



## The Supreme Court Provides Clarity: IEA Patients are Entitled to Probable Cause Hearings Within Three Days of Certification

By: Melissa M. Hanlon

In a ruling issued on May 11, 2021, the New Hampshire Supreme Court held that psychiatric patients held involuntarily in Emergency Departments must be given a probable cause hearing within three days of their involuntary emergency admission pursuant to RSA 135-C:31, I. This important ruling will necessarily dramatically change the way involuntary emergency admissions are handled in New Hampshire. (*Jane Doe v. Commissioner of the New Hampshire Department of Health and Human Services*, No. 2020-0454)

The issue came before the Supreme Court after a patient proceeding under the Jane Doe pseudonym filed a writ of habeas corpus seeking her relief from New Hampshire Hospital on the ground that she was not provided a probable cause hearing within three days of her involuntary emergency admission. Pursuant to RSA 135-C:27, patients can be held on an involuntary basis if a psychiatrist approved by the Department of Health and Human Services (DHHS) certifies that the person is “in such mental condition as a result of mental illness that she poses a serious likelihood of danger to self or others.” The statute requires that a patient be “immediately” delivered to a designated receiving facility upon completion of the involuntary emergency admission certificate. RSA 135-C:29, I. In the underlying case, because of a lack of available beds at the designated receiving facilities in the State, the patient was kept in the Emergency Department at Dartmouth-Hitchcock Medical Center for more than two weeks and was not given a probable cause hearing until she arrived at New Hampshire Hospital (the designated receiving facility).

DHHS argued that involuntary emergency admission to the state mental health services system for purposes of complying with the statute does not occur until the patient is present at, accepted by, and therefore admitted to, a designated receiving facility. Consistent with this, DHHS asserted that until a bed becomes physically available and the patient is transported to a designated receiving facility, the

requirement to hold a probable cause hearing within three days (excluding Sundays and holidays) is not triggered. This interpretation is consistent with the longstanding practice in the State of not holding probable cause hearings until the patient is actually admitted to the designated receiving facility. While waiting for a bed to become available, patients are routinely detained in emergency departments around the State. In the past several years, there has routinely been a large waiting list for placement at designated receiving facilities, with many patients “boarding” in emergency departments.

The Court held that the plain language of RSA 135-C:31 requires a probable cause hearing within three days of the completion of the involuntary emergency admission certificate, regardless of whether the person has been actually admitted by a designated receiving facility. The Court noted the reality that “the statutory process is not working as the legislature intended because of the lack of beds in receiving facilities” and that as a result, individuals certified for involuntary emergency admission are boarded in private hospitals while waiting for an appropriate bed. However, the Court upheld the duty to provide probable cause hearings within three days of completion of the involuntary emergency admission certification unless and until the legislature changes the statutory scheme.

In short, it is now clear that patients detained under an involuntary emergency admission certificate must be provided with a probable cause hearing within three days (excluding Sundays and holidays), or be released. It remains to be seen how DHHS, the Courts, and the legislature will comply with this mandate.



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