


LEGAL ISSUES AND
MENTAL HEALTH
LAW


#19

**Legal Aspects
of Mental Health Law**




State of Georgia
Crisis Intervention Team
Training Program

Why CIT?



Canton v. Harris (1989)



3€ In 1989, the U.S. Supreme Court ruled in that the inadequacy of police training may serve as a basis for municipal liability where to not to train amounts to deliberate indifference for the rights of persons with whom the police come into contact .

Byrd v. Long Beach (2004)

- 3€ City of Long Beach, California, Defendant; Angela and Titus Byrd, Plaintiffs; Civil case filed in Los Angeles Superior Court
- 3€ Marcella Byrd, 57 years old
- 3€ Diagnosis - presumed schizophrenia
- 3€ Officer Rodriguez called for backup
- 3€ Backup officer shot beanbag and hit her leg; then again hitting her thigh
- 3€ Ms. Byrd then used a knife
- 3€ Officers shot her 5 times, suspect killed
- 3€ Recovery from schizophrenia could have been an option. That decision was removed as a choice.

Byrd v. Long Beach (2004)




3€ Verdict - March 3, 2004

- 12 City of Long Beach found to be 80% comparatively negligent as officers did not attempt to de-escalate the situation
- 12 Marcella Byrd - 20%
- 12 Plaintiffs awarded \$210, 000


CIT Training and Liability



- 3€ Reduces liability – For example, CIT leaders in Ohio have reported no lawsuits since CIT established. Reality is that CIT should reduce the risk of successful lawsuits.
- 3€ Less injury and deaths to individuals with mental disabilities and to officers involved.
- 3€ Treatment for those individuals in need.



**Probate Court
Lay Affidavit**



Probate Court Lay Affidavit

- 3€ Any interested person or persons may institute guardianship proceedings for an incapacitated adult;
- 3€ Adult guardianship provisions provide for lay affidavit;
- 3€ Court can order an examination, evaluation , or admit to a treatment facility via involuntary treatment

• O.C.G.A. §29-5-6(a); Code section will change when new guardianship law becomes effective July 1, 2005.

Probate

- 3€ Guardianship
 - 12 Limited, unless otherwise ordered
 - 12 Voting, unless judge finds mental incompetence
- 3€ Mental Illness Intervention
 - All rights retained; due process must be afforded before any denial

Types/Stages of Intersection

3€ Guardianship

- 12 Emergency, blending into...
- 12 Permanent

3€ Mental Illness Interventions

- 12 Examination
- 12 Evaluation
- 12 Admit to Treatment Facility
- 12 Involuntary Treatment

Legal Aspects Regarding the Role of Law Enforcement in Civil Commitment

Laws and Regulations

3€ Mental Illness Defined

12"Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

– O.C.G.A. . § 37-3-1(11)

3€ "Mentally ill person requiring involuntary treatment" means a person who is an inpatient or an outpatient.

– O.C.G.A. . § 37-3-1(12)

Inpatient defined

3€A person who is mentally ill and:

12Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or

12Who is so unable to care for that person's own physical health and safety as to create an imminently life-endangering crisis; AND

12Who is in need of involuntary inpatient treatment.

Civil Involuntary Commitment

3€Law Enforcement Officers are statutorily authorized to pick up and transport a mentally ill person to an emergency receiving facility pursuant to a:

12Physician's certificate;

12Court Order; or

12Request from facility to pick up because person left without permission during involuntary hospitalization.

Physician's Certificate
O.C.G.A. § 37-3-41(a)

3€A physician has executed a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment.

Emergency Receiving Facility (ERF) - 1013

- 3€Physician issues certificate
- 12Person examined in last 48 hours
- 12Appears to be mentally ill requiring involuntary treatment
 - ☒ Acting on physician's certificate, law enforcement officer may take to nearest ERF for examination
 - ☒ Court can order law enforcement to take patient to either physician or ERF

- O.C.G.A. §37-3-41(a)

Court Order
O.C.G.A. § 37-3-41(b)

3€Court order from the county in which a person may be found commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section.

3€

Court Order (cont'd)

3€Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.

Left without permission O.C.G.A. § 37-3-5

3€If, during the period of involuntary hospitalization pursuant to any valid physician's certificate, court order, or order by the hearing examiner authorized by this chapter, a patient escapes or otherwise leaves a facility without permission, the facility may advise any peace officer that the patient has escaped or otherwise left the facility without permission; and the peace officer shall be authorized to take the patient into custody and return him to such facility.

Petition for Court-Ordered Evaluation

12Any person may file application with a community mental health center, under oath saying person is mentally ill requiring involuntary treatment.

12Mental Health Center must perform preliminary investigation; If it establishes probable cause to believe true, the Mental Health Center files petition with the Court.

12Any person may file a Petition with the Court under oath alleging a person within the county is mentally ill requiring involuntary treatment, if petition is accompanied by a physician's certificate that the person was examined within the last 5 days, that person may be mentally ill and that full evaluation is necessary.

• O.C.G.A. §37-3-61(1)

Emergency admission by law enforcement

3€ Law enforcement may act on their own if:

12 Person is committing a penal offense AND

12 Police officer has reason to believe the person is mentally ill requiring involuntary treatment, then police may take to physician or an ERF

— O.C.G.A. §37-3-42

Civil Involuntary Commitment

3€ Outpatient civil detention is an alternative to inpatient detention under certain circumstances:

12 The person must be deemed safe for the community.

12 Still requires a commitment order to assure compliance with mental health treatment.

3€ Law enforcement may be requested to assist, in cases of noncompliance, with transport to a mental health facility.

Outpatient Commitment

3€ "Outpatient" means a person who is mentally ill and:

3€ (A) Who is not an inpatient but who, based on the person's treatment history or current mental status, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;

3€ (B) Who because of the person's current mental status, mental history, or nature of the person's mental illness is unable voluntarily to seek or comply with outpatient treatment; and

3€ (C) Who is in need of involuntary treatment.

• O.C.G.A. . § 37-3-1 (12.1)

Transportation Issues



- 3€ O.C.G.A. 37-3-101 - Governing authority for the county of individual's residence arranges;
- 3€ Type of vehicle in discretion of county governing authority – provided that
 - 12 Whenever possible, marked vehicles normally used for transportation of criminals/accused shall not be used for patients
 - 12 Court shall order the sheriff to transport the patient in such manner as the patient's condition demands
 - 12 If Community health center is satisfied that patient can be transported safely by family members and friends, private transportation is encouraged;
 - 12 In nonemergency situations, no female patient transported without another female in attendance who is not patient, unless husband, adult brother, or adult son accompanies said female patient.

Liability



Act or Fail to Act

False Imprisonment

- 3€ False imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person is deprived of his personal liberty.
 - 12 O.C.G.A. § 51-7-20

False Imprisonment Claims

3€“When the detention is predicated upon a procedurally valid process, false imprisonment is not an available remedy regardless of the motives upon which the process was secured, because detention effectuated pursuant to procedurally valid process, such as an arrest warrant, is not unlawful.”

12Williams v. Smith, 179 Ga. App. 712 (1986)

False Arrest Claims

3€An arrest under process of law, without probable cause, when made maliciously, shall give a right of action to the party arrested. O.C.G.A. § 51-7-1

3€Malice consists in personal spite or in a general disregard of the right consideration of mankind, directed by chance against the individual injured. O.C.G.A. § 51-7-2

Immunity

3€O.C.G.A. §37-3-4 provides immunity from civil or criminal liability for ***“any physician, psychologist, peace officer, attorney, or health official, or any hospital official, agent, or other person employed by private hospital, state-operated facility, political subdivision, or hospital authority created pursuant to §31-7-4 who acts in good faith in compliance with admission and discharge procedures...”***

Discretionary function

3€When officer was performing a discretionary duty at the time of the arrest and no showing was made that the officer acted maliciously or with an intent to injure, the officer was entitled to official immunity from liability.

12Reese v. City of Atlanta, 261 Ga. App. 761, 583 S.E.2d 584 (2003).

Failure to protect

3€Public duty doctrine:

“Liability does not attach where the duty owed by the governmental unit runs to the public in general and not to any particular member of the public, except where there is a special relationship between the governmental unit and the individual giving rise to a particular duty owed to that individual.”

City of Rome v. Jordan, 263 Ga. 26 (1993)

Special Relationship

3€Sometimes a special relationship between the individual and the municipality is created which sets the individual apart from the general public and engenders a special duty owed to that individual.

Requirements for the Creation of a Special Relationship

- 3€ An explicit assurance by municipality, through promises or actions, that it would act on behalf of the injured party;
- 3€ Knowledge on the part of the municipality that inaction could lead to harm; and
- 3€ Justifiable and detrimental reliance by the injured party on the municipality's affirmative undertaking.

Legal Aspects of Mental Health Law



Consumers' Rights



Georgia's Consumers



- 3€ Georgia Consumer Network is a national leader
- 3€ Cemetery Project at Central State Hospital
- 3€ Unmarked, unkempt graves transformed into a place of honor
- 3€ "From Silence, to a Whisper, to a Voice"

Rights of Individuals with Mental Illness

- 3€ Courts and legislatures have recognized that the persons with mental illness have such rights as:
 - 12 Community integration
 - 12 Treatment or refusal of treatment
 - 12 Legal representation in certain proceedings
 - 12 Freedom from discrimination

Rights of Individuals with Mental Illness

- 3€ Primary component of the ADA is "reasonable" accommodations and modifications for disabled persons.
- 3€ Law Enforcement Officers must make reasonable adjustments and modifications of policies, practices or procedures, on a case-by-case basis.
- 3€ If mental illness or a request for modification due to mental illness is expressed, LEO may need to modify routine practices.

The Americans With Disabilities Act



- 3€ The ADA was signed into law on July 26, 1990 by President George Bush
- 12€ Olmstead v. L.C. is a landmark U.S. Supreme Court case from Georgia on the ADA (1999).

The Americans With Disabilities Act

- 3€ 1990—Americans with Disabilities (ADA) act passed.
- 3€ ADA requires fair and equal treatment for all people with disabilities, whether physical or mental
- 3€ ADA entitles the mentally ill to same services and protections from law enforcement agencies as other citizens.
- 3€ They may not be excluded or segregated, denied or otherwise provided with lesser services

The Americans With Disabilities Act

- 3€ ADA protects qualified individuals with disabilities.
- 3€ An individual with a disability is one who has a physical or mental impairment that substantially limits major life activities, has a record of such an impairment, or is regarded as having such an impairment

The Americans With Disabilities Act

3€ Under the ADA, physical or mental impairments include, but are not limited to:

12 Visual, speech, hearing impairments, mental retardation, emotional illness, Specific learning disabilities, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, orthopedic conditions, cancer, heart disease, diabetes, and contagious and noncontagious diseases, such as TB and HIV.

Americans with Disabilities Act (ADA) & Section 504, Rehabilitation Act of 1973

3€ Prohibit covered entities from discriminating against persons with disabilities in the provision of benefits or services or the conduct of programs or activities on the basis of their disability.

3€ Section 504 applies to programs that receive federal assistance

3€ ADA covers all of the services, programs, and activities conducted by public entities (state and local governments), including licensing.



1/25/2006

The Americans With Disabilities Act

3€ Effective communications requirements

3€ Reasonable accommodations or modifications in policies, practices and/or procedures on a case-by-case basis.

Title II

Limited English Proficiency(LEP) Examples of Discrimination



- Providing services to LEP persons that are more limited in scope or are lower in quality than those provided to other persons;
- Subjecting LEP persons to unreasonable delays in the delivery of services;
- Limiting participation in a program or activity on the basis of English proficiency;
- Providing services to LEP persons that are not as effective as those provided to those who are proficient in English; or
- Failing to inform LEP persons of the right to receive free interpreter services and/or requiring LEP persons to provide their own interpreter.

1/25/2006

Olmstead v. L.C.



3€ In June 1999, the U.S. Supreme Court ruled in Olmstead that states must develop a “comprehensive, effectively working plan” to provide medically appropriate community-based care to eligible populations within given budget restraints.

Georgia and Other Laws Protecting Rights

- 12 O.C.G.A. Title 37
- 12 O.C.G.A. Title 31
- 12 Criminal Statutes
- 12 DHR Rules and Regulations for Clients' Rights , Chapter 290-4-9
- 12 DHR Rules and Regulations for Patients' Rights, Chapter 290-4-6
- 12 Federal Laws and Regulations
- 12 Hospital Conditions of Participation
- 12 ICF-MR Interpretive Guidelines
- 12 HIPAA Privacy Regulations

Additional Issues

- 3€ Co-occurring Disorders
- 3€ Limited English Proficiency/Sensory Impairment
- 3€ Older adults with Mental Illness
- 3€ Dementia
- 3€ Chronic physical disability and Mental Illness

Importance of Self-Protection and Self-Advocacy

- 3€ Self-Protection is at the foundation of a quality consumer protection system;
- 3€ Individuals in services must know boundaries for care providers.
- 3€ Individuals in services must be knowledgeable about their condition, medications and other aspects of their care to fully participate in treatment, **recovery or habilitation.**

Purpose of Consumer Rights

- 3€ To protect individuals in service from behavior and consequences that threaten their health, safety or well-being;
- 3€ To safeguard the rights of persons treated pursuant to the Official Code of Georgia Annotated (O.C.G.A.) Chapters 37-3, 37-4 and 37-7;
- 3€ To establish boundaries for staff and the provider organization, volunteers, contractors, and others in services;

Notice of Consumer Rights

- 12 Notice to consumer, parent or guardian at beginning of treatment/habilitation of rights and remedies in regulations;
- 12 Notice given in manner commensurate with individual's abilities and capabilities of understanding;
- 12 Prior to restriction of right, staff person shall again inform consumer or his/her parent or legal guardian of administrative complaint or judicial review, except as condition makes impractical --- however, to advise as soon as condition permits.

Right to Participate in Treatment Decisions

- 3€ Persons in services have the right to participate in their treatment;
 - 12 condition
 - 12 legal status
- 3€ Includes the right to refuse treatment
- 3€ Individual Services Planning (ISP);
- 3€ Discharge Planning;
- 3€ Legal representatives can be substituted

Right to Freedom of Choice

- 3€ A guiding principle of consumers' rights is that consumers and their families member should have choice regarding services and input into planning and treatment or habilitation issues;
- 3€ Federal Medicaid law incorporates consumer choice.

Right to Confidentiality of Consumer Information

- 3€Records and treatment are confidential;
- 3€Certain information told to certain professionals are privileged information;
- 3€Clients' Rights Rules and Regulations;
- 3€Patients' Rights Rules and Regulations;
- 3€State and federal laws;
- 3€Health Information Portability Accountability Act (HIPAA) new privacy regulations.
- 12See Office of Civil Right guidance for law enforcement

HIPAA and Law Enforcement

- 3€U.S. Department of Health and Human Services, Office of Civil Rights - enforcement
- 3€www.hhs.gov/ocr/hipaa (Click on New FAQ on Disclosing PHI to Law Enforcement 7/26/04 to the left of page)
- 3€Generally, HIPAA permits a covered entity to release certain Protected Health Information (PHI) when investigating criminal activity
- 3€However, if state privacy law is more stringent, state law will prevail.

Right to be Free from Seclusion and Restraint

- 3€An individual in services is to be free from seclusion and restraints.
- 3€Crisis stabilization
- 3€Federal regulations
 - ☒ Hospital Conditions of Participation for Medicaid
 - ☒ Seclusion and Restraint regulations

Right to be Free from Abuse, Neglect and Exploitation

- 3€ Consumers should be free from abuse, neglect and exploitation;
- 3€ State and federal laws and regulations against abuse, neglect and exploitation
- 3€ Training in prevention of abuse, neglect and exploitation is key.
- 3€ Clients' Rights Rules and Regulations;
- 3€ Disabled Adults and Elder Rights laws or Long Term Care Act;
- 3€ DHR Uniform Guide for Adult Abuse Reporting

Vulnerable Consumers

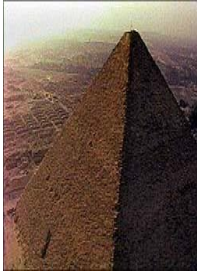
- 3€ Severe Disability;
- 3€ Non-Verbal;
- 3€ Significant Behavioral Issues;
- 3€ Medically Fragile;
- 3€ No family or outside person who advocates for the consumer (unpaid);
- 3€ Changes in Behavior; and
- 3€ Past allegations of abuse;
- 3€ Prescribed several medications.

Keeping An Eye Out For Additional Issues



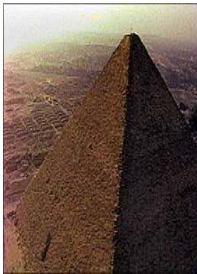
- 3€ Co-occurring disorders
- 3€ Cultural Competency
- 3€ Family/Caregiver Domestic Disputes
- 3€ Incapacitated vs. Overmedicated
- 3€ Behavioral vs. Clinical
- 3€ Language Barriers
- 3€ Aging Issues
- 3€ Dementia
- 3€ Sensory Impairment

Additional Resources



- 3€ Consumer Rights
- 12 Office of Investigations
- 12 DHR/MHDDAD
- 12 (404) 657-5964

Additional Resources




- 3€ Adult Protective Services (APS)
- 12 Disabled Adults and Elder Persons Protection Act, O.C.G.A. §30-5-1, et seq.
- 12 Centralized Intake
DHR Division of Aging Services
1-888-774-0152
In Metro Atlanta Call:
(404) 657-5250
Community Elder Rights Teams include law enforcement

Conclusion



- 3€ Over the years, mental health laws and consumer's rights have significantly changed the way law enforcement and mentally ill persons interact.
- 3€ The Official Code of Georgia Annotated provides specific guidance, **but any questions on the legality of a situation should be addressed to the individual officer's legal counsel.**

**Legal Aspects
of Mental Health Law** 
*Consumer Rights, Civil Commitment &
Probate Lay Affidavit Process*

*Thank you for your leadership on
Georgia Crisis Intervention Team Training.*

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Official Code of Georgia Annotated – Statutes

37-3-1. Definitions.

Statute text

As used in this chapter, the term:

"Available outpatient treatment" means outpatient treatment, either public or private, available in the patient's community, including but not limited to supervision and support of the patient by family, friends, or other responsible persons in that community. Outpatient treatment at state expense shall be available only within the limits of state funds specifically appropriated therefore.

"Chief medical officer" means the physician with overall responsibility for patient treatment at any facility receiving patients under this chapter or a physician appointed in writing as the designee of such chief medical officer.

(2) "Clinical record" means a written record pertaining to an individual patient and shall include all medical records, progress notes, charts, admission and discharge data, and all other information which is recorded by a facility or other entities responsible for a patient's care and treatment under this chapter and which pertains to the patient's hospitalization and treatment. Such other information as maybe be required by rules and regulations of the board shall also be included.

(3) "Community mental health center" means an organized program for the care and treatment of the mentally ill operated by a community service board or other appropriate public provider.

(4) "Court" means:

In the case of an individual who is 17 years of age or older, the probate court of the county of residence of the patient or the county in which such patient is found. Notwithstanding Code Section 15-9-13, in any case in which the judge of such court is unable to hear a case brought under this chapter within the time required for such hearing or is unavailable to issue the order specified in subsection (b) of Code Section 37-41, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and shall be otherwise qualified for his duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or his successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed with the approval of the governing authority of the county for which such person is appointed and shall be paid from the county funds of said county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served; or

(B) In the case of an individual who is under the age of 17 years, the juvenile court of the county of residence of the patient or the county in which such patient is found.

(5) "Emergency receiving facility" means a facility designated by the department to receive patients under emergency conditions as provided in Part 1 of Article 3 of this chapter.

(6) "Evaluating facility" means a facility designated by the department to receive patients for psychiatric evaluation as provided in Part 2 of Article 3 of this chapter.

(7) "Facility" means any state owned or state operated hospital, community mental health center, or other facility utilized for the diagnosis, care, treatment, or hospitalization of persons who are mentally ill; any facility operated or utilized for such purpose by the United States Department of Veterans Affairs or other federal agency; and any other hospital or facility within the State of Georgia approved for such purpose by the department.

Official Code of Georgia Annotated – Statutes

- (8) "Full and fair hearing" or "hearing" means a proceeding before a hearing examiner under Code Section 37-3-83 or Code Section 37-3-93 or before a court as defined in paragraph (4) of this Code section. The hearing may be held in a regular courtroom or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The patient shall be provided with effective assistance of counsel. If the patient cannot afford counsel, the court shall appoint counsel for him or the hearing examiner shall have the court appoint such counsel; provided, however, that the patient shall have the right to refuse in writing the appointment of counsel, in the discretion of the hearing examiner or the court. The patient shall have the right to confront and cross-examine witnesses and to offer evidence. The patient shall have the right to subpoena witnesses and to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The patient shall have the right to obtain a continuance for any reasonable time for good cause shown. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases. The burden of proof shall be upon the party seeking treatment of the patient. The standard of proof shall be by clear and convincing evidence. At the request of the patient, the public may be excluded from the hearing. The patient may waive his right to be present at the hearing, in the discretion of the hearing examiner or the court. The reason for the action of the court or hearing examiner in excluding the public or permitting the hearing to proceed in the patient's absence shall be reflected in the record.
- (9) "Individualized service plan" means a proposal developed during a patient's stay in a facility and which is specifically tailored to the individual patient's treatment needs. Each plan shall clearly include the following:
- (A) A statement of treatment goals or objectives, based upon and related to a proper evaluation, which can be reasonably achieved within a designated time interval;
 - (B) Treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to these goals and which include a specific prognosis for achieving these goals;
 - (C) Identification of the types of professional personnel who will carry out the treatment and procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law;
 - (D) Documentation of patient involvement and, if applicable, the patient's accordence with the service plan; and
 - (E) A statement attesting that the chief medical officer has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the patient's home community.
- (9.1) "Inpatient" means a person who is mentally ill and:
- (A)(i) Who presents a substantial risk of imminent harm to that person or others, as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to that person or other persons; or
 - (ii) Who is so unable to care for that person's own physical health and safety as to create an imminently life-endangering crisis; and
 - (B) Who is in need of involuntary inpatient treatment.
- (9.2) "Inpatient treatment" or "hospitalization" means a program of treatment for mental illness within a hospital facility setting.
- (9.3) "Involuntary treatment" means inpatient or outpatient treatment which a patient is required to obtain pursuant to this chapter. (10) "Least restrictive alternative," "least restrictive environment," or "least restrictive appropriate care and treatment" means that which is the least restrictive available alternative, environment, or care and treatment, respectively, within the limits of state funds specifically appropriated therefore.

Official Code of Georgia Annotated – Statutes

- (11) "Mentally ill" means having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (12) "Mentally ill person requiring involuntary treatment" means a person who is an inpatient or an outpatient.
 - (12.1) "Outpatient" means a person who is mentally ill and:
 - (A) Who is not an inpatient but who, based on the person's treatment history or current mental status, will require outpatient treatment in order to avoid predictably and imminently becoming an inpatient;
 - (B) Who because of the person's current mental status, mental history, or nature of the person's mental illness is unable voluntarily to seek or comply with outpatient treatment; and
 - (C) Who is in need of involuntary treatment.
 - (12.2) "Outpatient treatment" means a program of treatment for mental illness outside a hospital facility setting which includes, without being limited to, medication and prescription monitoring, individual or group therapy, day or partial programming activities, case management services, and other services to alleviate or treat the patient's mental illness so as to maintain the patient's semi-independent functioning and to prevent the patient's becoming an inpatient.
- (13) "Patient" means any mentally ill person who seeks treatment under this chapter or any person for whom such treatment is sought.
- (14) "Private facility" means any hospital facility that is a proprietary hospital or a hospital operated by a nonprofit corporation or association approved for the purposes of this chapter, as provided herein, or any hospital facility operated by a hospital authority created pursuant to the "Hospital Authorities Law," Article 4 of Chapter 7 of Title 31.
 - (14.1) "Psychologist" means a licensed psychologist who meets the criteria of training and experience as a health service provider psychologist as provided in Code Section 31-7-162.
 - (14.2) "Regional state hospital administrator" means the chief administrative officer of a state owned or state operated hospital and the state owned or operated community programs in a region. The regional state hospital administrator, under the supervision of the regional coordinator, has overall management responsibility for the regional state hospital and manages services provided by employees of the regional state hospital and employees of state owned or operated community programs within a mental health, developmental disabilities, and addictive diseases region established in accordance with Code Section 37-2-3.
- (15) "Representatives" means the persons appointed as provided in Code Section 37-3-147 to receive notice of the proceedings for voluntary or involuntary treatment.
- (16) "Superintendent" means the chief administrative officer who has overall management responsibility at any facility receiving patients under this chapter, other than a regional state hospital or state owned or operated community program, or an individual appointed as the designee of such superintendent.
 - (16.1) "Traumatic brain injury" means a traumatic insult to the brain and its related parts resulting in organic damage thereto which may cause physical, intellectual, emotional, social, or vocational changes in a person. It shall also be recognized that a person having a traumatic brain injury may have organic damage or physical or social disorders, but for the purposes of this chapter, traumatic brain injury shall not be considered mental illness as defined in paragraph (11) of this Code section.
- (17) "Treatment" means care, diagnostic and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual.
- (18) "Treatment facility" means a facility designated by the department to receive patients for psychiatric treatment as provided in Code Sections 37-3-80 through 37-3-84.

Official Code of Georgia Annotated – Statutes

37-3-4. Immunity of physicians, peace officers, or other private or public hospital employees from liability for actions taken in good faith compliance with admission and discharge provisions of chapter.

Statute text

Any physician, psychologist, peace officer, attorney, or health official, or any hospital official, agent, or other person employed by a private hospital or at a facility operated by the state, by a political subdivision of the state, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility.

37-3-5. Apprehension by peace officer of patient who leaves facility without permission.

Statute text

If, during the period of involuntary hospitalization pursuant to any valid physician's certificate, court order, or order by the hearing examiner authorized by this chapter, a patient escapes or otherwise leaves a facility without permission, the facility may advise any peace officer that the patient has escaped or otherwise left the facility without permission; and the peace officer shall be authorized to take the patient into custody and return him to such facility.

Official Code of Georgia Annotated – Statutes

37-3-41. Emergency admission based on physician's certification or court order; report by apprehending officer; entry of treatment order into patient's clinical record; authority of other personnel to act under statute.

Statute text

- (a) Any physician within this state may execute a certificate stating that he has personally examined a person within the preceding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment. A physician's certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.
- (b) The appropriate court of the county in which a person may be found may issue an order commanding any peace officer to take such person into custody and deliver him forthwith for examination, either to the nearest available emergency receiving facility serving the county in which the patient is found, where such person shall be received for examination, or to a physician who has agreed to examine such patient and who will provide, where appropriate, a certificate pursuant to subsection (a) of this Code section to permit delivery of such patient to an emergency receiving facility pursuant to subsection (a) of this Code section. Such order may only be issued if based either upon an unexpired physician's certificate, as provided in subsection (a) of this Code section, or upon the affidavits of at least two persons who attest that, within the preceding 48 hours, they have seen the person to be taken into custody and that, based upon observations contained in their affidavit, they have reason to believe such person is a mentally ill person requiring involuntary treatment. The court order shall expire seven days after it is executed.
- (c) Any peace officer taking into custody and delivering for examination a person, as authorized by subsection (a) or (b) of this Code section, shall execute a written report detailing the circumstances under which such person was taken into custody. The report and either the physician's certificate or court order authorizing such taking into custody shall be made a part of the patient's clinical record.
- (d) Any psychologist, clinical social worker, or clinical nurse specialist in psychiatric/mental health may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist, a clinical social worker, or a clinical nurse specialist in psychiatric/mental health acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist, the term "clinical social worker" means any person authorized under the laws of this state to practice as a licensed clinical social worker, and the term "clinical nurse specialist in psychiatric/mental health" means any person authorized under the laws of this state to practice as a registered professional nurse and who is recognized by the Georgia Board of Nursing to be engaged in advanced nursing practice as a clinical nurse specialist in psychiatric/mental health.

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37-3-42. Emergency admission of persons arrested for penal offenses; report by officer; entry of report into clinical record.

Statute text

- (a) A peace officer may take any person to a physician within the county or an adjoining county for emergency examination by the physician, as provided in Code Section 37-3-41, or directly to an emergency receiving facility if (1) the person is committing a penal offense, and (2) the peace officer has probable cause for believing that the person is a mentally ill person requiring involuntary treatment. The peace officer need not formally tender charges against the individual prior to taking the individual to a physician or an emergency receiving facility under this Code section. The peace officer shall execute a written report detailing the circumstances under which the person was taken into custody; and this report shall be made a part of the patient's clinical record.
- (b) Any psychologist may perform any act specified by this Code section to be performed by a physician. Any reference in any part of this chapter to a physician acting under this Code section shall be deemed to refer equally to a psychologist acting under this Code section. For purposes of this subsection, the term "psychologist" means any person authorized under the laws of this state to practice as a licensed psychologist.

37-3-61. Initiation of proceedings for court ordered evaluation.

Statute text

Proceedings for a court ordered evaluation may be initiated in the following manner:

- (1) Any person may file an application executed under oath with the community mental health center for a court ordered evaluation of a person located within that county who is alleged by such application to be a mentally ill person requiring involuntary treatment. Upon the filing of such application, the community mental health center shall make a preliminary investigation and, if the investigation shows that there is probable cause to believe that such allegation is true, it shall file a petition with the court in the county where the patient is located seeking an involuntary admission for evaluation; and
- (2) Any person may file with the court a petition executed under oath alleging that a person within the county is a mentally ill person requiring involuntary treatment. The petition must be accompanied by the certificate of a physician or psychologist stating that he has examined the patient within the preceding five days and has found that the patient may be a mentally ill person requiring involuntary treatment and that a full evaluation of the patient is necessary.

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37-3-101. Transportation of patients generally.

Statute text

- (a) The governing authority of the county where the patient is found or located shall arrange for initial emergency transport of a patient to an emergency receiving facility. Except as otherwise authorized under subsection (b) of this Code section, the governing authority of the county of the patient's residence shall arrange for all required transportation for mental health purposes subsequent to the initial transport. The type of vehicle employed shall be in the discretion of the governing authority of the county, provided that, whenever possible, marked vehicles normally used for the transportation of criminals or those accused of crimes shall not be used for the transportation of patients. The court shall, upon the request of the community mental health center, order the sheriff to transport the patient in such manner as the patient's condition demands. At any time the community mental health center is satisfied that the patient can be transported safely by family members or friends, such private transportation shall be encouraged and authorized. In non-emergency situations, no female patient shall be transported at any time without another female in attendance who is not a patient, unless such female patient is accompanied by her husband, father, adult brother, or adult son.
- (b) Notwithstanding the provisions of subsection (a) of this Code section, when a patient is under the care of a facility, the facility shall have the discretion to determine the type of vehicle to safely transport the patient and to arrange for such transportation without the need to obtain the prior approval of the governing authority of the county of the patient's residence, the court, or the community mental health center. This subsection shall not prevent the facility from requesting and receiving transportation services from the governing authority of the county of the patient's residence and shall not relieve the county sheriff of the duty of providing transportation. Persons providing transportation are authorized to transport a patient from a sending facility to a receiving facility but shall not release the patient under any circumstances except into the custody of the receiving facility. The use of physical restraints to ensure the safe transport of the patient shall comply with the requirements of Code Section 37-3-165. When transportation is not provided by the county sheriff, the expense of such transportation shall not be billed to the county governing authority but may be billed to the patient and, unless agreed to in writing by the facility, shall not be billed to or considered an obligation of the facility.

37-3-166. Treatment of clinical records; when release permitted; scope of privileged communications; liability for disclosure; notice to sheriff of discharge. Statute text

- (a) A clinical record for each patient shall be maintained. Authorized release of the record shall include but not be limited to examination of the original record, copies of all or any portion of the record, or disclosure of information from the record, except for matters privileged under the laws of this state. Such examination shall be conducted on hospital premises at reasonable times determined by the facility. The clinical record shall not be a public record and no part of it shall be released except:
 - (1) When the chief medical officer of the facility where the record is kept deems it essential for continued treatment, a copy of the record or parts thereof may be released to physicians or psychologists when and as necessary for the treatment of the patient;
 - (2) A copy of the record may be released to any person or entity designated in writing by the patient or, if appropriate, the parent of a minor, the legal guardian of an adult or minor, or a person to whom legal custody of a minor patient has been given by order of a court;
 - (2.1) A copy of the record of a deceased patient or deceased former patient may be released to or in response to a valid subpoena of a coroner or medical examiner under Chapter 16 of Title 45, except for matters privileged under the laws of this state;

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- (3) When a patient is admitted to a facility, a copy of the record or information contained in the record from another facility, community mental health center, or private practitioner may be released to the admitting facility. When the service plan of a patient involves transfer of that patient to another facility, community mental health center, or private practitioner, a copy of the record or information contained in the record may be released to that facility, community mental health center, or private practitioner; (4) A copy of the record or any part thereof may be disclosed to any employee or staff member of the facility when it is necessary for the proper treatment of the patient;
- (5) A copy of the record shall be released to the patient's attorney if the attorney so requests and the patient, or the patient's legal guardian, consents to the release;
- (6) In a bona fide medical emergency, as determined by a physician treating the patient, the chief medical officer may release a copy of the record to the treating physician or to the patient's psychologist;
- (7) At the request of the patient, the patient's legal guardian, or the patient's attorney, the record shall be produced by the entity having custody thereof at any hearing held under this chapter;
- (8) A copy of the record shall be produced in response to a valid subpoena or order of any court of competent jurisdiction, except for matters privileged under the laws of this state;
- (8.1) A copy of the record may be released to the legal representative of a deceased patient's estate, except for matters privileged under the laws of this state;
- (9) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of a criminal investigation may be informed as to whether a person is or has been a patient in a state facility, as well as the patient's current address, if known; and
- (10) Notwithstanding any other provision of law to the contrary, a law enforcement officer in the course of investigating the commission of a crime on the premises of a facility covered by this chapter or against facility personnel or a threat to commit such a crime may be informed as to the circumstances of the incident, including whether the individual allegedly committing or threatening to commit a crime is or has been a patient in the facility, and the name, address, and last known whereabouts of any alleged patient perpetrator.
- (b) In connection with any hearing held under this chapter, any physician, including any psychiatrist, or any psychologist who is treating or who has treated the patient shall be authorized to give evidence as to any matter concerning the patient, including evidence as to communications otherwise privileged under Code Section 24-9-21, 24-9-40, or 43-39-16.
- (c) Any disclosure authorized by this Code section or any unauthorized disclosure of confidential or privileged patient information or communications shall not in any way abridge or destroy the confidential or privileged character thereof, except for the purpose for which such authorized disclosure is made. Any person making a disclosure authorized by this Code section shall not be liable to the patient or any other person, notwithstanding any contrary provision of Code Section 24-9-21, 24-9-40, or 43-39-16.
- (d) When a sheriff transports an adult involuntary patient to a facility, that sheriff may request in writing that a notice of such patient's discharge be given to the sheriff; and such notice shall be provided if such patient or the patient's guardian consents in writing to the disclosure or if, in its discretion, the court ordering the involuntary treatment provides for such notice in the order issued pursuant to Code Section 37-3-81.1.

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51-7-1. Right of action for false arrest.

Statute text

An arrest under process of law, without probable cause, when made maliciously, shall give a right of action to the party arrested.

51-7-2. Malice defined.

Statute text

Malice consists in personal spite or in a general disregard of the right consideration of mankind, directed by chance against the individual injured.

51-7-20. False imprisonment defined.

Statute text

False imprisonment is the unlawful detention of the person of another, for any length of time, whereby such person is deprived

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30-5-1. Short title. Statute text This chapter shall be known and may be cited as the "Disabled Adults and Elder Persons Protection Act."

30-5-2. Legislative purpose. Statute text

The purpose of this chapter is to provide protective services for abused, neglected, or exploited disabled adults and elder persons. It is not the purpose of this chapter to place restrictions upon the personal liberty of disabled adults or elder persons, but this chapter should be liberally construed to assure the availability of protective services to all disabled adults and elder persons in need of them.

30-5-3.

Definition

s. Statute

text As

used in

this

chapter,

the term:

- (1) "Abuse" means the willful infliction of physical pain, physical injury, mental anguish, unreasonable confinement, or the willful deprivation of essential services to a disabled adult or elder person.
- (2) "Caretaker" means a person who has the responsibility for the care of a disabled adult or elder person as a result of family relationship, contract, voluntary assumption of that responsibility, or by operation of law.
- (3) "Court" means the probate court for the county of residence of the disabled adult or elder person or the county in which such person is found. In any case in which the judge of the probate court is unable to hear a case brought under this chapter within the time required for such hearing, such judge shall appoint a person to serve and exercise all the jurisdiction of the probate court in such case. Any person so appointed shall be a member of the State Bar of Georgia and be otherwise qualified for his or her duties by training and experience. Such appointment may be made on a case-by-case basis or by making a standing appointment of one or more persons. Any person receiving such standing appointment shall serve at the pleasure of the judge making the appointment or said judge's successor in office to hear such cases if and when necessary. The compensation of a person so appointed shall be as agreed upon by the judge who makes the appointment and the person appointed, with the approval of the governing authority of the county for which such person is appointed, and shall be paid from the county funds of such county. All fees collected for the services of such appointed person shall be paid into the general funds of the county served.
- (4) "Department" means the Department of Human Resources.
- (5) "Director" means the director of the county department of family and children services, or the director's designee, in the county in which the disabled adult or elder person resides or is present.
- (6) "Disabled adult" means a person 18 years of age or older who is not a resident of a long-term care facility, as defined in Article 4 of Chapter 8 of Title 31, but who is mentally or physically incapacitated.
- (7) "Disabled adult in need of protective services" means a disabled adult who is subject to abuse, neglect, or exploitation as a result of that adult's mental or physical incapacity.

(7.1) "Elder person" means a person 65 years of age or older who is not a resident of a long-term care facility as defined in Article 4 of

Chapter 8 of Title 31.

- (8) "Essential services" means social, medical, psychiatric, or legal services necessary to safeguard the disabled adult's or elder person's rights and resources and to maintain the physical and mental well-being of such person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, and protection from health and safety hazards but shall not include the taking into physical custody of a disabled adult or elder person without that person's consent.
- (9) "Exploitation" means the illegal or improper use of a disabled adult or elder person or that person's resources for another's profit or advantage.
- (10) "Neglect" means the absence or omission of essential services to the degree that it harms or threatens with harm the physical or emotional health of a disabled adult or elder person.
- (11) "Protective services" means services necessary to protect a disabled adult or elder person from abuse, neglect, or exploitation. Such services shall include, but not be limited to, evaluation of the need for services and mobilization of essential services on behalf of a disabled adult or elder person.