

Forthwith

- Why the need for such expediency?
 - Consider some medical reasons...

Roles of the Participants

Duties of Prosecuting Attorney W.Va. Code §27-5-1©

- Represent Applicants in All Proceedings
- Waiver of services possible during non-court, non-judicial days... BY...
- MHC, Judge, or Designated Magistrate... IF...
 1. Finding made Applicant's interests not jeopardized, and
 2. With concurrence of the Applicant

Consider Cooperative Agreement

W.Va. Code §27-5-1 (c)

- Make arrangements to rotate or cover non-judicial, non-court hours
- Need concurrence of circuit courts and county commissions
- Can hold hearings in county other than where Respondent found
- Prosecutors can serve in other county

Prosecutor Practice

- Advise family and other Applicants about “Limited Guardianships” for the purpose of handling addiction and/or psychiatric emergencies for the Respondent
- Advise family and other Applicants about “Advance Medical/Psychiatric Directives” tailored to handle psychiatric or addiction emergencies and needed hospitalizations



Role of Law Enforcement:

The Sheriff Certified Municipal Law Enforcement

Duties of the Sheriff

W.Va. Code §27-5-1 (d)

- Take the Respondent into custody and transport to and from the place of hearing and the mental health facility
- Maintain custody and control of the Respondent during period of time in which the Respondent is waiting for the involuntary commitment hearing and while the hearing is being conducted

Duties of the Sheriff

W.Va. Code §27-5-1 (e)

- If Respondent is violent or combative, shall maintain custody in the facility until the evaluation is completed
- Otherwise County Commission must reimburse mental health facility for security services provided by the mental health facility

Duties of the Sheriff

W.Va. Code §27-5-10

- “Whenever: transportation of the Respondent is required, it is the duty of the sheriff to provide “immediate” transportation “to and from the appropriate mental health facility or state hospital.”

Sheriff Transport Assistance

W.Va. Code §27-5-10(b)

- County Commission on behalf of Sheriff and Directors of Local Community Mental Health Center and emergency medical services can enter into written agreement arranging alternative transportation program
- Agreement must clearly define responsibilities, requirements for program participation and the persons bearing ultimate responsibility for the Respondent's safety and well-being

Use of Certified Municipal Law Enforcement Officers for Transport

W.Va. Code §27-5-1 (e)

- Sheriffs and municipal governments can enter into written agreement officers to perform transport, detention, and custodial duties of sheriff
- Agreement must be approved by County Commission and Circuit Court
- Necessary elements of agreement set forth in statute

Roles of Law Enforcement

- Interaction with mentally ill frequent with law enforcement
- Is a form of police work/ a law enforcement function that is necessary
- Develop connections and liaisons with mental health and social workers

Role of Counsel for the Respondent Representing the Respondent

- Are you meeting with your client ASAP after appointment?
- Or are you seeing your client for the first time just prior to the probable cause hearing?
- Are you putting your client at risk for a federal life-long prohibition, that might be avoided by counseling your client to accept voluntary treatment upfront?

Representing the Respondent: NICS INDEX/Firearm Ban

- Did you know that persons who have been
 1. adjudicated as a mental defective, or have been
 2. Committed to a mental institution, or who are
 3. Unlawful users of or addicted to any controlled substance
- Are categories of persons who are prohibited from possessing and receiving firearms (Federal Register, Vol. 62, No. 124) and as such may be (1) included in the NICS [National Instant Criminal Background Check System] Index

NICS Firearm Ban is a Life-Long Prohibition

- Exception: Relief from Disabilities Remedy to life prohibition: Title 18, Subsection 925

Representing the Respondent: Federal Gun Control

- 18 U.S.C. §922(g)(4) provides that it is unlawful for any person “who has been adjudicated as a mental defective or who has been committed to a mental institution” to possess in or affecting commerce, any firearm or ammunition.
- It is a felony conviction

Federal Firearms Regulations:

- Definition of “adjudicated as a mental defective” (27 C.F.R. §178.11(a))
- A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:
 1. Is a danger to himself or others
 2. Lacks the mental capacity to contract or manage his own affairs

Federal Firearms Regulations:

- Definition of “committed to a mental institution” (27 C.F.R. §178.11)
- A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

NICS Prosecutions and Case Law

- Cases upholding indictment for possession of firearm as defendant was previously “committed to a mental institution”:
 - US v. Vertz, 102 F.Supp.2d 787 (W.D.Mich., 2000) Denied Motion to Dismiss Indictment
 - US v. Midgett, 198 F.3d 143 (4th Cir. (VA.), 1999) Sentenced to 33 months of imprisonment.
 - US v. Chamberlain, 159 F.3d 656 (C.A.1, (Me.), 1998) Sentenced to 5 years of probation plus assessment.
 - US v. Whiton, 48 F.3d 356 (8th Cir. (S.D.), 1995) Sentenced to one year probation.
 - US v. Waters, 23 F.3d 29 92nd Cir. 1994) Sentenced to 2 years probation and \$2,500 fine

Gun Control Prosecutions and Case Law

- Issue of whether a person has been committed to a mental institution is “a question of federal law”
 - Vertz, 102 F. Supp. 2d 787; US v. Giardina, 861 F.2d 1334; Midgett, 198 F .3d 143 (4th Cir. 1999)

“Commitment” is ...

- State procedure of admission by certificate of 2 doctors without judicial order of commitment = commitment under federal gun control statute. Waters, 23 F.3d 29 (2nd Cir. 1994).
- See also: Involuntary hospital admission supported by 2 physician's certificates pending court hearing where finding made of “mental illness requiring treatment” but which did not result in hospital commitment due to other available treatment = commitment under federal gun control statute. Vertz, 102 F. Supp.2d 787. And, Whiton, 48 F.3d 356 (8th Cir. 1995), procedure of certification by 2 examining psychologists for involuntary admission = commitment under federal gun control statute

“Commitment” is ...

- Emergency hospitalization of 5 days based upon application, examination and certification by one physician, and review and endorsement by judge (with no full hearing prior to involuntary admission) = commitment under federal gun control statute. *US v. Chamberlain*, 159 F.3d 656 (1st Cir. 1998). Court rejected argument that a person could be deemed “committed” only after notice and formal issuance of order following full hearing at which the person had an opportunity to be heard.

“Commitment” is NOT...

- ... where a defendant is found at the time of admission to have no serious mental illness and not to be in need of hospitalization; [Chamberlain, 159 F.3d at 662, n. 11](#)
- ... charge against a person involuntarily hospitalized without any medical justification and then deemed not mentally ill; [Jones, 117F.Supp.2d 551](#)
- ... a person in a mental institution for “observation” or a “voluntary admission” to a mental institution; [Vertz, 102F.Supp.2d 7887](#)

Representing the Respondent

- Is it in your client's best interests to let the matter go to probable cause hearing now?

Forthwith Hearing
or Hearing within
12 hours



Request up to 48
hour postponement

Representing the Respondent

- Is voluntary outpatient or voluntary inpatient an option for your client?
- Will the applicant agree to dismiss the application if your client agrees to appropriate voluntary treatment?
- If your client won't agree to voluntary treatment, would delay of the hearing affect the outcome positively for you client?
- Could delay and agreement by your client to treatment in the interim, result in no certification when examined or no finding of probable cause?

Representing the Respondent

- Should you counsel your client to agree to and/or request treatment and medication during detention periods?
- Is your client's behavior resulting from failure to take medication, lack of medication to take, incorrect medication, or medication reaction, i.e. failure of case management by self, health personnel and/ or family?
- Should you recommend your client execute an Advance Psychiatric Directive?
- Should you recommend to your client that a limited guardian to control psychiatric admissions, medications, and treatment be obtained to avoid involuntary admissions?

Civil Liberty and Freewill

- Does protecting your client's liberty interests really mean just trying to get the case dismissed?
- Does it also mean freeing your mentally ill client from their brain disease, i.e., getting them the treatment they need?
- Are you advocating for services and treatment for you client?