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Subject Matter Analysis
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State Laws Related to Involuntary Commitment of Individuals with Substance Use Disorder and Alcoholism - *Part 2 of 2*

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In Part 1 of NAMSDL's subject matter analysis of involuntary commitment, NAMSDL looked at the constitutional considerations related to the involuntary commitment of individuals with substance use disorders and alcoholism. In this edition, we explore the current state of involuntary commitment laws across the country, exploring their similarities and differences and providing an overview of factors required to involuntarily commit an individual for treatment.

Substance use disorders and alcoholism can wreak havoc on an individual's life and the lives of their family and friends. They can cause repeated absences and poor work performance resulting in loss of employment, neglect of familial responsibilities, problems with interpersonal relationships, loss of family and friends, and repeated contact with the criminal justice system. Individuals with substance use disorders and/or alcoholism are often unable or unwilling to voluntarily submit to treatment. As a result, many states have enacted involuntary commitment statutes to provide for the detention and treatment of individuals with substance use disorders and/or alcoholism.

The first proposal for a "sober-house hospital" to treat alcoholics was made by Benjamin Rush (Founding Father and Surgeon General in the Continental Army) in 1812.[1] This was followed by calls by others for the creation of asylums to treat inebriates in 1830 and the founding of the first "embryo asylum" at Boston's Washingtonian Hall in 1845.[2] There was much discussion of involuntary commitment of alcoholics, with various opponents arguing that treatment was ineffective, that the certification process was suspect, and that morality should not be legislated.[3] In the face of this opposition, 14 states nevertheless enacted involuntary commitment laws for inebriates during the last half of the 19th century.[4] Following prohibition, consumption of alcohol was barred and use of narcotics was criminalized, making commitment of persons with alcoholism or addiction superfluous as these individuals were often incarcerated.[5] Commitment laws for individuals with substance use disorders made a resurgence in the 1960s following "a series of U.S. Supreme Court decisions that decriminalized alcoholism and addiction."[6,7]

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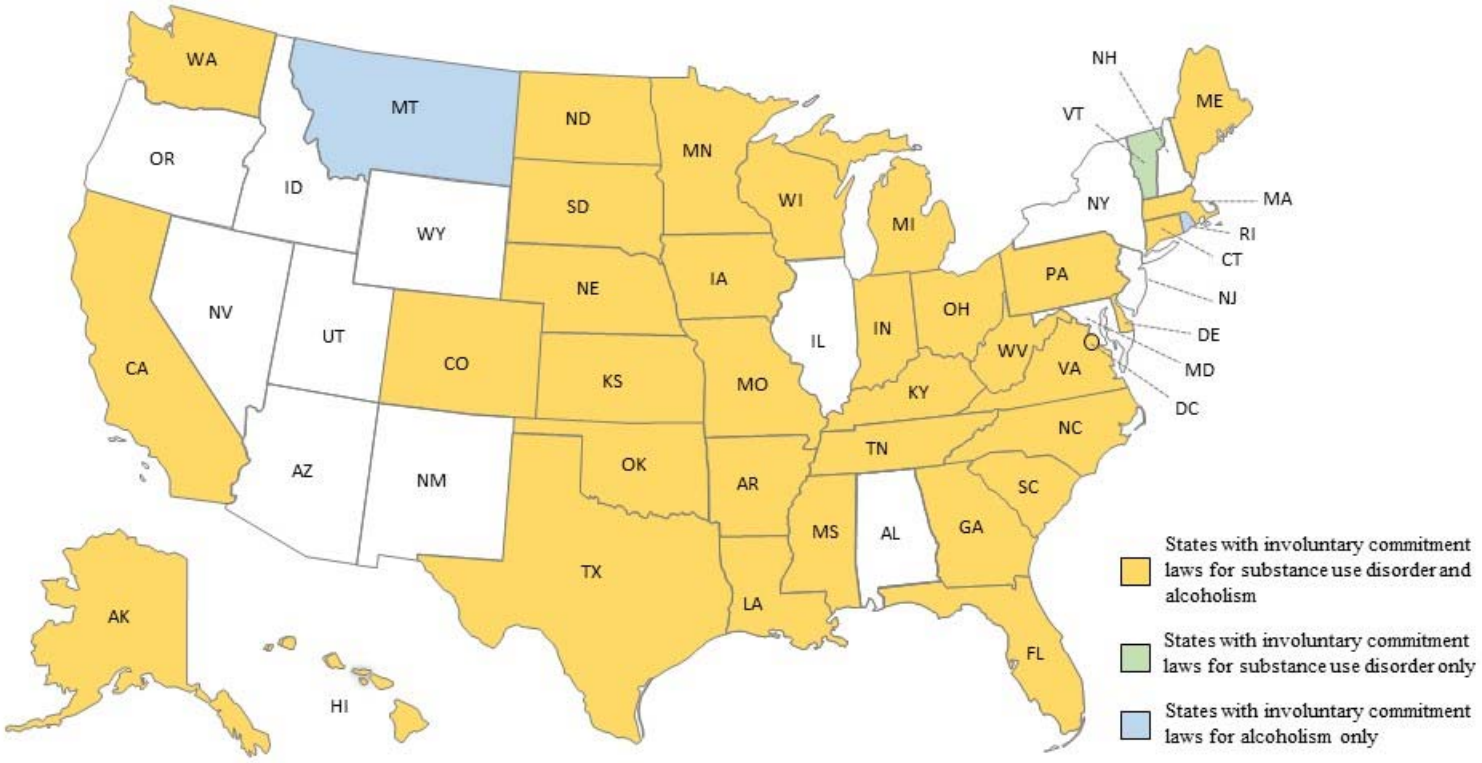
Currently, 37 states and the District of Columbia have statutes in place allowing for the involuntary commitment of individuals suffering from substance use disorder, alcoholism, or both. In five states (Indiana, Maine, Nebraska, Tennessee, and Virginia), substance abuse and alcoholism are specifically included in the statutory definition of mental illness or mental disorder, making involuntary commitment of a person with a substance use disorder and/or alcoholism the same as the civil commitment of an individual with a psychiatric condition. The majority of states, however, specifically exclude substance use disorders and alcoholism from their legal definition of mental illness or mental disorder, which is likely due to criminal court considerations with legislators not wanting criminal defendants who committed a crime while under the influence to be able to plead an insanity defense. In total, 24 states exclude substance use disorders and alcoholism from the statutory definition of mental illness or mental disorder. Eight of those states (Alabama, Arizona, Idaho, Illinois, Nevada, New Hampshire, Oregon, and Wyoming) do not have separate involuntary commitment provisions for individuals with substance use disorders and/or alcoholism.

States with Involuntary Commitment Laws



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Of the 37 states with involuntary commitment laws for individuals with substance use disorders and/or alcoholism, Montana and Rhode Island only provide for involuntary commitment of individuals suffering from alcoholism, while Vermont only includes provisions for persons with drug addiction.

There are many commonalities among the states with regard to their involuntary commitment provisions. In order to bring a petition for the involuntary commitment of an individual, it is not enough to allege that the individual is addicted to drugs and/or alcohol. There must be evidence presented that the individual has threatened, attempted, or inflicted physical harm on himself or herself or another, or proof that if the individual is not detained, he or she will inflict physical harm on himself, herself, or another, and/or that the individual is incapacitated by drugs or alcohol such that he or she cannot provide for his or her basic needs, including food, shelter, and clothing, and there is no suitable adult (usually a family member or friend) willing to provide for such needs.

In most cases, the proceedings are initiated by the filing of a petition for emergency commitment or detention of the individual, which can typically be filed by any person with knowledge of the individual's condition, including law enforcement officers, attending physicians, family members, or friends. In some states, however, an emergency commitment petition may only be brought by a health professional treating the individual. In those circumstances, the individual is usually brought to the health care facility (emergency department of a hospital or a mental health or treatment facility) by a family member or law enforcement officer and the health care professional will then make a determination whether emergency detention and treatment of the individual is warranted.

Under emergency commitment procedures, an individual can be detained anywhere from 24 hours to 15 days. The majority of the 30 states with emergency commitment proceedings provide that an individual can be held on an emergency basis for between 24 hours to five days, and most states extend that time period if a petition for involuntary commitment has been filed during the period in which the individual is being treated on an emergency basis. Most states also require that the individual be examined by at least one physician during that time and, if the person does not meet the requirements for emergency detention or no longer meets those requirements, that he or she be released.

Involuntary commitment proceedings can, in most states, be initiated by a spouse, guardian, other relative, friend, health care practitioner, law enforcement officer, or other interested person. As with emergency commitment proceedings, some states do require that the petition be brought by a health care practitioner, typically the professional treating the individual on an emergency basis. Regardless of the individual filing the petition, most states require that the petition be accompanied by one or more affidavits or certificates issued by a physician or other health care professional who has examined the individual to be committed within a certain time period prior to the filing of the petition. This requirement can typically be abrogated if the individual in question refuses to submit to an examination. After the petition is filed, the court will compel the individual to submit to an examination by a health care professional or take the individual into custody until an examination can be performed to determine if the individual meets the criteria for involuntary commitment and treatment.

In every state, due to constitutional due process requirements, individuals sought to be committed have the right to an attorney or, if they cannot afford an attorney, to have the court or other committing agency appoint an attorney to

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represent them during the proceedings. Every state also grants individuals the right to petition for a writ of habeas corpus at any point after they have been committed. The purpose of a writ of habeas corpus is to have the court determine whether the person's detention is lawful and, if not, to order the release of the individual.

Other common rights afforded to individuals during commitment proceedings include the right to have a copy of the petition and notice of the hearing date, to present and cross-examine witnesses, to be examined by a medical or health care professional of his or her choice (usually at their own cost, unless the individual is indigent), and the right to appeal an adverse ruling. The individual also has the right to be present during the hearing or trial, although a court may determine that the individual's presence in the courtroom would be detrimental to his or her health, in which case the court will keep the individual from attending and appoint a guardian *ad litem* to represent the individual's interests in the proceeding. A guardian *ad litem* is different than an attorney in that a guardian's duty is to protect the best interests of the individual, which may not always be what the individual wants, whereas the attorney's duty is to act according to his or her client's wishes. Additionally, in most states, individuals have the right to maintain communication with family and friends, their attorney, and clergy, as well as the right to send and receive mail that hasn't been intercepted, read, or censored.

The maximum period of commitment for individuals involuntarily committed ranges from 72 hours to one year, with the most common maximum period being 90 days. In most cases, the maximum amount of time an individual can be detained is set out in statute; however, as mentioned above, the individual can petition for release via a writ of habeas corpus at any time. Additionally, the director or administrator of the facility where the individual is being held can release him or her at any time if the director or administrator believes that the individual is no longer in need of inpatient treatment. In some states, the director or administrator must receive court approval prior to discharging the individual, while in other states, the director or administrator must only notify the court that the patient has been discharged. As part of the discharge process, the director, administrator, court, or other committing agency may require that the patient continue treatment on an outpatient basis and, if the individual fails to cooperate with outpatient treatment, he or she may be remanded to the custody of the treatment facility.

If, at the end of the original commitment period, the director or administrator of the facility where the individual is being detained believes that he or she is in need of further treatment, most states allow the director or administrator, or other interested party, to bring recommitment proceedings to extend the period of time during which the individual can be detained. For patients who are recommitted after the initial period of commitment, the maximum period of subsequent commitment ranges from 30 days to one year, with the majority of states providing a maximum of 90 days.

States require that the involuntary commitment of individuals for inpatient treatment of a substance use disorder and/or alcoholism be the least restrictive alternative to treat the individual. If an individual can be adequately treated on an outpatient basis, the court or other committing agency is generally required to either dismiss the proceedings or will order the individual to submit to outpatient treatment. If the individual fails or refuses to cooperate with outpatient treatment, the court then has the option of detaining the individual for intensive inpatient treatment at a public or private facility.

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Every state with involuntary commitment provisions for individuals with a substance use disorder and/or alcoholism requires that the court or other committing agency find that the individual meets the specific requirements for detention by clear and convincing evidence. In other words, the petitioner has the burden of showing that the allegations of the petition – that is, that the individual is a person in need of treatment – are substantially more probable than not. This is not as high a burden as in criminal cases, where the standard is beyond a reasonable doubt.

Finally, states provide immunity to individuals who, in good faith, bring a petition to have an alleged drug or alcohol abuser involuntarily committed, meaning that the petitioner is not subject to civil or criminal liability for such commitment. However, persons who bring false or fraudulent petitions to have an individual involuntarily committed are generally subject to either criminal or civil penalties. Another aspect of the immunity provisions is the immunity provided to health care or mental health facilities for discharging a patient prior to the expiration of the detention period as well as immunity for any actions taken by that individual after his or her release.

Although there are some variations in state laws regarding involuntary commitment – maximum commitment periods and who may file a petition, for example – most state laws are generally consistent with regard to the procedures and criteria needed to be met for an individual to be detained and treated involuntarily.

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[1]Hall, Kathleen Thompson, MD and Paul S. Appelbaum, MD. "The Origins of Commitment for Substance Abuse in the United States." The Journal of the American Academy of Psychiatry and the Law 30 (2002): 30:33-45.
[2]*Id.*
[3]*Id.*
[4]*Id.*
[5]*Id.*
[6]*Id.*
[7]See, "Constitutional Considerations for Involuntary Commitment**,"** National Alliance for Model State Drug Laws, www.namsdl.org, for more information on the legal history of involuntary commitment statutes.

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