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Children, Families, Health, and Human Services Interim Committee

61st Montana Legislature

TO: Committee members
FROM: Lisa Mecklenberg Jackson, Staff Attorney
RE: Possible revision of Title 53, chapter 20, part 1
DATE: September 11, 2009

QUESTION: Based on the question posed in an August 2008 Montana Supreme Court decision, In the Matter of T.P., 2008 MT 266, 345 Mont. 152, should portions of Title 53, chapter 20, part 1, relating to the involuntary commitment of developmentally disabled individuals, be revised to insure procedural and substantive due process?

FACTS OF THE CASE: In January 2006, DPHHS petitioned for the involuntary commitment of T.P., a developmentally disabled woman, to the Montana Development Center (MDC) via the First Judicial District Court in Helena. DPHHS and T.P. stipulated to her commitment to MDC for a period not to exceed 90 days. On May 1, 2006, DPHHS petitioned for T.P.'s recommitment under section 53-20-128, MCA. Attached to the petition was an individual treatment plan from early March 2006 (March Plan) and a Qualified Mental Retardation Professional (QMRP) Report dated April 27, 2006 (Janacaro's Report). As required by statute, the district court referred the petition to the Residential Facility Screening Team (RFST). The RFST determined T.P. was seriously developmentally disabled and recommended her recommitment. The RFST Report listed a number of instances of aggression and disruption on the part of T.P. but was devoid of any description of the listed incidents. The March Plan, Janacaro's Report, and the RFST Report were not formally offered into evidence but were filed with the district court as required by statute and were available to the court and both parties. The district court held a hearing on the petition for T.P.'s recommitment. A DPHHS representative and RFST chairwoman was the sole witness in support of T.P.'s recommitment. She testified that "the document [the RFST] looked at was the . . . treatment plan dated 5/2/06" (May Plan). This May Plan had not been filed with the petition in district court, nor was it admitted into evidence at the hearing. Thus, the district court never saw the May Plan. The representative herself could not provide any information regarding the reported incidents involving T.P. and suggested that the RFST merely accepted, without examination of the facts, the conclusion of T.P.'s treatment planning team set forth in the May Plan. T.P. was not present at the hearing although an advocacy specialist with the Montana Advocacy Program testified in opposition to T.P.'s recommitment. On October 2, 2006, the District Court entered its order recommitting T.P. for one year.

T.P. appealed. The Montana Supreme Court found the First Judicial District Court's recommitment of T.P. to the MDC was clearly erroneous because it was not supported by substantial evidence. In his concurrence, Justice Nelson states "I have grave concerns about any

statutory scheme that allows the State to deprive a person of his or her liberty and dignity on the basis of oral and written hearsay; on documents not in evidence; on the testimony of persons who have no direct knowledge of matters and incidents about which they are testifying; on reports which contain undefined, confusing, inconsistently used, and purely subjective terminology; and where the person who is the subject of the proceeding may not even be present." Justice Nelson suggested the Legislature revisit Title 53, chapter 20, to enact appropriate amendments and revisions to this statutory scheme so as to insure procedural and substantive due process to developmentally disabled persons who are involuntarily committed and recommitted.

So, back to the question: should portions of Title 53, chapter 20, part 1, relating to the involuntary commitment of developmentally disabled individuals, be revised to insure procedural and substantive due process? Do the facts in In the Matter of T.P. reflect an isolated incident or an ongoing problem? I looked for case law following In the Matter of T.P. and found only one 2009 Montana Supreme Court case, In the Matter of G.M., 2009 MT 59, 349 Mont. 320 (2009) bringing up a similar issue in a dissent by Justice Nelson.

I have spoken with several attorneys at DPHHS who feel the requirements already contained in statute are sufficient to ensure procedural and substantive due process in developmentally disabled involuntary commitment cases. They felt the situation in In the Matter of T.P. was an isolated incident and not an accurate reflection of how these types of procedures are uniformly handled. It is clear that at least some statutory and administrative safeguards do exist. There are administrative rules in Title 37, chapter 34, part 23, spelling out the responsibilities of RFSTs, developmental disabilities professionals, and QMRPs. In addition, section 53-20-125 (2), MCA, does provide that the RFST must include the factual basis for its commitment recommendation and must describe evaluation devices that have been employed in evaluating the respondent. And under section 53-20-125 (4), MCA, the respondent may request that a hearing be held on the recommendation of the RFST. Based on these regulations, an argument could be made that adequate substantive and procedural guidelines already exist in Title 53, chapter 20, part 1, regarding the involuntary commitment of developmentally disabled individuals and that care and caution need to be taken by courts in following the letter of the existing law in these types of proceedings.

That being said, however, the situation outlined in In the Matter of T.P. may be cause for concern and there may possibly be ways to strengthen several statutes within Title 53, chapter 20, part 1, to add additional safeguards to the involuntary commitment process. I look forward to the CFHHS' interim committee's decision as to whether to look into this issue further.
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