

January 1969

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Denver Law Journal

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Recommended Citation

Civil Commitment in Colorado: Introduction, 46 Denv. L.J. 495 (1969).

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Civil Commitment in Colorado: Introduction

CIVIL COMMITMENT IN COLORADO

INTRODUCTION

Man often attempts to remove from his society that which he cannot comprehend. Consequently the history of those suffering from the infirmities of mental illness has been one of condemnation and confinement. Yet as man began to understand the complexities of mental illness and realize that factors such as environment and experience contributed to the development of personality and behavior, he became less quick to condemn and more anxious to help. Significant developments in new fields of learning such as sociology, psychology, and psychiatry have helped to create a society which is more receptive to the problems of mental health.

In recent years, society's response to persons with mental health problems has undergone close scrutiny and careful reevaluation by lawmaking bodies, by concerned professionals, and by the academic community. The major challenge facing the legal profession has been to develop standards for determining when and how a mentally afflicted individual's legal status may be altered in order that custody and treatment may be imposed upon him against his will. Concepts of due process have become determinative guidelines in framing and evaluating the basic procedures by which society may alter the legal status and restrict the rights of individuals whose mental condition and behavior deviate substantially from accepted norms. In this issue, two articles present contrasting, although not inconsistent, views of due process in the civil commitment process in Colorado.

Probate Court Judge David Brofman's article reviews the basic commitment procedures and compares them with procedures in earlier years in Colorado, which were basically punishment-oriented. His theme is that presently the rights of the mentally ill are fully and adequately protected by statute, by Colorado supreme court decision, and by district and probate court procedure. Yet he notes the comparatively meager portion of the nation's resources which are being channeled toward mental health problems in general.

Carl Johnson's article concludes that the present procedures do not provide adequate safeguards, in large measure *because* of inadequate resources which are channeled toward the problems of civil commitment. He presents extensive analysis and research which consider the civil commitment process in light of his three major purposes: (1) to compare the formal law — as set forth in the statutes and court opinions — and the law as it is administered in day-to-day practice; (2) to gain an insight into and evaluate the standards of "due process" and fairness inherent in the practices under the present formal law with a view to suggesting changes and improvements in the present commitment and adjudication procedures; and (3) to provide the practicing attorney with a basic rudimentary description of the present commitment and adjudication procedures in Colorado and their administration. The author's recommendations and concrete proposals for change may be evaluated in terms of his legal and empirical research and in the context of the perspective provided by Judge Brofman.