

Involuntary Civil Commitment: Time for Another Pendulum Swing?

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To the Editor—Upon learning that her son, Nicholas Nanes, was arrested in September 2020 for the alleged murder of two Wake County residents, Janet Allen lamented that the mental health system had failed both her son and the community. She reported to the media that her son had been diagnosed with schizophrenia and was “in and out of the hospital, in and out of jail” during the past several years [1]. Ms. Allen indicated that her attempts to get her son help were unsuccessful, and she alluded to an unwillingness on his part to voluntarily engage in treatment. She noted, “severely mentally ill people may need some of their rights taken away, and I am speaking of my son” [1].

Ms. Allen’s comments echo frustrations that many individuals experience when attempting to have a loved one engage in meaningful treatment for a severe mental illness. During the American Civil Rights movement, greater attention was paid to the civil liberties deprivations associated with involuntary commitment. Several landmark court cases in the 1970s resulted in significant changes being made to civil commitment processes. These cases include *Lessard v Schmidt* (which granted individuals facing civil commitment many of the same legal protections that are extended to defendants in criminal proceedings) [2], *O’Connor v Donaldson* (which highlighted a need for dangerousness as a criterion for commitment) [3], and *Addington v Texas* (which raised the burden of proof for civil commitment to a “clear and convincing evidence” standard) [4]. As a consequence of these rulings, there has been a shift away from a need-for-treatment approach (based upon the principle of *parens patriae*) and a tightening of the requirements for involuntary commitment, which has made it more difficult for someone to be civilly committed for psychiatric treatment.

It is understandable why this change has occurred, as many individuals committed to psychiatric institutions during the past two centuries were exposed to terrible conditions, with minimal due process protections. However, during the past several decades the nation has witnessed the collateral effects associated with a tightening of the commitment laws. It is estimated that 16%-20% of the

current incarcerated population in the United States has a severe mental illness, compared to 4% in the general public [5]. Also, approximately 25% of America’s homeless population suffers from severe mental illness [6]. Jails, prisons, homeless shelters, and streets are not acceptable environments for the mentally ill; perhaps it is time for the pendulum to swing back toward a treatment-centric commitment model. NCMJ

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