IMPOUNDED

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
SJC-13455

APPELLATE DIVISION OF THE DISTRICT COURT
19-ADMH-84SO

WRENTHAM DISTRICT COURT
1857CR001194

COMMONWEALTH v. A.Z.

ON DIRECT APPELLATE REVIEW OF A DECISION AND ORDER OF THE APPELLATE DIVISION OF THE DISTRICT COURT

SOUTHERN DISTRICT

APPELLANT'S REPLY BRIEF

DEVORAH ANNE VESTER
BBO #600806
Appeals Staff Attorney
Committee for Public Counsel Services
Mental Health Litigation Division
109 Main Street, Suite 201
Northampton, MA 01060
C. (617) 331.1598
F. (413) 586.0658
dvester@publiccounsel.net
July 31, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENT

I. The Commonwealth's claim that A.Z.'s appeal is moot is erroneous

The Commonwealth maintains that this Court should dismiss A.Z.'s appeal as moot because her interest in the G.L. c. 123, s. 15(b) commitment terminated when she was subsequently found incompetent to stand trial. (Com. 15).[1] It relies on four arguments to support this position. These arguments are unavailing.

First, the Commonwealth asserts that Matter of F.C., 479 Mass. 1029 (2018) does not apply because the "narrow and limited purpose of an order for temporary hospitalization for observation and further examination under G.L. c. 123, §15(b) is so the defendant may only be tried as competent; thus, there is no continuing stigma after the 20-day hospitalization has concluded." (Com. 16).

The gauge for mootness under F.C. is neither the purpose nor the length of the commitment. Rather, it is the stigma generated from "orders … not lawfully issued." F.C., 479 Mass. at 1029–30. The

[1] References to the Commonwealth's brief appear as "Com. page number;" references to A.Z.'s principal brief appear as "A.Z. page number."

stigma from commitment lives on even after the commitment order in question has terminated or expired. Id. (Citation omitted).

This Court reaffirmed this principle in Garcia v. Com., 487 Mass. 97, 102 (2021) with regard to appeals from temporary commitment orders issued under G.L. c. 123, s. 16(a). "Because individuals temporarily committed under § 16 (a) have a personal stake in litigating a wrongful temporary commitment, even after release from confinement, we conclude that appeals from an order pursuant to § 16 (a) are not moot." Garcia, 487 Mass. at 102. Like a temporary commitment under s. 16(a), a temporary commitment under s. 15(b) carries with it a stigma. Therefore, A.Z has a surviving interest in her appeal just as Mr. Garcia did. If this Court were to adopt the Commonwealth's reasoning, any commitment order no longer in effect would also be moot since once a commitment order terminates, the purpose of that order will have also been fulfilled.

Second, the Commonwealth claims that subsequent events on the criminal docket, including the ultimate dismissal of charges, makes this appeal moot, and cites to Com. v. Pagan, 445 Mass. 315, 317 (2005) ("Because the charges against the defendant were resolved, the case is moot"). (Com. 16-17). Pagan is inapplicable because that case

dealt with mootness of a criminal appeal where the charges were dropped. Id. Thus, there was no relief the Court could have ordered. Here, the disposition of the underlying criminal case has no bearing on the continuing injury from the unlawful commitment.

Third, the Commonwealth also relies on Matter of J.C., 2018 Mass. App. Div. 63, and Matter of T.C., 2018 Mass. App. Div. 35, two Appellate Division cases that predate F.C., to support its claim that the requirement of providing personal identifying information to the Department of Criminal Justice Information Services (DCJIS) as a result of a s. 15b order does not overcome mootness of A.Z.'s appeal. (Com. 17). Its reliance on these cases for that proposition is misplaced.

By ignoring F.C.'s precedent, the Commonwealth also overlooks this Court's acknowledgment in F.C., that G.L. c. 123, s. 36C implicates other live issues that overcome mootness:

> Although we conclude that a patient's continuing interest in removing stigma associated with an involuntary commitment is sufficient to require an appeal to be decided on its merits, we recognize that the statute itself may implicate ongoing Federal collateral consequences, providing an additional reason for needing to resolve the appeal on the merits.

F.C., 479 Mass. at 1030, fn. 2.

Lastly, the Commonwealth claims that A.Z.'s appeal is moot based on the language in fn. 10 of Garcia, in which this Court stated

that it was not addressing "the portion of § 16 (a) allowing temporary commitments of incompetent defendants, because such circumstances present different compelling interests." (Com. 18). That quote is inapposite because it does not relate to the issue of mootness. Rather, it relates to the question of substantive due process. See Garcia, 487 Mass. at 102.

II. The Commonwealth fails to explain how G.L. c. 123, s. 15(b) is narrowly tailored to further the government's interest in determining competence to stand trial

A. Whether a statute is narrowly tailored to further an interest is a question separate from whether an interest is legitimate and compelling

The Commonwealth suggests that the legitimate and compelling purpose of s. 15(b) makes it narrowly tailored both per se and in its application. (Com. 18-21). This position is erroneous.

By itself, an underlying legitimate and compelling government interest is insufficient; a statute must also be narrowly tailored to further such interest. See Com. v. Weston W., 455 Mass. 24, 35 (2009) (after determining government's intertest legitimate and compelling, Court looked to whether the ordinance was "limited as narrowly as possible consistent with its proper purpose"). This burden falls on the Commonwealth. Garcia, 487 Mass. at 104 (Commonwealth bears

burden of showing restriction of liberty narrowly tailored to compelling government interest).

B. Footnote 15 of Garcia does not answer the question whether s. 15(b) is narrowly tailored

The Commonwealth relies on footnote 15 of Garcia to support its claim that s. 15(b) is narrowly tailored: "In Garcia, the Supreme Judicial Court stated that G.L. c. 123, §15(b) is narrowly tailored because hospitalizations are ordered only after a screening evaluation and a judicial determination that observation and further examination are necessary." (Com. 21).

Its reliance is misguided because this dicta indeed begs the question of whether s. 15(b) is narrowly tailored instead of answering it. Neither the initial in-court evaluation under G.L. c. 123, s. 15(a) nor the judicial determination under s. 15(b) indicates that s. 15(b) is narrowly tailored. On the contrary, the fact that a trial court judge has unbridled or total discretion to determine what a "necessary" involuntary commitment means strongly suggests that s. 15(b) is capable of burdening more individuals than necessary. See Kenniston v. Dep't of Youth Servs., 453 Mass. 179, 188 (2009) (concluding juvenile civil commitment statute, "impermissibly leaves a determination of dangerousness to the 'unbridled discretion' of the

department in filing its petition, and, ultimately, offers no guidance to limit the discretion of the judge who reviews the petition); Aime v. Com., 414 Mass. 667, 682 (1993) (concluding amendments to bail reform act failed strict scrutiny because court had "unbridled discretion" to determine whether arrested individual dangerous); see also Com. v. Pagan, 445 Mass. 161, 172–73 (2005) (concept of constitutional vagueness in due process context based partly on principle that penal statute should provide comprehensible standards limiting prosecutorial and judicial discretion).

This Court should reconsider Garcia's footnote 15 and reject a trial court's authority to interpret what "necessary" means in s. 15(b). This is because such authority permits a trial judge to decide what the standard is (as opposed to *applying* the standard that guides his discretion) and determine the limitations of substantive due process where liberty is at stake. See Kenniston, 453 Mass. at 188; see also Massachusetts Coal. for the Homeless v. Fall River, 486 Mass. 437, 444, fn. 11 (2020) (citation omitted) (rejecting exercise of discretion by law enforcement when assessing the facial validity of a statute).

C. A narrowly tailored statute is based on a universal standard that minimizes the group of affected persons

The Commonwealth does not cite to any case that clarifies what it means for a statute to be "narrowly tailored" to comply with strict scrutiny. (Com. 18-21). Such cases are important to bring to this Court's attention to promote a full briefing of this issue.

This Court has determined that a narrowly tailored statute adheres to a clear universal standard that guides the lower courts in minimizing the group of persons whose liberty is curtailed. See Com. v. Knapp, 441 Mass. 157, 164-66 (2004) (statute permitting temporary confinement before SDP commitment trial narrowly tailored to further interest of protecting public from harm by likely sexually dangerous persons based on numerous requirements and safeguards); Querubin v. Com., 440 Mass. 108, 114-116 (2003) (detention without bail of defendant posing serious flight risk narrowly tailored to further interest in securing defendant's presence at trial because based on rules of court and statutory guidance); Paquette v. Com., 440 Mass. 121, 126-127, 131 (2003) (bail revocation following charge of crime committed on release narrowly tailored to further interest in assuring compliance with law and preserving integrity of judicial process because denial of bail based on carefully delineated standard); Weston W., 455 Mass at

35-36 (civil ordinance imposing curfew narrowly tailored to achieve legitimate goals because curfew similar to others found constitutional, limited in important respects, and adopted only after adequate planning, debating, and researching other models); see also Kenniston, 453 Mass. at 188–89, citing United States v. Salerno, 481 U.S. 739, 742-43 (1987) (federal bail reform act narrowly tailored because it prohibits bail for only extremely serious offenses, defines dangerousness according to specific factors, and requires proof by clear and convincing evidence that no release conditions ensure public safety). Cf. Weston W., 455 Mass at 39-41 (holding part of curfew ordinance allowing criminal prosecution of minors with potential for commitment to DYS not narrowly tailored because criminal prosecution an "extraordinary and unnecessary response to what is essentially a status offense, and is contrary to the State's treatment of similar conduct"); Aime, 414 Mass. at 681–82 (amendments to bail reform statute not narrowly tailored because apply to any arrestee, failed to impose burden of proof regarding dangerousness, and give judicial officer unbridled discretion to determine whether arrestee dangerous).

Based on these interpretations, Garcia's footnote 15 does not answer the question regarding how s. 15(b) is narrowly tailored. The initial screening under s. 15(a) is not dispositive because the in-court evaluation merely sorts out those who are clearly competent or incompetent to stand trial from those who may need further evaluation. In addition, a judge's discretion under s. 15(b) to determine whether an involuntary hospitalization is "necessary" to ultimately determine competence does not make this provision narrowly tailored. For s. 15(b) to be narrowly tailored, judicial discretion must be subject to a standard to ensure that the pool of defendants who may be involuntarily hospitalized is minimized. Supra.

III. The Commonwealth's claim that this Court cannot read the likelihood of serious harm standard of G.L. c. 123 into s. 15b is erroneous

The Commonwealth asserts that this Court should not read the likelihood of serious harm standard of G.L. c. 123 into s. 15(b) because the Legislature (1) chose not to include a likelihood of serious harm standard in s. 15, (Com. 22), and (2) gave courts discretion to commit a defendant to further evaluate for competence to stand trial (Com. 22-23).

In support of this claim, it principally relies on Garcia, 487 Mass. at 106, in which this Court remarked with regard to s. 16(a), "[w]e doubt whether our tools of statutory interpretation would allow us to follow the Commonwealth's proposed course [to read in a standard from other portions of the statute], especially where legislative history suggests that the Legislature might not have intended to include a standard at all." (Com. 22). The Commonwealth's reliance on Garcia for this claim misses the mark.

In Garcia, this Court hesitated to read a standard into s. 16(a) because this provision lacks any indication that the Legislature intended it to have a standard. See Garcia, 487 Mass. at 106. By contrast, s. 15(b) contains a standard – the word "necessary" – albeit an undefined one. Whereas in s. 16(a) there is no language to interpret, in s. 15(b) there is.

Consistent with its primary duty to "effectuate the intent of the Legislature in enacting [s. 15b]," Wallace W. v. Com., 482 Mass. 789, 793 (2019) (citation omitted), this Court should interpret "necessary" in harmony with the standard set forth in other commitment provisions of c. 123. See J.M. v. C.G., SJC-13295, slip op. at *3 (July 19, 2023) (citation omitted) ("[w]hen interpreting a statute, 'we construe the

various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction'"). The word "necessary" in s. 15(b) cannot be orphaned from the statute's recognition of a person's right to liberty. "'A statute must be interpreted "as a whole"; it is improper to confine interpretation to the single section to be construed.'" Id. Therefore, any interpretation of "necessary" must be supported by the legislative history of c. 123 which has increasingly given respondents greater due process protections. See Wallace W., 482 Mass. 793 (citation omitted); Kirk v. Com., 459 Mass. 67, 72 (2011); Matter of N.L., 476 Mass. 632, 636 (2017).

This Court applied these principles of statutory construction when it interpreted the word "discharge" in G.L. c. 123, s. 12(d) in Pembroke Hosp. v. D.L., 482 Mass. 346 (2019). There, this Court looked at "the legislative intent to protect [a person's] right to be 'free from physical restraint'" as a unifying principle in the context of a denial of a commitment petition. Id. at 352. It rejected an interpretation of discharge as releasing a person from care (as urged by the hospital) and instead defined discharge as setting a person at liberty from involuntary restraint (in accordance with due process). Id.

The Commonwealth also relies on Seng v. Com., 445 Mass. 536 (2005), to support the lack of a standard in s. 15(b). (Com. 23). Its reliance is misguided. Seng does not answer the due process question posed. It merely affirms a court's authority to order a competency examination by "'one or more'" experts. Seng, 445 Mass. at 540 (citation omitted).

Lastly, in justifying the trial court's unrestricted authority to commit a defendant without a defined standard, the Commonwealth seeks to distinguish commitments under G.L. c. 123, ss. 7&8, 12(b), 16(b)&(c), 18, and 35 from a commitment under s. 15(b). (Com. 24). That distinction fails for two reasons.

First, regardless of the legitimate and compelling purpose for restraining a person's liberty -- safety of person and public/care and treatment, or further evaluation to determine competence to stand trial – each provision is subject to the overarching principles of c. 123 which serve to protect a person's right to be free from physical restraint. Pembroke Hosp., 482 Mass. at 347, 352.

Second, all of these provisions – including s. 15(b) – are subject to the collateral consequences of s. 36C which presumes a nexus between mental illness and dangerousness. G.L. c. 123, s. 36C(a) and

(b). Consequently, like any other person committed under the provisions the Commonwealth seeks to distinguish, a defendant who has been involuntarily hospitalized under s. 15(b) carries a burden of showing that she is no longer dangerous to public safety and has been successfully treating the underlying mental illness if she chooses to seek relief to possess a firearm under this provision. G.L. c. 123, s. 36C(b).

IV. The Commonwealth's claim that the judge properly exercised his substantial discretion to issue the hospitalization order is erroneous

A. The Trial Court's discretion was subject to A.Z.'s due process rights

The Commonwealth claims that the judge properly exercised his substantial discretion to issue the hospitalization order. (Com. 25). It is undisputed that s. 15(b) gave the Trial Court discretion to commit A.Z. to determine her competence to stand trial. (A.Z. 61, 64). However, whether the judge properly exercised his discretion depends on whether he exercised it within the bounds of due process. See Garcia, 487 Mass. at 108 (determining s. 16(a) problematic because it appears to grant "unfettered discretion" to judges considering commitment of defendants who fall within ambit of first clause).

Further, since the exercise of that discretion implicated an undefined standard, this Court reviews the matter *de novo*. See Com. v. K.W., 490 Mass. 619, 624 (2022) (before considering abuse of discretion in denial of motion to expunge, court determines whether judge made error of law in interpreting relevant statutes and reviews interpretation of statute de novo).

The Commonwealth's reliance on Com. v. Brown, 449 Mass. 747, 759 (2007), is misplaced. (Com. 25). In Brown, this Court concluded that "[a] judge's determination of competency is entitled to substantial deference 'because the judge had the opportunity to view the witnesses in open court and to evaluate the defendant personally.'" Id. (Citation omitted). Here, the judge's ultimate determination of A.Z.'s competence to stand trial under G.L. c. 123, s. 15(d) is not an issue.

B. The facts of a viable, plausibly available outpatient evaluation were squarely before the Trial Court which was obligated to consider them under due process

The Commonwealth fails to successfully rebut A.Z.'s argument that a further examination for competence to stand trial under s.15(b) could have been completed outpatient. It supports this claim on three arguments which are misguided. (Com. 25-28).

First, the Commonwealth states that "defense counsel proposed that the examination be conducted by a court clinician rather than the defendant's expert, specifically, Dr. Robertson." (Com. 26). The record cites which the Commonwealth provides in its brief offer no support for this contention. See RA/14, 18-20 and SA/10. Indeed, counsel for A.Z. represented that the parties were ordered to return to court before January 15, 2019 "because of the availability of Dr. Robertson" to perform the initial 15(a) evaluation. (RA/28). Even if the Commonwealth's assertion were true, this fact has no bearing on the requested outpatient evaluation under s. 15(b) since the preliminary 15(a) examination is customarily done in the courthouse. G.L. c. 123, s. 15(a).

Second, the Commonwealth asserts that the Court found that A.Z. no longer believed she had a mental illness and would be unlikely to seek treatment voluntarily. (Com. 26). Even if true, this is irrelevant for consideration of a less restrictive alternative to inpatient hospitalization. Neither a person's denial of mental illness nor the rejection of treatment for mental illness per se supports the inadequacy of an outpatient competency evaluation because the purpose of s. 15(b) is not to treat mental illness. G.L. c. 123, s. 15(b). See Com. v. Jones,

479 Mass. 1, 12–13 (2018) (purpose of s. 15 is to evaluate defendant's competence); see also Com. v. Brown, 449 Mass. at 759 (s. 15 provides framework for court to ensure defendant competent for trial).

Importantly, the Commonwealth presented no facts or evidence at the hearing to support this theory (or any other theory that an outpatient evaluation would not be viable). (RA/41). Indeed, its failure to object to the outpatient evaluation supports a waiver of this argument on appeal. Carey v. New England Organ Bank, 446 Mass. 270, 285 (2006) (issue not raised or argued below may not be argued for first time on appeal).

The Commonwealth posits that the judge had the statutory authority and responsibility "to assuage those concerns" that A.Z. no longer believed that she had a mental illness and would be unlikely to seek treatment voluntarily. (Com. 26). In support, it cites to United States v. Huguenin, 950 F.2d 23 (1st Cir. 1991). Its reliance on Huguenin for this claim is misplaced, for the following reasons.

- **The issue on appeal in Huguenin is different from those A.Z. is raising**. In Huguenin, the appellant, who had been convicted for attempting to evade and defeat the federal income tax, claimed that the District Court had no right to subject him to a

competence examination without his consent. Huguenin, 950 F.2d at 25, 27. By contrast, A.Z. is not disputing the Trial Court's discretion to order a competence examination under s. 15(b). (A.Z. 61, 64).

- **In Huguenin, the Court did not order a competence evaluation to assuage concerns that the defendant did not believe he had a mental illness and would be unlikely to seek treatment voluntarily**. Rather, it ordered an evaluation based on its "serious doubts as to [Huguenin's] competency to represent himself, and also serious doubt as to his full understanding of these charges, the seriousness of these charges, and what is about to occur." Huguenin, 950 F.2d at 26.
- **In Huegenin, the Court ordered an outpatient competence evaluation.** Interestingly, it first ordered an outpatient evaluation as opposed to an inpatient evaluation. Huguenin, 950 F.2d at 26. The defendant showed up at the evaluation but refused to submit to the examination unless third parties were allowed to observe or he was allowed to record the session. Id. Since the defendant had refused to submit to the outpatient evaluation, the Court granted the government's motion to

revoke bail and committed him to a facility to determine competence to stand trial. Id.

Third, the Commonwealth fails to show that A.Z.'s claim on appeal concerning "a less restrictive alternative was not properly before the trial court because there was no credible evidence presented that further examination for competence to stand trial under G.L. c. 123, §15(b) could have been completed outpatient." (Com. 26). In support, it states:

> Absent from the record was any testimony by Dr. Schmitz, nor an affidavit from her. Defense counsel represented that Dr. Schmitz could do a competency evaluation on an outpatient bases, which could not be considered by the judge. (RA/39). See Mass. G. Evid. §§801, 802 (2022) (statement of a declarant offered by a party in evidence to prove the truth of the matter asserted is inadmissible.) (Com. 27).

The Commonwealth cites to no authority that supports that the rules of evidence applied to A.Z.'s motion for an outpatient competence evaluation. (Com. 26-27). Indeed, there is a good argument that the rules of evidence did not apply strictly for the same reasons this Court has articulated regarding probation revocation hearings. See Com. v. Durling, 407 Mass. 108, 114-119 (1990) (rules of evidence need not apply at probation revocation hearing; use of reliable hearsay permissible because revocation proceedings must be

flexible in nature and all reliable evidence should be considered); Abbott A. v. Com., 458 Mass. 24, 34 (2010) (citation omitted) (rules of evidence governing criminal trial do not apply to dangerousness hearing under s. 58A).

Even if the Trial Court had to find counsel's representations regarding Dr. Schmitz's availability to conduct an outpatient evaluation "substantially reliable," Durling, 407 Mass. at 118, it could still consider this evidence because it was uncontroverted. See Harper v. Harper, 329 Mass. 85, 88 (1952) (only evidence reported consisted wholly of the statements of counsel, which when uncontradicted may be taken as evidence).

If the Trial Court was not satisfied with representations of counsel, it could have easily continued the matter to a second call or the following day to allow Dr. Schmitz, a Norfolk court clinician, (RA/20), time to appear in court to testify to this matter. A very brief continuance to provide the court with the facts it needed to decide the matter was justified given the potential "massive curtailment" of liberty in a temporary commitment. See Newton-Wellesley Hosp. v. Magrini, 451 Mass. 777, 784 (2008).

Even if the rules of evidence did apply, the Commonwealth failed to object to counsel's representations regarding the outpatient examination. (RA/41). Since the Commonwealth did not oppose counsel's representations, the Court was free to consider them. Com. v. Jones, 439 Mass. 249, 261 (2003) (once admitted, hearsay may be weighed with the other evidence and given any evidentiary value it may possess). Regardless, this issue is waived on appeal. See Carey v. New England Organ Bank, 446 Mass. at 285.

The Commonwealth's argument also ignores an essential principle that is triggered whenever a person's liberty is threatened under c. 123: the Court's obligation to ensure due process.

Regardless of the form in which the Trial Court was put on notice of a "viable, plausibly available" less restrictive means of further evaluating A.Z.'s competence to stand trial, Matter of Minor, 484 Mass. 295, 310 (2020), it was aware of facts that supported a less restrictive means of vindicating the government's interest to determine her competence. (RA/19-20, 27, 35-41).

A court cannot ignore facts before it that may support a less restrictive alternative to a deprivation of liberty:

> Regardless of the constitutional place of such a doctrine, either in general or in the particular context, we think it natural and

> right that *all concerned in the law and its administration should strive to find the least burdensome or oppressive controls over the individual* that are compatible with the fulfilment of the dual purposes of our statute […]

Com. v. Nassar, 380 Mass. 908, 917-918 (1980) (Emphasis added) Indeed, a court is responsible for ensuring the due process rights of persons whose liberty is at stake. See Minor, 484 Mass. at 309 (since strict scrutiny requires that commitment be the least restrictive means of vindicating government's interest, this cannot be ensured "unless and until a judge has considered less restrictive alternatives in each case").

Here, the judge ignored counsel's representations entirely, never stating that it wished to hear from Dr. Schmitz before deciding A.Z.'s motion. (RA/23-32, 37-38). While it may have been better practice for counsel to have brought Dr. Schmitz to the hearing, failure to do so did not nullify the court's responsibility to consider the availability and viability of a less restrictive alternative to hospitalization. Minor, 484 Mass. at 309.

Citing to Com. v. Lameire, 50 Mass. App. Ct. 271, 276 (2000), the Commonwealth further asserts that "[t]he judge was also present throughout the proceedings and could have observed the defendant's 'behavior in the courtroom, [her] demeanor, and [her] interaction with

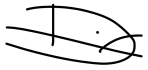
defense counsel.'" (Com. 28). However, there is nothing in the record that shows that A.Z. had displayed any disruptive behavior or unfavorable demeanor or engaged in any negative interaction with counsel when the Court denied her motion for an outpatient evaluation. On the contrary, when the judge addressed A.Z. at the end of the hearing, the record reflects her apparent composure. (RA/42).

Finally, the Commonwealth fails to address the decisive role that strict scrutiny plays in this analysis. (Com. 25-28). Even if A.Z. had never presented any evidence or made any representations of counsel regarding the availability or viability of an outpatient evaluation, strict scrutiny independently required the Trial Court to ensure that its application of s.15(b) considered less restrictive means for vindicating the government's interest in determining A.Z.'s competence to stand trial. See Garcia, 487 Mass. at 105 (court's analysis of evidence under s. 16(a) had to conform with strict scrutiny and rest on constitutionally adequate basis to restrict defendant's liberty).

CONCLUSION

Based on her reply and principal brief, A.Z. requests that this Court issue the rulings and grant the relief requested in her principal brief.

Respectfully submitted,
A.Z.
By her attorney,



Devorah Anne Vester
BBO #600806
Appeals Staff Attorney
Mental Health Litigation Division
Committee for Public Counsel Services
109 Main Street, Suite 201
Northampton, MA 01060
C. (617) 331.1598
F. (413) 586.0658
dvester@publiccounsel.net

July 31, 2023

ADDENDUM

ADDENDUM
TABLE OF CONTENTS

COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT

IN THE MATTER OF A.Z.	APPELLATE DIVISION: Southern District
	NO.: 19-ADMH-84SO
vs.	TRIAL COURT: Wrentham Division
	DOCKET NO.: 1857CR1194

DECISION AND ORDER

This cause was before the Appellate Division for the Southern District. It is hereby ordered that the Clerk of the Trial Court make the following entry on the docket of this case:

The trial court's order of January 10, 2019 under G.L. c. 123, s. 15(b) is affirmed. Appeal dismissed.

Opinion filed herewith.

Date: May 5, 2022

HON. KEVIN J. FINNERTY
Justice

HON. DAVID W. CUNIS
Justice

Justice

A true copy. Attest

/s/ Brien M. Cooper
Appellate Division Clerk

COMMONWEALTH OF MASSACHUSETTS
APPELLATE DIVISION OF THE DISTRICT COURT DEPARTMENT
SOUTHERN DISTRICT

IN THE MATTER OF A.Z.

NO. 19-ADMH-84SO

In the WRENTHAM DIVISION:

Justice: Thomas, J.
Docket No. 1857CR1194
Date of Decision Appealed: January 10, 2019
Date of Entry in the Appellate Division: June 27, 2019

In the APPELLATE DIVISION:

Justices: Finnerty, P.J., Cunis & Campbell, JJ.[1]
Date of Hearing: December 3, 2020
Date Opinion Certified: May 5, 2022

COUNSEL FOR COMMONWEALTH

Michael McGee, Esq.
Norfolk District Attorney's Office
45 Shawmut Road
Canton, MA 02021

COUNSEL FOR RESPONDENT

Devorah A. Vester, Esq.
Committee for Public Counsel Services
Mental Health Litigation Division
109 Main Street, Suite 201
Northampton, MA 01060

OPINION

CAMPBELL, J. This case involves an appeal by A.Z. of an order that she be hospitalized pursuant to G.L. c. 123, § 15(b) for observation and examination as her to competency to stand trial in her criminal case. She raises constitutional challenges that we address after setting forth the relevant prior proceedings and facts.

[1] The Honorable Cathleen E. Campbell participated in the deliberation of this case and authored this opinion prior to her appointment to the Superior Court.

1. *Prior proceedings*. On July 9, 2018, A.Z. was arraigned in the Wrentham District Court for a single charge of threat of a bomb/hijack, in violation of G.L. c. 269, § 14(b).[2] A.Z's. competency to stand trial was evaluated by Dr. Leah Robertson ("Robertson"). See G.L. c. 123, § 15(a). A.Z. was found to be competent and was not ordered to undergo further evaluation. See G.L. c. 123, § 15(b). The Commonwealth moved for A.Z.'s pretrial detention pursuant to the dangerousness statute, G.L. c. 276, § 58A. On July 17, 2018, the District Court entered a finding of dangerousness and ordered A.Z.'s detention.

A.Z. appealed the District Court's finding of dangerousness and its order of pretrial detention to the Superior Court. On August 3, 2018, the Superior Court affirmed the District Court's finding of dangerousness, but it determined there were conditions of release that could serve as an alternative to pretrial detention. The Superior Court ordered: GPS monitoring of A.Z.; that she reside at the Knights Inn in Hadley, Massachusetts or another location approved by probation; comply with a curfew 12:00 A.M. to 5:00 A.M.; stay away from the alleged victim or any employee of the Walpole Times; stay away from Walpole, Massachusetts; continue with mental health treatment under a doctor's supervision; take all prescribed medications; have no contact with the Walpole Times or any news organization; refrain from posting anything on social media; and sign and not rescind releases of information for probation.

On August 8, 2018, the Commonwealth moved to revoke A.Z.'s conditional release due to alleged violations of her conditions from A.Z.'s repeated contact with the Attorney General's Press Office. The Commonwealth's motion was denied, but A.Z.'s terms and conditions of release were amended. She was prohibited from having any contact with the Attorney General's Office. Further, she was restricted to using a phone or a computer only to facilitate contact with friends, family, counsel, therapists, and the housing authority.

On December 19, 2018, the Commonwealth again moved to revoke A.Z.'s conditional release for

[2] In August, 2018, the Commonwealth amended the charge to threat to commit a crime (to shoot someone), in violation of G.L. c. 275, §§ 2-4.

allegedly sending her children's book to the home of the Norfolk District Attorney and the parent's home of an assistant district attorney along with a note. Again, the Commonwealth's motion to revoke was denied. On December 28, 2018, the Commonwealth filed a motion asking the court to reconsider its denial of the motion for revocation due to the delivery of another copy of the book to the assistant district attorney at her office. That motion for reconsideration was not acted upon.

On January 4, 2019, the Commonwealth again moved to revoke A.Z.'s conditional release due to her friend sending a letter to the Walpole Times. The motion was denied.

On January 7, 2019, the Commonwealth again moved to revoke A.Z.'s conditional release because on January 3, 2019, she was arraigned on a new criminal charge of leaving the scene of an accident with property damage. The motion to revoke was denied. But, on that same day, the judge again ordered A.Z. to be evaluated for competency to stand trial pursuant to G.L. c. 123, § 15(a).[3]

On January 10, 2019, A.Z. was examined at the court by the same court clinician who performed an evaluation of her competency to stand trial in July, 2018.[4] After a full hearing, the judge ordered that A.Z. go to the Solomon Carter Fuller Mental Health Center for twenty days of observation and further examination.

On January 15, 2019, A.Z. filed a notice of appeal.[5] On January 16, 2019, A.Z. filed a petition with the Supreme Judicial Court for relief pursuant to G.L. c. 211, § 3, challenging the judge's order for further observation and examination pursuant to G.L. c. 123, § 15(b). On January 24, 2019, A.Z.'s petition was

---

[3] A.Z. previously was evaluated for competency in July, 2018, after her arraignment.

[4] The clinician was Dr. Leah Robertson.

[5] The January 15th notice of appeal is a general notice of appeal. It states in its entirety: "Notice is hereby given that the defendant in the above referenced case, being aggrieved by certain opinions, rulings, directions, and judgments of the Court, hereby appeals pursuant to Massachusetts Rules of Appellate Procedure, Rule 3." An amended notice of appeal was filed on February 12, 2019. Again, it is a general notice of appeal in that it states the defendant is appealing from "[t]he decision of the Wrentham District Court on January 10, 2019 . . . made without sufficient evidence and in violation of the Defendant's constitutional rights." It does not specify in the notice any specific constitutional rights violated.

denied.

On January 29, 2019, after a hearing in the District Court, A.Z. was found incompetent to stand trial. The Commonwealth filed a motion requesting further observation and examination pursuant to G.L. c.123, § 16(a). That motion was allowed with neither party objecting. On March 1, 2019, after a hearing, A.Z. was found competent to stand trial.

On July 1, 2019, the court accepted a joint recommendation to place A.Z. on pretrial probation for three months with conditions. On October 1, 2019, A.Z.'s criminal case was dismissed.

2. *G.L. c. 123, § 15(a) hearing conducted on January 10, 2019*. Before the January 10, 2019, hearing began, counsel on behalf of A.Z. moved to continue the hearing to another date and for funds for an ongoing independent evaluation of A.Z.'s competency. Counsel wanted A.Z.'s evaluation to be performed on an outpatient basis. The judge allowed A.Z.'s motion for additional funds for her designated expert, Dr. Schmitz, but denied the request for a continuance of the hearing.

Dr. Robertson, a designated forensic psychologist working for the court clinic for about a year, performed the evaluation of A.Z. This was the second time Dr. Robertson evaluated A.Z. A.Z. and Dr. Robertson first met in July, 2018, after her arraignment. Dr. Robertson evaluated A.Z. for competency pursuant to G.L. c. 123, § 15(a). Dr. Robertson testified at the July 10, 2019, hearing as follows:

> "At that time [July, 2018,] I realized that [A.Z.] is a very intelligent woman, had a very strong factual understanding of the proceedings against her, and had, in my opinion, a solid rational understanding of how she wanted to proceed. I did not recommend further evaluation at that time, and I believe she was found to be competent.
>
> "Since then, I spoke with [A.Z.'s counsel] earlier this week [in January, 2019]. He shared with me that he is having this private evaluation done with Dr. Schmitz. I asked him how things had been going in these past six months with his client, and he indicated to me that he has noticed some decline, that she talks quite a bit, and it can get in the way of their discussing things.
>
> "[A.Z.] told me when I first met her in July that she was diagnosed with bipolar disorder. She had one psychiatric hospitalization at age 19. She's been seeing her current therapist, I believe, since 2013, and she is prescribed a mood-stabilizing medication since 2008. She said she is prescribed this medication to counterbalance the effect of an estrogen patch that she's taking.

> "When I spoke to her today [January 10, 2019], it was very, very hard to interview her. She, in my opinion, had pressured speech, flight of ideas. I saw her attorney intervene multiple times to try to advise her. She ignored him, talked over him. It was very hard to even get through a few questions. Again, I'm not concerned about her factual understanding. It's more her rational understanding and her ability to communicate with her attorney.
>
> "At the same time, this case has become quite complicated. Her attorney tells me that she's been arrested a couple of times for the possible violation of the conditions, which didn't turn out to be as such. He tells me that she has an open charge for leaving the scene in a car accident recently.
>
> "Today, she tells me that she does not believe that she has a mental illness, which my understanding is that she would no[t] pursue further mental health treatment if she does not believe she has a mental illness. She does tell me that she feels anguished about this relationship with this other man, Kevin, as well as all the stress of these court proceedings, and there's a lot of evidence. It seems like it's been quite a complicated case. So in my opinion, the bar is higher for her to be competent, to manage all this complex information.
>
> "So at the present time, I do not think she possesses the ability to consult with her attorney in a rational manner in her own best interest. So I would recommend further evaluation. And my recommendation would be . . . a psychiatric hospital. I think if she does not treat this mental illness, she will continue to decompensate.
>
> "No history of suicide attempts, violence. She denied current thoughts to harm herself or anyone else. There is no overt psychotic symptoms like hearing voices or gross bizarre delusional beliefs. But I do believe that her presentations today are a result of mental illness, and that she does require a psychiatric hospitalization."

In arguing against an inpatient evaluation of A.Z.'s competency, the following relevant colloquy occurred between the judge and A.Z.'s attorney:

> "Counsel for A.Z.: What you haven't heard today is any argument by the court clinic, or by the Commonwealth, or by anyone who has -- who knows -- who has information about [A.Z.] or the case that she's a danger to herself or others. In fact, if the --
>
> "Judge: Is that the test, Counsel?
>
> "Counsel for A.Z.: No, but that's -- under Section 12, that would be the standard for whether or not she would need to be hospitalized. And so it has to be a consideration here. As you -- as I put in my affidavit in support of my motion for funds, there is no reason to believe that she's a danger to herself or others. Dr. Schmitz did not believe she was a danger to herself or others on Monday. Nobody today believes she's a danger to herself or others.
>
> "Judge: All right. I understand.

"Counsel for A.Z.: And there are other alternatives to -- I mean, I think that's the most important thing here. There is an alternative to her hospitalization, and nothing has been put forward today on why she needs to be hospitalized.

"Judge: Well, respectfully, there was an argument. The presentation included, among other things, that she doesn't believe that she has a mental problem that needs to be addressed, and therefore Dr. Robertson was concerned that she may not be a good candidate for voluntary treatment.

"Counsel for A.Z.: But there was also testimony that she's seeing her therapist, that she's taking her medications.

"Judge: Ok. I'm sorry. Let me just interrupt. Doctor, did you have a suggestion as to what facility should I order her to go to --

"Dr. Robertson: Solomon Carter Fuller Mental Health Center.

…

"Counsel for A.Z.: So in other words -- and I've also -- included in my affidavit is a belief by myself, as well as the mental health clinician that I've hired in the case, who has already begun a competency evaluation, that it could be done on an outpatient basis.[6] And why shouldn't the Court always err on the side of not committing someone? They're -- and that's why I said she's not a danger to herself or others. Shouldn't that be a standard here, that we should commit people against their will for 20 days if, and only if, they're a danger to themselves or others? There is another way for this evaluation to take place, and that's why I brought up -- this -- that's why it's all relevant.

"The Commonwealth was the one who suggested it. That was based in part on things that she didn't do. Now there's no reason -- she appeared here for the evaluation. She appeared Monday . . . for the motion to revoke. The motion to revoke was denied. She met with my doctor on Monday. She was released Friday from -- after the warrant was lifted. She appeared Monday. . . .

"Judge: I understand this part, yeah. . . . [Y]ou've told me that already, so. Any other argument?

"Counsel for A.Z.: No, I just -- I think it's unfair. I think it's a violation of her

[6] There is no affidavit from the clinician whom A.Z.'s counsel references. Instead, A.Z.'s counsel in his motion states in relevant part: "Dr. Schmitz told me that [A.Z.] did not meet the legal and clinical criteria for commitment (danger to herself or others) on 1/7/19. Dr. Schmitz told me that she believes that she could complete a 123/15 evaluation on an outpatient basis." Clearly, these statements of the clinician are hearsay that the judge could not consider. See Mass. G. Evid. §§ 801-802, at 281-301 (2021). But even if the judge chose to consider these hearsay statements, the judge had the ability to discredit them and credit Dr. Robertson's testimony. "The fact finder may accept all, some, or none of the testimony of a witness, including an expert witness. *Commonwealth v. Hinds*, 450 Mass. 1, 12 n.7 (2007); *Commonwealth v. Fitzgerald*, 376 Mass. 402, 411 (1978)." *Matter of D.D.*, 2019 Mass. App. Div. 101, 103 (defendant killed father but was found not guilty by reason of insanity, at Bridgewater since killing and committed pursuant to G.L. c. 123, § 16(b). Appellate Division does not conduct de novo review of judge's factual findings, but instead reviews for errors of law or abuse of discretion).

> due process rights for her to be hospitalized. This -- she has a threats case where she is working with me towards trial. There is a question of competency that can be resolved on an outpatient basis before we determine whether or not she can proceed to trial.
>
> "Did -- I mean, her car is outside. She lives in Western Massachusetts. She has a life. She -- if you detain her now for 20 days, that will be disruptive. She met with her therapist on, what, last week, Thursday, which she does every week. She's – there's -- she takes medications.
>
> "So the standard should not be because she says she doesn't have mental illness that she needs to be hospitalized to determine her competency. That's not -- that's not logical. One doesn't follow from the other. The question is does she understand . . . the proceedings against her and can she work with her attorney, and that can be determined by a doctor on an outpatient basis. If a doctor decides that she can't – by observation, that she can't work with me because her mental illness is getting in the way, then that can be determined on outpatient basis. There's -- there hasn't been anything today presented to you why this -- why inpatient is necessary. And so the Court should always err on the side of outpatient.
>
> "Judge: Thanks so much.
>
> . . .
>
> "Judge: All right. Ms. [Z] can you come up here, please?
>
> "Let me say that I understand that you would rather not me order you to be further evaluated by the state under Chapter 15(a) and the subsequent chapters under 123. However, I do understand Dr. Leah Robertson's presentation as her observations, her thoughts concerning the challenges that you're presented with and the way in which she observed your behavior and characteristics today and prior. I understand that she does believe that you have this illness, and that you are not in a position to be able to confidently assist counsel, and therefore she is recommending further evaluation and a work-up under the General Law, Chapter 120 [*sic*], Section 15(a) and (b). I am going to allow that and endorse her suggestion that you be committed to the Solomon Carter Fuller Mental Health Institution for further -- Center for further evaluation under the chapter and section."

3. *Issues raised by A.Z. are not moot*. After review by a clinician and a full hearing conducted pursuant to G.L. c. 123, § 15(a), A.Z. was ordered to undergo further observation and examination as to her competency to stand trial, pursuant to G.L. c. 123, § 15(b), at the Solomon Carter Fuller Mental Health Center. The Commonwealth challenges this Appellate Division's review of the issues raised by A.Z., urging that we find the matter to be moot. That assertion must fail. In *Matter of F.C.*, 479 Mass.

1029 (2018), the Supreme Judicial Court held that "[a]ppeals from expired or terminated commitment and treatment orders under G.L. c. 123, §§ 7, 8 and 8B, like appeals from expired harassment prevention orders (G.L. c. 258E) or expired abuse prevention orders (G.L. c. 209A), 'should not be dismissed as moot where the parties have a continuing interest in the case.' See *Seney v. Morhy*, 467 Mass. [58,] 62 [(2014)]. At the very least, a person who has been wrongfully committed or treated involuntarily has 'a surviving interest in establishing that the orders were not lawfully issued, thereby, to a limited extent, removing a stigma from his name and record.' *Id*., quoting *Wooldridge v. Hickey*, 45 Mass. App. Ct. 637, 638 (1998) (abuse prevention order). Although an expired or terminated order may no longer have operative effect, the appeal should not be dismissed without considering the merits of the underlying order. See *Superintendent of Worcester State Hosp. v. Hagberg*, 374 Mass. 271, 276 (1978) ('[m]ental illness does not carry the same stigma it once did, but we are not prepared to say the stigma has entirely disappeared')." *Matter of F.C.*, *supra* at 1029-1030. See also *Garcia v. Commonwealth*, 487 Mass. 97, 102 (2021) (temporary commitment order pursuant to G.L. c. 123, § 16(a), like other civil commitments, carries stigma providing defendant surviving interest).

Even if the court's order that A.Z. undergo further observation and examination pursuant to G.L. c. 123, § 15(b) was moot, we would review the issues raised by A.Z. She raises constitutional due process and equal protection challenges, issues that are capable of repetition yet evading review. Her challenge is not a challenge merely to the order of observation and examination. "'Issues involving the commitment and treatment of mentally ill persons are generally considered matters of public importance,' and that such issues, even where moot, 'present "classic examples" of issues that are capable of repetition, yet evading review.' *Matter of N.L.*, 476 Mass. [632,] 635 [(2017)], quoting *Newton Wellesley Hosp. v. Magrini*, 451 Mass. 777, 782 (2007)." *Matter of F.C.*, *supra* at 1029 n.1. Contrast this case with *Matter of A.H.*, 2018 Mass. App. Div. 13.[7] As such, the issues raised by A.Z. will be addressed by this Appellate

[7] In *Matter of A.H.*, 2018 Mass. App. Div. 13, the Appellate Division declined to review A.H.'s appeal of a G.L. c. 123, § 8B order. It held that A.H.'s appeal, based solely on the sufficiency and weight of the evidence, failed to

Division.

4. *Sections 15(a) & (b): Constitutional and statutory interpretation.* On January 10, 2019, at the Wrentham District Court, A.Z. met with Dr. Robertson, a designated forensic psychologist. Dr. Robertson conducted an evaluation of A.Z. pursuant to G.L. c. 123, § 15(a). Previously, in July, 2018, after A.Z. was arraigned, she did a similar evaluation. At that time, she found A.Z. had a very strong factual understanding of the proceedings and a solid rational understanding of how she wished to proceed with her criminal case. But this time, the result of Dr. Robertson's examination was different.

Dr. Robertson reported that it was very hard to interview A.Z. Her speech was pressured, and she had a "flight of ideas." She ignored her attorney and his advice, speaking over him and making it hard to get responses to even a few questions. The doctor had concerns about A.Z.'s rational understanding and ability to communicate with counsel.

Even though A.Z. has a history of bipolar and takes medication, A.Z. told the doctor she did not believe that she was suffering from a mental illness, making it questionable whether she would pursue mental health treatment. A.Z. was anguished about her relationship with a man and was stressed about the court proceedings and evidence. Dr. Robertson found A.Z. did not possess the ability to consult with her attorney in a rational manner in her own best interest. She recommended commitment to the Solomon Carter Fuller Mental Health Center.

A.Z.'s attorney argued that there was no evidence A.Z. presented a danger to herself or others.[8] Further, A.Z. was proceeding with a competency evaluation on an outpatient basis, which was a less

raise an issue that was capable of repetition yet evading review. *Id*. at 14. Further, the Division held A.H. lacked a personal stake in the outcome of the appeal. *Id*. That decision predates the Supreme Judicial Court's decision in *Matter of F.C.*, 479 Mass. 1029 (2018). In that case, the Court held, "[A] person who has been wrongfully committed *or* treated involuntarily has 'a surviving interest in establishing that the orders [issued pursuant to G.L. c. 123, §§ 7, 8 and 8B] were not lawfully issued, thereby, to a limited extent, removing a stigma from his name and record'" (emphasis added; citation omitted). *Id*. at 1029-1030.

[8] While counsel for A.Z. and the judge refer to dangerousness, the actual relevant language in the sections of G.L. c. 123 at issue in this case is a serious risk of harm to self or others.

restrictive means of conducting the evaluation. He opined that A.Z.'s due process rights were being violated as there was no reason to order an inpatient evaluation taking away her liberty.

The judge pointed out to A.Z.'s attorney that the standard he was espousing, a danger to self or others, was not required by G.L. c. 123, § 15(b) for a twenty-day order of hospitalization for observation and examination of competency.

A. *Constitutional*. Both federal and state constitutional law prohibit the trial, conviction, or sentencing of an incompetent person. "'It has long been the law of this Commonwealth that the "trial, conviction or sentencing of a person charged with a criminal offence while he is legally incompetent violates his constitutional rights of due process" . . ., whether under the Fourteenth Amendment to the Constitution of the United States or under art. 12 of the Declaration of Rights of the Constitution of this Commonwealth.' *Commonwealth v. Hill*, 375 Mass. 50, 51-52 (1978), quoting from *Commonwealth v. Vailes*, 360 Mass. 522, 524 (1971)." *Commonwealth v. Adkinson*, 80 Mass. App. Ct. 570, 583 (2011). "To be competent to stand trial, a defendant must have 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and [have] a rational as well as factual understanding of the proceedings against him.' *Dusky v. United States*, 362 U.S. 402, 402 (1960). See *Commonwealth v. Vailes*, 360 Mass. 522, 524 (1971)." *Commonwealth v. Haltiwanger*, 99 Mass. App. Ct. 543, 556 n.11 (2021). See also *Commonwealth v. Adkinson*, *supra* at 583-584.

"When a criminal defendant is suspected of being incompetent to stand trial, a court may order the defendant to be evaluated by a court-appointed medical professional for an initial determination of competency. See G.L. c. 123, § 15(a). If the initial determination is that the defendant appears to be incompetent and further examination is necessary, a judge may order the defendant committed to a mental health facility for a period of observation not to exceed twenty days. See G.L. c. 123, § 15(b)." *Matter of E.C.*, 479 Mass. 113, 116-117 (2018).

Section 15 of G.L. c. 123 states in relevant part:

"(a) Whenever a court of competent jurisdiction doubts whether a defendant in a

> criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.
>
> "(b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person."

Because bringing to trial, convicting, or sentencing a legally incompetent defendant violates their constitutional substantive due process rights, temporary detention, such as that permitted by G.L. c. 123, § 15(b), when there is a question of competency, satisfies a compelling government interest of ensuring incompetent people are not criminally tried, convicted, or sentenced. Cf. *Garcia v. Commonwealth*, *supra* at 103.[9]

Recently commenting on G.L. c. 123, § 15 and explaining the distinction between cases where there is a criminal charge pending and where a mental health commitment is strictly civil, the Supreme

---

[9] "We have held that certain temporary detentions satisfy due process when justified by compelling government interests such as protecting the public from harm, securing a defendant's presence in court, or preserving the integrity of the judicial process. See, e.g., [*Commonwealth v.*] *Knapp*, 441 Mass. [157,] 164-165 [(2004)] (temporary confinement before G.L. c. 123A sexually dangerous person commitment trial is narrowly tailored to compelling interest of protecting public from harm by persons likely to be sexually dangerous); *Querubin v. Commonwealth*, 440 Mass. 108, 114 (2003) (detention without bail of defendant who poses serious risk of flight permissible because securing defendant's presence at trial is 'of fundamental importance to the basic functioning of the judiciary'); *Paquette v. Commonwealth*, 440 Mass. 121, 131 (2003), cert. denied, 540 U.S. 1150 (2004) (bail revocation following charge of crime committed while on release 'narrowly tailored to further the Commonwealth's legitimate and compelling interests in assuring compliance with its laws[] and in preserving the integrity of the judicial process'); *Mendoza v. Commonwealth*, 423 Mass. 771, 780-781 (1996) (pretrial detention based on dangerousness under G.L. c. 276, § 58A, satisfies due process)." *Garcia v. Commonwealth*, *supra* at 103.

Judicial Court stated the following:

> "Nothing in our holding today is intended to affect the statutory scheme in G.L. c. 123, § 15. Under that section, a judge may order an evaluation of a defendant by a court clinician before trial if the judge doubts whether the defendant is competent to stand trial or criminally responsible by reason of mental illness (§ 15[a] evaluation). That examination is typically brief and takes place in the court house or in a place where the defendant is being detained before trial. There is no separate and independent detention of the defendant for that purpose. After the § 15(a) evaluation, the judge may then order that the person be involuntarily hospitalized for up to twenty days, for observation and a more detailed examination, if, based on the court clinician's evaluation, the court 'has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or criminally responsible.' G.L. c. 123, § 15(b).
>
> "Hospitalization under § 15(b) is distinguishable from that under § 16(a) for two reasons. First, it is narrowly tailored. By the time a hospitalization is ordered under § 15(b), there already has been an initial evaluation under § 15(a) and a determination based on it that the hospitalization is needed. Thus, only defendants for whom a longer period of observation and examination is needed will be hospitalized against their will. Second, there is a compelling government interest. Because the criminal case is ongoing, an evaluation under § 15 to determine the defendant's competency or lack of criminal responsibility is designed to help ensure that a defendant is not tried while incompetent or found guilty when he or she lacks criminal responsibility. See *Commonwealth v. Robidoux*, 450 Mass. 144, 152 (2007) (subjecting incompetent defendant to trial would violate due process rights)."

Garcia v. Commonwealth, *supra* at 106 n.15. See also *Commonwealth v. Calvaire*, 476 Mass. 242, 246 (2017) (confinement of incompetent defendants under G.L. c. 123, § 16[f] "narrowly tailored to allow the Commonwealth some time to pursue the legitimate and proper purpose of prosecuting charged crimes, but not for a period of time longer than is reasonably necessary to ascertain the defendant's chances of regaining competency"), cited with approval in *Garcia v. Commonwealth*, *supra* at 102 n.10.

It is clear that when criminal charges are pending, the court's desire to make certain that an incompetent person is not forced to go to trial provides a compelling state interest. As such, it is narrowly tailored to a compelling government interest.

Counsel on behalf of A.Z. argues that her equal protection rights protected by the United States Constitution and art. 10 of the Massachusetts Declaration of Rights were violated. She opines that people with mental illness may not be treated differently under G.L. c. 123 absent proof of dangerous and no

available less restrictive alternative. As set forth in *Commonwealth v. Calvaire*, 476 Mass. 242 (2017), such an equal protection claim to a provision of G.L. c. 123 that involves not only mental illness but a pending criminal charge fails. *Id*. at 245-247 (equal protection argument challenging G.L. c. 123, § 16(f) fails; competent and incompetent defendants are not similarly situated; statute does not improperly intrude on liberty interest where it is narrowly tailored to compelling state interest).

Additionally, the issue of a less restrictive alternative to hospitalization was not properly before the court. On January 7, 2019, the court put the parties on notice that A.Z.'s competency was an issue. It approved funds for an independent evaluation by A.Z.'s expert, Dr. Schmitz. The court continued the G.L. c. 123, § 15(a) hearing on competency until January 10, 2019. Yet on January 10, 2019, neither Dr. Schmitz nor a sworn affidavit from Dr. Schmitz was presented to the court for consideration.

Instead, A.Z.'s counsel in a motion requesting additional funds for Dr. Schmitz and a continuance asserted in relevant part: "Dr. Schmitz told me that [A.Z.] did not meet the legal and clinical criteria for commitment (danger to self or others) on 1/7/19. Dr. Schmitz told me that she believes that she could complete a 123/15 evaluation on an outpatient basis." Clearly, these statements of the clinician were offered by counsel for the truth of the matter asserted and are hearsay that the judge could not consider. See Mass. G. Evid. §§ 801-802, at 281-301 (2021). Therefore, there was no credible evidence on this issue of a less restrictive alternative to hospitalization before the court.

B. *Statutory interpretation*. A.Z.'s argument that G.L. c. 123, § 15(b) violates her rights is misplaced for additional reasons. She argues involuntary hospitalization for an evaluation and examination of competency without a finding of danger to self or others and without consideration of less restrictive alternatives goes against the legal tenets of G.L. c. 123. She does this by comparing G.L. c. 123, § 15(b) to G.L. c. 123, §§ 7, 8, 12, and 35. But she overlooks very important distinctions between these sections.

First, G.L. c. 123, §§ 7, 8, 12, and 35 deal with involuntary *civil* commitments. A finding of serious risk of harm to self or others is specifically required by the plain language appearing in those statutory

sections. In contrast, A.Z. was facing a criminal charge when issues of her competency arose. See G.L. c. 123, § 15(b). In her criminal case, she already was found by both the District Court and the Superior Court to be a danger pursuant to the dangerousness statute, G.L. c. 276, § 58A.

The judge's January 10, 2019, order of hospitalization for observation and examination for competency was directly related to her pending criminal charge. This was not a civil commitment. Further, G.L. c. 123, § 15(b) does not in its language require a finding of serious risk of harm to self or others for a temporary hospitalization for observation and to evaluate competency. If after the initial period of hospital observation and examination a person is found incompetent, for a judge to order a long-term hospitalization, he must make a finding of serious risk of harm to self or others in sync with the standard required for an involuntary civil commitment. See G.L. c. 123, §§ 7 and 8. See also G.L. c. 123, § 16.

Turning again to A.Z.'s argument espousing that a judge should be required to find a defendant poses a danger to order a twenty-day hospitalization for observation and examination of competency, the plain language of G.L. c. 123, §§ 15(a) and (b) does not set forth such a requirement. The Supreme Judicial Court recently offered guidance as to a court's interpretation of statutory language enacted by the Legislature. In several opinions -- *Garcia v. Commonwealth*, 487 Mass. 97, 107 (2021), *Rahim v. District Attorney for the Suffolk Dist.*, 486 Mass. 544, 547 (2020), and *Commonwealth v. Montarvo*, 486 Mass. 535, 536-537 (2020) -- the Court held that statutory interpretation should give meaning to the plain language of the words set forth in a statute and should not read into a statute a meaning not intended by its enactment.

Sections 15 and 16 of G.L. c. 123 both address the hospitalization of defendants for observation and examination of competency. Section 16(a) specifically requires that for a longer-term hospitalization for competency, a judge must make a finding of serious risk of harm to self or others. In contrast, that language is absent from G.L. c. 123, § 15(a) and (b), which addresses temporary initial hospitalizations of twenty days or so. It is not appropriate for this Appellate Division to read into G.L. c. 123, § 15(a) and

(b) a standard that the Legislature chose not to impose. See *Aime v. Commonwealth*, 414 Mass. 667, 683-684 (1993). See also *Garcia v. Commonwealth*, *supra* at 106-107 ("We doubt whether our tools of statutory interpretation would allow us [to read into G.L. c. 123, § 16(a) a standard found in other portions of the statute], . . . especially where legislative history suggests the legislature might not have intended to include a standard at all.").

For all the foregoing reasons, the decision of the trial court is affirmed and the appeal is dismissed.

HON. KEVIN J. FINNERTY, Presiding Justice
HON. DAVID W. CUNIS, Justice
HON. CATHLEEN E. CAMPBELL, Justice

This certifies that this is the Opinion of the Appellate Division in this case. A True Copy, Attest:

/s/ Brien M. Cooper

Brien M. Cooper, Clerk

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPREME JUDICAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2019-0015

Wrentham District Court
No. 1857CR001194

COMMONWEALTH

v.

[redacted]

JUDGMENT

This matter came before the Court, Budd, J., on a petition pursuant to G. L. c. 211, § 3. The petitioner seeks relief from an order of the Wrentham District Court dated January 10, 2019 in docket number 1857CR001194.

The petitioner has an adequate alternative remedy, she may seek an appeal in the Appellate Division of the District Court or the Norfolk Superior Court. See Maza v. Commonwealth, 423 Mass. 1006 (1996).

Upon consideration thereof it is hereby ORDERED that the petition be, and the same hereby is, DENIED without hearing.

By the Court, (Budd, J.)

Assistant Clerk

Entered: January 24, 2019

ORDER FOR HOSPITALIZATION & EXAMINATION G.L. c. 123, § 15(b) ORIGINAL	DOCKET NUMBER 1857CR001194	Trial Court of Massachusetts District Court Department

DEFENDANT NAME		COURT NAME & ADDRESS
[redacted]		Wrentham District Court 60 East Street Wrentham, MA 02093 (508)384-3106
ADDRESS [redacted]	DOB [redacted] / GENDER Female SSN [redacted] HOME PHONE NO. [redacted]	

DEFENSE ATTORNEY	DEFENSE ATTORNEY'S PHONE NO.	NEXT COURT EVENT DATE & TIME
Ethan S Yankowitz, Esq.	(781)381-5228	01/29/2019 08:30 AM Mental Health Hearing

NO. OF COUNTS	COMPLAINT DATE	POLICE DEPARTMENT OF OFFENSE	DEFENDANT MUST APPEAR IN COURT ON THE ABOVE DATE & TIME
1	07/09/2018	Walpole PD	

FIRST FOUR OFFENSE COUNTS

COUNT	OFFENSE CODE	OFFENSE DESCRIPTION	OFFENSE DATE
1	275/2-0	THREAT TO COMMIT CRIME c275 §2	07/06/2018

TO THE OFFICIAL IN CHARGE OF

Solomon Carter Fuller Mental Health Center

REASON FOR EXAMINATION

COMPETENCE TO STAND TRIAL

The Court hereby ORDERS pursuant to G.L. c. 123, § 15(b) that the defendant be hospitalized for a period not to exceed 20 days at the facility or hospital named above for observation and examination, and that during such period a qualified physician or psychologist examine the defendant and report in writing his or her opinion, supported by clinical findings, as to whether mental illness or mental defect have so affected the defendant that he or she is not competent to stand trial and/or not criminally responsible for the offense(s) with which he or she has been charged (as indicated in the "REASON FOR EXAMINATION" shown above), and as to whether the defendant is in need of treatment and care offered by the Department of Mental Health.

Any duly authorized officer is hereby directed to deliver the defendant to such facility or hospital, along with a copy of this Order, and to make return to this court. The defendant shall be returned to this court on the next court date indicated above, unless returned earlier. If such qualified physician or psychologist believes that observation for more than 20 days is necessary, he or she shall so notify the court and request in writing an extension of the 20 day period, specifying the reasons therefor.

TO THE RESPONDENT: This commitment order prohibits you from being issued a firearm identification card or a license to carry unless a petition for relief is subsequently granted.

FURTHER ORDERS

DATE OF ORDER	JUDGE ISSUING ORDER	SIGNATURE OF JUDGE/CLERK-MAGISTRATE
01/10/2019	Hon. Steven E Thomas	X

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 1

§ 1. Definitions

Effective: January 1, 2021
Currentness

The following words as used in this section and sections two to thirty-seven, inclusive, shall, unless the context otherwise requires, have the following meanings:

“Commissioner”, the commissioner of mental health.

“Department”, the department of mental health.

“Dependent funds”, those funds which a resident is unable to manage or spend himself as determined by the periodic review.

“District court”, the district court within the jurisdiction of which a facility is located.

“Facility”, a public or private facility for the care and treatment of mentally ill persons, except for the Bridgewater State Hospital.

“Fiduciary”, any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.

“Funds”, all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.

“Independent funds”, those funds which a resident is able to manage or spend himself as determined by the periodic review.

“Licensed mental health professional”, any person who holds himself out to the general public as one providing mental health services and who is required pursuant to such practice to obtain a license from the commonwealth.

“Likelihood of serious harm”, (1) a substantial risk of physical harm to the person himself as manifested by evidence of, threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

“Patient”, any person with whom a licensed mental health professional has established a mental health professional-patient relationship.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

“Psychiatric nurse”, a nurse licensed pursuant to section seventy-four of chapter one hundred and twelve who specializes in mental health or psychiatric nursing.

“Psychiatrist”, a physician licensed pursuant to section two of chapter one hundred and twelve who specializes in the practice of psychiatry.

“Psychologist”, an individual licensed pursuant to section one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve.

“Qualified advanced practice registered nurse”, a certified registered nurse anesthetist, a certified nurse midwife, certified nurse practitioner, clinical nurse specialist, or psychiatric clinical nurse specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section eighty B of chapter one hundred and twelve who is designated by and meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified advanced practice registered nurse need not be an employee of the department or of any facility of the department.

“Qualified physician”, a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department; provided that different qualifications may be established for different purposes of this chapter. A qualified physician need not be an employee of the department or of any facility of the department.

“Qualified psychiatric nurse mental health clinical specialist”, a psychiatric nurse mental health clinical specialist authorized to practice as such under regulations promulgated pursuant to the provisions of section eighty B of chapter one hundred and twelve who is designated by and meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychiatric nurse mental health clinical specialist need not be an employee of the department or of any facility of the department.

“Qualified psychologist”, a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department, provided that different qualifications may be established for different purposes of this chapter. A qualified psychologist need not be an employee of the department or of any facility of the department.

“Reasonable precautions”, any licensed mental health professional shall be deemed to have taken reasonable precautions, as that term is used in section thirty-six B, if such professional makes reasonable efforts to take one or more of the following actions as would be taken by a reasonably prudent member of his profession under the same or similar circumstances:--

(a) communicates a threat of death or serious bodily injury to the reasonably identified victim or victims;

(b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;

(c) arranges for the patient to be hospitalized voluntarily;

(d) takes appropriate steps, within the legal scope of practice of his profession, to initiate proceedings for involuntary hospitalization.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

"Restraint", bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of an inpatient or resident in his room for the night, or any other means which unreasonably limit freedom of movement.

"Social worker", an individual licensed pursuant to sections one hundred and thirty to one hundred and thirty-two, inclusive, of chapter one hundred and twelve.

"Superintendent", the superintendent or other head of a public or private facility.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1989, c. 117, §§ 2 to 5; St.1989, c. 304, § 1; St.2020, c. 260, § 41, eff. Jan. 1, 2021.

M.G.L.A. 123 § 1, MA ST 123 § 1

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 7

§ 7. Commitment and retention of dangerous persons; petition; notice; hearing

Effective: March 1, 2005
Currentness

(a) The superintendent of a facility may petition the district court or the division of the juvenile court department in whose jurisdiction the facility is located for the commitment to said facility and retention of any patient at said facility whom said superintendent determines that the failure to hospitalize would create a likelihood of serious harm by reason of mental illness.

(b) The medical director of the Bridgewater state hospital, the commissioner of mental health, or with the approval of the commissioner of mental health, the superintendent of a facility, may petition the district court or the division of the juvenile court department in whose jurisdiction the facility or hospital is located for the commitment to the Bridgewater state hospital of any male patient at said facility or hospital when it is determined that the failure to hospitalize in strict security would create a likelihood of serious harm by reason of mental illness.

(c) Whenever a court receives a petition filed under any provisions of this chapter for an order of commitment of a person to a facility or to the Bridgewater state hospital, such court shall notify the person, and his nearest relative or guardian, of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing on a petition brought for commitment pursuant to paragraph (e) of section 15, and sections 16 and 18, or for a subsequent commitment pursuant to paragraph (d) of section 8 shall be commenced within 14 days of the filing of the petition, unless a delay is requested by the person or his counsel. For all other persons, the hearing shall be commenced within 5 days of the filing of the petition, unless a delay is requested by the person or his counsel. The periods of time prescribed or allowed under the provisions of this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

Credits
Added by St.1986, c. 599, § 38. Amended by St.1992, c. 379, § 24; St.2000, c. 249, §§ 1, 2; St.2002, c. 127; St.2004, c. 410, § 1, eff. Mar. 1, 2005.

M.G.L.A. 123 § 7, MA ST 123 § 7
Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 8

§ 8. Proceedings to commit dangerous persons; notice; hearing; orders; jurisdiction

Currentness

(a) After a hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at a facility or shall not renew such order unless it finds after a hearing that (1) such person is mentally ill, and (2) the discharge of such person from a facility would create a likelihood of serious harm.

(b) After hearing, unless such hearing is waived in writing, the district court or the division of the juvenile court department shall not order the commitment of a person at the Bridgewater state hospital or shall not renew such order unless it finds that (1) such person is mentally ill; (2) such person is not a proper subject for commitment to any facility of the department; and (3) the failure to retain such person in strict custody would create a likelihood of serious harm. If the court is unable to make the findings required by this paragraph, but makes the findings required by paragraph (a), the court shall order the commitment of the person to a facility designated by the department.

(c) The court shall render its decision on the petition within ten days of the completion of the hearing, provided, that for reasons stated in writing by the court, the administrative justice for the district court department may extend said ten day period.

(d) The first order of commitment of a person under this section shall be valid for a period of six months and all subsequent commitments shall be valid for a period of one year; provided that if such commitments occur at the expiration of a commitment under any other section of this chapter, other than a commitment for observation, the first order of commitment shall be valid for a period of one year; and provided further, that the first order of commitment to the Bridgewater state hospital of a person under commitment to a facility shall be valid for a period of six months. If no hearing is held before the expiration of the six months commitment, the court may not recommit the person without a hearing.

(e) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill and that the discharge of the person from a facility would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over the commitment of the person may order the commitment of the person to such facility.

(f) In the event that the hearing is waived and on the basis of a petition filed under the authority of this chapter showing that a person is mentally ill, that the person is not a proper subject for commitment to any facility of the department and that the failure to retain said person in strict security would create a likelihood of serious harm, the district court or the division of the juvenile court department which has jurisdiction over a facility, or the Brockton district court if a person is retained in the Bridgewater state hospital, may order the commitment of the person to said hospital.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1992, c. 379, § 25.

M.G.L.A. 123 § 8, MA ST 123 § 8

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 12

§ 12. Emergency restraint and hospitalization of persons posing risk of serious harm by reason of mental illness

Effective: January 1, 2021
Currentness

(a) A physician who is licensed pursuant to section 2 of chapter 112, an advanced practice registered nurse authorized to practice as such under regulations promulgated pursuant to section 80B of said chapter 112, a qualified psychologist licensed pursuant to sections 118 to 129, inclusive, of said chapter 112 or a licensed independent clinical social worker licensed pursuant to sections 130 to 137, inclusive, of said chapter 112 who, after examining a person, has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a 3-day period at a public facility or at a private facility authorized for such purposes by the department. If an examination is not possible because of the emergency nature of the case and because of the refusal of the person to consent to such examination, the physician, qualified psychologist, qualified advanced practice registered nurse or licensed independent clinical social worker on the basis of the facts and circumstances may determine that hospitalization is necessary and may therefore apply. In an emergency situation, if a physician, qualified psychologist, qualified advanced practice registered nurse or licensed independent clinical social worker is not available, a police officer who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a 3-day period at a public facility or a private facility authorized for such purpose by the department. An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information that may assist the admitting physician or qualified advanced practice registered nurse. Whenever practicable, prior to transporting such person, the applicant shall telephone or otherwise communicate with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and to give notice of any restraint to be used and to determine whether such restraint is necessary.

(b) Only if the application for hospitalization under this section is made by a physician or a qualified advanced practice registered nurse specifically designated to have the authority to admit to a facility in accordance with the regulations of the department, shall such person be admitted to the facility immediately after reception. If the application is made by someone other than a designated physician or a qualified advanced practice registered nurse such person shall be given a psychiatric examination by a designated physician or a qualified advanced practice registered nurse immediately after reception at such facility. If the physician or a qualified advanced practice registered nurse determines that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness, the physician or qualified advanced practice registered nurse may admit such person to the facility for care and treatment. Upon admission of a person under this subsection, the facility shall inform the person that it shall, upon such person's request, notify the committee for public counsel services of the name and location of the person admitted. The committee for public counsel services shall immediately appoint an attorney who shall meet with the person. If the appointed attorney determines that the person voluntarily and knowingly waives the right to be represented, is presently represented or will be represented by another attorney, the appointed attorney shall so notify the committee for public counsel services, which shall withdraw the appointment. Any person admitted under this subsection who has reason to believe that such admission is the result of an abuse or misuse of this subsection may request or request through counsel

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

an emergency hearing in the district court in whose jurisdiction the facility is located and unless a delay is requested by the person or through counsel, the district court shall hold such hearing on the day the request is filed with the court or not later than the next business day.

(c) No person shall be admitted to a facility under this section unless the person, or the person's parent or legal guardian on the person's behalf, is given an opportunity to apply for voluntary admission under paragraph (a) of section 10 and unless the person, or the person's parent or legal guardian, has been informed that: (i) the person has a right to such voluntary admission; and (ii) the period of hospitalization under this section cannot exceed 3 days. At any time during such period of hospitalization, the superintendent may discharge such person if the superintendent determines that such person is not in need of care and treatment.

(d) A person shall be discharged at the end of the 3-day period unless the superintendent applies for a commitment under sections 7 and 8 or the person remains on a voluntary status.

(e) Any person may make an application to a district court justice or a justice of the juvenile court department for a 3-day commitment to a facility of a person with a mental illness if the failure to confine said person would cause a likelihood of serious harm. The court shall appoint counsel to represent said person. After hearing such evidence as the court may consider sufficient, a district court justice or a justice of the juvenile court department may issue a warrant for the apprehension and appearance before the court of the alleged person with a mental illness if in the court's judgment the condition or conduct of such person makes such action necessary or proper. Following apprehension, the court shall have the person examined by a physician or a qualified advanced practice registered nurse designated to have the authority to admit to a facility or examined by a qualified psychologist in accordance with the regulations of the department. If the physician, qualified advanced practice registered nurse or qualified psychologist reports that the failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, the court may order the person committed to a facility for a period not to exceed 3 days; provided, however, that the superintendent may discharge said person at any time within the 3-day period. The periods of time prescribed or allowed under this section shall be computed pursuant to Rule 6 of the Massachusetts Rules of Civil Procedure.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1988, c. 1, § 10; St.1989, c. 304, §§ 2, 3; St.1992, c. 379, § 29; St.2000, c. 249, §§ 4 to 8; St.2004, c. 410, § 2, eff. Mar. 1, 2005; St.2010, c. 278, § 1, eff. Nov. 7, 2010; St.2020, c. 260, § 43, eff. Jan. 1, 2021.

M.G.L.A. 123 § 12, MA ST 123 § 12

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 15

§ 15. Competence to stand trial or criminal responsibility; examination; period of observation; reports; hearing; commitment; delinquents

Effective: March 28, 2001
Currentness

(a) Whenever a court of competent jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians or one or more qualified psychologists. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or psychologist in the law for determining mental competence to stand trial and criminal responsibility.

(b) After the examination described in paragraph (a), the court may order that the person be hospitalized at a facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's or psychologist's report under paragraph (a) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty day period, an examining qualified physician or an examining qualified psychologist believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty day period, specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(c) At the conclusion of the examination or the observation period, the examining physician or psychologist shall forthwith give to the court written signed reports of their findings, including the clinical findings bearing on the issue of competence to stand trial or criminal responsibility. Such reports shall also contain an opinion, supported by clinical findings, as to whether the defendant is in need of treatment and care offered by the department.

(d) If on the basis of such reports the court is satisfied that the defendant is competent to stand trial, the case shall continue according to the usual course of criminal proceedings; otherwise the court shall hold a hearing on whether the defendant is competent to stand trial; provided that at any time before trial any party to the case may request a hearing on whether the defendant is competent to stand trial. A finding of incompetency shall require a preponderance of the evidence. If the defendant

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

is found incompetent to stand trial, trial of the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

(e) After a finding of guilty on a criminal charge, and prior to sentencing, the court may order a psychiatric or other clinical examination and, after such examination, it may also order a period of observation in a facility, or at the Bridgewater state hospital if the court determines that strict security is required and if such person is male. The purpose of such observation or examination shall be to aid the court in sentencing. Such period of observation or examination shall not exceed forty days. During such period of observation, the superintendent or medical director may petition the court for commitment of such person. The court, after imposing sentence on said person, may hear the petition as provided in section eighteen, and if the court makes necessary findings as set forth in section eight, it may in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of commitment shall be valid for a period of six months. All subsequent proceedings for commitment shall take place under the provisions of said section eighteen in the district court which has jurisdiction of the facility or hospital. A person committed to a facility or Bridgewater state hospital pursuant to this section shall have said time credited against the sentence imposed as provided in paragraph (c) of said section eighteen.

(f) In like manner to the proceedings under paragraphs (a), (b), (c), and (e) of this section, a court may order a psychiatric or psychological examination or a period of observation for an alleged delinquent in a facility to aid the court in its disposition. Such period shall not exceed forty days.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1987, c. 465, § 25; St.1996, c. 266; St.2000, c. 357.

M.G.L.A. 123 § 15, MA ST 123 § 15

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 16

§ 16. Hospitalization of persons incompetent to stand trial or not guilty by reason of mental illness; examination period; commitment; hearing; restrictions; dismissal of criminal charges

Effective: October 30, 2015
Currentness

(a) The court having jurisdiction over the criminal proceedings may order that a person who has been found incompetent to stand trial or not guilty by reason of mental illness or mental defect in such proceedings be hospitalized at a facility for a period of forty days for observation and examination; provided that, if the defendant is a male and if the court determines that the failure to retain him in strict security would create a likelihood of serious harm by reason of mental illness, or other mental defect, it may order such hospitalization at the Bridgewater state hospital; and provided, further, that the combined periods of hospitalization under the provisions of this section and paragraph (b) of section fifteen shall not exceed fifty days.

(b) During the period of observation of a person believed to be incompetent to stand trial or within sixty days after a person is found to be incompetent to stand trial or not guilty of any crime by reason of mental illness or other mental defect, the district attorney, the superintendent of a facility or the medical director of the Bridgewater state hospital may petition the court having jurisdiction of the criminal case for the commitment of the person to a facility or to the Bridgewater state hospital. However, the petition for the commitment of an untried defendant shall be heard only if the defendant is found incompetent to stand trial, or if the criminal charges are dismissed after commitment. If the court makes the findings required by paragraph (a) of section eight it shall order the person committed to a facility; if the court makes the findings required by paragraph (b) of section eight, it shall order the commitment of the person to the Bridgewater state hospital; otherwise the petition shall be dismissed and the person discharged. An order of commitment under the provisions of this paragraph shall be valid for six months. In the event a period of hospitalization under the provisions of paragraph (a) has expired, or in the event no such period of examination has been ordered, the court may order the temporary detention of such person in a jail, house of correction, facility or the Bridgewater state hospital until such time as the findings required by this paragraph are made or a determination is made that such findings cannot be made.

(c) After the expiration of a commitment under paragraph (b) of this section, a person may be committed for additional one year periods under the provisions of sections seven and eight of this chapter, but no untried defendant shall be so committed unless in addition to the findings required by sections seven and eight the court also finds said defendant is incompetent to stand trial. If the person is not found incompetent, the court shall notify the court with jurisdiction of the criminal charges, which court shall thereupon order the defendant returned to its custody for the resumption of criminal proceedings. All subsequent proceedings for the further commitment of a person committed under this section shall be in the court which has jurisdiction of the facility or hospital.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

(d) The district attorney for the district within which the alleged crime or crimes occurred shall be notified of any hearing conducted for a person under the provisions of this section or any subsequent hearing for such person conducted under the provisions of this chapter relative to the commitment of the mentally ill and shall have the right to be heard at such hearings.

(e) Any person committed to a facility under the provisions of this section may be restricted in his movements to the buildings and grounds of the facility at which he is committed by the court which ordered the commitment. If such restrictions are ordered, they shall not be removed except with the approval of the court. If the superintendent seeks removal or modification of such restriction, the superintendent shall notify the district attorney who has or had jurisdiction of the relevant criminal case. If, after the superintendent communicates the superintendent's intention to remove or modify such restriction in writing to the court and the district attorney who has or had jurisdiction of the relevant criminal case, neither the court nor the district attorney makes written objection to such removal or modification within 14 days of receipt of the notice, such restriction shall be removed by the superintendent. If the superintendent or medical director of the Bridgewater state hospital intends to discharge a person committed under this section or at the end of a period of commitment intends not to petition for his further commitment, he shall notify the court and district attorney which have or had jurisdiction of the criminal case. Within thirty days of the receipt of such notice, the district attorney may petition for commitment under the provisions of paragraph (c). During such thirty day period, the person shall be held at the facility or hospital. This paragraph shall not apply to persons originally committed after a finding of incompetence to stand trial whose criminal charges have been dismissed.

(f) If a person is found incompetent to stand trial, the court shall send notice to the department of correction which shall compute the date of the expiration of the period of time equal to the time of imprisonment which the person would have had to serve prior to becoming eligible for parole if he had been convicted of the most serious crime with which he was charged in court and sentenced to the maximum sentence he could have received, if so convicted. For purposes of the computation of parole eligibility, the minimum sentence shall be regarded as one half of the maximum sentence potential sentence. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B, and one hundred and twenty-nine C of chapter one hundred and twenty-seven shall be applied to reduce such period of time. On the final date of such period, the court shall dismiss the criminal charges against such person, or the court in the interest of justice may dismiss the criminal charges against such person prior to the expiration of such period.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1992, c. 286, § 190; St.2015, c. 112, eff. Oct. 30, 2015.

M.G.L.A. 123 § 16, MA ST 123 § 16

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 18

§ 18. Hospitalization of mentally ill prisoners; examination; reports; hearing; commitment; petition for transfer to inpatient psychiatric facility or unit licensed or operated by the department of mental health or to Bridgewater state hospital; voluntary admission; reduction of sentence; discharge

Effective: November 8, 2022
Currentness

<[Subsection (a) effective until November 8, 2022. For text effective November 8, 2022, see below.]>

(a) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or psychologist, designated by the department as qualified to perform such examination. Said physician or psychologist shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal case. Such report shall include an opinion, with reasons therefore, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report shall be signed by the physician or psychologist conducting such examination, and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility or, if a male, the Bridgewater state hospital by reason of mental illness. The person in charge of the place of detention shall have the same right as a superintendent of a facility and the medical director of the Bridgewater state hospital to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital; provided, however, that, notwithstanding the court's failure, after an initial hearing or after any subsequent hearing, to make a finding required for commitment to the Bridgewater state hospital, the prisoner shall be confined at said hospital if the findings required for commitment to a facility are made and if the commissioner of correction certifies to the court that confinement of the prisoner at said hospital is necessary to insure his continued retention in custody. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

<[Subsection (a) as amended by 2022, 177, Sec. 47 effective November 8, 2022. For text effective until November 8, 2022, see above.]>

(a) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or psychologist, designated by the department as qualified to perform such examination. Said physician or psychologist shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

of the criminal case. Such report shall include an opinion, with reasons therefore, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report shall be signed by the physician or psychologist conducting such examination, and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility or, if a male, the Bridgewater state hospital by reason of mental illness. The person in charge of the place of detention shall have the same right as a superintendent of a facility and the medical director of the Bridgewater state hospital to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

<[Subsection (a ½) inserted by 2022, 177, Sec. 48 effective November 8, 2022.]>

(a ½)(1) For purposes of this subsection, “mental health watch” shall mean a status designated by the place of detention intended to protect a prisoner from a risk of imminent and serious self-harm.

(2) A prisoner or a prisoner's legal representative, or a staff person at the request of a prisoner, may petition the district court with jurisdiction over the prisoner's place of detention or, if the prisoner is awaiting trial to the court with jurisdiction of the criminal case, to be transferred to a suitable inpatient psychiatric facility or unit licensed or operated by the department of mental health or to Bridgewater state hospital. The court may order the prisoner's requested transfer if the prisoner: (i) has been on mental health watch for at least 72 hours; or (ii) is at serious risk of imminent and serious self-harm. A transfer under this subsection to Bridgewater state hospital shall only be ordered if: (i) the prisoner is male and no bed is available in a timely manner at a unit licensed or operated by the department of mental health; or (ii) (A) the prisoner is not a proper person for commitment to an inpatient psychiatric facility or unit licensed or operated by the department of mental health; and (B) the failure to retain the prisoner in strict custody would create a likelihood of serious harm. When a prisoner has been on mental health watch for 48 hours, and once every 24 hours thereafter that the prisoner remains on mental health watch, a member of the mental health staff of the place of detention shall advise the prisoner of the prisoner's right to petition under this subsection and advise the prisoner that staff at the place of detention may also, at the prisoner's request, petition on the prisoner's behalf. If the prisoner requests, either orally or in writing, that staff at the place of detention petition under this subsection, an employee, representative, agent or other designee of the place of detention shall file a petition with the appropriate court within 12 hours. If a prisoner, a prisoner's legal representative or a staff person files a petition in a court that lacks jurisdiction under this subsection, the clerk of the court shall, as soon as is practicable, determine the court with jurisdiction and forward the petition to that court for adjudication. The court may order periodic reviews of transfers under this subsection.

(b) Notwithstanding any contrary provision of general or special law, a prisoner who is retained in any place of detention within the commonwealth and who is in need of care and treatment in a facility may, with the approval of the person in charge of such place of detention apply for voluntary admission under the provisions of paragraph (a) of section ten.

(c) At the commencement of hospitalization under the provisions of paragraph (a) or paragraph (b) the department of correction shall enter in the patient record of such prisoner the date of the expiration of the sentence of the prisoner. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be applied to reduce such sentence, and on such date the prisoner shall be discharged; provided, however, that if the superintendent or other head of a facility or the medical director of the Bridgewater state hospital determines that the discharge of the prisoner committed subject to the provisions of paragraph

(a) would create a likelihood of serious harm by reason of mental illness, he shall petition the district court having jurisdiction over the facility prior to the date of expiration to order the commitment of such person to a facility or to the Bridgewater state hospital under the provisions of this chapter other than paragraph (a); and provided, further, that any prisoner resident in a facility subject to the provisions of paragraph (b) shall be free to leave such facility subject to the provisions of section eleven.

(d) In the event the provisions of this chapter require the release of a prisoner from a facility or from the Bridgewater state hospital prior to the date of expiration of his sentence calculated under the provisions of paragraph (c), such prisoner shall be forthwith returned to the place of detention from which he was transferred to such facility or to said hospital.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1990, c. 272; St.2022, c. 177, §§ 47, 48, eff. Nov. 8, 2022.

M.G.L.A. 123 § 18, MA ST 123 § 18

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 35

§ 35. Commitment of alcoholics or substance abusers

Effective: August 9, 2018
Currentness

For the purposes of this section the following terms shall, unless the context clearly requires otherwise, have the following meanings:

“Alcohol use disorder”, the chronic or habitual consumption of alcoholic beverages by a person to the extent that (1) such use substantially injures the person’s health or substantially interferes with the person’s social or economic functioning, or (2) the person has lost the power of self-control over the use of such beverages.

“Facility”, a public or private facility that provides care and treatment for a person with an alcohol or substance use disorder.

“Substance use disorder”, the chronic or habitual consumption or ingestion of controlled substances or intentional inhalation of toxic vapors by a person to the extent that: (i) such use substantially injures the person’s health or substantially interferes with the person’s social or economic functioning; or (ii) the person has lost the power of self-control over the use of such controlled substances or toxic vapors.

Any police officer, physician, spouse, blood relative, guardian or court official may petition in writing any district court or any division of the juvenile court department for an order of commitment of a person whom he has reason to believe has an alcohol or substance use disorder. Upon receipt of a petition for an order of commitment of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the application to be served upon the person in the manner provided by section twenty-five of chapter two hundred and seventy-six. In the event of the person's failure to appear at the time summoned, the court may issue a warrant for the person's arrest. Upon presentation of such a petition, if there are reasonable grounds to believe that such person will not appear and that any further delay in the proceedings would present an immediate danger to the physical well-being of the respondent, said court may issue a warrant for the apprehension and appearance of such person before it. If such person is not immediately presented before a judge of the district court, the warrant shall continue day after day for up to 5 consecutive days, excluding Saturdays, Sundays and legal holidays, or until such time as the person is presented to the court, whichever is sooner; provided, however that an arrest on such warrant shall not be made unless the person may be presented immediately before a judge of the district court. The person shall have the right to be represented by legal counsel and may present independent expert or other testimony. If the court finds the person indigent, it shall immediately appoint counsel. The court shall order examination by a qualified physician, a qualified psychologist or a qualified social worker.

If, after a hearing which shall include expert testimony and may include other evidence, the court finds that such person is an individual with an alcohol or substance use disorder and there is a likelihood of serious harm as a result of the person’s alcohol or substance use disorder, the court may order such person to be committed for a period not to exceed 90 days to a facility designated by the department of public health, followed by the availability of case management services provided by the department of public health for up to 1 year; provided, that a review of the necessity of the commitment shall take place

by the superintendent on days 30, 45, 60 and 75 as long as the commitment continues. A person so committed may be released prior to the expiration of the period of commitment upon written determination by the superintendent of the facility that release of that person will not result in a likelihood of serious harm; provided, that the superintendent shall provide timely notification to the committing court and, if consent is obtained from the committed person, to the petitioner; provided further, that the superintendent shall request such consent from all committed persons. Such commitment shall be for the purpose of inpatient care for the treatment of an alcohol or substance use disorder in a facility licensed or approved by the department of public health or the department of mental health. Subsequent to the issuance of a commitment order, the superintendent of a facility may authorize the transfer of a patient to a different facility for continuing treatment; provided, that the superintendent shall provide timely notification of the transfer to the committing court and, if consent is obtained from the committed person, to the petitioner; provided further, that the superintendent shall request such consent from all committed persons.

If the department of public health informs the court that there are no suitable facilities available for treatment licensed or approved by the department of public health or the department of mental health, or if the court makes a specific finding that the only appropriate setting for treatment for the person is a secure facility, then the person may be committed to: (i) a secure facility for women approved by the department of public health or the department of mental health, if a female; or (ii) the Massachusetts correctional institution at Bridgewater or other such facility as designated by the commissioner of correction, if a male; provided, however, that any person so committed shall be housed and treated separately from persons currently serving a criminal sentence. The person shall, upon release, be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purpose. The department of public health shall maintain a roster of public and private facilities available, together with the number of beds currently available and the level of security at each facility, for the care and treatment of alcohol use disorder and substance use disorder and shall make the roster available to the trial court.

Annually, not later than February 1, the commissioner shall report on whether a facility other than the Massachusetts correctional institution at Bridgewater is being used for treatment of males under the previous paragraph and the number of persons so committed to such a facility in the previous year. The report shall be provided to the clerks of the senate and house of representatives, the chairs of the joint committee on public safety and homeland security and the chairs of the joint committee on the judiciary.

Nothing in this section shall preclude a facility, including the Massachusetts correctional institution at Bridgewater or such other facility as may be designated by the commissioner of correction, from treating persons on a voluntary basis.

The court, in its order, shall specify whether such commitment is based upon a finding that the person is a person with an alcohol use disorder, substance use disorder, or both. The court, upon ordering the commitment of a person found to be a person with an alcohol use disorder or substance use disorder pursuant to this section, shall transmit the person's name and nonclinical identifying information, including the person's social security number and date of birth, to the department of criminal justice information services. The court shall notify the person that such person is prohibited from being issued a firearm identification card pursuant to section 129B of chapter 140 or a license to carry pursuant to sections 131 and 131F of said chapter 140 unless a petition for relief pursuant to this section is subsequently granted.

After 5 years from the date of commitment, a person found to be a person with an alcohol use disorder or substance use disorder and committed pursuant to this section may file a petition for relief with the court that ordered the commitment requesting that the court restore the person's ability to possess a firearm, rifle or shotgun. The court may grant the relief sought in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that: (i) the person is not likely to act in a manner that is dangerous to public safety; and (ii) the granting of relief would not be contrary to the public interest. In making the determination, the court may consider evidence from a licensed physician or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of 3 consecutive years.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

A facility used for commitment under this section for a person found to be a person with a substance use disorder shall maintain or provide for the capacity to possess, dispense and administer all drugs approved by the federal Food and Drug Administration for use in opioid agonist treatment, including partial agonist treatment, and opioid antagonist treatment for opioid use disorder and shall make such treatment available to any person for whom such treatment is medically appropriate.

If the court grants a petition for relief pursuant to this section, the clerk shall provide notice immediately by forwarding a certified copy of the order for relief to the department of criminal justice information services, who shall transmit the order, pursuant to paragraph (h) of section 167A of chapter 6, to the attorney general of the United States to be included in the National Instant Criminal Background Check System.

A person whose petition for relief is denied may appeal to the appellate division of the district court for a de novo review of the denial.

Credits

Added by St.1986, c. 599, § 38. Amended by St.1987, c. 465, § 27; St.1987, c. 500; St.1989, c. 352; St.1992, c. 379, § 30; St.2010, c. 292, eff. Nov. 8, 2010; St.2011, c. 142, § 18, eff. July 1, 2012; St.2014, c. 165, § 155, eff. July 1, 2014; St.2014, c. 284, § 15, eff. Jan. 1, 2015; St.2016, c. 8, §§ 1 to 4, eff. April 24, 2016; St.2016, c. 52, § 40, eff. Mar. 14, 2016; St.2017, c. 47, §§ 56, 57, eff. July 1, 2017; St.2018, c. 208, §§ 72 to 74, eff. Aug. 9, 2018.

M.G.L.A. 123 § 35, MA ST 123 § 35

Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 123. Mental Health (Refs & Annos)

M.G.L.A. 123 § 36C

§ 36C. Transmission of committed person's name and nonclinical, identifying information to department of criminal justice information services; prohibition of committed person from being issued firearm identification card or license to carry; petition for relief

Effective: January 1, 2015
Currentness

(a) A court that orders the commitment of a person pursuant to sections 7, 8 or 18 or subsection (e) of section 12 or subsection (b) of section 15 or subsection (b) or (c) of section 16, shall transmit the person's name and nonclinical, identifying information, including the person's social security number and date of birth to the department of criminal justice information services. The court shall notify the person that such person is prohibited from being issued a firearm identification card pursuant to section 129B of chapter 140 or a license to carry pursuant to sections 131 and 131F of said chapter 140 unless a petition for relief is subsequently granted pursuant to subsection (b).

(b) After 5 years from the date of commitment, a person committed pursuant to sections 7, 8 or 18 or subsection (e) of section 12 or subsection (b) of section 15 or subsection (b) or (c) of section 16 may file a petition for relief with the court that ordered the commitment requesting the court to restore the person's ability to possess a firearm. The court may grant the relief sought in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that: (i) the person is not likely to act in a manner that is dangerous to public safety; and (ii) the granting of relief would not be contrary to the public interest. In making the determination, the court may consider evidence from a licensed physician or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of 3 consecutive years.

(c) When the court grants a petition for relief pursuant to subsection (b), the clerk shall immediately forward a copy of the order for relief to the department of criminal justice information services.

(d) A person whose petition for relief is denied pursuant to subsection (b) may appeal to the appellate division of the district court for a de novo review of the denial.

Credits
Added by St.2014, c. 284, § 17, eff. Jan. 1, 2015.

M.G.L.A. 123 § 36C, MA ST 123 § 36C
Current through the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Constitution of the United States
Annotated
Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V, USCA CONST Amend. V
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV, USCA CONST Amend. XIV
Current through P.L. 117-262. Some statute sections may be more current, see credits for details.

End of Document © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 1

Art. I. Equality of people; natural rights

Currentness

Art. I. All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

M.G.L.A. Const. Pt. 1, Art. 1, MA CONST Pt. 1, Art. 1
Current through amendments approved February 1, 2022

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 10

Art. X. Right of protection and duty of contribution; taking of property; consent to laws; taking of property for highways and streets

Currentness

Art. X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

M.G.L.A. Const. Pt. 1, Art. 10, MA CONST Pt. 1, Art. 10
Current through amendments approved February 1, 2022

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 12

Art. XII. Regulation of prosecutions; right of trial by jury in criminal cases

Currentness

Art. XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

M.G.L.A. Const. Pt. 1, Art. 12, MA CONST Pt. 1, Art. 12
Current through amendments approved February 1, 2022

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

2023 WL 4610717
Only the Westlaw citation is currently available.
Supreme Judicial Court of Massachusetts,
Berkshire.

J.M.

v.

C.G. (and two consolidated cases [1]).

SJC-13295

Argued December 7, 2022

Decided July 19, 2023

Synopsis

Background: Putative biological father filed suit to establish paternity more than four years after another man had executed a voluntary acknowledgement of parentage. Putative father also filed motion to intervene in legal father's action seeking legal custody and expanded parenting time. The Probate and Family Court Department, Berkshire Division, Richard A. Simons, J., denied motion and dismissed complaints. Putative father appealed, and consolidated appeal was transferred on Supreme Judicial Court's own motion.

Holdings: The Supreme Judicial Court, Budd, C.J., held that:

putative father was barred from bringing suit to establish paternity more than one year after voluntary acknowledgement of parentage;

he was required to demonstrate substantial parent-child relationship before proceeding with his suit to establish paternity; and

he failed to demonstrate substantial parent-child relationship.

Affirmed.

Paternity. Parentage. Parent and Child, Custody. Practice, Civil, Intervention, Dismissal. Jurisdiction, Probate Court, Paternity proceeding, Equitable. Probate Court, Jurisdiction, Paternity proceeding. Statute, Construction. Due Process of Law, Paternity. Evidence, Paternity.

Complaint filed in the Berkshire Division of the Probate and Family Court Department on August 14, 2020.

A motion to intervene was heard by Richard A. Simons, J.

Complaints filed in the Berkshire Division of the Probate and Family Court Department on January 21 and March 17, 2021.

A hearing on the preliminary showing required to pursue an adjudication of paternity was had before Richard A. Simons, J., and entry of judgments of dismissal were ordered by him.

After consolidation, the Supreme Judicial Court on its own initiative transferred the cases from the Appeals Court.

Attorneys and Law Firms

The following submitted briefs for amici curiae:

Buffy D. Lord (Brigid M. Hennessey & Jennifer M. Breen also present) North Adams, for M.H.

Dennis M. LaRochelle, Pittsfield, for J.M.

Christina L. Paradiso & Krista M. Ellis, for Community Legal Aid & others.

C. Thomas Brown, Patrick T. Roath, & Sara A. Bellin, Boston, for Susan Frelich Appleton & others.

Maura Healey, Attorney General, & Helle Sachse, Assistant Attorney General, for the Attorney General.

Patience Crozier, Cambridge & Mary L. Bonauto, for GLBTQ Legal Advocates & Defenders.

Anna Richardson, for Veterans Legal Services.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

Opinion

BUDD, C.J.

***1** In these cases, M.H., the putative biological father of a child (Amelia),[2] filed suit to establish paternity more than four years after another man, J.M., had executed a voluntary acknowledgement of parentage (VAP). Because M.H. is time barred from challenging the VAP and is unable to meet the requirements to proceed in equity, we affirm the order

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

of the Probate and Family Court judge denying his motion to intervene in an action brought by J.M., the legal father, against C.G., the mother, seeking legal custody and expanded parenting time, and we also affirm the judgments dismissing two other actions brought by M.H.[3]

Statutory framework for establishing parentage. General Laws c. 209C (c. 209C) was enacted to ensure that "[c]hildren born to parents who are not married to each other [receive] the same rights and protections of the law as all other children." G. L. c. 209C, § 1. To that end, the statute provides a mechanism for determining parentage of nonmarital children by way of either a VAP or a court adjudication.[4] G. L. c. 209C, § 2.

A VAP must be executed jointly by the birth parent and a putative parent, notarized, and filed with the registrar of vital records and statistics or the court. G. L. c. 209C, § 11 (a). It is effective as of the date it is signed and has the "same force and effect as a judgment of [parentage]." Id. Importantly, the subsection provides for a one-year statute of repose; that is, any challenge to a VAP must be brought within one year of its being signed. Id. Moreover, challenges are limited to allegations of fraud, duress, or material mistake of fact. Id.

Chapter 209C also allows for parentage to be adjudicated by a judge by way of a bench trial where a plaintiff must establish parentage by clear and convincing evidence. G. L. c. 209C, §§ 5 (a), 7, 8. In addition to a putative parent, others authorized to bring a complaint to establish parentage under c. 209C include the birth mother, the child, a guardian, or the Commonwealth if the child is receiving any type of public assistance.[5] G. L. c. 209C, § 5 (a).

Where c. 209C is not available as a vehicle for establishing parentage, the Probate and Family Court may do so pursuant to its general equity jurisdiction. See C.C. v. A.B., 406 Mass. 679, 689-690, 550 N.E.2d 365 (1990). See also G. L. c. 215, § 6 (granting general equity jurisdiction to Probate and Family Court). However, as discussed in more detail infra, to proceed under common law where a child's parentage already has been determined, a plaintiff must first demonstrate a substantial relationship between the putative parent and the child. C.C., supra at 689, 550 N.E.2d 365.

***2** Background and procedural posture. We recite the facts as found by the Probate and Family Court judge, reserving some details for later discussion.

The mother gave birth to Amelia in February 2013. At the time she was born, no father was listed on her birth certificate. The mother and Amelia lived with different people during the first few months of Amelia's life. When Amelia was eight months old, she and the mother moved in with J.M., a former boyfriend with whom the mother had been coparenting another child prior to Amelia's birth. Although J.M. was not Amelia's biological father, he treated her in the same way as he did his biological child. Even after the mother moved in, months later, with a new partner, J.M. continued to parent Amelia, seeing her nearly every day and taking an active role in her medical care and education. Approximately three years later, in November 2016, the mother and J.M. agreed to formalize the arrangement by executing a VAP under c. 209C to establish him as Amelia's legal father.

In August 2020, after a disagreement with the mother, J.M. brought an action seeking legal custody and expanded parenting time.[6] Thereafter, M.H. sought to intervene in the action, alleging that he is Amelia's putative biological father and seeking to "secure his parental rights under the law."

To demonstrate that he had standing to intervene in that action, M.H. filed complaints both in equity and under c. 209C to establish his paternity of Amelia.[7] After a two-day, consolidated evidentiary hearing, the judge dismissed both complaints and denied the motion to intervene. M.H. timely appealed, and we transferred the consolidated appeal to this court on our own motion.

Discussion. M.H. maintains that, as Amelia's putative biological father, his c. 209C complaint should have been allowed to proceed notwithstanding the fact that the one-year time limit for challenging the VAP had lapsed. M.H. further argues that his claim in equity was dismissed improperly because, although one normally must demonstrate a substantial parent-child relationship to move forward with a common-law parentage claim, it is unnecessary for him to do so in the circumstances of this case.

1. Action to establish parentage under G. L. c. 209C. M.H.'s action pursuant to c. 209C was dismissed because a VAP executed four years prior named another as the legal father. M.H. argues on appeal that the language of G. L. c. 209C, § 5 (a), allows his suit regardless of the preexisting VAP. In the alternative, he argues that the VAP is invalid and that his due process rights were violated because he did not receive notice of the VAP in order to challenge it in a timely manner.

***3** a. Statutory interpretation. The defendant contends that G. L. c. 209C, § 5 (a), expressly allows him, as the putative biological father, to bring a complaint to establish parentage and that the section specifies that the only circumstance in which the suit would be barred is if the child's birth occurred during the mother's marriage or within 300 days of its termination. As the mother never has been married, M.H. argues that his c. 209C complaint should have been allowed to go forward notwithstanding the preexisting VAP.

When interpreting a statute, "we construe the various provisions of a statute in harmony with one another, recognizing that the Legislature did not intend internal contradiction." DiFiore v. American Airlines, Inc., 454 Mass. 486, 491, 910 N.E.2d 889 (2009), citing Locator Servs. Group, Ltd. v. Treasurer & Receiver Gen., 443 Mass. 837, 859, 825 N.E.2d 78 (2005). Our ultimate goal is to effectuate the intent of the Legislature. See Curtatone v. Barstool Sports, Inc., 487 Mass. 655, 658, 169 N.E.3d 480 (2021).

Here, M.H. fails to consider c. 209C in toto. See Commonwealth v. Fleury, 489 Mass. 421, 429, 183 N.E.3d 1145 (2022), quoting Chin v. Merriot, 470 Mass. 527, 532, 23 N.E.3d 929 (2015) ("[a] statute must be interpreted 'as a whole'; it is improper to confine interpretation to the single section to be construed"). As discussed supra, G. L. c. 209C, § 11 (a), specifies that any "challenge" to a VAP must be brought within "one year" of its execution. By arguing that his statutory right to pursue a c. 209C complaint under § 5 (a) is not affected by this time limit, M.H. renders it inoperable, thus violating a fundamental rule of statutory interpretation. See Casa Loma, Inc. v. Alcoholic Beverages Control Comm'n, 377 Mass. 231, 234, 385 N.E.2d 976 (1979) ("It is a common tenet of statutory construction that, wherever possible, no provision of a legislative enactment should be treated as superfluous").

Additionally, M.H.'s narrow reading of the statute nullifies the purpose of VAPs in particular and c. 209C as a whole. See Adoption of Daphne, 484 Mass. 421, 424, 141 N.E.3d 1284 (2020), quoting Harvard Crimson, Inc. v. President & Fellows of Harvard College, 445 Mass. 745, 749, 840 N.E.2d 518 (2006) ("Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense").

As discussed supra, c. 209C is meant to ensure that nonmarital children receive the same rights and protections as those born to parents married to one another. G. L. c. 209C, § 1. To that end, § 11 (a)'s one-year cutoff for challenging a VAP provides stability and permanency with regard to the parentage of nonmarital children.[8] See Paternity of Cheryl, 434 Mass. 23, 30, 746 N.E.2d 488 (2001), citing G. L. c. 209C, § 11 ("There is a compelling public interest in the finality of paternity judgments").

Without the time limit, parentage established by way of a VAP would be open to challenge indefinitely, depriving the child of the stability that c. 209C is meant to provide. See C.C., 406 Mass. at 691, 550 N.E.2d 365 ("Without regard to the outcome of a paternity case, even the very trial of such a case might place great strain on a unitary family"). See also Lowery v. Klemm, 446 Mass. 572, 578-579, 845 N.E.2d 1124 (2006) ("we will not adopt a construction of a statute that creates 'absurd or unreasonable' consequences" [citation omitted]).

***4** The VAP that establishes J.M. as Amelia's legal father was executed in November 2016. M.H.'s c. 209C complaint filed in March 2021, then, is over three years too late.[9]

b. Validity of the VAP. M.H. additionally argues that because the VAP was signed with the knowledge that J.M. is not Amelia's biological father, it is invalid, implying that the time limit is not applicable. See D.H. v. R.R., 461 Mass. 756, 763-764, 964 N.E.2d 950 (2012) (where VAP does not become effective as matter of law, there is no time limit on challenges to its validity); Woodward v. Commissioner of Social Servs., 435 Mass. 536, 556, 760 N.E.2d 257 (2002) (VAP invalid where estate of deceased individual executed acknowledgment). We disagree.

M.H. maintains that "it would be a miscarriage of justice" to treat VAPs executed in the absence of biological ties as equal to those based thereon. To the contrary, we long have recognized that "families take many different forms" and that thus "a genetic connection between parent and child can no longer be the exclusive basis for imposing the rights or duties of parenthood" (quotation and citation omitted). Adoption of a Minor, 471 Mass. 373, 378 n.8, 29 N.E.3d 830 (2015). "Nothing in the language of G. L. c. 209C expressly limits its applicability to parentage claims based on asserted biological ties." Partanen v. Gallagher, 475 Mass. 632, 638, 59 N.E.3d 1133 (2016). And we specifically have held that an individual may establish parentage under c. 209C and execute VAPs without a biological connection to a child. See id. at 639, 59 N.E.3d 1133.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

Thus, M.H. is mistaken on the law. To the extent he challenges the VAP on the basis of fraud, as explained supra, his claim is time barred.

c. Due process claim. M.H. also maintains that he has been deprived of "notice and an opportunity to be heard at a meaningful time and in a meaningful manner." See Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). It is true that "fathers of [nonmarital] children have certain [due process rights] to maintain a relationship with those children." C.C., 406 Mass. at 685, 550 N.E.2d 365, citing Stanley v. Illinois, 405 U.S. 645, 651-652, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). However, claiming that one's due process rights have been violated does not make it so.

We previously have held that where, as here, a plaintiff has a cause of action at common law (discussed in more detail infra), he is not without an opportunity to be heard on his claim to establish paternity. C.C., 406 Mass. at 691, 550 N.E.2d 365. Thus, we again decline to address the constitutionality of c. 209C. See Commonwealth v. Paasche, 391 Mass. 18, 21, 459 N.E.2d 1223 (1984) ("We do not decide constitutional questions unless they must necessarily be reached").

2. Common-law action to establish parentage. As mentioned supra, where a plaintiff seeks to challenge parentage that already has been established, the putative parent must proceed under common law pursuant to the court's equity jurisdiction. C.C., 406 Mass. at 682, 550 N.E.2d 365. To do so, he or she must demonstrate a substantial parent-child relationship by clear and convincing evidence. Id. at 689-691, 550 N.E.2d 365.

***5** M.H. argues that the judge improperly applied the substantial parent-child relationship standard to his common-law paternity complaint. In the alternative, M.H. contends that if he is subject to the substantial relationship standard, the judge erred in finding that he failed to sustain his burden. We discern no error.

a. Applicability of the substantial parent-child relationship standard. Where a child's parentage already has been established legally, the substantial relationship test is a necessary balancing test accounting for the fact that a new parentage suit disrupts a family and a child's life and potentially will result in the displacement of one legal parent with another person. See C.C., 406 Mass. at 690-691, 550 N.E.2d 365. See also M.J.C. v. D.J., 410 Mass. 389, 393, 572 N.E.2d 562 (1991) (recognizing "significant intrusion of a full-fledged paternity action"). Where a person alleging to be the biological parent of a child can meet this threshold, however, that "developed parent-child relationship" acquires its own significant protection, and the intrusion on the relationship between the child and the existing legal parent is "greatly decreased" -- the putative biological parent already having been a significant part of the child's life. C.C., supra at 691, 550 N.E.2d 365. In other words, "[t]he existence or nonexistence of a substantial relationship between the putative [parent] and child is relevant in evaluating both the rights of the parent and the best interests of the child." Id. at 690, 550 N.E.2d 365, quoting R.R.K. v. S.G.P., 400 Mass. 12, 21, 507 N.E.2d 736 (1987) (Liacos, J., concurring). See R.F. v. S.D., 55 Mass. App. Ct. 708, 711, 774 N.E.2d 636 (2002).

Here, M.H.'s contention that the substantial relationship test should not apply, because the mother and legal father do not live together as a "traditional family unit" and thus have "nothing to protect," is a serious misreading of our case law. Although we previously have discussed the potential disruption to marital families, see, e.g., M.J.C., 410 Mass. at 389, 572 N.E.2d 562; C.C., 406 Mass. at 690, 550 N.E.2d 365; R.F., 55 Mass. App. Ct. at 708-709, 774 N.E.2d 636, the same logic requiring a showing of a substantial parent-child relationship applies equally where a child's parentage has been determined by a VAP, see G. L. c. 209C, § 1; Smith v. McDonald, 458 Mass. 540, 546, 941 N.E.2d 1 (2010) ("the legal equality of nonmarital children pursuant to G. L. c. 209C, § 1, dictates the same rule apply for children in comparable circumstances"). In both cases, "[w]here the putative father can come forward with clear and convincing evidence of a substantial parent-child relationship, the interest in protecting a family, which by necessary implication has already suffered interference, is greatly decreased." M.J.C., supra at 393, 572 N.E.2d 562.

Although we have recognized "another" important interest in the "traditional" family unit, protecting the best interests of the child is the primary purpose of the substantial parent-child relationship requirement. See C.C., 406 Mass. at 690, 550 N.E.2d 365. A child's interest is served by stable and supportive families of all types. See Partanen, 475 Mass. at 642, 59 N.E.3d 1133; Adoption of a Minor, 471 Mass. at 378 n.8, 29 N.E.3d 830; Hunter v. Rose, 463 Mass. 488, 491, 493, 975 N.E.2d 857 (2012) ("a child's welfare is promoted by ensuring that she has two parents to provide, inter alia, financial and emotional support," although

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

parents were separated).[10] By contrast, we have recognized that uncertainty and repetitious litigation over parentage, particularly where a family unit is in place, is not conducive to a child's best interests. See Adoption of Willow, 433 Mass. 636, 647, 745 N.E.2d 330 (2001). Where, as here, Amelia has known J.M. to be her father since she could speak, Amelia spends more than one-half of her time with him, and he has taken an active role in every part of Amelia's life, there undoubtedly is something to protect regardless of the marital status of her parents.[11] The probate judge properly required M.H. to first demonstrate a substantial parent-child relationship before proceeding with his suit.

***6** b. Application of the substantial parent-child relationship standard. Finally, M.H. claims that the probate judge erred in concluding that he had not demonstrated a substantial parent-child relationship with Amelia. As M.H. acknowledges, the existence of a substantial parent-child relationship is a fact-based inquiry. C.C., 406 Mass. at 690, 550 N.E.2d 365. "A judge has broad discretion to consider any factor," and "[a]bsent clear error, we will not substitute our weighing of the evidence for that of a trial judge who had the opportunity to observe the witnesses and form conclusions about their credibility." A.H. v. M.P., 447 Mass. 828, 838, 857 N.E.2d 1061 (2006). See Smith v. Jones, 69 Mass. App. Ct. 400, 404, 868 N.E.2d 629 (2007) ("As in other contexts where cases center on the best interests of the child, we will not disturb the judge's findings or substitute our judgment for that of the trial judge absent clear error").

Here, after an evidentiary hearing, the judge found that M.H. and Amelia had a relationship that included spending time together at family gatherings and holidays, in addition to M.H.'s having provided occasional transportation or caretaking help. However, the judge also found that M.H. "was not routinely involved in [Amelia's] health, education or welfare" and "did not support her financially or emotionally as a parent does." Thus, notwithstanding the fact that M.H. and Amelia enjoyed a positive and caring relationship, the judge ultimately determined that M.H. failed to demonstrate a substantial parent-child relationship.

On appeal, M.H. does not contest any of the judge's findings. As we see no clear error on the part of the judge, we leave intact his conclusion that M.H. did not meet his preliminary burden to pursue his common-law action to establish parentage.

Conclusion. We affirm the order denying M.H.'s motion to intervene and the judgments dismissing his complaints.

So ordered.

All Citations

--- N.E.3d ----, 2023 WL 4610717

Footnotes

1 M.H. vs. C.G. & another; and M.H. vs. C.G.

2 A pseudonym.

3 We acknowledge the amicus briefs submitted by Community Legal Aid, Greater Boston Legal Services, Northeast Legal Services, De Novo Center for Justice and Healing, and Massachusetts Law Reform Institute; professors of constitutional and family law; the Attorney General; and GLBTQ Legal Advocates & Defenders; and the amicus letter submitted by Veterans Legal Services.

4 General Laws c. 209C also provides for court-ordered child support, visitation, and custody rights with respect to such children. G. L. c. 209C, § 2. See Smith v. McDonald, 458 Mass. 540, 544, 941 N.E.2d 1 (2010).

5 As discussed further infra, such a complaint may not be brought pursuant to c. 209C if the birth mother is married at the time the child is born and the putative parent is not the mother's spouse. G. L. c. 209C, § 5 (a).

6 J.M. brought the complaint after his relationship with the mother had become strained, in part, because he had told Amelia that he was not her biological father, after which the mother threatened to reduce his time with Amelia.

 © 2023 Thomson Reuters. No claim to original U.S. Government Works.

7 M.H. filed two separate complaints. He states that, in January 2021, he initially attempted to file a c. 209C complaint but instead filed a complaint in equity at the court's request. Then, in March 2021, he filed a second complaint, under c. 209C. At a status conference later that month, the probate judge indicated that he would rule only on the complaint in equity, having concluded that the VAP precluded M.H. from proceeding pursuant to c. 209C.

8 In this way, the time limit functions as a statute of repose, which creates a right to be immune from challenge after a certain period of time has elapsed from a specified event. See, e.g., Bridgwood v. A.J. Wood Constr., Inc., 480 Mass. 349, 352, 105 N.E.3d 224 (2018) (“A statute of repose eliminates a cause of action at a specified time” and “provid[es] a ‘substantive right to be free from liability after a given period of time has elapsed from a defined event’ ” [citation omitted]).

9 M.H. also contends that the VAP is binding only on the mother and legal father and therefore cannot be considered res judicata against him. This argument is misplaced. M.H. is not precluded from challenging the VAP because the issue has been decided or because he was not a signatory to it. Rather, his claim fails because he missed the deadline for bringing it.

10 The probate judge made direct findings that Amelia “has known [J.M.] as her father” and “has consistently known that [J.M.] is her other caretaking parent,” with whom she “spends over half of her time residing.”

11 M.H. also argues that he should not be required to demonstrate a substantial parent-child relationship because the mother in this case prevented him from forming one and “kept [him] in the dark about [Amelia's] paternity until August 2020.” See C.C. v. A.B., 406 Mass. 679, 690 n.10, 550 N.E.2d 365 (1990); R.F. v. S.D., 55 Mass. App. Ct. 708, 712, 774 N.E.2d 636 (2002). This argument is without merit where the probate judge found that M.H. had ample reason to suspect his biological paternity as early as Amelia's conception, the mother updated M.H. as other potential biological fathers were ruled out, and the mother facilitated M.H.’s spending time with Amelia throughout her childhood. Cf. M.J.C. v. D.J., 410 Mass. 389, 394-395, 572 N.E.2d 562 (1991). Although M.H. claimed that he did not know he had a right to establish his paternity of Amelia, this lack of knowledge cannot be ascribed to the mother.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY

SUPREME JUDICIAL COURT
NO. SJC-13455

APPELLATE DIVISION OF THE DISTRICT COURT
DOCKET NO: 19-ADMH-84SO

WRENTHAM DISTRICT COURT
DOCKET NO. 1857CR001194

COMMONWEALTH v. A.Z.

CERTIFICATION OF COMPLIANCE - Mass. R.A.P. 16(k)

I, Devorah Anne Vester, hereby certify pursuant to Mass. R.A.P. 16(k) that Appellant's Reply Brief and Addendum comply with all applicable Rules of the Appeals Court governing appellate briefs including, but not limited to, Rule 16(a)(1,3,4,9,11-15) (addendum); Rule 16(e) (references to the record); and Rule 20 (form and length of briefs, appendices, and other documents). Compliance with the applicable length limit of Rule 20 was ascertained by Times New Roman, a proportionally spaced font, 14 pt., 4,374 non-excluded words, and word processing program Microsoft Word, version 2301, Windows 11 Pro.

Respectfully,

_____

Devorah Anne Vester
BBO #600806
Appeals Staff Attorney
Mental Health Litigation Division
Committee for Public Counsel Services
109 Main Street, Suite 201
Northampton, MA 01060
C. (617) 331.1598
F. (413) 586.0658
dvester@publiccounsel.net

July 31, 2023

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK COUNTY

SUPREME JUDICIAL COURT
NO. SJC-13455

APPELLATE DIVISION OF THE DISTRICT COURT
DOCKET NO: 19-ADMH-84SO

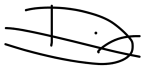
WRENTHAM DISTRICT COURT
DOCKET NO. 1857CR001194

COMMONWEALTH v. A.Z.

CERTIFICATE OF SERVICE

I, Devorah Anne Vester, hereby certify that on this 31st day of July 2023, I sent by email to Appellee Commonwealth of Massachusetts, through counsel, a complete and true copy of Appellant's Reply Brief and Addendum in compliance with Mass. R.A.P. 13(e) and Mass. R.A.P. 16(a)(15):

ADA Pamela Alford
ADA Michael McGee
Norfolk County District Attorney's Office
45 Shawmut Road
Canton, MA 02021
michael.p.mcgee@state.ma.us
pamela.alford@state.ma.us



_____

Devorah Anne Vester
BBO #600806
Appeals Staff Attorney
Mental Health Litigation Division
Committee for Public Counsel Services
109 Main Street, Suite 201
Northampton, MA 01060
C. (617) 331.1598
F. (413) 586.0658
dvester@publiccounsel.net