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CIVIL COMMITMENT OF THE MENTALLY ILL IN THE DENVER PROBATE COURT

BY DAVID BROFMAN†*

INTRODUCTION

IT has been a long hard road from the days when the subjects of "lunacy inquisitions" in Colorado were called "defendants"[1] to today's standards of treatment, care and legal protection of the mentally ill. Not until 1957 was the terminology in the chapter of the Colorado statutes dealing with the mentally ill modernized and language such as "lunatics and other mental defectives" or "lunatics," deleted.[2]

Only 15 years ago volunteers in mental health literally had legislative doors slammed in their faces when they sought enactment of relatively minor changes in the nomenclature which would have deleted the offensive and outdated statutory language referring to the mentally ill.[3] The efforts of these volunteers continued, however, and in 1957 the modern terminology was adopted.[4]

Procedures for the *voluntary* treatment of the mentally ill were proposed by citizens' groups and were adopted by the legislature in 1957.[5] However, efforts to obtain treatment on a voluntary basis were thwarted by institution directors who refused to accept patients seeking voluntary hospitalization.[6] A similar problem was faced earlier in this century, and then, as now, volunteers were the leaders in the reforms sought. As a result of the earlier citizen efforts to provide care for Colorado's mentally ill, an act was adopted by the voters in 1916, providing

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[1] Hawkyard v. People, 115 Colo. 35, 169 P.2d 178 (1946).

[2] COLO. REV. STAT. ANN. §§ 71-1-1 to 71-1-33 (Supp. 1960).

[3] Six volunteers waited two hours after their appointment time for the chairman of the legislative committee. When he arrived, they were unpolitely dismissed because he was too busy to see them.

[4] As an example, the "lunacy commission" referred to in COLO. REV. STAT. ANN. § 71-1-2 (1953) became the "medical commission" in COLO. REV. STAT. ANN. § 71-1-6 (Supp. 1960).

[5] COLO. REV. STAT. ANN. § 71-1-2 (Supp. 1960).

[6] Probate court and city attorney personnel recall the firm refusal of the then superintendent of the Colorado State Hospital to accept such patients.

for the care and treatment of the insane.[7] The act, which was initiated by petition, provided that the Colorado Board of Corrections (the agency entrusted with the responsibility of administering mental care institutions at the time) could not limit the number of persons cared for at the "Colorado Insane Asylum" or elsewhere. It became the law when approved by Colorado voters by a four-to-one margin, and by Denver County voters by ten-to-one.[8]

In 1960 the volunteers again presented their case to the Colorado lawmakers. A joint session of the legislature and a packed gallery heard William C. Menninger, M.D., of the famed Menninger Foundation in Topeka, Kansas, relate the needs for effective, humane care and treatment of the mentally ill in Colorado.[9] So great was the impact of this and previous educational efforts that the 1965 bill amending the short term involuntary hospitalization and commitment procedures was sponsored by 59 of the 100 members of the session.[10]

The rights of the mentally ill were further protected when the legislature in 1957 adopted a statute insuring the right of the patient to communicate with the court, relatives, and attorneys in any form.[11]

Through the years, largely through the efforts of concerned and dedicated volunteers, the plight of the mentally ill in Colorado has been recognized by the legislature, and action has been taken to provide care, treatment, funds, facilities, and protection of the legal rights of the mentally ill.

The volunteer efforts in the mental health field continue. In the Denver Probate Court, there is constant coordination and consultation between court officials, members of the city attorney's staff, law enforcement personnel, physicians, clergymen, teachers, civic groups, welfare and social workers, visiting nurses, attorneys, and others, in the processing of cases and consideration of ways of improving the care and protection of the mentally ill.

I. The Civil Commitment Process

The Denver Probate Court has exclusive original jurisdiction to hear and determine matters arising in the City and County of

[7] Colo. Sess. Laws 1917, ch. 79, 21st Sess. of the Gen. Ass'y of the State of Colo. The act was approved at the general election held November 7, 1916.

[8] *Id.*

[9] Address by Dr. Menninger to the Colorado State Legislature, January 8, 1960.

[10] Colo. Sess. Laws 1965, ch. 186, 1st Sess. of 45th Gen. Ass'y of the State of Colo. (codified in scattered sections of Colo. Rev. Stat. Ann., chapter 71) (Supp. 1965).

[11] Colo. Rev. Stat. Ann. § 71-1-23 (Supp. 1960), *as amended* (Supp. 1965).

Denver under Chapter 71 of the Colorado Revised Statutes.[12] The mental health division of the court, which is presently staffed by two assistant city attorneys and three probate court personnel, has responsibility for processing and investigating commitment proceedings commenced in the court. In 1968, the division handled a total of 2,074 actions.[13]

The statute provides for four basic commitment procedures: 1) voluntary hospitalization,[14] 2) emergency custody,[15] 3) short term involuntary hospitalization,[16] and 4) involuntary commitment.[17] The probate court has statutory jurisdiction in each of these proceedings except voluntary hospitalization.[18] While the statute does not require that voluntary hospitalization be processed by the court, the staff of the mental health division can and does assist in such proceedings pursuant to court policy. In addition to the emergency, short term, and involuntary commitment proceedings, over which it has original jurisdiction, the court handles a number of cases referred from the county and district courts.[19] The statute provides that no examination shall be made of any person charged with a criminal offense by a medical commission appointed under the *civil* commitment provisions unless or until the criminal offense shall be tried or dismissed; this provision, however, allows the judge of the court having jurisdiction of the pending criminal action to request the probate court to proceed under the civil commitment provisions.[20]

A. *Voluntary Hospitalization*

1. Admission to Hospital

In 1957, the Colorado legislature enacted the basic voluntary hospitalization provision which is in the statute today. Under this provision, any person age 18 or over who is mentally ill or mentally deficient, and who so requests, may be admitted by any hospital for observation, diagnosis, care, and treatment.[21] This

[12] *Id.* § 71-1-1(2)(f) (Supp. 1965).

[13] 1968 ANNUAL REPORT, PROBATE COURT FOR THE CITY AND COUNTY OF DENVER 2-3.

[14] COLO. REV. STAT. ANN. § 71-1-2 (1963), *as amended* (Supp. 1965).

[15] *Id.* § 71-1-3 (1963), *as amended* (Supp. 1965).

[16] *Id.* § 71-1-4 (1965), *as amended* (Supp. 1969).

[17] *Id.* § 71-1-5 (Supp. 1965), *as amended* (Supp. 1969).

[18] *Id.* § 37-20-3 (Supp. 1965), *as amended* (Supp. 1967); *id.* § 71-1-1(2)(f) (Supp. 1965).

[19] *Id.* § 71-1-10 (Supp. 1965). This section provides for a transfer of jurisdiction "whenever it shall appear necessary and desirable for the convenience of the respondent or for any other reasons . . . ." *Id.*

[20] *Id.* § 71-1-25 (Supp. 1965).

[21] *Id.* § 71-1-2(1) (Supp. 1960), *as amended* (1963).

procedure is commonly used in the treatment of alcoholics.[22] A person under 18 years of age may be admitted upon application of his parent or legal guardian.[23]

2. Release

Any person who is voluntarily hospitalized under this section can be released in one of several ways. He will be discharged if he has recovered, or if hospitalization is no longer advisable, feasible, or beneficial.[24] The statute also provides that a patient shall be discharged upon his request or that of his legal guardian, parent, spouce, or adult next of kin; such release is to occur within 5 days after a written request is filed with the administrative office of the hospital.[25] Release may be conditioned upon the consent of the patient if he was committed at his own request and another person requests his release;[26] release of a minor may be conditioned upon the consent of his parent or legal guardian, if he was committed at the request of another person.[27]

If the administrative officer of the hospital or the attending physician is of the opinion that release of the patient would be unsafe or dangerous he may, within 5 days from filing of the release request, file a written opinion to that effect with the court.[28] The court then proceeds under the short term involuntary hospitalization provisions or the involuntary commitment provisions of the statute.[29]

B. *Emergency Procedure*

1. Custody

A sheriff or police officer who has a good faith belief that a person is mentally ill or deficient, and is apt to injure himself or others if allowed to remain at liberty, may place that person in custody pending an order of the court. The officer must immediately file with the court a statement setting forth the circumstances and the reasons for his conclusions as to the mental condition of the person whom he has placed in custody.[30]

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[22] Use of the voluntary hospitalization procedure is considered to be an effective method of treatment by the Denver authorities.

[23] COLO. REV. STAT. ANN. § 71-1-2(1) (1963).

[24] *Id.* § 71-1-2(2) (1963).

[25] *Id.* § 71-1-2(3)(a) (1963).

[26] *Id.* § 71-1-2(3)(b) (1963).

[27] *Id.* § 71-1-2(3)(c) (1963).

[28] *Id.* § 71-1-2(3)(d) (Supp. 1965).

[29] *Id.* §§ 71-1-4 *et seq.* (Supp. 1965) and §§ 71-1-5 *et seq.* (Supp. 1965). These sections provide further explanation of the procedure followed by the court.

[30] *Id.* 71-1-3 (1963), *as amended* (Supp. 1965).

An 18-bed ward is available at Denver General Hospital for the hospitalization of patients whose behavior is so aggressive that they cannot be safely contained elsewhere in the hospital.[31] A patient who is not dangerous may not be held in jail pending action by the court,[32] although if criminal charges are pending or a criminal investigation is underway, a person might be confined in jail under that action.

2. Court Action

Within 24 hours from the filing of the report by the officer (excluding Saturdays, Sundays and legal holidays) the court must enter an order discharging the person in custody or confining him for observation, diagnosis, or treatment under the short term involuntary hospitalization provisions or referring the matter to a medical commission appointed under the involuntary commitment provisions of the statute.[33]

C. *Short Term Involuntary Hospitalization*

1. Petition

Any reputable person may file with the court a petition alleging that it would be in the best interests of a respondent that he be hospitalized for observation, diagnosis, and treatment for mental illness. The petition must be accompanied by a statement from a licensed physician that it would be in the best interest of the respondent that he be hospitalized. This provision, which was added by the legislature in 1961,[34] is probably the most important protection afforded the respondent by the statute. In his statement, the doctor must set forth the reasons for his opinion and give the dates on which he examined the respondent. The petition must also be accompanied by a statement from the city attorney that probable cause appears to exist for the issuance of an order of hospitalization.[35]

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[31] R. GLASSCOTE, J. SUSSEX, E. CUMMING, & L. SMITH, THE COMMUNITY MENTAL HEALTH CENTER: AN INTERIM APPRAISAL 119 (1969).

[32] COLO. REV. STAT. STAT. ANN. § 71-1-5(2) (Supp. 1965).

> Until the final determination of the inquiry into his mental condition, the respondent shall be placed in the custody of some relative or other proper person, or the department of institutions for placement in a state hopistal, or in the custody of any other hospital not under the supervision of said department or some other convenient or suitable place to be designated by the court, for examination, diagnosis, observation, care and treatment; provided, no person held under the provisions of this section shall be confined in a common jail unless there be sufficient showing that he is violent and dangerous to himself or others or that there is no other adequate place of custody available in the county.

Id.

[33] *Id.* § 71-1-3(3) (1963).

[34] *Id.* § 71-1-4(1) (1963), *as amended* (Supp. 1965).

[35] *Id.*

Proceedings may also be initiated by filing with the court a statement by a physician or administrative officer of a hospital, as provided for in the voluntary hospitalization provision.[36]

Additionally, upon a satisfactory showing to the court that emergency circumstances exist which make it essential that the respondent be immediately hospitalized, and that it would be unsafe or dangerous for him to remain at large pending (1) an examination by a physician or (2) a statement by the city attorney that probable cause appears to exist for the issuance of an order of hospitalization, the court may waive the requirement for either or both and issue an order for hospitalization.[37]

2. Order for Short Term Involuntary Hospitalization and Appointment of Guardian Ad Litem.

Whenever a request is filed for an order of short term hospitalization, the court will appoint an attorney as guardian *ad litem* for the respondent. It is the duty of the guardian *ad litem* to make such investigation as is necessary to protect the interests of the respondent, and to make certain that the respondent is or has been advised of his right to a hearing on the order of hospitalization. The guardian *ad litem* should report the results of his investigation to the court as soon as possible, but he must do so not more than 5 days after the entry of the order of hospitalization, unless he receives an extension of time by the court.[38] If the court is of the opinion that the estate of the respondent is subject to waste or theft during the period of involuntary hospitalization or involuntary commitment, the court may assign the guardian *ad litem* the additional duty of inventorying and securing the assets pending adjudication of the respondent.[39] The court may also, under a provision added by the 1969 Colorado legislature, determine that a responsible person other than the guardian *ad litem* be appointed to perform these functions, and such person will act under the direction of the guardian *ad litem*. This person's duty is to secure the assets of the estate against waste and theft pending adjudication of the respondent, and to make a report of these assets to the court within 5 days of his appointment.[40]

Upon satisfactory showing of need, or upon recommendation of a medical commission appointed under the provisions of this

[36] *Id.* § 71-1-2 (1963).
[37] *Id.* § 71-1-4(1) (Supp. 1965).
[38] *Id.* § 71-1-4(3) (Supp. 1965).
[39] *Id.* § 71-1-8(4) (Supp. 1969).
[40] *Id.* § 71-1-35 (Supp. 1969).

section, the court may issue an order committing the respondent to the department of institutions for placement in a state institution, or committing him to some other hospital for hospitalization, examination, diagnosis, observation, care, and treatment for a period not to exceed 3 months.[41] When the director of the hospital or the attending physician files a written statement that a longer period of hospitalization is necessary, the court may extend the period not to exceed a total of 6 months from the date of the original order.[42] The court's order directs the sheriff or some responsible person to deliver the respondent to the hospital.[43]

3. Service

A copy of the petition and order must be personally served on the respondent by the person taking him to the hospital.[44] In addition, a written notice is given to the respondent that a hearing on his hospitalization may be had before the court or a medical commission, upon written request directed by the court.[45] The guardian *ad litem* is also to be provided with a copy of the order of hospitalization within 2 days after its entry.[46]

4. Review

The respondent or his guardian *ad litem* may at any time file a written request that the commitment be reviewed by the court, or by a medical commission; a similar request may be made that the treatment be on an outpatient basis or in a nursing home, rather than in a hospital.[47] If the original order of hospitalization was entered upon the recommendation of a medical commission, review must be by the court and not by a commission.[48]

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[41] *Id.* § 71-1-4(4) (Supp. 1965).

[42] *Id.* § 71-1-4(8) (Supp. 1965).

[43] *Id.* § 71-1-4(5) (Supp. 1965).

[44] *Id.*

[45] *Id.* The failure to clearly prove proper service of notice on the respondent has resulted in a reversal of an order of adjudication. *See* Iwerks v. People, 130 Colo. 86, 273 P.2d 133 (1954). Other cases indicating the court's strong position that the statutory requirements be strictly construed include: Young v. Brofman, 139 Colo. 296, 338 P.2d 286 (1959); Rickey v. People, 129 Colo. 174, 267 P.2d 1021 (1954); Kendall v. People, 126 Colo. 573, 252 P.2d 91 (1952); Okerberg v. People, 119 Colo. 529, 205 P.2d 224 (1949).

[46] COLO. REV. STAT. ANN. § 71-1-4(3) (Supp. 1965). Interpreting a prior statute containing a notice provision identical to the present one, the Colorado Supreme Court held in the case of Hultquist v. People, 77 Colo. 310, 236 P. 997 (1925) that the giving of this notice was mandatory and could not be waived by the guardian *ad litem*. According to the court, the purpose of the 2 days' notice was to enable the attorney appointed as guardian *ad litem* to make an adequate investigation and preparation to protect the interests of the respondent at the medical commission hearing. *Id.* at 316, 236 P. at 998.

[47] COLO. REV. STAT. ANN. § 71-1-4(6) (Supp. 1965).

[48] *Id.*

If court review is requested, the matter shall be set for hearing within 10 days, and notice must be given to the respondent, his guardian *ad litem,* and the city attorney.[49] If the respondent desires counsel, he may retain an attorney to represent him in the review proceedings. If he is unable to pay for counsel, the court will appoint the guardian *ad litem* to represent the respondent in the proceedings.[50]

At the conclusion of the hearing, the court may enter an order of hospitalization, discharge the respondent, refer the matter to a medical commission, or enter any other suitable order.[51]

Upon motion of the guardian *ad litem* or upon the court's own motion, the court will issue an order requiring the doctor attending the respondent to file a written report with the court within 10 days as to the results of his examination to date.[52] The court may thereafter proceed in accordance with the involuntary commitment procedures, discharge the respondent if the examining doctor recommends, or allow the original order of hospitalization to continue in full force and effect.[53]

Whenever it appears to the court by reason of medical reports or other satisfactory showing that the respondent has received maximum benefit from hospitalization and treatment, and that the respondent is mentally competent, and that it will be in his best interests to be discharged, the court will enter an order terminating the hospitalization.[54]

5. Further Proceedings

If the director of the hospital files a report with the court stating that the respondent is in need of continued hospitalization beyond the maximum 6-month period provided for in this section of the statute, the court proceeds under the provisions of the involuntary commitment section, usually on its own motion.[55]

6. Sealing of Records

The records in all short term involuntary hospitalization cases are maintained separately and, upon discharge of the respondent from the hospital, the record is sealed and the respondent's name is omitted from the index of cases until and unless the respondent

[49] *Id.*

[50] *Id.* § 71-1-8 (1963). The Colorado Public Defender has had the responsibility in this area since January 1, 1970. *Id.* § 39-21-3(2)(a) (Supp. 1969).

[51] *Id.* § 71-1-4(6) (Supp. 1965).

[52] *Id.* § 71-1-4(7) (Supp. 1965).

[53] *Id.*

[54] *Id.* § 71-1-4(10) (Supp. 1965).

[55] *Id.* § 71-1-4(11) (Supp. 1965).

has been adjudicated under the involuntary commitment procedures or unless the court for good cause orders the record opened.[56] The reason the restriction on the file does not occur until termination of the hospitalization is to permit interested persons to locate the respondent.[57]

D. *Involuntary Commitment*

1. Petition, Guardian *Ad Litem* and Custody

The petition which is filed for involuntary commitment is similar to that filed for short term involuntary hospitalization.[58] The petition must contain a request for a hearing before a medical commission, and must be accompanied by a physician's statement.[59] Upon receipt of the petition, or upon its own motion (if the court has good cause to believe that a person is mentally ill or mentally deficient), the court may issue an order directing a designated person to take the respondent into custody, pending determination of his mental condition.[60]

A guardian *ad litem* must be appointed,[61] as in the short term involuntary hospitalization proceedings.[62] The guardian *ad litem* must be served with a copy of the petition and order directing custody at least 2 days prior to any hearing before a medical commission, and within 5 days after issuance of the custody order.[63] The guardian *ad litem's* duties in the involuntary commitment procedure are in many respects the same as in the short term involuntary hospitalization procedure, including the inventorying and safeguarding of the respondent's assets, if such latter duty is assigned by the court.[64] As in the short term involuntary hospitalization provision, a responsible person may be appointed by the court to inventory and secure the assets of the respondent's estate pending adjudication.[65]

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[56] *Id.* § 71-1-4(12) (Supp. 1965).

[57] This was the view of the legislative committee at the time the statute was drawn and is the view of the author.

[58] COLO. REV. STAT. ANN. § 71-1-5(1) (Supp. 1965).

[59] *Id.* It should be noted, though, that this statutory provision requires the medical statement to indicate "whether or not the physician has examined the respondent and the date or dates of said examination . . . ," while the provision in section 71-1-4 concerning short term involuntary hospitalization does not provide for a statement by a physician who has not examined the respondent.

[60] *Id.* § 71-1-5(1) (Supp. 1965).

[61] *Id.* § 71-1-8 (1963).

[62] *Id.* § 71-1-4(3) (Supp. 1965).

[63] *Id.* § 71-1-5(1) (Supp. 1965).

[64] *Id.* § 71-1-8 (1963), *as amended* (Supp. 1969) and § 71-1-4(3) (Supp. 1965).

[65] *Id.* § 71-1-35 (Supp. 1969).

Until such time as final determination has been made as to the respondent's mental condition, he remains in the custody of a relative or other proper person, or the department of institutions for placement in a state hospital, or in the custody of another hospital, or in some other convenient and suitable place designated by the court for examinations, diagnosis, observation, care and treatment.[66]

2. Medical Commission

a. *Appointment*

The court appoints a medical commission whenever a petition and doctor's statement are filed under the involuntary commitment section.[67] Additionally, a commission may be appointed under the provisions of the emergency procedure and short term involuntary hospitalization statutes, as described *supra*.[68]

The commission consists of two doctors licensed to practice medicine in Colorado, neither of whom is a relative of the respondent or of any petitioner or has any financial interest in the outcome of the proceedings.[69] Upon appointment of the commission, the court fixes a time and place for the first meeting. Notice must be personally served on the respondent at least 5 days prior to the hearing.[70]

b. *Procedure*

At the request of the commission, the guardian *ad litem,* the respondent's attorney, or the city attorney, the court will cause subpoenas to be issued to compel the attendance of witnesses or the production of records at the commission hearings.[71] The commission has the power to administer oaths, hear evidence, and hear statements of the respondent, his attorney or his guardian *ad litem*.[72] The commission can examine hospital and medical records, reports, and witnesses, make such investigation and inquiry as it deems necessary and adjourn the hearing to a time and place

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[66] *Id.* § 71-1-5(2) (Supp. 1965). "[N]o person held under the provisions of this section shall be confined in a common jail unless there be sufficient showing that he is violent and dangerous to himself or others or that there is no other adequate place of custody available in the county." *Id.*

[67] *Id.* § 71-1-6(1) (Supp. 1965).

[68] *See* text, § B(2) & C(4) *supra* and accompanying notes.

[69] *Id.* § 71-1-6(1) (Supp. 1965).

[70] *Id.* § 71-1-6(2) (Supp. 1965).

[71] *Id.* § 71-1-7(1) (1963).

[72] *Id.*

certain.[73] All of the proceedings of the commission are to be conducted by the city attorney.[74]

c. *Report of the Commission*

Within 48 hours of the conclusion of the hearing (unless an extension of time is granted by the court), the commission must file a verified report of its findings with the court.[75] The commission's report must answer the specific questions listed in the statute as to the nature of the respondent's affliction.[76] If *any* of the questions are answered in the affirmative, the report is to provide personal information about the respondent and recommend a suitable place for his commitment or a suitable person to be entrusted with custody of the respondent. Additionally, the report must include any conditions of custody which the commission recommends.[77] A copy of the report is forwarded to the institution in which the respondent is placed, to the department of institutions, and to the guardian *ad litem*.[78]

d. *Report of the Guardian Ad Litem*

The guardian *ad litem* is required to attend all meetings of the commission, after having been given at least 2 days notice,[79] and must make a written report to the court within 5 days after the commission report is filed.[80] His report gives personal information about the respondent and information about the witnesses who testified at the hearing.[81] In the event the commission finds that

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[73] *Id.*

[74] *Id.* § 71-1-9 (Supp. 1965).

[75] *Id.* § 71-1-7(2)(a) (1963).

[76] The questions are noted in COLO. REV. STAT. ANN. § 71-1-7(2)(b-e) (1963): (b) Is the respondent afflicted with a disease, infirmity, old age, or disorder, which impairs his mental or emotional functions to a degree sufficient to require protection, supervision, treatment, or confinement for his own welfare or the welfare or safety of others? (c) Does the respondent, by reason of mental illness, lack sufficient control, judgment, and discretion to manage his own property or affairs? (d) Are the respondent's intellectual functions so deficient, arrested or impaired by disease, or physical injury that he lacks sufficient control, judgment, and discretion to manage his own property or affairs? (e) Are respondent's intellectual functions so deficient, arrested, or impaired that for his own welfare, or the welfare or safety of others, he requires protection, supervision, guidance, training, control, or care?

[77] *Id.* § 71-1-7(3) (Supp. 1965).

[78] *Id.*

[79] *Id.* § 71-1-8(1) (1963).

[80] *Id.* § 71-1-8(2) (1963).

[81] *Id.* § 71-1-8(2) (1963). "The guardian ad litem shall make a written report to the court within five days after the filing of the report of the medical commission, showing the occupation, citizenship, and residence of the respondent, his length of residence in Colorado, his previous place of residence, if known, and the name, address, and relationship to respondent of the petitioner and of the witnesses examined at the hearing." *Id.*

the respondent is mentally ill or mentally deficient, the guardian *ad litem's* report must include an inventory of the respondent's real and personal property, social security information, the names and addresses of next of kin, and a recommendation as to the desirability of appointing a conservator for the respondent's estate.[82]

3. Adjudication, Commitment, and Custody

If the medical commission finds that the respondent is mentally ill or deficient and recommends indefinite commitment and adjudication, the court must then enter an order within 6 days after the filing of the commission report; this order adjudicates the respondent mentally ill or mentally deficient and provides for his commitment or custody.[83] If the commission recommends short term hospitalization without adjudication, the court proceeds under the provisions of the short term involuntary hospitalization statute.[84]

A respondent adjudicated mentally ill is committed to the department of institutions for placement in a state hospital or, if he is eligible, the respondent may be committed to an agency of the United States for care and treatment;[85] the court may also commit the respondent to a hospital or other suitable place not under the jurisdiction of the department of institutions, or the court may designate some proper person to take custody of the respondent and assume his custody, care, and maintenance.[86]

A respondent adjudged mentally deficient is committed to the department of institutions for placement in a state institution or committed to a designated private hospital or other suitable place;

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[82] *Id.* § 71-1-8(3) (1963).

[83] *Id.* § 71-1-11(1) (Supp. 1965).

[84] *Id.*

> The use of the term "adjudicating" indicates that a jury verdict is not an essential requisite of adjudication within the meaning of [a 1957 statute concerning the appointment of a conservator for a respondent's estate]. To be sure, this initial adjudication is an interlocutory one where a jury trial has been requested. However, the statute relative to appointment of conservators does not require that the person shall have been *finally* "adjudicated mentally ill" by a jury as a condition precedent to the appointment of a conservator. Therefore, we are of the opinion that the county court acted within the powers granted to it by statute when it appointed the conservator herein prior to impaneling a jury. Acceptance of the petitioner's contention could mean delay in the appointment of a conservator and could result in loss of property. The statute does not tie the hands of the county court in this manner.

Young v. Brofman, 139 Colo. 296, 303, 338 P.2d 286, 290 (1959).

[85] COLO. REV. STAT. ANN. § 71-1-11(2) (Supp. 1965).

[86] *Id.*

if the court deems it desirable, a responsible person may be designated to take custody of the respondent.[87]

The statute provides that the Colorado psychopathic hospital is not a suitable place for the commitment of a respondent who has been adjudicated mentally ill or mentally deficient.[88]

4. Commitment of Persons Under Age Sixteen

No mentally deficient person under the age of 16 can be placed in a state hospital by the Department of Institutions unless such person is psychotic or mentally ill, in addition to being mentally deficient.[89]

5. Review

Any respondent or his attorney, his guardian *ad litem,* his legal guardian, parent, spouse, or adult next of kin may, within 5 days after the entry of the order of adjudication or commitment, file a demand in writing with the court that the questions considered by the medical commission be tried by the court or by a jury.[90] If the respondent has been removed from the area of jurisdiction of the court during this 5 day period, he has an additional 15 days (a total of 20 days after the entry of the order of adjudication or commitment) to file his demand.[91]

If a jury trial is demanded, the court must cause a jury of six

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[87] *Id.* § 71-1-11(3) (Supp. 1965).

[88] *Id.* § 71-1-11(4) (1963).

> The Colorado psychopathic hospital shall not be considered a suitable place for the commitment of a respondent who has been adjudged mentally ill or deficient, nor shall such respondent be committed thereto or retained therein after adjudication, except that temporary treatment of an adjudicated respondent in Colorado psychopathic hospital may be authorized by the medical director thereof when, in his opinion, such would further the teaching and scientific objectives of the hospital.

Id.

[89] *Id.* § 71-1-12(1) (Supp. 1965).

> Subsection 2 of the same article provides that "in the event that suitable space in facilities of the department of institutions for the accommodation of mentally ill persons under the age of sixteen is not available, the department shall not be required to place such respondents in an institution immediately and shall determine the priority of admission of respondents not yet admitted. In establishing priorities, the department shall give due regard to the nature of the child's emotional disturbance, the presence of a situation in which the child is dangerous to himself or others, and other relevant factors. The department of institutions may request the children's diagnostic center, established by section 124-3-10, C.R.S. 1963, to evaluate the child following adjudication and prior to admission to an institution or may make such other arrangements concerning the child as seem desireable. The department of institutions shall notify the court of the availability of space for admission or of any other arrangements so that a proper order of commitment may be entered.

Id. § 77-1-12(2) (Supp. 1965).

[90] *Id.* § 71-1-13(1) (Supp. 1965).

[91] *Id.*

to be summoned and a trial to be held within 1 month.[92] The findings of the medical commission are admissible as evidence, upon their identification by the person or persons verifying the commission report.[93] Such person or persons are subject to cross-examination, and the statute provides that the jury shall be instructed that the findings of the medical commission may be overcome by a preponderance of the evidence.[94] The Colorado Supreme Court has, however, interpreted this burden of proof provision to require the city to establish the mental illness of the respondent by a preponderance of the evidence, and not to require the respondent to produce any evidence whatsoever.[95] The court held that the burden of proof could not be shifted from the city to the respondent.[96]

The jury must answer the same questions prescribed in the statute for the medical commission to answer.[97] The court enters a decree in accordance with the determination of the jury, either entering an order of commitment if the jury answers in the affirmative any questions propounded, or discharging the respondent if all questions are answered in the negative; the court may set aside the jury finding and enter an order notwithstanding the finding if the court is of the opinion that the finding of the jury is contrary to the law or evidence.[98]

6. Rights of Respondent

The statute provides that no respondent shall lose any civil rights nor forfeit any legal status unless he has been adjudicated mentally ill or deficient.[99] Entry of an order of competency restores all civil rights and legal status.[100]

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[92] *Id.* § 71-1-13(2) (1963). *See also* Young v. Brofman, 139 Colo. 296, 338 P.2d 286 (1959). *Young* makes this jury trial a mandatory procedure once it has been requested. In *Young* the lower court reasoned that it could deny a requested jury trial if it felt that the best interests of the respondent required such action, analogizing to the fact that it may enter a judgment notwithstanding the verdict if such trial is had and it disagrees with the jury's findings as being contrary to law. Mr. Justice Doyle, writing for the majority of the court, stated: "We do not believe that the court, can once request has been made, determine whether the case is a proper one for a jury trial or whether it is in the best interests of the ward to impanel a jury. Our interpretation of the statute is that the words, 'if the respondent requests' means if the respondent or some one of the persons named requests the same in his behalf. Thus, the court has no discretion in the matter, but must impanel a jury." *Id.* at 300, 338 P.2d at 288.

[93] COLO. REV. STAT. ANN. § 71-1-13(2) (1963).

[94] *Id.*

[95] Sabon v. People, 142 Colo. 323, 350 P.2d 576 (1960).

[96] *Id.*

[97] COLO. REV. STAT. ANN. § 71-1-13(3) (1963).

[98] *Id.*

[99] *Id.* § 71-1-23(1) (1963).

[100] *Id.* Subsection (2) of this statute provides: "Any person in custody under this article shall have the right to communicate with his spouse and relatives, and the further right to communicate with the judge of the court having jurisdiction, and with his attorney, by sealed mail or otherwise." *Id.* § 71-1-23(2) (Supp. 1965).

7. Adjudication of Competency

Upon the filing of a written petition by any reputable person setting forth that the adjudicated respondent is no longer mentally ill or deficient, supported by a doctor's certificate, the court must immediately appoint two doctors to examine the respondent at the place where he's physically present and report their findings.[101] If the respondent is confined, at least one of the examining doctors must not be associated with the institution in which the respondent is confined.[102] If the court finds that the respondent is no longer mentally ill or deficient, it will enter an order of competency and if the respondent is at that time confined in an institution, he must be immediately released.[103]

8. Discharge by Hospital

If, in the opinion of the superintendant or chief medical officer of a hospital, any respondent adjudicated and committed to the hospital is no longer mentally ill or deficient, the officer shall file in the court a verified statement to that effect, recommending that the respondent be discharged.[104] The court may, on its own motion, enter an order of competency in such case.[105]

Additionally, administrative discharges may be granted by the hospital when such conditional release is felt to be in the best interests of the respondent or society.[106]

II. CARE AND TREATMENT OF THE MENTALLY ILL

All of the procedural safeguards imaginable in the hospitalization and commitment process would be of little avail if effective treatment facilities were not provided for the care and treatment of the mentally ill, whether they have been committed voluntarily, by court order, or otherwise. In the Denver area, the services and facilities of the Denver General Hospital Comprehensive Mental Health Center and the Fort Logan Mental Health Center[107] provide

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[101] *Id.* § 71-1-26 (1963).

[102] *Id.*

[103] *Id.*

[104] *Id.* § 71-1-27 (1963).

[105] *Id.*

[106] *Id.* § 71-1-28 (Supp. 1965). This section provides for the release of a respondent by the superintendent of the Colorado State Hospital, or the superintendent of the state home and training schools located at Ridge and Grand Junction, or the chief officer of a veteran's administration hospital. However, there is no provision in this section of the statute for release of a respondent by the superintendent of a private hospital.

[107] *See generally* R. GLASSCOTE, J. SUSSEX, E. CUMMING & L. SMITH, THE COMMUNITY MENTAL HEALTH CENTER: AN INTERIM APPRAISAL 107-28 (1969) and R. GLASSCOTE, A. KRAFT, S. GLASSMAN, & W. JEPSON, PARTIAL HOSPITALIZATION FOR THE MENTALLY ILL: A STUDY OF PROGRAMS AND PROBLEMS 65-80 (1969).

examples of the new thinking and approaches being developed to treat the mentally ill. These two facilities are used extensively by the probate court because of the services they are capable of providing.

The inpatient facilities at Denver General Hospital are limited, but the new addition being constructed will provide greatly expanded and improved care and treatment. There will be a walk-in service, a base of operations for the home visitation service, medical education facilities, offices for social workers and volunteers, two 22-bed psychiatric units, space for the day care program, group therapy rooms, a psychological testing laboratory, and a 10-bed nursing unit for children with psychiatric illness.

The programs offered by Denver General include both inpatient and outpatient services, a day treatment program, forensic psychiatry program, psychiatric emergency service, hospital consultation and liason program, and the psychological testing laboratory. The outpatient service includes 5 teams, each composed of a psychiatrist, a clinical psychologist, two psychiatric social workers, a psychiatric nurse, a secretary, several volunteers, and graduate students drawn from social work, nursing, psychology, special education, and rehabilitation counseling. Family and self-referrals make up the largest category of referrals to the teams, but many patients are referred from the emergency room, the psychiatric liason service, psychiatric agencies, Denver General's inpatient service, social agencies, private physicians, the police and, of course, the courts.

The outpatient service also includes the Visiting Nurse Service, a program sponsored jointly by the City and County of Denver and the United Fund. The several hundred nurses serve patients at Denver General and provide home nursing services to patients discharged from the Colorado State Hospital. The nurses make home visits to the families of hospitalized patients and followup home visits to patients. A visiting nurse is assigned full time to the alcoholic treatment program.

In 1967, about 3,900 persons were seen as outpatients by the personnel at Denver General, for a total of almost 22,500 hours of patient contact.[108] The visiting nurses saw about 1,300 patients in 2,600 visits in 1967.[109] During 1967, about 900 hours of consultation were provided to the courts and the police by the staff of the Denver General program.[110]

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[108] R. GLASSCOTE, J. SUSSEX, E. CUMMING & L. SMITH, THE COMMUNITY MENTAL HEALTH CENTER: AN INTERIM APPRAISAL 115 (1969).

[109] *Id.*

[110] *Id.* at 119.

The Fort Logan Mental Health Center is a state facility established in 1961 to treat as many patients as possible in a day program.[111] It has been said that the facility "has probably the largest and certainly one of the most important day hospital programs in the world."[112] Fort Logan has special programs for alcoholics, geriatric patients, and children under age 15. It offers a crisis intervention service, halfway houses and other services in a comprehensive mental health program.

In addition to the approximately 500 full time clinical employees there is an extensive volunteer program at the Center. Also, during the summer months, 80 to 100 high school and college students serve as volunteers in approximately 25 different departments. The efforts of volunteers are evident in other areas of the Fort Logan program. About 35 garden clubs and 200 other community organizations have helped raise funds, donated equipment, furnished entertainment and taught classes to patients on gardening, bridge, personal grooming, flower arranging and crafts.[113]

Fort Logan is permitted to exclude any admission as it sees fit, except for those patients under court order. The purpose of this restriction is to insure that those admitted have real need for the treatment offered at the Center, and that existing community services such as those offered by Denver General are used extensively. There is presently no program for the adolescent at Fort Logan, so young persons between the ages of 15 and 18 must go to the Colorado State Hospital in Pueblo. A program for adolescents is, however, in the offing at Fort Logan.

The facilities at Pueblo provide services similar to those offered at Fort Logan. Additionally, there are facilities which provide the security required by some patients. Once this facility was the only one available for the care and treatment of the mentally ill in Colorado. Today, the trend is to provide flexible treatment services which can be tailored to meet the individual needs of each patient. The availability and expansion of such treatment facilities and programs is of tremendous importance, and is given much consideration by the court in making a determination whether to commit and where to commit a patient.

Great progress has been made in Colorado over the years in providing improved care for the mentally ill. As Chief Judge David

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[111] R. GLASSCOTE, A. KRAFT, S. GLASSMAN & W. JEPSON, PARTIAL HOSPITALIZATION FOR THE MENTALLY ILL: A STUDY OF PROGRAMS AND PROBLEMS 65 (1969).

[112] *Id.*

[113] *Id.* at 69.

L. Bazelon of the United States Court of Appeals for the District of Columbia Circuit has said, "The purpose of involuntary hospitalization is treatment, not punishment . . . . Absent treatment, the hospital is transformed into a penitentiary where one could be held indefinitely for no convicted offense."[114]

There was a day in Colorado when the "Colorado Insane Asylum" was literally a warehouse for the mentally ill, offering little if any treatment or possibility of release. The author recollects that at one time there was a single physician for some 6,500 patients!

Today, we in Colorado recognize the truth of Judge Bazelon's statement. The legislature has enacted statutes which provide extensive due process safeguards, so that it is not possible to "railroad" a person into a mental hospital, as it might have been at an earlier time.[115] The requirement that a doctor's statement must accompany a petition for hospitalization has done much to prevent baseless actions.

The federal and state governments have appropriated significant funds to improve existing care and treatment facilities and to provide new facilities.

Still, last year only $350 million was spent for all the research, training and service activities of the National Institute of Mental Health, while $10 *billion* was spent at all levels of government for highways to accommodate 80 million cars which killed 58,000 Americans and seriously injured 2 million more.[116]

The first comprehensive study of the economic costs of mental illness was released in 1968. Covering the calendar year 1966, the study indicated that the cost of mental illness in this country is more than $20 billion a year. Of this total, $15.5 billion is lost to reduced individual productivity, and the remaining $5 billion is attributable to the cost of treating and preventing mental illness in a single year.[117]

The proposed research budget for the National Institute of Mental Health for fiscal 1969 was but $100 million, in spite of

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[114] Rouse v. Cameron, 373 F.2d 451, 452-53 (D.C. Cir. 1966).

[115] Hultquist v. People, 77 Colo. 310, 236 P. 995 (1925).

[116] Address by M. Gorman, Executive Director of the National Commission Against Mental Illness, 6th Legislative Dinner, Mass. Association for Mental Health, Feb. 11, 1969, published as *Comprehensive Community Mental Health Centers: Myth or Reality* at 22 (Nat'l Comm. Against Mental Illness, 1028 Connecticut Avenue, N.W., Wash., D.C. 20036)

[117] Testimony by M. Gorman before House Appropriations Subcomm. on Labor-H.E.W., April 25, 1968, published as *Community Mental Health Center Program in Jeopardy* at 6 (Nat'l Comm. Against Mental Illness, 1028 Connecticut Avenue, N.W., Washington, D.C. 20036).

the fact that in 1968 mental illness incapacitated more than 4 million people and filled close to 50% of all the nation's hospital beds.[118]

Experimental treatment approaches have proved effective at such Centers as Fort Logan in cutting down the amount of time patients spend in hospitals, and in helping them to return to productive lives and stay out of the hospitals once released. Of course, long term treatment and hospitalization facilities are necessary to provide adequate care, treatment, and security for the acutely and chronically ill, but where there is a chance to return people to productive lives with short term treatment and hospitalization, day centers, or outpatient treatment, these programs should be available and fully utilized.

The Denver Probate Court has kept pace with the rapid changes in the mental health field and has geared its operation to accommodate the modern concepts, as treatment and training are substituted for custody. This fact is reflected in the reduction in adjudications and increase in "Hold and Treat" orders (temporary hospitalizations) from 1961 through 1968:[119]

	1961	1962	1963	1964	1965	1966	1967	1968
Adjudication:	1048	487	281	265	288	292	255	207
Hospitalization:	91	245	271	251	315	254	328	487

The above figures do not reflect the large number of persons who were accepted for voluntary hospitalization.

If we are to continue to improve our treatment and rehabilitation facilities and methods, the interest and support of legislators, medical people, lawyers, and the general public is vital. Since courts and lawyers play a primary role in the hospitalization and commitment process, we have a special obligation to insure that the procedural safeguards provided in the statute are scrupulously followed and that the spirit as well as the letter of the law is followed.

SUMMARY

Colorado now has adequate statutes to deal with the problems of the mentally ill. The rights of the mentally ill are fully protected and there is little possibility of "railroading" because of such safeguards as appointment of a guardian *ad litem*; originating current physician's letter; city attorney's representation to the

[118] *Id.* at 4.
[119] 1968 ANNUAL REPORT, PROBATE COURT FOR THE CITY AND COUNTY OF DENVER 2-3.

court; medical commission; provision for jury and the court review of the findings; the protection of the right to communicate with the court, family, friends and attorney; and the release or recommended restoration to reason by hospital administrators.