Mandatory Reporters and Legal Issues: Connecticut's Perspective

Sandy Hook Advisory Commission

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How Can A Person in Connecticut be Involuntarily Transported and Admitted to a Hospital for Psychiatric Evaluation and Treatment?

Criteria: *Danger to Self or Others, or Gravely Disabled*

Physician Emergency Certificate (PEC)

C.G.S. § 17a-502. Physician can have person transported to a public or private hospital via ambulance

- for **confinement** (for no more than 15 days) and evaluation
- if physician concludes person has psychiatric disabilities and is a **danger to self or others, or gravely disabled**
- Must be evaluated within 36 – 48 hours,
- Must be notified of right to an attorney and hearing (within 72 hours)

Danger to Self or Others or Gravely Disabled – Authority to Direct Emergency Transport to Hospital

Sec. 17a-503. (Formerly Sec. 17-183a). Detention by police officer prior to commitment. Issuance of emergency certificates by psychologist and certain clinical social workers and advanced practice registered nurses.

(a) Police Officer

(b) Probate Court

(c) Licensed Psychologist

(d) Licensed Clinical Social Worker or Licensed APRN*

* has received a minimum of 8 hours of specialized training in the conduct of direct evaluations as a member of (A) any mobile crisis team, jail diversion program, crisis intervention team, advanced supervision and intervention support team, or assertive case management program operated by or under contract with the Department of Mental Health and Addiction Services, or (B) a community support program certified by the Department of Mental Health and Addiction Services.

Police - Authority to Direct Transport to Hospital

POLICE OFFICER

- **reasonable cause to believe** that a person has psychiatric disabilities and is **dangerous to himself or herself or others or gravely disabled**, and
- in need of **immediate** care and treatment
- may take such person into **custody** and take **or** cause such person to be taken to a **general hospital** for emergency examination under this section.
- The officer shall execute a **written request for emergency examination** detailing the circumstances under which the person was taken into custody, and such request shall be left with the facility.
- The **person shall be examined within 24 hours** and shall not be held for more than **72 hours** unless committed under section 17a-502.

Probate Court - Authority to Issue Warrant for Apprehension, Examination, Direct Emergency Transport to Hospital

UPON APPLICATION BY ANY PERSON TO THE COURT OF PROBATE (having jurisdiction)

- alleging that any respondent has psychiatric disabilities and is **dangerous to himself or herself or others or gravely disabled,** and
- in need of **immediate** care and treatment in a hospital for psychiatric disabilities,
- such court **may issue a warrant for the apprehension and bringing before it** of such respondent and examine such respondent.
- If the court determines that there is **probable cause to believe** that such person has psychiatric disabilities and is **dangerous to himself or herself or others or gravely disabled**, the court **shall order** that such respondent be **taken to a general hospital** for examination.
- The person shall be examined within **24 hours** and shall not be held for more than **72 hours** unless committed under section 17a-502.

Licensed Psychologist - Authority to Direct Emergency Transport to Hospital

LICENSED PSYCHOLOGIST

- who has **reasonable cause to believe** that a person has psychiatric disabilities and is **dangerous to himself or herself or others or gravely disabled**, and
- in need of **immediate** care and treatment
- may issue an emergency certificate in writing that **authorizes and directs that such person be taken to a general hospital** for purposes of a medical examination
- The person shall be examined within **24 hours** and shall not be held for more than **72 hours** unless committed under section 17a-502.

Licensed Social Worker or APRN - Authority to Direct Emergency Transport to Hospital (Qualified)

LICENSED CLINICAL SOCIAL WORKER OR LICENSED ADVANCED PRACTICE REGISTERED NURSE who

*(1) has received a minimum of **8 hours of specialized training** in the conduct of **direct evaluations** as a member of*

(A) any mobile crisis team,

- jail diversion program,

- crisis intervention team,

- advanced supervision and intervention support team, or

- assertive case management program operated by or under contract with the Department of Mental Health and Addiction Services, or

(B) a community support program certified by the Department of Mental Health and Addiction Services, and

Licensed Social Worker or APRN - Authority to Direct Emergency Transport to Hospital (Qualified)

LICENSED CLINICAL SOCIAL WORKER OR LICENSED ADVANCED PRACTICE REGISTERED NURSE who

(2) based upon the **direct evaluation** of a person,

- has **reasonable cause to believe** that such person has psychiatric disabilities and is **dangerous to himself or herself or others or gravely disabled**, and
- in need of **immediate** care and treatment
- may issue an emergency certificate in writing that **authorizes and directs that such person be taken to a general hospital** for purposes of a medical examination.
- The person shall be examined within **24 hours** and shall not be held for more than **72 hours** unless committed under section 17a-502.
- The Commissioner of Mental Health and Addiction Services shall collect and maintain statistical and demographic information pertaining to emergency certificates issued under this subsection

Relevant Definitions Under C.G.S. §17a-495:

- **Dangerous To Himself or Herself or Others**:
  - substantial risk that
  - physical harm will be inflicted by
  - an individual upon his or her own person or upon another person.

- **Gravely Disabled**: A person,
  - as a result of mental or emotional impairment,
  - is in danger of serious harm as a result of an **inability or failure to provide for** his or her **own basic needs such as essential food, clothing, shelter or safety** and
  - hospital treatment is necessary and available and
  - such person is mentally incapable of determining whether or not to accept such treatment
    - because his/her judgment is impaired by mental illness/psychiatric disability.

If Upon Evaluation at the Hospital, the Patient is Believed to be a Danger to Self or Others, or Gravely Disabled, and will not Admit Self Voluntarily…

Physician Emergency Certificate (PEC)

C.G.S. § 17a-502

- Physician can admit person to hospital for no more than 15 days, for further evaluation and treatment

If After 15 Days, it is Believed the Patient Continues to be a Danger to Self or Others, or is Gravely Disabled, and the Patient Refuses to Remain in Hospital Voluntarily…

Commitment by Probate Court

- C.G.S. § 17a-498
- If upon evaluation by 2 physicians it is believed a patient needs treatment beyond the 15 days allowed under the Physician Emergency Certificate
- Hearing requested with probate judge (if person refuses to remain in the hospital voluntarily)
- Probate judge can order further commitment (beyond the 15-day PEC) for an indefinite period

What about Patient Privacy – Are Providers Limited by Confidentiality Laws When Faced with a Patient Believed to Be Dangerous?

Connecticut Confidentiality Statutes

Confidentiality Laws Recognize the Central Importance of the Therapeutic Relationship Between Patient and Provider

Statutory Exceptions to Confidentiality in Connecticut

- **To protect patient or others from imminent physical harm**
- Language varies by statute/mental health profession
- Professions with confidentiality exception related to imminent physical harm:
  - Licensed Psychologists
  - Licensed Psychiatrists
  - Licensed Clinical Social Workers
  - Licensed Professional Counselors
  - Certified Marital and Family Therapists

Exceptions to Confidentiality – Risk of Harm

MHP	Statute	EXCEPTION TO CONFIDENTIALITY
Psychologist	52-146c(5)(c)(3)	"risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals"
Psychiatrist	52-146f(2)	"substantial risk of imminent physical injury by the patient to himself or others or … for the purpose of placing the patient in a mental health facility"
Marital and Family Therapist	52-146p(c)(2)	"failure to disclose such communications presents a clear and present danger to the health or safety of any individual;"
Social Worker	52-146q(6)(c)(2)	"substantial risk of imminent physical injury by the person to himself or others,"
Professional Counselor	52-146s(c)(4)	"failure to disclose such communication presents a clear and present danger to the health or safety of any individual;"
	52-146s(c)(5)	"risk of imminent personal injury to the person or to other individuals or risk of imminent injury to the property of other individuals;"

Summary

- Statutory Authority to have someone involuntarily transported to hospital for evaluation, treatment, confinement
- Statutory Exceptions to confidentiality
- Both have an immediacy component in terms of need for treatment, and danger to self or others or gravely disabled
- Both are permissive, in that the provider uses clinical judgment and discretion

Mandatory Reporting Requirements in Connecticut

Connecticut's Common Law
Duty to Protect

Duty to Protect: Threat of Imminent Physical Harm to a Known Victim or Class of Victims

- Psychotherapist does not have a duty to control the behavior of an outpatient when there is no known threat to an identifiable victim by the patient. *Fraser v. United States*, 235 Conn. 625 (1996)
- Scope of duty of a psychotherapist [as defined in *Fraser*] arises in the event of "[i]mminent risk of serious personal injury to identified victims" *Jacoby v. Brinkerhoff*, 250 Conn. 86, 96 (1999)
- "[A] psychiatrist has a duty to speak where harm to identifiable victims is a foreseeable consequence of his silence." *Garamella v. New York Medical College*, 27 F.Supp.2d 167, 175 (1998)

Weighing the Pros/Cons of Duty to Protect

Pros

- Allows providers to breach confidentiality and notify police or potential victim when known specific threat of imminent physical harm
  - Protects public welfare

Cons

- Impairs therapeutic alliance – no longer productive/drop out
- Stigmatizes patient
- Decreased access - provider unwillingness to take on risk
- Decreased access – patient avoidance of reporting
- Possibly exacerbates the situation (warn)

Potential Unintended Consequences of Expanded Duty to Protect…

…to include reporting of anyone *"perceived to be a danger to self or others"* …or mandated reporting

- Overly broad language will include many who are not a threat
- Further Increases Stigma
- Further Decreases Access
- Questionable increased benefit to public welfare

Potential Unintended Consequences of Expanded Duty to Protect

- Stigma – increases, rather than decreases

- Suggests mentally illness equates with violence – lack of research support
  - Substance Abuse has much stronger relationship to violence
  - Suicidal threat much more common than homicidal threat
  - Mentally ill much more likely to be victims of violence

- Very little societal benefit in terms of decreased threat
  - Many false positives
  - Low likelihood of violence
    - Base rates
    - Fact that they are seeking treatment voluntarily
  - Those most likely to be violent least likely to seek treatment (antisocial/psychopathy, lack of value for personal relationships)

Potential Unintended Consequences of Expanded Duty to Protect

- Decreased Access
  - Impairs existing therapeutic relationship – no longer effective or patient drops out of treatment
  - New patients less likely to seek treatment
    - High functioning persons – least obvious when in distress – need professional to detect
      - Most likely to be aware of mandated reporting requirements, most likely to be averse to reporting, most likely to avoid seeking treatment
  - Providers less likely to take on cases perceived to be risky - this is already a problem

Ethical Issues

- Provider's primary responsibility is to benefit patient
  - Balance harm to patient (privacy, confinement) vs. benefit to society
  - Broad mandated reporting requirements of "danger to self or others" risks great harm to patient in terms of violation of privacy, and breach of therapeutic relationship, with little benefit to society
  - Harm many who are not going to act, in order to potentially deter one who might act

- "We deem it … appropriate to balance the interests of those injured by psychiatric outpatients against the interests of the mental health profession in honoring the confidentiality of the patient-therapist relationship…
- Whatever that balancing process may indicate in other circumstances, it counsels against the imposition of liability for harm to unidentifiable victims or unidentifiable classes of victims of outpatients with no history of dangerous conduct or articulated threats of dangerous behavior."

– *Fraser v. United States*, 235 Conn. 625, 635 (1996)

Mandatory Reporting Requirements in Connecticut

Connecticut's Statutory

Duty to Report

Suspected Abuse, Neglect or Exploitation

- Child Abuse (C.G.S. § 17a-101(b))
- Elder Abuse (C.G.S. § 17b-451)
- Persons with Disabilities (C.G.S. § 46a-11b)
- Residents of Long-Term Care Facilities (C.G.S. § 17b-407)

http://www.ct.gov/dph/cwp/view.asp?a=3121&q=389520

Where to Go from Here

“How do we make sure this never happens again?”

Governor Malloy’s Press Release, January 3, 2013, announcing the creation of the Sandy Hook Advisory Commission

No Guarantees, Only Strategies

- Cannot ensure it will never happen again
- Can minimize risk – Explore options for minimizing risk of recurrence

Summary: Current Common Law Duties and Statutory Authority

- Mental health professionals have a common law duty to protect when alerted by a patient of a threat of imminent physical harm to a known person or group of persons

- Statutory exceptions to confidentiality allow for breaching confidentiality and for involuntary transport and admission to hospital for psychiatric evaluation and treatment when patient determined or believed to be a “danger to self or others, or gravely disabled”

If Codification Desired…

DUTY TO PROTECT (as drafted by the Connecticut Legal Rights Project)

For the purposes of this section, “mental health care provider” means a psychologist, psychiatrist, marital or family therapist, licensed clinical social worker, advanced practice registered nurse, or licensed professional counselor.

A physician or mental health care provider has a duty to take protective action and may disclose privileged or confidential communications to law enforcement without the patient's consent if the physician or mental health care provider determines, in his or her professional judgment, that a patient with a known propensity for violence has made a credible threat of serious physical injury by specific means to a clearly identified individual or group of individuals.

The duty to take protective action is deemed to have been discharged if the physician or mental health care provider makes reasonable and timely efforts to:

1. Establish and undertake a documented treatment plan reasonably calculated to address the risk that the patient will carry out the threat; or

2. Secure hospitalization of the patient pursuant to Section 17a-498, 17a-502, 17a-503, or (17a-506) of this Chapter; or

3. Inform the appropriate law enforcement agency of:

    a. The nature of the threat;

    b. The identity of the patient making the threat; and

    c. The identity of the specified victim or victims.

No cause of action or disciplinary action may arise against any physician or mental health care provider for failing to predict, warn of, or take precautions to provide protection from a patient’s violent behavior unless: the physician or mental health care provider knew of the patient’s propensity for violence; the patient communicated to the physician or mental health care provider a credible threat to inflict imminent serious physical injury upon a reasonably identifiable victim or victims; and the physician or mental health care provider did not act in compliance with the provisions of this section. No cause of action or disciplinary action may arise under any patient confidentiality act against a physician or mental health care provider for confidences disclosed or not disclosed in good faith to a law enforcement agency, to the potential victim or victims, or to other third parties in an effort to discharge a duty to take protective action arising under the provisions of this section.

Additional Considerations When Considering Codification

Pro

- Eliminates need for providers to determine likelihood of violence
  - Action based on patient's expressed threat
  - Eliminates clinical judgment – closer to a "yes/no" determination

Con

- Eliminates clinical judgment
- Court interpretations not always reasonable, consistent (e.g., California, statute used by prosecutors to mandate therapists to testify as prosecution witnesses)
- No guarantee providers will be immune from liability (*e.g.*, Arizona, where court found otherwise)

Multifaceted Approach to Prevention/Minimizing Risk

Mental Health is one facet

- Prevention in Schools – Broaden health education curriculum to include mental health
  - Identification, regulation, and healthy expression of emotions
- Early Intervention/Accessibility of Services
  - Availability of comprehensive psychological evaluations
    - Regional Consultation Centers or Mobile Consulting Psychologists
    - Available to all students upon referral from school (family, too?)
- Reduce Stigma
  - Integrate mental health care/self care in school system through health education, sending home information (handouts, brochures), providing workshops and parenting trainings for parents, referrals, and "normalizing"
  - Emotions ≠ Weakness

Thank You

Further inquiries:

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References

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