11/04
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This email should be going to all members of the IST work group. Not surprisingly, the California Supreme Court just rejected efforts to defend the constitutionality of current California IST practices. If you haven't seen it yet, read about it here: https://www.courthousenews.com/california-high-court-upholds-faster-mental-health-care-transfers-for-unfit-defendants/?fbclid=IwAR2WoCKlSTes3vxUAH7_nw5KtFZRk5UsLnl7zQfnicpJiR5pbtsktJkbpy8

California high court upholds faster mental health care transfers for unfit defendants | Courthouse News Service

The state appealed that ruling, arguing the court's 28-day deadline was "arbitrary and improper." This past June, California's First Appellate Court of Appeal rejected the state's argument, finding the deadline was "appropriate and necessary" because "too many of these defendants' due process rights continue to be violated due to lengthy waits in county jails."

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I am a retired attorney who used to work on this issue as an Assistant Attorney General in another state that had a far more sensible system of dealing with IST's and the small percentage of severely mentally ill ("SMI") individuals who are very, very violent and dangerous by history. **My suggestion: GIVE UP on using the criminal justice system, which incentivizes potential IST's to resist treatment and take up valuable bed space without getting better-** because if they get better they will go to trial under the impossible M'Naughton standard and be convicted and imprisoned. Usually hospitals are nicer than prisons. But parking people in beds we need for other people is a waste of money and their lives.

Here's how things worked in Minnesota, to my best recollection. If a criminal judge got wind that an arrestee might be IST, the individual was simply bound over to the civil side for civil commitment. (I never worked the criminal side so I'm murky on the procedure, but that was

the result. Some changes to California's abominable Lanterman-Petris-Shit Act (misspelling deliberate) would be needed to force hospitals to evaluate these people instead of streeting them, which they now do routinely because they are immune from civil and criminal liability for doing so under LPS.) If the arrestee was committed, the state commitment law required the committing body to notify the police when the person was released, so they could decide what to do. For minor crimes, they typically did nothing because they had achieved their desired result by getting the person treatment. The criminal charge would hang and could be piled on new charges if the individual reoffended, but there would be no warrant out for the person's arrest.

If the person did not meet civil commitment standards and had committed very minor crimes, they were simply let go, again with the charge available if they reoffended but no warrant out on them. These were called "gap" defendants and efforts have been made over the years to get them resources.

Extremely violent and dangerous individuals who were IST were typically civilly committed to the State Security Hospital (a real hospital with no bars on the windows, gleaming new when I was there and a very humane space) as "mentally ill and [really, really, really] dangerous." ("MI &D") This special commitment entailed proving the individual's severe mental illness and really, really bad act(s) and resulted in an indefinite commitment that flipped the burden of proof: the committed individual had to prove s/he was safe in order to be released. The hospital would support release, subject to carefully-tailored discharge plans that ensured appropriate monitoring and supervision for people like John Hinckley, a classic schizophrenic who was med-compliant and had a mother more than willing to take him home. All patients had the right to petition periodically for release (and to lawyers, and expert witnesses) but the hospital would not support those whom they still considered dangerous, because that was what the law required of them. Either way, the case was heard by a three judge panel after notice to the victim(s) and the county attorney, and plenty of evidence would be considered. In every case I was involved with, the court accepted the hospital's position. As I recall either side had a right of appeal.

Because what I have described is a civil proceeding, IST status was irrelevant. Most of these individuals *were* genuinely IST in the criminal system, and severely ill. In my 18 years as an AAG I read the appellate advance sheets every week and I don't remember ever reading a criminal decision where a mental illness defense was even asserted. I think prosecutors stopped pushing those cases because civil commitment as MI &D was a better and more humane way to protect the public.

As I recall, the MI & D statute, found here: https://www.revisor.mn.gov/statutes/cite/253B.18)--was twice challenged--one challenge went to the US Supreme Court (??) and in both instances was upheld--even though the hospital psychiatrists admitted that some MI &D's were untreatable under the current science (brain injuries, "personality disorders" etc.). The

hospital tried to develop treatment modalities for them and kept them safe, and that was considered enough.)

Sec. 253B.18 MN Statutes

Subdivision 1. Procedure. (a) Upon the filing of a petition alleging that a proposed patient is a person who has a mental illness and is dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08.If the court finds by clear and convincing evidence that the proposed patient is a person who has a mental illness and is dangerous to the public, it shall ...

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