

# Involuntary Commitment and Guardianship Laws

## Persons with a Substance Use Disorder

Currently, 35 states and the District of Columbia have enacted involuntary commitment laws for those suffering from alcoholism and/or substance use disorders (SUDs).<sup>1</sup> The statutes governing such care vary widely between jurisdictions, although many include similar criteria. Such criteria include:

1. dangerousness to oneself or others;
2. grave disability;
3. lack of decision-making capacity/incapacitation;
4. inability to manage personal affairs and take care of basic needs; and
5. loss of control/addiction.

Who can petition the court to commit someone also varies, but common statutory requirements include that the person with the SUD or alcoholism must be evaluated by a medical professional, that the examining medical professional must certify, in writing, that the person needs intensive treatment, and that the certification must accompany the commitment petition.

The length of time that an individual may be involuntarily committed for treatment also varies among the jurisdictions, ranging from three days to one year. Most states allow recommitment if the court orders that additional treatment is necessary. Commitment types include: (1) police pick-up (usually for public intoxication in which the person is a danger to him or herself and the public), where an individual is held for a short time period; (2) emergency hospitalization (most often available for use only by health care professionals), where an individual is held for a medium time period; and (3) involuntary commitment, where an individual is held for a long time period.

In order to protect an individual's civil rights, every state ensures that the person receives due process by providing the person with the SUD the right to an attorney during the commitment process. Moreover, every state grants the person the right to petition the court for a writ of habeas corpus. Other guaranteed rights include: (1) receiving a copy of the involuntary commitment petition; (2) receiving notice of the hearing date; (3) being present at the hearing; (4) presenting and cross-examining witnesses; (5) continuing communication with family, friends, an attorney, and the clergy; (6) sending and receiving uncensored mail; and (7) appealing an adverse ruling. Every state requires that the court must meet the requirements of detention by clear and convincing evidence.

Addiction professionals generally agree that involuntary commitment of those suffering from SUDs can, and often does, save lives. However, they are quick to note that during confinement, the person must receive effective, evidence-based treatment. With respect to those with opioid use disorders (OUDs), many treatment professionals agree that medication-assisted-treatment, offering all of the medications approved for OUDs, must be included. Many facilities do not have access to, or money for, such medications. Furthermore, involuntary commitment statutes do not mandate continuing treatment, after the individual is released. Continuing court intervention and follow-up is the key to maintaining sobriety.

Involuntary commitment laws, while not a panacea, are one tool to help address SUDs, and particularly, the rise in OUDs, throughout the United States. While research demonstrates that involuntary treatment works, the proper treatment and follow-up are essential to ensuring lasting recovery.

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<sup>1</sup> Rhode Island's involuntary commitment law only applies to those suffering from alcoholism, while Vermont's only applies to those with substance use disorders.

### Alabama

Involuntary Commitment: Ala. Code § 22-52-1.1 specifically excludes substance abuse and alcoholism from its definition of mental illness with respect to involuntary commitment.

Guardianship: Ala. Code § 26-2A-20(8) defines an incapacitated person as anyone who is impaired due to “chronic use of drugs” or “chronic intoxication” with respect to guardianship.

### Alaska\*

Involuntary Commitment: Alaska Stat. § 47.37.190 allows specific individuals to petition a court for a 30-day involuntary commitment order for someone who is “an alcoholic or drug abuser” and has inflicted, or will inflict, physical harm on someone or is incapacitated by alcohol or drugs.

### Arizona

Involuntary Commitment: Ariz. Rev. Stat. Ann. § 36-501 specifically excludes substance abuse and alcoholism from its definition of mental disorder with respect to involuntary commitment.

Guardianship: Ariz. Rev. Stat. Ann. § 14-5101 defines an incapacitated person as anyone who is impaired due to “chronic use of drugs” or “chronic intoxication” with respect to guardianship.

### Arkansas

Involuntary Commitment: Ark. Code. Ann. § 20-47-202 specifically excludes dependence on, or addiction to, alcohol or drugs from its definition of mental illness with respect to involuntary commitment.

Guardianship: Ark. Code Ann. § 28-65-101 defines an “incapacitated person” as someone who is impaired because of a disability, such as “chronic use of drugs, or chronic intoxication,” where the person lacks the capacity to meet the essential requirements for his or her health or safety or to manage his or her finances with respect to guardianship.

### California\*

Involuntary Commitment: Cal. Welf. & Inst. Code Ann. § 5201 allows anyone to file a petition requesting that an evaluation of a person’s condition be made because that a person is “a danger to others, or to him [or her]self, or is gravely disabled.” Cal. Welf. & Inst. Code Ann. § 5225 provides that when a criminal defendant is in court because of “chronic alcoholism or the use of narcotics or restricted dangerous drugs” and is deemed to be “a danger to others, to him [or her]self, or to be gravely disabled, the judge may order an evaluation of that person, where he or she may be detained for 72 hours. Under Cal. Welf. & Inst. Code Ann. § 5250, the person may be certified to be detained to receive up to an additional 14 days of intensive treatment under various conditions. Moreover, Cal. Welf. & Inst. Code Ann. § 5340 provides that the “custody, evaluation, and treatment” of people suffering from substance use disorders follow the same procedures set forth for those with mental illness and chronic alcoholism.<sup>2</sup>

### Colorado\*

Involuntary Commitment: Colo. Rev. Stat. Ann. § 27-81-112 allows specific individuals to file a petition to involuntarily commit someone to the office of behavioral health as long as the petition alleges that the person has an alcohol use disorder and has threatened, or attempted, to inflict, or has inflicted, physical harm on him or herself or on another person or is incapacitated by alcohol.

Moreover, Colo. Rev. Stat. Ann. § 27-82-108 allows specific individuals to file a petition to involuntarily commit someone to the office of behavioral health as long as the petition alleges that the person has a substance use disorder and has threatened, or attempted, to inflict, or has inflicted, physical harm on him or herself or on another person or is incapacitated by drugs.

### Connecticut\*

Involuntary Commitment: Conn. Gen. Stat. Ann. § 17a-685 allows specific individuals to apply to the probate court to involuntarily commit someone to an inpatient treatment facility for alcohol or drug dependency and declare that the person is an alcohol or drug-dependent person who is

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<sup>2</sup> It should be noted that pursuant to Cal. Welf. & Inst. Code Ann. § 5001, the legislative intent of the involuntary commitment statutes

reads that the legislation is meant to end inappropriate and indefinite involuntary commitment and promote evaluation and treatment.

\* This jurisdiction has an involuntary commitment statute that addresses substance use disorders.

dangerous to him or herself or others or is gravely disabled.

#### **Delaware\***

Involuntary Commitment: Del. Code Ann. tit. 16 § 2211 allows anyone to submit a written request concisely providing the “observations, circumstances and knowledge of the requestor”

for someone to be involuntarily committed to a “licensed residential treatment facility or outpatient treatment program” for alcohol or drug use.

#### **District of Columbia\***

Involuntary Commitment: D.C. Code Ann. § 24-607 allows a person to be involuntarily committed for inpatient treatment and care if a court determines that he or she is a chronic alcoholic and is “in immediate danger of substantial physical harm.” Moreover, D.C. Code Ann. § 24-708 allows a court to find someone to be a drug user (defined as anyone who “uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction”<sup>3</sup>) and may commit him or her to a hospital for rehabilitation.

#### **Florida\***

Involuntary Commitment: Fla. Stat. Ann. § 397.675 allows someone to be involuntarily committed if he or she is “substance abuse impaired” or has a co-occurring mental health disorder and has no self-control, is impaired, and is likely to suffer from neglect which poses a threat of harm to him or herself or others. Moreover, pursuant to Fla. Stat. Ann. § 397.693, a court may order involuntary treatment for someone if the person meets the criteria set forth in § 397.675 and has been placed under protective custody, subject to an emergency admission, assessed by a professional, subject to involuntary assessment and stabilization, or subject to alternative involuntary admission.

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<sup>3</sup> D.C. Code Ann. § 24-702.

<sup>4</sup> The Idaho statute defines someone who is mentally ill as someone who has a “substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality” thereby requiring care and treatment.

\* This jurisdiction has an involuntary commitment statute that addresses substance use disorders.

#### **Georgia\***

Involuntary Commitment: Ga. Code Ann. § 37-7-1 provides that an “alcoholic, drug dependent individual, or drug abuser” may be ordered into involuntary inpatient treatment if he or she presents a substantial risk of imminent harm to him or herself or others, is incapacitated by alcohol or drugs, and is in need of involuntary treatment. Additionally, the person with the substance use disorder may be ordered into involuntary outpatient treatment if he or she must enter such treatment to avoid imminent admission as an inpatient, is unable to voluntarily seek, or comply with, outpatient treatment, and is in need of involuntary treatment.

#### **Hawaii\***

Involuntary Commitment: Hawaii Rev. Stat. Ann. § 334-142 allows any family member to apply to a court for an order of involuntary outpatient treatment for substance abuse or addiction if the conduct of the person “indicates substance abuse or addiction;” if the person has a “history of substance abuse, treatment, and relapse;” if the person’s conduct has affected his or her family; if the family member has a good faith belief that the person poses an imminent danger to him or herself or to others; if treatment for the person is available and the person has the financial resources to pay for it; and if there are any other reason to seek court intervention.

#### **Idaho**

Involuntary Commitment: Idaho Code Ann. § 66-317 does not mention substance abuse or alcoholism in its definition of mentally ill<sup>4</sup> with respect to involuntary commitment.<sup>5</sup>

Guardianship: Idaho Code Ann. § 15-5-101 does not mention drugs or alcohol. It defines an incapacitated person as anyone who is impaired because he or she lacks the capacity to make or communicate responsible decisions (but does not include a developmental disability) and is a legal, not a medical issue. It refers to a person who “has suffered, is suffering, or is likely to suffer,

<sup>5</sup> It should be noted that Idaho Code Ann. § 39-307A allows a law enforcement officer to take someone who appears to be incapacitated by alcohol or drugs into protective custody and placed into a treatment facility for emergency treatment or to the city or county jail until a treatment facility is available no longer than 24 hours.

substantial harm due to an inability to provide for his personal needs for food, clothing, shelter, health care, or safety, or an inability to manage his or her property or financial affairs,” exclusive of isolated instances.

### **Illinois**

Involuntary Commitment: Ill. Comp. Stat. Ann. ch. 405 § 5/1-129 specifically excludes a substance use disorder from its definition of mental illness with respect to involuntary commitment.

Guardianship: Ill. Comp. Stat. Ann. ch. 755 § 5/11a-2 defines a person with a disability as someone who, because of excessive use of intoxicants or drugs, wastes his estate and exposes him or herself or family to want or suffering with respect to guardianship.

### **Indiana\***

Involuntary Commitment: Indiana Code § 12-23-11.1-1 provides that anyone who is an alcoholic, incapacitated by alcohol, or a drug abuser may be involuntarily committed except for a drug abuser who is charged with, or convicted of, an offense that makes the individual ineligible to receive treatment.

### **Iowa\***

Involuntary Commitment: Iowa Code Ann. §§ 125.75 provides that any interested person may apply to a court to involuntarily commit someone with a “substance-related disorder” to a treatment facility. The application must state the applicant's belief that the person is a danger to him or herself or others and lacks judgment due to a substance-related disorder (defined as “a diagnosable substance abuse disorder of sufficient duration to meet diagnostic criteria specified within the most current diagnostic and statistical manual of mental disorders . . . that results in a functional impairment”<sup>6</sup>) or a serious mental impairment; delineate facts that support the above-stated belief; and include evidence that supports the above-stated belief.

### **Kansas\***

Involuntary Commitment: Kan. Stat. Ann. § 59-29b46 allows various individuals to apply to involuntarily commit a person with an alcohol or substance abuse problem (defined as someone who has an alcohol or substance abuse problem and is incapacitated by alcohol or any substance and is likely to cause harm to self or others without treatment<sup>7</sup>).<sup>8</sup>

### **Kentucky\***

Involuntary Commitment: KY Rev. Stat. Ann. § 222.430 sets forth the procedures that must be followed when a person suffering from alcohol and other drug abuse is ordered to undergo involuntary treatment. Additionally, KY Rev. Stat. Ann. § 222.430 provides that the person suffering from alcohol and other drug abuse must be ordered to undergo treatment if he or she suffers from alcohol and other drug abuse, presents an imminent threat of danger (or a substantial likelihood of such a threat in the near future) to him or herself or others, and can reasonably benefit from treatment.

### **Louisiana\***

Involuntary Commitment: LA Rev. Stat. Ann. § 28:52.4 allows a parent, spouse, legal guardian, or a child who has attained the age of 18 of a person suffering from “a substance-related or addictive disorder” to apply for the person to be involuntarily admitted to a hospital or treatment facility. The application must contain “a written statement of facts, including personal observations, leading to the conclusion that the person is suffering from a substance-related or addictive disorder and is dangerous to him [or her]self or others or is gravely disabled, specifically describing any dangerous acts or threats, and stating that the person has been encouraged to seek treatment but is unwilling to be evaluated on a voluntary basis.”

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<sup>6</sup> Iowa Code Ann. § 125.2.

<sup>7</sup> Kan. Stat. Ann. § 59-29b46.

<sup>8</sup> It should be noted that Kansas has the Crisis Intervention Act (Kan. Stat. Ann. §§ 59-29c01 to 59-29c14) which allows counties to

establish a 24-hour, seven-day per week, involuntary care center where a person in crisis may be involuntarily admitted for 72-hours for evaluation by behavioral health professionals in an attempt to avoid the court process.

\* This jurisdiction has an involuntary commitment statute that addresses substance use disorders.

## Maine\*

Involuntary Commitment: ME Rev. Stat. Ann. tit. 34-B § 3801 defines a mentally ill person as someone with “a psychiatric or other disease that substantially impairs that person’s mental health” including anyone suffering the “effects from the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol.” Additionally, ME Rev. Stat. Ann. tit. 34-B § 3864 allows a court to involuntarily commit a person and implement a treatment plan if the application for commitment contains information that the person “lacks the capacity to make an informed decision regarding treatment,” and “is unable or unwilling to comply with recommended treatment,” that the need for the treatment “outweighs the risks and side effects,” and that the “recommended treatment is the least intrusive appropriate treatment option.”

## Maryland

Involuntary Commitment: Md. Health Gen. Code Ann. § 10-101 does not mention substance abuse or alcoholism in its definition of a mental disorder<sup>9</sup> with respect to involuntary commitment.

Guardianship: Md. Trusts and Estates Code Ann. § 13-201 defines a disabled person as someone who is not able to manage his or her property and affairs because of habitual drunkenness or addiction to drugs with respect to guardianship.

## Massachusetts\*

Involuntary Commitment: Mass. Gen. Laws Ann. ch. 123 § 35 allows “any police officer, physician, spouse, blood relative, guardian, or court official” to petition the court for an order of involuntary commitment of a person whom he or she believes has an alcohol or substance use disorder.

## Michigan\*

Involuntary Commitment: Mich. Comp. Laws Ann. § M.C.L.A. 330.1281a provides that a spouse, family member, guardian, or health professional may initiate

proceedings in court for the involuntary commitment of a person who has a substance use disorder, presents an imminent danger or imminent threat of danger (or a substantial likelihood of the threat of danger in the near future) to him or herself or others as a result of the substance use disorder, and can reasonably benefit from treatment.

## Minnesota\*

Involuntary Commitment: Minn. Stat. Ann. § 253B.064 allows any “interested person”<sup>10</sup> to apply to a specified agency for early intervention of a person who is alleged to be “chemically dependent (defined as someone who is not capable of self-management due to habitual use of alcohol, drugs, or other mind-altering substances (this includes a pregnant woman who uses substances during her pregnancy))”<sup>11</sup> and whose conduct poses a likelihood of physical harm to him or herself or others. If the agency determines that early intervention is necessary, it is required to prepare a prepetition screening report.

## Mississippi\*

Involuntary Commitment: Miss. Code Ann. § 41-31-3 allows a “husband, wife, child, mother, father, next of kin, or any friend or relative thereof, or the county health officer” to apply to place a person, “alleged to be an alcoholic or drug addict,” into involuntary detention and treatment, and the application must demonstrate that because of his or her alcoholism or drug addiction, the person is incapable of taking care of his or her affairs, or is dangerous to him or herself or others, or “has lost the power of self-control because of periodic, constant or frequent use of alcoholic beverages or habit-forming drugs, and that he is in need of care and treatment, and that his detention, care and treatment at an institution will improve his health.”

## Missouri\*

Involuntary Commitment: Mo. Ann. Stat. § 631.115 allows various adults to apply to the circuit court for the

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<sup>9</sup> The Maryland statute defines mental disorder to include a mental illness that substantially impairs the mental or emotional functioning of an individual, making care or treatment necessary or advisable for the welfare of the individual.

<sup>10</sup> Defined in Minn. Stat. Ann. § 253B.02 as any “adult, including but not limited to, a public official. . . and the legal guardian, spouse,

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parent, legal counsel, adult child, next of kin, or other person designated by a proposed patient” or a health plan under which the proposed patient is covered.

<sup>11</sup> Minn. Stat. Ann. § 253B.02.

detention, treatment, and rehabilitation in an alcohol or drug abuse facility of a person who is likely to seriously harm him or herself or others because of alcohol, drug abuse, or both.

### **Montana**

Involuntary Commitment: Mont. Code Ann. § 53-21-102 specifically excludes “addiction to drugs or alcohol and drug or alcohol intoxication” in its definition for a mental disorder with respect to involuntary commitment.

Guardianship: Mont. Code Ann. § 72-5-101 defines an incapacitated person as someone who is impaired by “chronic use of drugs or chronic intoxication” so the person lacks the capacity to make or communicate responsible decisions or causes his or her judgment to be so impaired that he or she is incapable of realizing and making a rational decision with respect to the person’s need for treatment, with respect to guardianship.

### **Nebraska\***

Involuntary Commitment: Neb. Rev. St. Ann. § 71-921 allows anyone to apply, through the county attorney, to a district court to have a “mentally ill and dangerous person” (defined as a someone who is “substance dependent”<sup>12</sup> and presents a substantial risk of serious harm to him or herself or others or is violent, threatens suicide, or is unable to provide for his or her basic human needs<sup>13</sup>) involuntarily hospitalized or sent to treatment. The application must contain a number of things, including information about the person’s past treatment; that the county attorney has probable cause to believe that the person is “mentally ill and dangerous;” the specific behavior, acts, attempts, or threats of the person; and information about anyone who has knowledge about the person’s substance dependence.

### **Nevada**

Involuntary Commitment: Nev. Rev. Stat. § 433A.115 specifically excludes in its definition of mental illness

someone who has diminished capacity caused by alcohol or drugs or dependence on, or addiction to, alcohol or drugs with respect to involuntary commitment.

Guardianship: Nev. Rev. Stat. § 159.019 does not mention drugs or alcohol. It defines an incapacitated person as someone who is not able “to receive and evaluate information or make or communicate decisions to such an extent that the person lacks the ability to meet essential requirements for physical health, safety, or self-care without appropriate assistance.”

### **New Hampshire**

Involuntary Commitment: N.H. Rev. Stat. Ann. § 135-C:2 specifically excludes “continuous or noncontinuous periods of intoxication caused by substances such as alcohol or drugs” and “dependence upon or addiction to any substance such as alcohol or drugs” with respect to involuntary commitment.

Guardianship: N.H. Rev. Stat. Ann. § 464-A:2 does not mention drugs or alcohol. It defines incapacity as a legal, not a medical, disability and refers to anyone “who has suffered, is suffering, or is likely to suffer substantial harm due to an inability to provide for” his or her “personal needs for food, clothing, shelter, health care, or safety or an inability to manage his or her property or financial affairs.”

### **New Jersey**

Involuntary Commitment: N.J. Stat. Ann. § 30:4-27.2 specifically excludes “alcohol intoxication” and a “transitory reaction to drug ingestion” with respect to involuntary commitment.<sup>14</sup>

Guardianship: N.J. Stat. Ann. § 3B:1-2 defines an incapacitated individual as someone who is impaired by “chronic use of drugs or alcoholism” so the person lacks the capacity to govern him or herself and manage his or her affairs with respect to guardianship.

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<sup>12</sup> Defined in Neb. Rev. St. Ann. § 71-913 as someone with “a behavioral disorder that involves a maladaptive pattern of repeated use of controlled substances, illegal drugs, or alcohol, usually resulting in increased tolerance, withdrawal, and compulsive using behavior and including a cluster of cognitive, behavioral, and physiological symptoms involving the continued use of such substances despite significant adverse effects resulting from such use.”

<sup>13</sup> Neb. Rev. St. Ann. § 71-908.

<sup>14</sup> It should be noted that N.J. Stat. Ann. § 26:2B-16 allows “a police officer or other authorized person” to assist someone who is “intoxicated in a public place to “an intoxication treatment center or other facility.”

\* This jurisdiction has an involuntary commitment statute that addresses substance use disorders.

### **New Mexico**

Involuntary Commitment: N.M. Stat. Ann. § 24-7B-3 does not mention drugs or alcohol with respect to involuntary commitment.<sup>15,16</sup>

Guardianship: N.M. Stat. Ann. § 45-5-101 defines an incapacitated person as anyone who demonstrates “functional impairment” due to chronic use of drugs or chronic intoxication where the person is unable to manage his or her personal affairs, financial affairs, or estate with respect to guardianship.

### **New York**

Involuntary Commitment: N.Y. Mental Hygiene Law § 1.03 provides that a “mental disability” includes alcoholism, substance dependence, or chemical dependence. However, alcoholism, substance dependence, or chemical dependence are not referenced in the definition of “mental illness” with respect to involuntary commitment.<sup>17</sup>

Guardianship: N.Y. Mental Hygiene Law § 81.03 defines someone with functional limitations as anyone whose behavior or conditions impair his or her ability to provide for personal needs (i.e., food, clothing shelter, health care, or safety) or property management with respect to guardianship.

### **North Carolina\***

Involuntary Commitment: N.C. Gen. Stat. Ann. § 122C-281 allows anyone with knowledge of a substance abuser who is dangerous to him or herself or others to file a petition to take a person into custody for an examination by a “commitment examiner.” The petition must include information about the person’s behavior leading to the petition. If there are reasonable grounds to believe that the facts alleged in the petition are true and that the person is a substance abuser and dangerous to him or herself or other, a law enforcement officer may take the person into custody.

### **North Dakota\***

Involuntary Commitment: N.D. Cent. Code Ann. § 25-03.1-08 allows anyone who is 18 or older to submit a petition to the state’s attorney of the appropriate county to have a person sent to involuntary treatment as long as the person is someone who is in need of treatment, the petitioner states the facts leading up to that assertion, and the petitioner provides contact information for others who are witnesses to the person’s behavior that demonstrates that the person is a “person requiring treatment.”

### **Ohio\***

Involuntary Commitment: Ohio Rev. Code Ann. §§ 5119.92 and 5119.93 provide that a “spouse, relative, or guardian” of someone may file a petition in court for the involuntary treatment of a person suffering from alcohol and other drug abuse, as long as the person suffers from alcohol and other drug abuse, presents an imminent danger or imminent threat of danger (now or in the future) to him or herself or others as a result of alcohol and other drug abuse, or the person can reasonably benefit from treatment. The petition must contain facts supporting the petitioner’s beliefs as stated above.

### **Oklahoma\***

Involuntary Commitment: Okla. Stat. Ann. tit. 43A, §5-410 allows a number of specified individuals to file a petition with the district court to involuntarily commit a person if that person “is a person requiring treatment” (defined as someone who, due to his or her drug or alcohol dependency, poses an immediate risk of physical harm to him or herself or others, has placed another person in fear of violent behavior, “is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person,” or poses a substantial risk

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<sup>15</sup> The statute defines mental illness as a “substantial disorder of a person’s emotional process, thoughts or cognition that grossly impairs judgment, behavior or capacity to recognize reality.”

<sup>16</sup> It should be noted that N.M. Stat. Ann. 1978 § 43-2-8 provides that in some circumstances, an authorized person may request that “an intoxicated or incapacitated person be committed to a treatment facility” for the purpose of protective custody.

<sup>17</sup> It should be noted that N.Y. Mental Hygiene Law §22.09 provides that a peace officer may take someone “who appears to be incapacitated by alcohol and/or substances to the degree that there is a likelihood to result in harm to the person or to others may be taken by a peace officer” to a treatment facility in order to receive emergency services.

of immediate death<sup>18</sup>). The petition must contain a statement of the facts upon which the allegation is based and a list of witnesses to the alleged facts.

### **Oregon**

Involuntary Commitment: Or. Rev. Stat. Ann. § 426.495, specifically excludes from the definition of mental illness someone who suffers from a substance use disorder.<sup>19</sup>

Guardianship: Or. Rev. Stat. Ann. § 125.005 defines “financially incapable” as someone who is not able to manage his or her financial resources (i.e., administer and dispose of real and personal property, intangible property, business property, benefits, and income) because of chronic use of drugs or controlled substances and chronic intoxication. However, the statute does not mention drugs or alcohol when defining someone who is incapacitated, whereby the “person’s ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to meet the essential requirements” (i.e., health care, food, shelter, clothing, personal hygiene, and physical health and safety), with respect to guardianship.

### **Pennsylvania\***

Involuntary Commitment: Pa. Stat. & Cons. Stat. tit. 71 1690.105 provides that an involuntary commitment for a drug dependent person (defined as someone who uses drugs, controlled substances, or alcohol and is dependent on the substances on a continuing basis<sup>20</sup>) be made in accordance with the procedures set forth in the Mental Health Procedures Act. Those procedures, pursuant to Pa. Stat. & Cons. Stat. tit. 50 P.S. § 7301, provide that a person is in need of involuntary treatment when, due to his or her substance use disorder, the person’s “capacity to exercise self-control, judgment, and discretion in the conduct of his [or her] affairs and social relations or to care for his [or her] own personal needs is so lessened that he poses a

clear and present danger<sup>21</sup> of harm” to him or herself or others.

### **Rhode Island\***

Involuntary Commitment: R.I. Gen. Laws Ann. § 23-1.10-10 specifically mentions alcohol only with respect to involuntary commitment, providing that a police officer must bring anyone “who appears to be incapacitated by alcohol” into protective custody and brought to a treatment facility for emergency treatment, if one is available. If not, the person must be taken to an emergency medical service for incapacitated persons unless it is impracticable to take the person to the treatment facility, whereby the police may take him or her into “protective custody, in the police station, in suitable quarters, for a reasonable time.”

Guardianship: R.I. Gen. Laws Ann. § 13-15.2-102 does not mention drugs or alcohol in its definition of incapacitated person with respect to guardianship.

### **South Carolina\***

Involuntary Commitment: S.C. Code Ann. § 44-52-70 allows any adult or head of a treatment facility to file a petition with the court in the appropriate county to involuntarily commit a person who is alleged to be “chemically dependent” (defined as someone who is suffering from chemical dependency demonstrated by overt or recent acts of violence, episodes of serious physical problems related to the habitual and excessive use of drugs or alcohol, or incapacitation by drugs or alcohol on a “habitual and excessive basis” as evidenced by numerous and recent court appearances, repeated incidences involving law enforcement, multiple prior treatment attempts, or testimony by family or by members of the community known to the person relating to a lifestyle adversely affected by alcohol or drugs<sup>22</sup>).

### **South Dakota \***

Involuntary Commitment: S.D. Codified Laws § 34-20A-70 allows a spouse, guardian, relative, physician,

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<sup>18</sup> Okla. Stat. Ann. tit. 43A, §§ 1-103.

<sup>19</sup> It should be noted that Or. Rev. Stat. Ann. § 430.399 provides that a police officer must take anyone “who is intoxicated or under the influence of controlled substances in a public place” ... and is incapacitated to a treatment or sobering facility.

<sup>20</sup> Pa. Stat. & Cons. Stat. tit. 71, 1690.102.

<sup>21</sup> Clear and present danger is defined in Pa. Stat. & Cons. Stat. tit. 50 P.S. § 7301.

<sup>22</sup> S.C. Code Ann. 1976 § 44-52-10.

administrator of an approved treatment facility, or “any other responsible person” to apply to the circuit court to involuntarily commit a person who is alleged to be an “alcoholic or drug abuser.”<sup>23</sup> The application must contain information about the person’s alcohol or drug abuse, demonstrating that the person habitually lacks self-control with respect to the use of alcoholic beverages or other drugs and has “threatened, attempted, or inflicted physical harm on himself or herself or on another and that unless committed, is likely to inflict harm on himself or herself or on another, is incapacitated by the effects of alcohol or drugs, or is pregnant and abusing alcohol or drugs.”

#### **Tennessee\***

Involuntary Commitment: Tenn. Code Ann. §§ 33-6-502 and 33-6-504 allow various people to file a complaint for the involuntary care and treatment of a person with a mental illness (defined as someone with alcohol or drug dependence<sup>24</sup>) if the person poses a substantial likelihood of serious harm due to the mental illness; the person needs care, training, or treatment because of the mental illness; and all available and “less drastic alternatives to placement in a hospital or treatment resource” do not meet, or have not met, the needs of the person.

#### **Texas\***

Involuntary Commitment: Tex. Health & Safety Code § 462.062 allows “a county or district attorney or other adult” to apply for court-ordered, involuntary treatment of a person with an alleged “chemical dependency” (defined as someone who abuses, has an addiction to, or has a psychological or physical dependence on alcohol or a controlled substance<sup>25</sup>) and is likely to cause serious harm to him or herself or others or will continue to suffer mental, emotional, or physical distress, causing him or her

to deteriorate in his or her ability to function independently if not treated and is unable to make a rational and informed choice as to whether to submit to treatment.

#### **Utah**

Involuntary Commitment: Utah Code Ann. § 62A-15-602 does not mention drugs or alcohol in its definition of mental illness<sup>26</sup> with respect to involuntary commitment.

Guardianship: Utah Code Ann. §§ 75-3-101 and 75-5b-102 do not mention drugs or alcohol with respect to guardianship.

#### **Vermont\***<sup>27</sup>

Involuntary Commitment: Vt. Stat. Ann. tit. 18 § 8402 allows an “interested party” to involuntarily commit a “drug addict” (defined as someone who “shows signs of mental illness because of his or her use of drugs, hallucinogens, stimulants, or sedatives or who has an uncontrollable desire for their use or consumption”<sup>28</sup>) only, as there is no mention of alcohol, to a hospital for care and treatment with respect to involuntary commitment.

#### **Virginia\***

Involuntary Commitment: Va. Code Ann. § 37.2-801 provides that anyone who has a “mental illness” (defined as including “substance use”<sup>29</sup>) that warrants treatment in a facility may be admitted to a facility with respect to involuntary commitment.

#### **Washington\***

Involuntary Commitment: Wash. Rev. Code Ann. § 71.05.160 allows a “designated crisis responder” (defined as a mental or behavioral health professional<sup>30</sup>) to submit a petition for the involuntary detention of a person with a

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<sup>23</sup> Pursuant to S.D. Codified Laws § 34-20A-2, an “alcoholic,” is defined as someone “who habitually lacks self-control as to the use of alcoholic beverages or uses alcoholic beverages to the extent that the person’s health is substantially impaired or endangered or the person’s social or economic function is substantially disrupted; and a “drug abuser,” is someone “who habitually lacks self-control as to the use of controlled drugs or substances . . . to the extent that the person’s health is substantially impaired or endangered or that the person’s social or economic function is substantially disrupted.”

<sup>24</sup> Tenn. Code Ann. § 33-1-101.

<sup>25</sup> Tex. Health & Safety Code §§ 462.001.

<sup>26</sup> The Utah statute defines mental illness as “a psychiatric disorder that substantially impairs an individual’s mental, emotional, behavioral, or related functioning” as defined in the Diagnostic and Statistical Manual of Mental Disorders or the International Statistical Classification of Diseases and Related Health Problems.

<sup>27</sup> It should be noted that Vermont’s involuntary commitment statute mentions only drug, not alcohol, addiction.

<sup>28</sup> Vt. Stat. Ann. tit. 18 § 8401.

<sup>29</sup> Va. Code Ann. § 37.2-800.

<sup>30</sup> Wash. Rev. Code Ann. § 71.05.020.

substance use disorder. The petition must state how the responder learned about the person's condition, that the responder personally observed or investigated the claim against the person, and the specific facts of the allegation. The petition must allege that the actions of the person for which the application is made constitute a likelihood of serious harm, or that the person is gravely disabled (defined as being in danger of serious physical harm as a result of his or her not providing for his or her essential human needs or being severely deteriorated in routine function<sup>31</sup>).

#### **West Virginia\***

Involuntary Commitment: W. Va. Code § 27-5-2 allows any adult to apply to the circuit court or a mental hygiene commissioner of the appropriate county for involuntary hospitalization of a person who the applicant believes is “addicted” (defined as “a maladaptive pattern of substance use” (to include alcohol and drugs) that leads to significant impairment manifested by recurrent substance use resulting in a failure to fulfill major role obligations at work, school or home; recurrent use in situations in which it is physically hazardous; recurrent substance-related legal problems; or continued use despite knowledge or having persistent or recurrent social or interpersonal problems due to the substance(s)<sup>32</sup>) and, because of the addiction, the person will likely cause harm to him or herself or others. The application must include facts demonstrating why the person is “addicted.”

#### **Wisconsin\***

Involuntary Commitment: Wis. Stat. Ann. § 51.20 allows an individual to petition the court to involuntarily commit a person who is drug dependent (defined as having a disease that is characterized by that person's out-of-control use of one or more drugs where the person's “physical health is substantially impaired or his or her social or economic functioning is substantially disrupted”<sup>33</sup>) and considers the person a danger to him or herself or others as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm or violent behavior and overt physical acts; sees the person using impaired judgment; sees that the person is not able to satisfy basic needs for nourishment, medical care, shelter, or safety; and sees a strong probability that the person is in danger of “death, serious physical injury, serious physical debilitation, or serious physical disease.”

#### **Wyoming**

Involuntary Commitment: Wyo. Stat. Ann § 25-10-101 specifically excludes drugs or alcohol and drug or alcohol intoxication from its definition of mental illness with respect to involuntary commitment.

Guardianship: Wyo. Stat. Ann § 3-1-101 defines an incompetent person as anyone who is unable to take care of him or herself or his or her property because of the use of alcohol or controlled substances with respect to guardianship.

## Considerations and Recommendations

Those who support involuntary commitment for S/ODU contend that allowing loved ones, health care providers, law enforcement, and others to quickly secure court orders to confine someone suffering from S/ODU as a last resort is a humane way to potentially save the life of someone who is suffering from severe medical and/or psychiatric conditions. Additionally, supporters contend

that states have a moral obligation to help those with afflictions who cannot help themselves. For involuntary commitment to work, effective treatment, including medication-assisted treatment (MAT), must be readily available. Moreover, such treatment must be available not only while the person is confined, but also upon the person's release.

<sup>31</sup> Wash. Rev. Code Ann. § 71.05.020.

<sup>32</sup> W. Va. Code § 27-1-11.

<sup>33</sup> Wis. Stat. Ann. § 51.01.

\* This jurisdiction has an involuntary commitment statute that addresses substance use disorders.

While research indicates that involuntary treatment may be as effective as voluntary treatment, many who oppose involuntary commitment do so because they believe that the loss of someone's civil liberties due to a SUD outweighs any therapeutic value from such commitment. Moreover, critics argue that involuntary commitment, in addition to potentially impinging on a person's due process rights, overwhelms hospital emergency departments, unnecessarily confines people, and does not provide individuals with adequate treatment to maintain a sober life. Lastly, critics claim that if addiction is a brain disease, then committing these "sick" people blurs the line between substance use treatment and incarceration.

Courts/court systems should consider the following before ordering someone into involuntary commitment or, in some cases, a guardianship:

1. Whether the person with a SUD has been afforded all of the procedural safeguards (e.g., the rights to an attorney, to be present, and to be heard; adherence to time restrictions; and the like) set forth in the statute.
2. Whether the court has been given an opportunity to review all of the evidence (e.g., examination by a psychologist or psychiatrist, reports related to the background and relationship of the individual requesting the commitment, reports related to any recent emergency commitments of the person with SUD, and the like). Additionally, whether the person should be afforded the opportunity to secure an independent, professional evaluation from the expert of their choosing.
3. Whether the court can directly address and question the person with a SUD in court immediately after the petition is served.
4. Whether those who evaluated the person with a SUD recommended an appropriate, evidence-based treatment program tailored to the individual.
5. Whether committing the person with a SUD is the least restrictive means (e.g., assisted outpatient treatment or, in the criminal justice system, mandatory, intensive outpatient treatment) available to provide treatment and continuity of care.
6. Whether the person filing for the commitment has arranged for treatment in an approved facility, with written confirmation from the facility indicating that there is a bed available for the person.
7. Whether the person filing for the commitment has confirmed that the proposed treatment will be covered by insurance (e.g., private, Medicaid, or through HUD or the VA) of the person with a SUD. Moreover, whether the court may or should direct others (e.g., family member petitioners) to pay for the costs of the commitment and of treatment.
8. Whether the proposed treatment facility has the appropriate capacity and resources (e.g., with respect to opioids, the facility has medication-assisted treatment (MAT)). The court should confirm that the person with SUD will not be housed in a jail or correctional facility.
9. Whether the proposed treatment facility has a full range of treatment options, not only detoxification.
10. Whether the court has been provided with an adequate, post-commitment treatment plan to ensure continuity of care, including an extended commitment.
11. Whether the court and all court personnel have received proper training on the privacy provisions of the Health Insurance Portability and Accountability Act (HIPPA) and the confidentiality requirements of the federal regulation, 42 CFR, Part 2, Confidentiality of SUD Records.

## Resources

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Hazelden Betty Ford Foundation, "Involuntary Commitment for Substance Use Disorders: Considerations for Policymakers," July 2017, <http://www.hazeldenbettyford.org/education/bcr/addiction-research/involuntary-commitment-edt-717>.

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## Pertinent Cases

Robinson v. California, 370 U.S. 660 (1962).

O'Connor v. Donaldson, 422 U.S. 563 (1975).

Addington v. Texas, 441 U.S. 418 (1979).

Lessard v. Schmidt, 379 F. Supp. 1376 (1974).

Doremus v. Farrell, 407 F. Supp. 509 (1975)

