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# JOURNAL



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# Involuntary Detention for Mental Illness

By Thomas G. Glick and Misty A. Watson

As lawyers, we spend a great deal of our efforts focusing on time. We respond to deadlines measured in days, weeks, months, even years. However, people who are mentally ill and a threat to themselves or others need legal attention in hours and minutes. For this reason, the State has crafted a system for involuntary detention and treatment of certain persons with express procedures when appropriate.<sup>1</sup>

In Missouri, the probate division is the traditional court for handling the affairs of those who cannot manage their affairs themselves, either because of death, disability or minority.<sup>2</sup> As a result, involuntary detention of mentally ill people who are also experiencing substantial problems and potentially acting contrary to their own interests, are also assigned to the probate divisions in Missouri.<sup>3</sup> Unfortunately, the procedures as expressly laid out in Chapters 631 and 632 for involuntary commitment rely heavily upon the actions of a local mental health coordinator.<sup>4</sup> Local mental health coordinators are mentioned repeatedly throughout the statute and play an important role in the involuntary commitment process.<sup>5</sup> Unfortunately, since 2004, mental health coordinators have not existed in Missouri and have not been funded.<sup>6</sup> As a result, the statute written to revolve around mental health coordinators must continue to function on its own without these individuals. For this reason and because of the urgent nature mental health cases present, a general legal practitioner might well benefit from a primer on involuntary detention and treatment. This article addresses how the involuntary detention statutes currently function in the absence of funding for mental health coordinators. Specifically excluded from this discussion are the statutory provisions in the mental health

statute addressing sexually violent predators<sup>7</sup> and mentally ill minors.<sup>8</sup>

Involuntary detention procedures are civil matters under Missouri statute.<sup>9</sup> Frequently this procedure is referred to as involuntary civil commitment. However, because they involve such a substantial denial of personal liberty in a locked-door facility, many rights for criminal defendants are also present in the involuntary commitment statute.<sup>10</sup> For example, there is an absolute right to an attorney<sup>11</sup> and the stat-

ute specifically provides for an attorney assigned to the respondent by the probate division.<sup>12</sup> Similarly, respondents to a petition for involuntary detention have an absolute right to remain silent and from self-incrimination, similar to the rights afforded to criminal defendants.<sup>13</sup> Correlations between this civil procedure and criminal procedure are further highlighted by the fact that these petitions are prosecuted by the prosecuting attorney or county counselor for that circuit court, even

1. Mo. Rev. Stat. § 632.105 to Mo. Rev. Stat. § 632.475 (2000).
2. Mo. Rev. Stat. § 472.020 (2000).
3. Mo. Rev. Stat. § 632.300(1) (2000).
4. See, e.g., Mo. Rev. Stat. § 632.300(1) (2000).
5. See, e.g., Mo. Rev. Stat. § 632.005(10) (2000).
6. Department of Mental Health—FY04 Budget (2004).
7. For more on the Sexually Violent Predator Statute see Mo. Rev. Stat. § 632.480 (2000) *et. seq.*
8. For more on mentally ill minors see Mo. Rev. Stat. § 632.110 (2000), § 632.115 (2000) and § 632.500 *et. seq.* (2000).
9. Mo. Rev. Stat. § 632.325 (2000).
10. Mo. Rev. Stat. § 632.324 (2000).
11. Mo. Rev. Stat. § 632.324(4) (2000).
12. Mo. Rev. Stat. § 632.415 (2000).
13. Mo. Rev. Stat. § 632.325 (2000).

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though petitions are created for and by mental health institutions.<sup>14</sup>

Any person who as a result of a mental disorder presents a likelihood of serious harm to himself or others may be subject to involuntary detention of varying durations.<sup>15</sup> Although modern psychiatry indicates that drug and alcohol abuse and dependence are mental illnesses,<sup>16</sup> these are specifically excluded from the involuntary detention procedures found in Chapter 632.<sup>17</sup> However, a separate provision is made for involuntary detention of persons who present a likelihood of serious harm to themselves or others as a result of drug or alcohol abuse.<sup>18</sup> In both cases, in order to prevail and have a petition granted for detention or additional detention, the petitioner must meet a burden of proof with clear and convincing evidence of both the respondent's mental illness and the likelihood of serious harm by the respondent to himself or others.<sup>19</sup>

### **Involuntary Detention Procedures**

The venue of an initial petition is any place where the respondent is either domiciled or can be found.<sup>20</sup> Subsequent hearings are properly held in the venue of the mental health facility where the respondent can be found.<sup>21</sup> However, respondents have the right to transfer venue from the location of their detention to their county of domicile by mere request of the same.<sup>22</sup>

As the time of possible detention for the respondent increases, the statutes correlatively provide for the due process rights of the respondent to increase. Initially, respondents may be detained for up to 96 hours by the presentation of an affidavit and/or testimony to any judge.<sup>23</sup> These petitions can be presented *ex parte* and can call for detention for up to 96 hours.<sup>24</sup> Although the statutory scheme indicates that the primary means of achieving such involuntary detention is through a mental health coordinator,<sup>25</sup> the absence of the mental health coordinators means that alternatives must be pursued for practical implementation of the stat-

ute.<sup>26</sup> Normally, the statute is implemented either by the presentation of an affidavit by a family member or any adult person<sup>27</sup> or by the presentation of an affidavit from a mental health professional where the mentally ill individual has through various possible means come for treatment.<sup>28</sup> The involuntary detention procedure may also result from voluntary detention when patients who voluntarily admit themselves into an inpatient mental health facility subsequently rescind their consent to treatment and demand release.<sup>29</sup> Under these conditions, if in the discretion of the treating physician or other healthcare workers, release is inappropriate because the respondent represents the likelihood of serious harm to himself or others, then the 96-hour hold may be initiated.<sup>30</sup>

The 96-hour treatment is defined not to include any holidays recog-

nized by the facility or court.<sup>31</sup> In addition to the 96 hours, if a facility has applied for up to 21 days additional detention and treatment, the respondent may be held for up to two judicial days to permit the court the opportunity to convene a hearing. The 96-hour provisions can be readily calculated (for weeks without any holidays) by use of the following chart.<sup>32</sup>

<b>Involuntary Admission on:</b>	<b>96-hour Hold Concludes at the Same Time on:</b>
Monday	Friday
Tuesday	Monday
Wednesday	Tuesday
Thursday	Wednesday
Friday	Thursday
Saturday	Friday
Sunday	Friday

14. Mo. Rev. Stat. § 632.405 (2000).
15. Mo. Rev. Stat. § 632.005(9) (2000).
16. Alan Frances, Harold A. Pincus, and Michael B. First, eds, American Psychiatric Ass'n, *Diagnostic & Statistical Manual of Mental Disorders: DSM-IV-TR* (4<sup>th</sup> ed. 2000).
17. Mo. Rev. Stat. § 632.380 (2000).
18. Mo. Rev. Stat. § 631.005-175 (2000).
19. Mo. Rev. Stat. § 632.145(4) (2000); Mo. Rev. Stat. § 632.335(4) (2000).
20. Mo. Rev. Stat. § 632.410 (2000).
21. *Id.*
22. *Id.*
23. Mo. Rev. Stat. § 632.305 (2000).
24. Mo. Rev. Stat. § 632.305(2) (2000).
25. Mo. Rev. Stat. § 632.300 (2000).
26. Mo. Rev. Stat. § 632.305(1) (2000).
27. Mo. Rev. Stat. § 632.305(4) (2000).
28. Mo. Rev. Stat. § 632.150 (2000).
29. *Id.*
30. *Id.*
31. Mo. Rev. Stat. § 632.005(14) (2000).
32. Mo. Rev. Stat. § 632.330(1) (2000).

