculate, given the supreme court's opinion in Gibson, how it would have viewed Platt's behavior, which the superior court found established a clear and present danger to others.\textsuperscript{140} It would seem that the supreme court would have viewed her behavior as manifestations of mental illness not severe enough to warrant commitment, or perhaps as mere normal outbursts of anger as the dissent in Platt viewed it.\textsuperscript{141} This is especially likely given the court's disagreement with the superior court concerning the seriousness of Gibson's behavior.\textsuperscript{142}

Gibson and Platt are illustrative of cases where it is difficult to determine whether the individual meets the clear and present danger standard. In other cases, however, such as Condry and Rommett, it is quite clear that the person does meet the standard. Yet, in others such as Commonwealth v. Blaker\textsuperscript{143} and In re Remly,\textsuperscript{144} it is clear that the person does not meet the standard.

In Blaker, involuntary commitment was sought after Blaker, a woman in her mid-sixties, became upset during a lunch at a senior citizens center and left the center.\textsuperscript{145} When a worker who found Blaker fifty yards away attempted to lead her to a bus to go home, Blaker struck the worker with her umbrella. Later, Blaker peacefully entered the bus and was driven home.\textsuperscript{146}

Shortly after the incident, Blaker was involuntarily committed under section 7302, and later a section 7303 petition was filed.\textsuperscript{147} Following the informal hearing, the mental health review officer found that Blaker posed a clear and present danger to others and

\textsuperscript{138} Id. at 71, 439 A.2d at 107.
\textsuperscript{139} Platt, 266 Pa. Super. at 291, 404 A.2d at 417-18.
\textsuperscript{140} Id. at 291, 404 A.2d at 418.
\textsuperscript{141} Id. at 296-97, 404 A.2d at 420-21. Judge Spaeth wrote an opinion concurring in part and dissenting in part. He concurred with the majority's decision to remand the case, and to allow Platt's husband to testify at the new hearing, but disagreeing with the court's decision allowing the psychiatrist to testify. Id. at 292, 404 A.2d at 418.
\textsuperscript{142} Gibson, 497 Pa. at 70-71, 439 A.2d at 107.
\textsuperscript{145} Blaker, 293 Pa. Super. at 394, 446 A.2d at 978.
\textsuperscript{146} Id.
\textsuperscript{147} Id. at 394, 446 A.2d at 977.
should be committed for another ten days. The court of common pleas reviewed the order and found that Blaker was a danger to herself, not others, but allowed the commitment order to stand. Blaker appealed, and the superior court found the evidence insufficient to support commitment. The court pointed out that other than the umbrella incident, there were no other reported episodes of violence. Furthermore, although a psychologist had examined Blaker when she was originally committed, he did not state that her behavior, wandering away from the senior citizens center, could result in death, serious bodily injury or debilitation. Although the court agreed that Blaker might need some testing or services, she did not meet the clear and present danger standard.

In re Remly concerned the involuntary commitment of an admittedly senile eighty-two year old man. Remly supposedly posed a clear and present danger to himself and others because he needed his wife's assistance in caring for his needs, and he once kicked his wife and swatted at her with a paring knife. The court, in overturning the involuntary commitment order, noted that senility alone was not sufficient to justify commitment. Instead, the court determined that a mental illness resulting in behavior that demonstrates a clear and present danger must be shown. In reviewing the record, the court found that there was insufficient evidence of such a mental illness resulting in the type of behavior necessary to order commitment.

The court sympathized with this attempt to help Remly, and recognized that perhaps he needed skilled nursing care. However, the court stated that using the involuntary commitment statute was not the proper means by which to procure the needed

148. Id. at 395, 446 A.2d at 978.
149. Id. In reviewing the decision, the lower court listened to a tape recording of the hearing before a MHRO and heard argument from appellant's counsel. Id.
150. Id. at 393, 446 A.2d at 978.
151. Id. at 397, 446 A.2d at 979.
152. Id.
153. Id. at 398, 446 A.2d at 980. Judge O'Kicki filed a dissenting opinion in which he opined that there was sufficient evidence to support a finding that Blaker met the clear and present danger standard. Id. at 403-04, 446 A.2d at 982.
155. Id. at 166, 471 A.2d at 515.
156. Id. at 167-68, 471 A.2d at 516.
157. Id. at 166, 471 A.2d at 515.
158. Id. at 166-67, 471 A.2d at 515-16.
159. Id. at 168-69, 471 A.2d at 516-17.
services.  

CRITICISM OF THE STANDARD

The aforementioned cases illustrate some of the problems that the statute’s critics allege are posed by the clear and present danger standard. The Gibson case illustrates what some people view as the standard’s laxness, in that it does not allow for the commitment of potentially dangerous and/or violent mentally ill individuals. Critics are concerned that the stringent requirements regarding evidence that the person poses a clear and present danger will not protect the public from dangerous individuals. To support their position, critics point to notorious cases, such as the Sylvia Seegrest incident or the incident in Pittsburgh in which a young hospital social worker was killed by a schizophrenic woman who had been in and out of mental hospitals for eighteen years, to demonstrate that the Pennsylvania standard allows dangerous persons to escape commitment, or to be committed for only a short period of time. Accordingly, such critics advocate a standard that permits commitment under a lessened standard, for longer periods of time.

Others criticize the standard on the basis that it is detrimental to the mentally ill. Attorneys, mental health professionals, the mentally ill and their families have pointed out that since Pennsylvania and other states have changed commitment standards and procedures, there has been a drastic decrease in the number of mentally ill persons who are institutionalized. As a result, many

160. Id. at 169-71, 471 A.2d at 517. In so finding, the court stated: There are indications in the record before us that appellant and his wife were caught in the grasp of well-intentioned officials. But, when the awesome power of the government bureaucracy and the courts is brought to bear on the individual citizen, good intentions are not enough. Even though they may be motivated by a desire to help the individual, the actions of the government must be strictly circumscribed by the law. This is most particularly mandatory when the governmental action involves the deprivation of the citizen’s liberty. The courts, in overseeing such liberty-depriving bureaucratic action, must be especially protective of the rights of the individual and vigilant in ensuring that the legal safeguards have been complied with. Id. at 170, 471 A.2d 517.


164. For a detailed history of the deinstitutionalization trend, see Myers, Involuntary Civil Commitment of the Mentally Ill: A System in Need of Changes, 29 VILL. L. REV. 367, 388-403 (1984) [hereinafter Myers], and Rhoden, The Limits of Liberty: Reinstitutionaliza-
of those who are no longer institutionalized now represent the many mentally ill homeless people. Some critics state that the mentally ill are "rotting with their rights on" or have gone from "back wards to back alleys." This criticism of the deinstitutionalization program and how this trend was brought about or effected by the change in commitment standards must be thoughtfully addressed. The massive deinstitutionalization of the mentally ill began in the late 1940's and occurred for many reasons, including concern for the rights of the mentally ill. However, this movement was also brought about because of changing medical theories, exposes of the conditions in institutions, the advent of psychotropic drugs, new social legislation, and economic concerns. This movement was accompanied by a trend toward civil commitment procedures that emphasized more stringent standards for commitment.

This trend wrought tremendous changes in the care and treatment of the mentally ill in the United States, including Pennsylvania.
nia. Although these changes have been largely positive, the negative aspects of these changes must be recognized so that solutions can be found to these problems.

**Solutions**

There are various solutions to consider. The first of these is a change in the standard for civil commitment. Alan F. Stone, M.D., is a leading advocate of changing the commitment standard. He and Clifford D. Stromberg have drafted a model law for civil commitment. This standard has various differences from the Pennsylvania standard.

The model law provides for emergency psychiatric examination upon certification by a physician if the individual suffers from a severe mental disorder that makes it likely that she will cause harm to herself, or others, is manifestly unable to care for basic needs, and immediate hospitalization is required to prevent harm to herself or others. This examination may also be initiated by a police officer taking the individual into custody, or by petition

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175. There are now only 13,000 persons undergoing treatment in state mental hospitals in Pennsylvania, compared to 225,000 receiving outpatient mental health services. See Moushey, *A Question of Care, Follow-Up: The Neglected Side of Treatment*, Pittsburgh Post-Gazette, June 28, 1988, at 1, 5, col. 2-3.


177. Model Law, supra note 176, at 319. The Model Law states:

A person may be taken into custody by a police officer, or accepted by an ambulance service, and transported and presented to a treatment facility for emergency psychiatric evaluation, when a licensed physician certifies in writing that he has examined the patient in the last 72 hours or has ongoing medical responsibility for the person and has knowledge of his current condition, and that on such basis he has probable cause to believe that such person is suffering from a severe mental disorder as a result of which: he lacks capacity to make an informed decision concerning treatment; and he is (1) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (2) likely to cause harm to others; and immediate hospitalization is necessary to prevent such harm.

Id.

178. Model Law, supra note 176, at 315-16, states:

4.A. Detention by a Police Officer.

1. A police officer may take a person into custody, and transport the person to a treatment facility for emergency psychiatric evaluation if and only if:
   a. the person would otherwise be subject to lawful arrest and the police officer believes that the person is in need of emergency psychiatric treatment; or
   b. the police officer has probable cause to believe that the person has attempted suicide within the last 48 hours; or
   c. the police officer has probable cause to believe, based on his personal observation and investigation or based on the petition of any interested adult under subsection 4.C. and such corroboration as the police officer deems necessary in the circum-
by an interested adult. Emergency evaluation and treatment may not exceed fourteen days, and a hearing must be held within five days of detention.

The Model Law also provides for additional periods of involuntary treatment. A thirty day commitment will be authorized if: 1) the individual is suffering from a severe mental disorder that is treatable; 2) the individual will not consent to treatment, or is unable to consent and lacks capacity to make decisions concerning treatment; and 3) the individual is likely to harm himself or others.

stances, that the person is suffering from a severe mental disorder as a result of which he is likely to cause harm to himself or to others or is manifestly unable to care for some of his basic needs, and that immediate hospitalization is necessary to prevent harm to the person or to others; or

d. he is acting upon the certification of a licensed physician under subsection 4.B.

2. Any person taken into custody pursuant to this subsection shall be presented promptly to a treatment facility. Correctional facilities shall not be used as temporary shelter for such persons except for the protective custody of the person pending transportation to a treatment facility.

3. Upon or shortly after taking a person into custody, the police officer shall take reasonable precautions to safeguard and preserve the personal property of the person unless a guardian or responsible relative is able to do so. Upon presenting a person to a treatment facility, the police officer shall inform the staff in writing of the facts that caused him to take the person into custody, and shall specifically state whether the person is otherwise subject to arrest.

Id.

179. Model Law, supra note 176, at 320. Section 4.C. of the Model Law reads: Any interested adult may petition for, or present a person for, emergency psychiatric evaluation by alleging based on personal observation that he has probable cause to believe that such person is suffering from a severe mental disorder as the result of which: he is likely to cause harm to himself or to others or is manifestly unable to care for some of his basic needs; and immediate hospitalization is necessary to prevent harm to the person or to others.

Id.

180. Model Law, supra note 176, at 324-25. This section provides: “The period of emergency evaluation and treatment shall in no case exceed fourteen days.” Id.

181. Model Law, supra note 176, at 322-32. This section states: 1. Each person who is admitted to a treatment facility shall receive a preliminary hearing before the court within five business days of admission or be discharged, unless he has, after consultation with counsel, executed a written waiver of such hearing. The hearing shall be informal and subject to such rules as the court sets consistent with fundamental fairness.

2. The court shall determine at the close of the hearing, or within five business days of the patient’s admission, whether he should be discharged. A patient shall then be discharged, unless the court determines that there is probable cause to believe that he satisfies the criteria for thirty-day commitment provided in Section 6, and unless within two business days of the court’s decision a petition for such commitment is filed with the court.

Id.

or to suffer substantial physical or mental deterioration. Additional treatment may also be authorized.

Unlike the Pennsylvania standard, the Model Law does not explicitly require objective evidence of harm to oneself. Also, the Model Law's broadest provisions allow for commitment if there is substantial deterioration in the individual's previous ability to function caused by "severe and abnormal mental, emotional or physical distress." This standard is meant to include former mental patients whose condition has deteriorated, perhaps leading to homelessness or other problems.

The question still remains, however, whether changing the stan-

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183. Model Law, supra note 176, at 330-31. Section 6.3 states:
A person may be involuntarily committed for a period of up to thirty days if, after the hearing provided in subsection 6.D., the court determines on the basis of clear and convincing evidence that:
1. the person is suffering from a severe mental disorder; and
2. there is a reasonable prospect that his disorder is treatable at or through the facility to which he is to be committed, and such commitment would be consistent with the least restrictive alternative principle; and
3. the person either refuses or is unable to consent to voluntary admission for treatment; and
4. the person lacks capacity to make an informed decision concerning treatment; and
5. as the result of the severe mental disorder, the person is (a) likely to cause harm to himself or to suffer substantial mental or physical deterioration, or (b) likely to cause harm to others.

Id.


185. PA. STAT. ANN. tit. 50 § 7301(b)(2) (Purdon Supp. 1988), set forth fully in note 20, supra, requires that certain objective criteria be met. The Model Law standard is more subjective, requiring behavior:

'Likely to cause harm to himself or to suffer substantial mental or physical deterioration' means that, as evidenced by recent behavior, the person (1) is likely in the near future to inflict substantial physical injury upon himself, or (2) is substantially unable to provide for some of his basic needs such as food, clothing, shelter, health, or safety, or (3) will if not treated suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior causing a substantial deterioration of his previous ability to function on his own.

Model Law, supra note 176, at 302-03. The Model Law further provides that:

'Likely to cause harm to others' means that as evidenced by recent behavior causing, attempting, or threatening such harm, a person is likely in the near future to cause physical injury or physical abuse to another person or substantial damage to another person's property.

Id.

186. Model Law, supra note 176, at 302-03.

187. Although the provisions regarding harm to others are objective in nature, the provision regarding harm to self is much more subjective, allowing for commitment of a number of individuals not necessarily committable under the Pennsylvania law. See Model Law, supra note 176, at 303-05.
standard will actually result in the mentally ill receiving better care or the state improving its mental health care delivery system. It appears that the problem may not be in the standard, but in the mental health care delivery network and state funding for these services. Therefore, another possible solution is to strengthen the current mental health care system.

The first place to start would be improving outpatient services. The Mental Health Procedures Act requires follow-up care for mentally ill persons released from hospitals through a system of case management.\textsuperscript{188} Individuals are to be followed through a local community mental health center;\textsuperscript{189} however, in reality patients are often not provided with proper instructions regarding follow-up, or the care that is provided is inadequate.\textsuperscript{190}

The reasons for inadequate follow-up care stem from funding problems. Although deinstitutionalization began several decades ago, state legislatures are still providing massive funding for state hospitals and little for outpatient programs, often because of community and union pressures.\textsuperscript{191} This includes Pennsylvania where only twenty-eight percent of mental health funding goes toward outpatient treatment for 225,000 people, and seventy-two percent of the funding goes to maintain 13,000 mentally ill persons in hospitals.\textsuperscript{192} This has resulted in poor post-discharge treatment, which then often results in reinstitutionalization of the mentally ill who do not receive proper aftercare.

Improving follow-up care and other outpatient services would help decrease the need for inpatient care often brought about by civil commitment. If individuals are adequately treated as outpatients they will be maintained on proper medication and the pres-
sures and problems they experience will be dealt with before they result in commitment. Also, as the statute provides, an individual may be involuntarily committed to outpatient services. Therefore, if outpatient services are improved, individuals who do meet the clear and present danger standard may be more readily admitted to these sort of programs with benefit to both the state and the individual. In addition, improved outpatient services would benefit individuals such as Gibson, Blaker and Remly who do not meet the clear and present danger standard, but need mental health services.

Better services would also alleviate some of the problems from which the mentally ill suffer, such as homelessness. Besides treatment for mental illness, improved services would include housing assistance, assistance with obtaining benefits from social programs, job training, and educational services. However, improved services will only be instituted if adequate funding is provided, and if there is effective management of those funds.

CONCLUSION

There seems little sense in changing the standard for involuntary civil commitment unless changes in the system are accompanied by changes in societal attitudes and priorities regarding funding of mental health programs. For example, merely changing the law will not eliminate the problem of homelessness, as many homeless people are not mentally ill and little is being done to aid them. Therefore, it is crucial to provide not only new standards, but also adequate funding to help those affected by the new standard. At this point in time, it would appear more appropriate to improve funding and services under the present law, rather than to institute new

193. The Mental Health Procedures Act provides generally for outpatient treatment in § 7104 which states, in pertinent part:

Adequate treatment means a course of treatment designed and administered to alleviate a person’s pain and distress and to maximize the probability of his recovery from mental illness. It shall be provided to all persons in treatment who are subject to this act. It may include inpatient treatment, partial hospitalization, or outpatient treatment. Adequate inpatient treatment shall include such accommodations, diet, heat, light, sanitary facilities, clothing, recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions.

PA. STAT. ANN. tit. 50 § 7104 (Purdon Supp. 1988). Section 7304(f) specifically provides for involuntary outpatient treatment. See supra note 65 for a full text of § 7304(f).
standards and procedures that may ultimately fail because of continuing problems with funding and delivery of services.

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