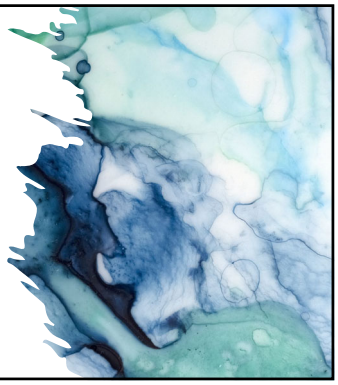
Civil Commitment for Substance Use Disorder: Historical Context and Current Relevance

Phillip Ross Cochran, OMS-III



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Disclosure

I declare no commercial or financial relationships that could be construed as a potential conflict of interest with the material in this presentation.

Objectives

- Define civil commitment law for substance use disorder (SUD)
- Discuss historical context of civil commitment
- Discuss advocacy for civil commitment as a response to the opioid epidemic
- Outline civil commitment law variability among states
- Describe Alabama SB 240 and potential application

Civil Commitment for SUD

- Civil commitment is a form of Involuntary Commitment.
- Definition of Involuntary commitment from Alabama SB 240:
- ***"INVOLUNTARY COMMITMENT.*** *Court-ordered mental health services in either an outpatient or inpatient setting."* (Alabama Secretary of State, 2024)
  - Alabama SB 240 does not define "civil commitment."
- "Civil commitment (CC) for substance use disorders (SUDs) is a legal mechanism, initiated by family members, healthcare professionals, or others, that compels individuals with substance use problems into involuntary treatment." (Jain et al., 2021)
- Details of involuntary commitment/civil commitment laws vary by state.
  - Diagnostic criteria, duration, inpatient vs. outpatient, etc.

Civil Commitment for SUD vs. Pretrial Diversion

Code of Alabama

Section 12-23-5

Any person arrested or charged with the violation of a controlled substance offense as set forth in Sections 13A-12-211, 13A-12-212, 13A-12-213, or 13A-12-214, may be a candidate, having jurisdiction over the offense to enroll in a drug abuse treatment program in lieu of undergoing prosecution.

Admission to such treatment or rehabilitation program and deferral of prosecution is subject to the following conditions:

(1) The defendant must have no prior felony convictions for controlled substance offenses or other pending felony charges.

(2) Where the person arrested or charged is in violation of a controlled substance offense as set forth in Sections 13A-12-211, 13A-12-212, 13A-12-213, or 13A-12-214, he/she may request diversion. The amount of controlled substances involved, however, must not exceed the amounts below.

a. 113.2 grams or four ounces of cannabis;
b. Five grams of cocaine HCL or of any mixture containing cocaine, as described in Section 20-2-25(1);
c. 500 milligrams of cocaine base;
d. One gram of any morphine, opium or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 20-2-23(2) or Section 20-2-25(1)a, or one gram of any mixture containing any such substance;
g. Five pills or capsules of hydromorphone, meperidine, pentazocine, hydrocodone, oxycodone, propoxyphene as described in Sections 20-2-1, et seq.;
h. One gram of 3, 4-methylenedioxy amphetamine, or of any mixture containing 3, 4-methylenedioxy amphetamine;

(The Alabama Legislature, 1990)

Controversy and Misunderstanding

- Civil commitment for SUD was initially met with scepticism and there is ongoing debate.
  - Infringement on patient autonomy (Messinger & Beletsky, 2021; Nace et al., 2007)
- Opinions shifting in favor of civil commitment for SUD among physicians and in literature
- **2007 survey of psychiatrist across US**
  - 739 American Psychiatric Association members
  - 22.3% supported commitment for drug addiction
  - 22.0% supported commitment for alcohol addiction (Brooks, 2007)
- **2021 American Society of Addiction Medicine survey**
  - 165 addiction physicians completed survey
  - 60.7% favored civil commitment for SUD
  - 21.5% opposed civil commitment for SUD
  - 17.8% Unsure if favored or opposed
  - 38.4% Unfamiliar with civil commitment SUD laws
  - 28.8% Unsure if civil commitment for SUD was permitted in their state (Jain et al., 2021)

Challenges with Involuntary Commitment

- **Clear need for involuntary commitment**
  - Mania: high risk behavior, harm to self and others
  - Schizophrenia: paranoid delusions and command hallucinations, harm to self or others
  - Dementia: may be unable to meet basic needs
- **Patient populations that may benefit from involuntary commitment**
  - Substance use disorders
  - Eating disorders
  - Personality disorders
  - Sex offenders
  - Not guilty by reason of insanity
  - Psychiatric disorders which impair mood, thoughts, and functioning
  - Psychiatric disorders which impair insight and judgement

(Testa & West, 2010)

Complex Ethical Considerations

- **Nonmaleficence** – "Do no harm" may be displayed by respecting patient's right for their autonomy for medical decision making.
- **Beneficence** – Duty to provide a service to a patient which will benefit them.
- **Autonomy** – Demonstrating capacity for medical decision making can be difficult in psychiatric disorders which retain reality-based thinking.
- **Justice** – Ethical complexities are counterbalanced by detailed civil commitment laws for SUD which ensure that equal patient rights are upheld.

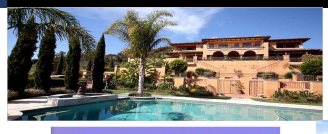
Legal Principles for Involuntary Commitment

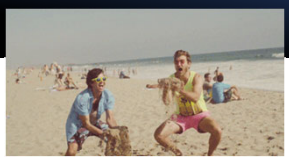
- ***Parens patriae*** – "parent of the country" government responsibility to intervene on behalf of citizens who cannot act in their own interest.
- **Police power** – state requirement to protect the interests of its citizens, duty to consider welfare of all people within state, statutes written for the benefit of society at large even if a certain individual's liberties are restricted.

(Testa & West, 2010)

Early 1900's Commitment

2024 Commitment





Historical Context

- **In 1403**, London's Bedlam Hospital opened an asylum to provide inpatient care for mental illnesses.
- **In America 1817 - 1824**
  - 4 private asylums were opened Connecticut, New York, Massachusetts, and Pennsylvania.
  - Public asylums were opened in the southern United States
  - widespread state-run mental institutions soon followed.
- **Prior to American asylums**, people with mental illness were held in prisons and shelters for the poor.
  - Mainly for safety of the community
  - No treatment offered
- **In 1953**, American asylum populations peak at 559,000 inpatients
  - Many were patients with dementia, seizure disorders, paralytic diseases, or advanced neurosyphilis
  - Most incurable with treatment at the time
  - Long-term care included use of restraints, sedation with bromides and chloral hydrate, or experimental treatment (e.g. opium, camphor, and cathartics)

(Testa & West, 2010)

Historical Context – Era of Institutionalization

- **Era of Institutionalization – 1800s - early 1900s American asylums** – Viewed persons with mental illness as lacking decision-making capacity, no distinction between voluntary and involuntary psychiatric admissions, all involuntary.
- **Privately funded** – commitment of unwanted family relatives possible
- **Many harms to patient once released**
  - In 1860, Mrs. Elizabeth Packard, committed for having an unclean spirit by her husband who was a clergyman due to her exploring spiritual traditions outside of Presbyterian faith.
  - Diagnosed with "moral insanity"
  - Held involuntarily for three years
  - Upon release, had lost custody of her children and ownership of her property
  - Filed a wrongful confinement lawsuit and won

(Testa & West, 2010)

Historical Context – Era of Institutionalization

- **Legal standard at the time** – only required presence of mental illness and recommendation for treatment for civil commitment
  - Assumed involuntary commitment would benefit patients with mental illness
  - Lack of capacity assumed
  - Doctrine of the time was *parens patriae*, practice considered acceptable
- **20th Century America changed civil commitment laws to protect right to liberty**
  - Right to a trial with attorney representation
  - Stricter commitment criteria
  - Decision-making power shifted from medical professionals to judges

(Testa & West, 2010)

Historical Context - Deinstitutionalization

- **Continued problems under new laws led to large scale discharge** from inpatient facilities and closure of state hospitals
  - Individuals often held in jail for days if attorney was not available to represent them in trial.
  - Advocacy from mental health professionals due to injustices
  - 1951 – National Institute of Mental Health (NIMH) published the "Draft Act Governing Hospitalization of the Mentally Ill" – functioned to restore psychiatrist decision-making power
- **1951-1954 – Chlorpromazine (Thorazine)** – invented in France and became widely used in America making outpatient treatment possible.
- **1963** – President John F. Kennedy signed the Community Mental Health Centers Act which facilitated transition of patients from inpatient to outpatient treatment.
- **Mass closure of hospitals** as psychiatric inpatients dropped from over 550,000 in 1950s to 30,000 by 1990s.

(Testa & West, 2010)

Shift to Dangerousness Criteria as the Standard for Civil Commitment

- **Along with deinstitutionalization** came a change in legal standard for civil commitment:
  - From need-for-treatment model to dangerousness model
- **1964** – Washington D.C. – established criteria for civil commitment
  - Determined to have a mental illness prior to hospitalization against persons will.
  - Had to pose an imminent threat to safety of self or others or be "gravely disabled" such that person is unable to provide for their own basic needs.

(Testa & West, 2010)

Procedural safeguards for Involuntary Commitment

- States allow involuntary admissions to hospitals but for a predetermined duration.
  - 2 days to 2 weeks depending on state.
- After which, patients are entitled to a court hearing with legal representation to determine if continuing commitment is warranted.

- **1966** Washington DC appeals court case **Lake v. Cameron** – Right for least confining treatment for nondangerous patients
- **1975** Supreme Court case **O'Connor v. Donaldson** – Mentally ill person must display a known risk of harm to self or others, or need psychiatric treatment for commitment.
- **1978** Supreme Court case **Addington v. Texas** – Determined that standard of proof of "beyond a reasonable doubt" could not be met for civil commitment due to attempting to predict future risk.

(Testa & West, 2010)

Unintended Consequences of Dangerousness Model

- **Nondangerous individuals with mental illness** who need treatment but refuse care may not meet criteria for commitment.
  - Roughly 25% of homeless population are individuals with mental disorders.
  - Despite about 6% of general population suffering from mental illness. (Testa & West, 2010)

Unintended Consequences of Dangerousness Model

- Many incarcerated individuals with mental illness are nonviolent offenders
  - Often "survival crimes" (e.g. stealing food, trespassing for shelter)
  - Arrested more often than people without mental illness
- Persons with history of civil commitment more likely to be arrested compared to those with voluntary psychiatric hospital stays.
- Dangerousness model has resulted in decreased average length of involuntary hospitalization.
  - Often limited treatment rather than progress toward long-term care.

(Testa & West, 2010)

Outpatient Civil Commitment

- Relatively modern, available in most states.
- Allows people suffering from mental disorders to remain in their communities.
- Easier to involuntarily hospitalize at earlier stages of psychiatric deterioration.

(Testa & West, 2010)

Outpatient Civil Commitment

- Easier for family members to access needed care for mentally ill relatives.
- Fewer arrests of people with mental illness.
- Improves psychiatric outcomes.
- Decreased inpatient length of stay.
- Increased participation in community psychiatric treatment.

(Testa & West, 2010)

State Enactment of Civil Commitment Laws

1970

Is SUD grounds for involuntary commitment under state law?

(0) Yes
(0) No

(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

1971

Is SUD grounds for involuntary commitment under state law?

(1) Yes
(0) No

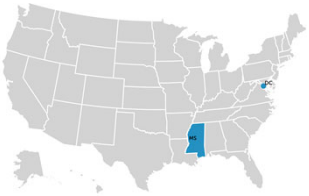
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

1983 – Mississippi enacts SUD civil commitment law.

Is SUD grounds for involuntary commitment under state law?

- (2) Yes
- (0) No



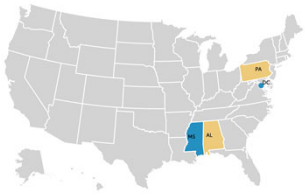
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

1996 – Alabama and PA enact civil commitment laws which exclude SUD as criteria for commitment.

Is SUD grounds for involuntary commitment under state law?

- (2) Yes
- (2) No



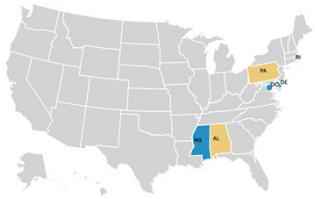
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2004 – Rhode Island and Delaware

Is SUD grounds for involuntary commitment under state law?

- (3) Yes
- (3) No



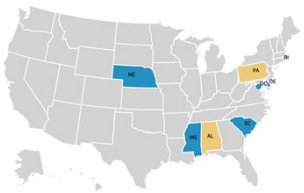
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2009 – Nebraska and South Carolina

Is SUD grounds for involuntary commitment under state law?

- (5) Yes
- (3) No



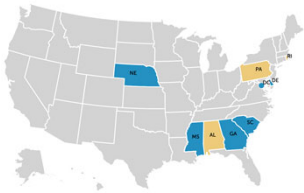
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2011 - Georgia

Is SUD grounds for involuntary commitment under state law?

- (6) Yes
- (3) No



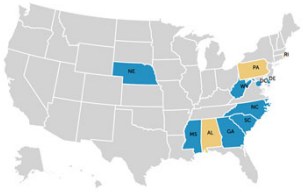
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2013 – North Carolina and West Virginia

Is SUD grounds for involuntary commitment under state law?

- (8) Yes
- (3) No



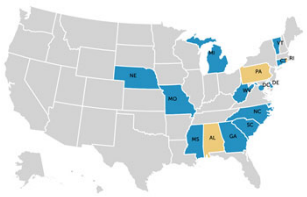
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2014

Is SUD grounds for involuntary commitment under state law?

- (12) Yes
- (3) No



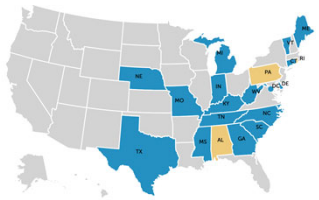
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2015

Is SUD grounds for involuntary commitment under state law?

- (17) Yes
- (3) No



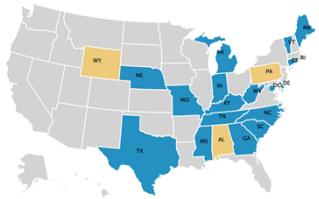
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2016

Is SUD grounds for involuntary commitment under state law?

- (17) Yes
- (4) No



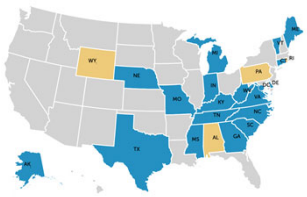
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

April 2017

Is SUD grounds for involuntary commitment under state law?

- (19) Yes
- (4) No



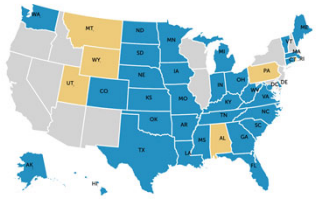
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

November 2017

Is SUD grounds for involuntary commitment under state law?

- (33) Yes
- (6) No



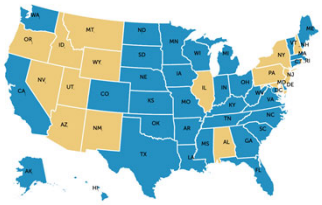
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2018 – All jurisdictions have involuntary commitment law which includes or excludes SUD as grounds for commitment.

Is SUD grounds for involuntary commitment under state law?

- (35) Yes
- (16) No



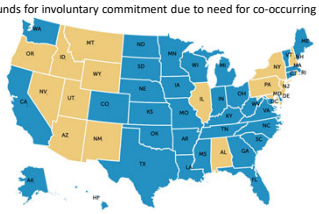
(Prescription Drug Abuse Policy System, 2021)

State Enactment of Civil Commitment Laws

2021 – Most recent update from PDAPS. Under Alabama SB 240, Alabama may still be considered to not have SUD as grounds for involuntary commitment due to need for co-occurring mental illness.

Is SUD grounds for involuntary commitment under state law?

- (35) Yes
- (16) No



(Prescription Drug Abuse Policy System, 2021)

Prevalence of Illicit Drug Use

- **Illicit Drug Use (2019)**
- 13.0% of persons age 12 years and older endorse illicit drug use in the past month.
- 1.9% of persons age 12 years and older endorse nonmedical use of a psychotherapeutic drug in the past month.

(Centers for Disease Control and Prevention. *Illicit Drug Use*, 2024)

Drug Overdoses, Majority Opioids

- **Drug Overdoses (2022)**
- Number of drug overdose deaths: 107,941
- Drug overdose deaths per 100,000 population: 32.4
- Number of drug overdose deaths involving any opioid: 81,806
- Drug overdose deaths involving any opioid per 100,000 population: 24.5

(Centers for Disease Control and Prevention. *Illicit Drug Use*, 2024)

Civil Commitment for SUD, Opioid Overdose Death Rates

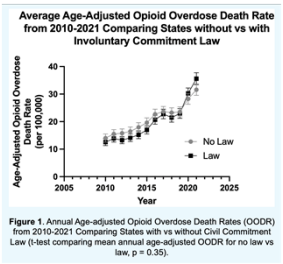


Figure 1. Annual Age-adjusted Opioid Overdose Death Rates (OODR) from 2010-2021 Comparing States with vs without Civil Commitment Law (t-test comparing mean annual age-adjusted OODR for no law vs law, p = 0.35).

(Cochran et al., 2024)

Civil Commitment for SUD, Opioid Overdose Death Rates

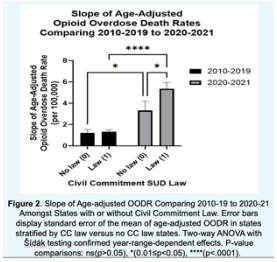


Figure 2. Slope of Age-adjusted OODR Comparing 2010-19 to 2020-21 Amongst States with or without Civil Commitment Law. Error bars display standard error of the mean of age-adjusted OODR in states stratified by CC law versus no CC law states. Two-way ANOVA with Šidák testing confirmed year-range-dependent effects. P-value comparisons: ns(p>0.05), *(0.01≤p<0.05), ****(p<.0001).

(Cochran et al., 2024)

Prevalence of Alcohol Use

- **Alcohol Use (2018)**
- 52.8% of adults age 18 and older currently regularly consumed alcohol (at least 12 drinks in lifetime and at least 12 drinks in past year).
- 25.1% of adults age 18 and older had at least one heavy drinking day (five or more drinks for men and four or more drinks for women) in the past year.

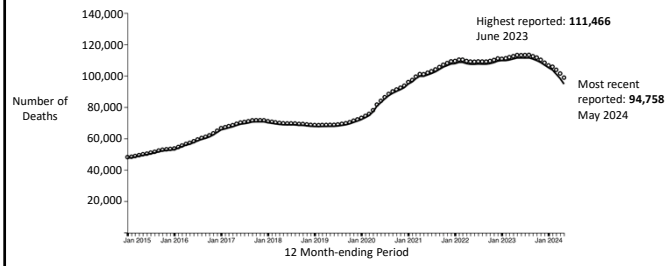
(Centers for Disease Control and Prevention. *Illicit Drug Use*, 2024)

Alcohol Use Mortality

- **Alcohol Related Mortality (2022)**
- Number of alcoholic liver disease deaths: 30,910
- Alcoholic liver disease deaths per 100,000 population: 9.3
- Number of alcohol-induced deaths, excluding accidents and homicides: 51,191
- Alcohol-induced deaths, excluding accidents and homicides per 100,000 population: 15.4

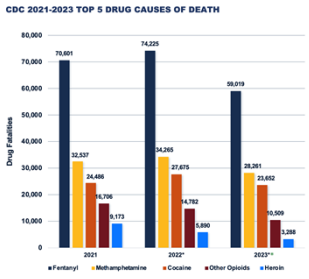
(Centers for Disease Control and Prevention. *Illicit Drug Use*, 2024)

12 Month-ending Provisional Counts of Drug Overdose Deaths: United States



(Centers for Disease Control and Prevention. *National Vital Statistics System*, 2024)

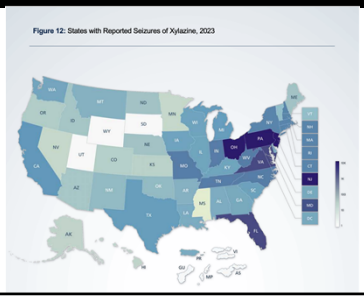
Fentanyl influx into US and Cutting Agents



"Fentanyl is the deadliest drug threat the United States has ever faced, killing nearly 38,000 Americans in the first six months of 2023 alone."

(Drug Enforcement Administration, 2024)

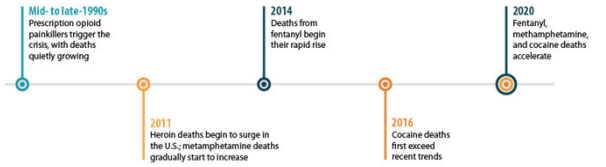
Fentanyl influx into US and Cutting Agents



Xylazine – Veterinary sedative added to illicit drugs complicating opioid overdose reversal with naloxone.

(Drug Enforcement Administration, 2024)

Advocacy for Civil Commitment Across America as a Result of the Opioid Epidemic



(State Health Access Data Assistance Center, 2021)

Advocacy for Civil Commitment Across America as a Result of the Opioid Epidemic

- **Kentucky**
  - **"Casey's Law"** (2004)
  - Named after Matthew Casey Wethington
  - Died of a heroin overdose in 2002.
  - Mother, Charlotte Wethington, lobbied for civil commitment SUD law.

(Walton & Hall, 2017)

Marchman Act – Florida
Sweeney et al., 2013

- 1993 - Florida Civil Commitment statute, Hal S. Marchman Alcohol and Other Drug Services Act
- Study conducted in 2012
- Examined 100 clinical charts of civilly committed patients 2003 - 2012.
- Treated at HealthCare Connection of Tampa, Inc., (HCC) - a private, for-profit, dual-diagnosis program specializes in treating impaired professionals, but not exclusively.

(Sweeney et al., 2013)

Marchman Act – Florida
Sweeney et al., 2013

- **100 subjects**
- Drug of choice: alcohol (n = 38), opiates (n = 25), cocaine (n = 10), benzodiazepines (n = 5), methamphetamine (n = 4), methadone (n = 1), and GHB (n = 1), and 16 patients were poly-addicted.

Dual Diagnosis: 56 subjects

Depression (n = 30), generalized anxiety disorder (n = 9), bipolar disorder (n = 10), adjustment disorder (n = 2), schizophrenia (n = 1), cyclothymia (n = 1), attention deficit disorder (n = 2), and Korsikoff's syndrome (n = 1).

22 (59.4%) women and 34 (53.9%) men were diagnosed with dual disorders.

(Sweeney et al., 2013)

Marchman Act – Comparison to Voluntary Treatment

- **Comparison to Voluntary Admissions:**
  - In 2011, HCC 240 patients admitted to inpatient treatment.
  - Of the 219 voluntary (non-Marchman) patients:
- **Discharge data:**
  - Successful completion – 154 (70% voluntarily admitted successfully completed treatment vs. 69% successfully completed involuntary commitment under Marchman order)
  - Against medical advice – 47
  - Left at staff request – 14
  - Transfer – 4

(Sweeney et al., 2013)

MOUD as Outcome for Civil Commitment for SUD – Massachusetts – Hayaki et al., 2022

- **121 subjects** with severe OUD were civilly committed July 2018 - June 2019.
- Inclusion criteria: No known active suicidality, psychosis, or mania.
- Average length of stay was 21.2 ($\pm$6.78) days.
- MOUD treatment adherence acquired by self report 3 months after discharge.

(Hayaki et al., 2022)

MOUD as Outcome for Civil Commitment for SUD – Massachusetts – Hayaki et al., 2022

- **During follow-up:**
  - 41% reported at least one day of illicit opioid use
  - 64% reported at least one day of MOUD receipt
    - Significantly less likely to use illicit opioids on days MOUD was received.
- **High rates of psychiatric comorbidities:**
  - More than half reported a diagnosis of depression or an anxiety disorder.
- About half of the sample reported previous civil commitment for SUD.
- Previous studies report relapse rate after voluntary inpatient treatment >60%

(Hayaki et al., 2022)

Variability in State Civil Commitment Law

- **Examples of how state civil commitment laws for SUD differ:**
  - Diagnostic criteria (mental illness vs. SUD vs. mental illness with co-occurring SUD)
  - Treatment type (residential or outpatient)
  - Mandated treatment duration, ranging from 2 weeks to 1 year.
  - Nebraska, Iowa, Michigan, and D.C. have no predetermined maximum initial commitment duration (determined at time of commitment)
  - Initial commitment duration (ranges from 14 days to unspecified)
  - 26 states and D.C. have a recommitment process.

(Prescription Drug Abuse Policy System, 2021)

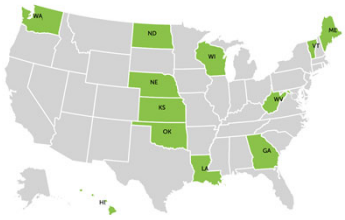
Variability in State Civil Commitment Law

- States differ in what is permitted under CC SUD law, which include:
  - Involuntary medication administration – 12 states
  - Seclusion – 10 states
  - Restraints – 13 states
  - Surgery – 4 states
  - Electroconvulsive therapy – 1 state
  - 15 states and Washington D.C. do not specify what is permitted.

(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

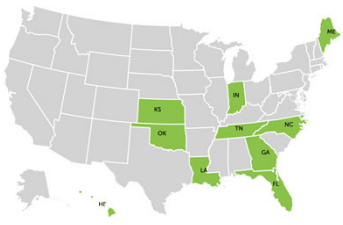
Involuntary Medication Administration (12 jurisdictions)



(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

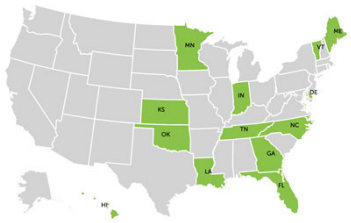
Seclusion (10 Jurisdictions)



(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

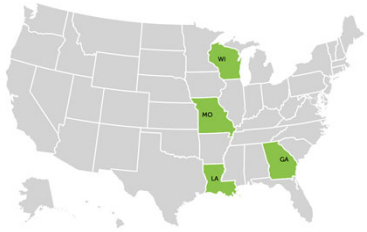
Restraints (13 jurisdictions)



(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

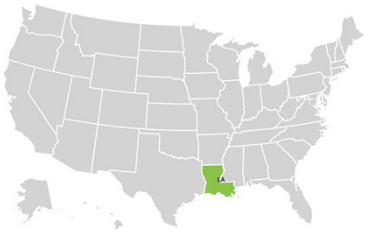
Surgery (4 jurisdictions)



(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

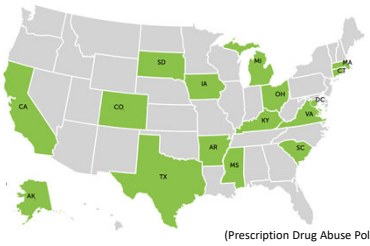
Electroconvulsive Therapy (1 jurisdiction)



(Prescription Drug Abuse Policy System, 2021)

Treatments Allowed Without Patient Consent Under Civil Commitment Law

Allowed Treatment Not Specified (16 Jurisdictions)



(Prescription Drug Abuse Policy System, 2021)

Civil Commitment SUD Law Usage by State

- **In 2011**, 33 of the 51 jurisdictions had civil commitment law with SUD provision.
- Florida: >9,000 (annual average)
- Massachusetts: >4,500 (annual average)
- Wisconsin: 260
- Missouri: 166
- Colorado: 150–200 (annual average)
- Hawaii: 83 in 2009
- Texas: 22 in 2010

(Christopher et al., 2015)

Civil Commitment SUD Law Usage by State

- 7 states report regular or frequent use, could not provide specific data, no central database (i.e., county, individual courts, or data not collected)
- 9 states never apply the law.
- 4 rarely apply the law.
- 6 states unable to report usage data.
- Note: Old data, lack of central recording database of law usage at state or national level, within cited study some states did not respond about usage

(Christopher et al., 2015)

Alabama SB 240 Introduction

Relating to the Alabama Department of Mental Health; to amend Sections 22-52-1.1, 22-52-1.2, 22-52-3, 22-52-7, 22-52-10.1, as last amended by Act 2023-472 of the 2023 Regular Session, 22-52-10.2, 22-52-10.4, 22-52-10.11, and 22-52-11 of the Code of Alabama 1975; to authorize a judge of probate to involuntarily commit an individual who suffers from a substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses; to provide for a change in jurisdiction of the sheriff who is required to serve the commitment petition on the respondent; to authorize the judge of probate to establish a procedure for placing limitations on the respondent's liberty, if any, pending a final hearing; to allow the judge of probate to determine the appropriate medical evaluation process, if any, for the respondent prior to final hearing; and to add Section 15-16-26 to the Code of Alabama 1975, to provide a process for the committing judge of probate to seek relief for the respondent from temporary criminal confinement, under certain circumstances, to fulfill a pending commitment order; and to provide that mental health providers are not required to expand existing services unless its currently available funds support the expansion.

(Alabama Secretary of State, 2024)

Alabama SB 240 Definitions and Diagnostic Criteria

CO-OCCURRING SUBSTANCE USE DISORDER. A substance use disorder that occurs secondarily to a primary diagnosis of one or more mental illnesses.

MENTAL ILLNESS. A psychiatric disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life, or a diagnosis designated as a Serious Mental Illness (SMI), as defined in the then current edition of the Diagnostic and Statistical Manual of Mental Disorders. The term specifically excludes the primary diagnosis of epilepsy, a substance use disorder, an intellectual disability, alcoholism, or a developmental disability.

SUBSTANCE USE DISORDER. A cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using a substance despite significant substance-related problems, such as impaired control, social impairment, risky behaviors, and pharmacological tolerance and withdrawal.

RESPONDENT. An individual for whom a petition for commitment to mental health services has been filed.

(Alabama Secretary of State, 2024)

Alabama SB 240 Process of Petitioning for Involuntary Commitment

22-52-1.2

Any individual may file a petition seeking the involuntary commitment of another individual.

The petition shall be filed in the probate court of the county in which the respondent is located. The petition shall be in writing, executed under oath, and shall include the following information:

(1) The name and address, if known, of the respondent.

(2) The name and address, if known, of the respondent's spouse, legal counsel, or next-of-kin.

(3) That the petitioner has reason to believe the respondent is mentally ill or is mentally ill with a secondary diagnosis of co-occuring substance use disorder.

(4) That the beliefs of the petitioner are based on specific behavior, acts, attempts, or threats, which shall be specified and described in detail.

(5) The names and addresses of other individuals with knowledge of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder who may be called as witnesses.

(Alabama Secretary of State, 2024)

Alabama SB 240 Sheriff Notifies Respondent of Petition and Hearing

22-52-3

When any petition has been filed seeking the involuntary commitment of a respondent and the petition has been reviewed by the judge of probate, the judge of probate shall order the sheriff of the county in which the respondent was located at the time of the filing to serve a copy of the petition, together with a copy of the order setting the petition for a hearing, upon the respondent.

The notice shall include the date, time and place of the hearing; a clear statement of the purpose of the proceeding and the possible consequences to the subject thereof; the alleged factual basis for the proposed commitment; a statement of the legal standards upon which commitment is authorized; and a list of the names and addresses of the witnesses who may be called to testify in support of the petition. The hearing shall be preceded by adequate notice to the respondent.

(Alabama Secretary of State, 2024)

Alabama SB 240 Sheriff May Bring Respondent Before Judge, Limitations on Liberty Determined

22-52-7

(a) (1) When a petition has been filed seeking to have limitations placed upon the liberty of a respondent pending the outcome of a final hearing on the merits, the judge of probate shall order the sheriff of the county in which the respondent was located at the time of the filing to personally serve the petition upon the respondent and to either bring the respondent before the judge of probate or be evaluated as provided in subsection (2).

(2) When any respondent against whom a petition has been filed seeking to have limitations placed upon the respondent's liberty pending the outcome of a full and final hearing on the merits is initially brought before the judge of probate, the judge of probate shall determine from an interview with the respondent what limitations, if any, shall be imposed upon the respondent's liberty and what temporary treatment, if any, shall be imposed upon the respondent pending further hearings. In making these determinations, the judge of probate may also interview any other available individuals or officers and may consult with or seek an evaluation by a licensed medical physician or qualified mental health professional. If limitations on the respondent's liberty are ordered, the judge of probate may order the respondent detained under the provisions of this section at a designated mental health facility or a hospital.

(Alabama Secretary of State, 2024)

Alabama SB 240 Harm to Self or Others, Prevented from Leaving Jurisdiction, Not Placed in Jail

(b) No limitations shall be placed upon the respondent's liberty nor treatment imposed upon the respondent unless such limitations are determined necessary by the judge of probate to prevent the respondent from posing a real and present threat of substantial harm to self or others or to prevent the respondent from leaving the jurisdiction of the court. No respondent shall be placed in a jail or other facility for individuals accused of or convicted of committing crimes.

The judge of probate shall order the respondent to appear at the times and places set for hearing the petition and may order the respondent to appear at designated times and places to be examined by licensed medical doctors or qualified mental health professionals.

If the respondent does not appear as ordered by the judge of probate, or if the judge of probate determines it is likely the respondent will not appear, the judge of probate may order the sheriff of the county in which the respondent was located at the time of the filing to take the respondent into custody and compel the respondent's attendance as ordered by the judge of probate.

If temporary treatment or admittance to a hospital is ordered for the respondent, the treatment shall be supervised by a licensed medical physician or qualified mental health professional who has willingly consented to treat the respondent, and admission to a hospital shall be ordered by a licensed medical doctor who has willingly consented to admit and treat the respondent.

(Alabama Secretary of State, 2024)

Alabama SB 240 Determination of Least Restrictive Treatment

22-52-10.1

(a)If at the final hearing on a petition seeking to involuntarily commit a respondent, the judge of probate finds, based on clear and convincing evidence, that the respondent **meets the criteria for involuntary commitment**, an order shall be entered for either of the following:

(1) Outpatient treatment.

(2) inpatient treatment.

(b) **The least restrictive alternative** necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder shall be ordered.

(c) The petition for involuntary commitment shall be dismissed if the criteria for commitment is not proved.

(d)(1) The judge of probate shall immediately report an order for involuntary commitment to the Alabama State Law Enforcement Agency, in a manner prescribed by the Alabama Justice Information Commission, for entry into the state firearms prohibited person database and the National Instant Criminal Background Check (NICS) system.

(2) The judge of probate shall report to the Alabama State Law Enforcement Agency, in a method determined by the commission, updates to any order for involuntary commitment that was previously forwarded to the Alabama State Law Enforcement Agency under this section, including notice of any reversal of petition or appeal.

(Alabama Secretary of State, 2024)

Alabama SB 240 Commitment to Outpatient Treatment

22-52-10.2

(a) **A respondent may be committed to outpatient treatment** if the probate court, based upon clear and convincing evidence, finds all of the following:

(1) **The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder.**

(2) As a result of the mental illness or mental illness with secondary diagnosis of co-occurring substance use disorder, the respondent, **if not treated, will suffer mental distress and experience deterioration of the ability to function independently.**

(Alabama Secretary of State, 2024)

Alabama SB 240 Commitment to Outpatient Treatment

22-52-10.2 (cont.)

(3) The respondent is unable to maintain consistent engagement with outpatient treatment on a voluntary basis, as demonstrated by either of the following:

a. The respondent's actions occurring within the two-year period immediately preceding the hearing.

b. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness.

(b) Upon a recommendation made by the designated mental health facility currently providing outpatient treatment that the respondent's outpatient commitment order should be renewed, **a probate court may enter an order to renew the commitment order upon the expiration of time allotted for treatment by the original outpatient treatment order** if the judge of probate finds, based upon clear and convincing evidence, all of the following:

(1) The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder.

(2) As a result of the mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder, the respondent, if treatment is not continued, will suffer mental distress and experience deterioration of the ability to function independently.

(3) The respondent remains unable to maintain consistent engagement with outpatient treatment on a voluntary basis.

(Alabama Secretary of State, 2024)

Alabama SB 240 Commitment to Inpatient Treatment

22-52-10.4

(a) A respondent may be committed to inpatient treatment if the judge of probate, based upon clear and convincing evidence, finds that all of the following are true:

(1) The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder.

(2) As a result of the mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder, the respondent poses a real and present threat of substantial harm to self or others.

(3) The respondent, if not treated, will continue to suffer mental distress and continue to experience deterioration of the ability to function independently.

(Alabama Secretary of State, 2024)

Alabama SB 240 Commitment to Inpatient Treatment

22-52-10.4 (cont.)

(4) The respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder would be desirable.

(b) If the judge of probate finds that no treatment is presently available for the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder, but that confinement is necessary to prevent the respondent from causing substantial harm to himself or herself or to others, the order committing the respondent shall provide that, should treatment for the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder become available at any time during the period of the respondent's confinement, the treatment shall be made available to him or her immediately.

(c) In determining whether an individual poses a real and present threat of substantial harm to self or others, all available relevant information shall be considered, including any known relevant aspects of the individual's psychosocial, medical, and psychiatric history, in addition to the individual's current behavior.

(d) Nothing in this section shall be construed as requiring a mental health provider to expand their current services if necessary funding is not provided.

(Alabama Secretary of State, 2024)

Alabama SB 240 Assessed for Least Restrictive Alternative

22-52-10.11

(a) The director of a state mental health facility or designated mental health facility in which a respondent is currently committed for inpatient treatment, not later than 30 days prior to the expiration of the current commitment order, shall assess the appropriateness of transferring the respondent to outpatient treatment as the least restrictive alternative necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder. The director may recommend to the probate court in writing that the order be modified to commit the respondent to outpatient treatment.

(b) A recommendation under subsection (a) shall do both of the following:

(1) State the grounds for the director's determination that outpatient treatment is the least restrictive alternative necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder.

(2) Identify the designated mental health facility to which the director recommends that the respondent be committed for outpatient treatment.

(Alabama Secretary of State, 2024)

Alabama SB 240 Assessed for Least Restrictive Alternative

22-52-10.11 (cont.)

(c) Notice of the recommendation under subsection (a) shall be provided to both of the following:

(1) The respondent.

(2) The director of the designated mental health facility identified under subsection (b), unless the director is the individual making the recommendation.

(d) Upon request of the respondent or any other interested party, the probate court shall hold a hearing on the recommendation. The judge of probate shall appoint an attorney to represent the respondent at the hearing. The hearing shall be conducted in accordance with Section 22-52-9.

(e) If a hearing is not requested, the judge of probate may make a decision regarding the facility director's recommendation based upon both of the following:

(1) The grounds stated in the recommendation.

(2) Consultation with the director of the designated mental health facility, or his or her designee, concerning the availability of resources to treat the respondent as an outpatient.

(f) If the probate court modifies the order, the modified order shall conform to all requirements of an original commitment to outpatient treatment under Section 22-52-10.3, except that the modified order may not extend beyond the term of the original order by more than 60 days.

(Alabama Secretary of State, 2024)

Alabama SB 240 May Fulfill Commitment Prior to Criminal Proceedings

Section 2. Section 15-16-26 is added to the Code of Alabama 1975, to read as follows:

15-16-26

Notwithstanding Section 15-16-20, Code of Alabama 1975, if a commitment order has been issued pursuant to Title 22, Chapter 52, Code of Alabama 1975, but cannot be fulfilled because the respondent is subsequently confined solely for misdemeanor charges or municipal ordinance violations, the judge of probate who issued the commitment order may communicate with the judge of the district, municipal or circuit court who ordered the respondent to be confined to discuss whether he or she will issue an order to discharge the respondent from confinement and suspend the criminal proceedings temporarily so that the commitment order may be fulfilled. The court shall give the prosecuting attorney an opportunity to object to the discharge order.

Section 3. This act shall become effective on January 1, 2025.

Signed by Governer Kay Ivey May 3, 2024

(Alabama Secretary of State, 2024)

Summary

- Involuntary commitment has a tumultuous past.
- Safeguards have been put in place in the modern era of civil commitment for SUD.
- State civil commitment SUD laws vary significantly.
- More research is needed to show efficacy of civil commitment for SUD.
- Alabama's civil commitment SUD law requires a mental illness with co-occurring SUD.
- Alabama's civil commitment SUD law becomes effective January 1, 2025.

Thank you

Questions or comments?

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918-770-2445

References

- Alabama Secretary of State. (2024). *Legislative Acts.* Act Number 2024-193. SB240 ENROLLED. https://arc-sos.state.al.us/ucp/L1538404.A1.pdf
- Brooks RA. Psychiatrists' opinions about involuntary civil commitment: results of a national survey. *J Am Acad Psychiatry Law.* (2007) 35:219–28.
- Centers for Disease Control and Prevention. (2024, July 23). *Illicit Drug Use.* https://www.cdc.gov/nchs/fastats/drug-use-illicit.htm
- Centers for Disease Control and Prevention. (2024, October 16) *National Vital Statistics System.* https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm#print
- Christopher PP, Pinals DA, Stayton T, Sanders K, Blumberg L. Nature and utilization of civil commitment for substance abuse in the United States. *J Am Acad Psychiatry Law.* (2015) 43:313–20.
- Drug Enforcement Administration. (2024) *National Drug Threat Assessment.* https://www.dea.gov/documents/2024/2024-05/2024-05-24/national-drug-threat-assessment-2024
- Hayaki J, Cinq-Mars H, Christopher PP, Anderson BJ, Stein MD. Opioid relapse and MOUD outcomes following civil commitment for opioid use. *J Subst Abus Treat.* (2022) 142:108873. doi: 10.1016/j.jsat.2022.108873
- Jain A, Christopher PP, Fisher CE, Choi CJ, Appelbaum PS. Civil commitment for substance use disorders: a National Survey of addiction medicine physicians. *J Addict Med.* (2021) 15:285–91. doi: 10.1097/ADM.0000000000000847
- Messinger, J., & Beletsky, L. (2021). Involuntary Commitment for Substance Use: Addiction Care Professionals Must Reject Enabling Coercion and Patient Harm. Journal of addiction medicine, 15(4), 280–282. https://doi.org/10.1097/ADM.0000000000000848
- Nace, E. P., Birkmayer, F., Sullivan, M. A., Galanter, M., Fromson, J. A., Frances, R. J., Levin, F. R., Lewis, C., Suchinsky, R. T., Tamerin, J. S., & Westermeyer, J. (2007). Socially sanctioned coercion mechanisms for addiction treatment. The American journal on addictions, 16(1), 15–23. https://doi.org/10.1080/10550490601077783
- Prescription Drug Abuse Policy System (2021). *Involuntary commitment for substance use.* Available at: https://pdaps.org/datasets/civil-commitment-for-substance-users-1562936854
- State Health Access Data Assistance Center. (2021). *The Opioid Epidemic in the United States.* https://www.shadac.org/opioid-epidemic-united-states
- Sweeney TJ, Strolla MP, Myers DP. Civil commitment for substance use disorder patients under the Florida Marchman act: demographics and outcomes in the private clinical setting. J Addict Dis. (2013) 32:108–15. doi: 10.1080/10550887.2012.759873
- Testa M, West SG. Civil commitment in the United States. *Psychiatry (Edgmont).* (2010) 7:30–40.
- The Alabama Legislature. (1990). *Code of Alabama.* Section 12-23-5. https://alison.legislature.state.al.us/code-of-alabama
- Wolton MT, Hall MT. Involuntary civil commitment for substance use disorder: legal precedents and ethical considerations for social workers. *Soc Work Public Health.* (2017) 32:382–93. doi: 10.1080/19371918.2017.1327388