

Mental Illness Law

Fall 2021

Course Schedule/Meeting Times: In Person Friday 4-6 p.m.

Antonin Scalia Law School – George Mason University

Instructor: Mary Mertz Parnell mmertzpa@gmu.edu or mparnell59@gmail.com

Hours: By appointment

Required Course Materials: No textbook. Weekly assignments from Virginia statutory and case law, as well as law review articles and periodicals. ASSIGNMENTS MAY CHANGE AND CHANGES MAY BE ANNOUNCED AT THE END OF EACH CLASS.

Learning Outcomes: By the end of the course, students should have acquired:

- Basic understanding of mental health law in Virginia.

Course Structure: Weekly class sessions will consist of lectures and/or guest speakers.

Grading: The grade will consist of 90 percent final exam and 10 percent class participation

The final exam will consist of 15 short-answer questions and two essay questions presenting fact-patterns that ask the students to identify issues in defending or prosecuting the case, or ask the student to write an opinion regarding Virginia mental health law. The exam will be open book and open note. The exam will be two hours long. However, students are not permitted to record any lectures, or reference any such recordings during the exam.

Attendance: Regular and punctual attendance is required to earn academic credit for this course. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Instructor may monitor attendance by any method she deems appropriated including, but not limited to, circulating a sign-in sheet, roll-call or visually surveying the class. Moreover, a student who is absent for at least 75 percent of a session of the course is absent from that session.

Class Recordings Prohibited: Pursuant to Academic Regulation 5-2.2, no portion of a class session or examination may be preserved by means of a recording device such as an audio recording device or camera.

Preliminary Assignment Schedule

Week 1: August 27

Course overview and Expectations

Definitions of Mental Illness

Deprivation of Constitutional Rights of the Mentally Ill

READING ASSIGNMENT: VA. CODE ANN. §§ 37.2-100, 800; 12 VA. ADMIN. CODE § 35-105-20; *O'Connor v. Donaldson*, 422 U.S. 563 (1975); *Addington v. Texas*, 441 U.S. 418 (1979); Steven S. Sharfstein, *Big Pharma and American Psychiatry: The Good, the Bad, and the Ugly*, Psychiatry Online, August 19, 2005,

<https://psychnews.psychiatryonline.org/doi/10.1176/pn.40.16.00400003>; Gavin Francis *Changing Psychiatry's Mind*, 68 *The New York Review of Books* 26-29, 1/14/2021 (reviewing ANNE HARRINGTON, *MIND FIXERS: PSYCHIATRY'S TROUBLED SEARCH FOR THE BIOLOGY OF MENTAL ILLNESS* (2019) and NATHAN FILER, *THIS BOOK WILL CHANGE YOUR MIND ABOUT MENTAL HEALTH: A JOURNEY INTO THE HEARTLAND OF PSYCHIATRY* (2019) (GMU Law Library online).

Week 2: September 3, 2021

History of Mental Illness Law to 1940s

READING ASSIGNMENT: Paul S. Applebaum, *A History of Civil Commitment and Related Reforms in the United States, Lessons for Today*, 25 *DEV. OF MENTAL HEALTH L.* 13, (2006); (GMU LAW LIBRARY ONLINE) Gerald Grob, *MENTAL ILLNESS AND AMERICAN SOCIETY, 1875-1940*; Ch. 6 *Mental Hygiene*, pp. 144-178 (1983.) (GMU LAW LIBRARY ONLINE); Megan Testa, et. al, *Civil Commitment in the United States*, *PSYCHIATRY*, Oct. 7, 2010 30-40; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3392176/>; *In re Josiah Oakes*, 8 *Law Reporter* 12 (Mass. 1845) <http://www.disabilitymuseum.org/dhm/lib/detail.html?id=1305&page=all>; *Buck v. Bell*, 274 U.S. 200 (1927); Gerald Grob, *Mental Illness Policy in America: Myths and Realities*, 11 *HEALTH AFFAIRS* 3, Fall 1992 (GMU Law Library online) ; *The Supreme Court Ruling that Led to 70,000 Forced Sterilizations*; NATIONAL PUBLIC RADIO (March 7, 2016) <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>; p. 3-5.

Week 3, September 10:

Deinstitutionalization and the Shift to Community-Based Treatment

READING ASSIGNMENT: Gerald Grob, *Public Policy and Mental Illnesses: Jimmy Carter's Presidential Commission on Mental Health*, *Milbank Q.* 425-56 (Sept. 2005) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690151/>; *Lake v. Cameron*, 364 F.2d 651 (1966); *Evans v. Paderick*, 443 F. Supp. 583 (4th Cir. 1977); *Jackson v. Indiana*, 406 U.S. 715 (1972); Daniel Yohanna, *Deinstitutionalization of People with Mental Illness: Causes and Consequences*, 15 *AMA JOURNAL OF ETHICS* 10: 886-891 (2013) https://journalofethics.ama-assn.org/article/deinstitutionalization-people-mental-illness-causes-and-consequences/2013-10_

Week 4, September 17:

GUEST SPEAKER: Abbey May, Director of Emergency and Acute Services, Fairfax County Community Services Board.

Virginia civil involuntary commitment criteria for adults,
Impact of Policy Changes on Delivery of Services

READING ASSIGNMENT: VA. CODE ANN. §§ 37.2-308.1, -809-809.1, -816, -817 (2020) Richard Bonnie, et. al, *Mental Health System Transformation After the Virginia Tech Tragedy*, 28 *HEALTH AFFAIRS* 3, 793-804 (2009);

https://www.researchgate.net/publication/24401217_Mental_Health_System_Transformation_After_The_Virginia_Tech_Tragedy; Megan Pauly, *Deaths in Virginia State Hospitals on the Rise*,

<https://vpm.org/news/articles/3589/deaths-in-virginia-state-psychiatric-hospitals-on-the-rise>; Jenna Portnoy, *Virginia Orders 5 State Hospitals to Stop Taking New Admissions Amid Shifting Staff Crisis*, THE WASH. POST., July 9, 2021, https://www.washingtonpost.com/local/virginia-politics/virginia-mental-health-hospitals-closed/2021/07/09/c9a7253c-e0e6-11eb-ae31-6b7c5c34f0d6_story.html.

Week 5, September 24:

Steps in the Involuntary Commitment Process

- Petition
- Emergency Custody Order
- Probable Cause
- Reasonable Degree of Medical Certainty
- Prescreen
- Independent Examination

READING ASSIGNMENT: VA. CODE ANN. §§ 37.2-803, 808 to 816; *Lagumen v. Richardson*, 80 Va. Cir. 51 (Chesapeake 2010); *Raub v. Bowen*, 960 F. Supp. 2d 602 (E.D. Va. 2012); *Raub v. Campbell*, 3 F. Supp. 3d 526 (E.D. Va. 2014).

Week 6, Oct. 1:

Involuntary Commitment Hearing

Appeals

Loss of Gun Rights

READING ASSIGNMENT: VA. CODE ANN. §§ 37.2-804.1, -814 to -819, -821, -844, -845, 846; 18.2-308.1:3, 19.2-152.13; 18 U.S.C. 992(g), -925(C); 27 CFR 478.11, 144; *Great Eastern Resort Corp. and Lib. Ins. v. Gordon*, 31 Va. App. 608 (2005); *Commonwealth v. Allen*, 269 Va. 262 (2005); *Paugh v. Henrico Area Mental Health and Developmental Services*, 286 Va. 85 (2013); *United States v. Bean*, 537 U.S. 71 (2002).

Week 7, October 8:

Capacity, Competency and Consent

Administration of Medication Over Objection

Guardianships and conservatorships

GUEST SPEAKER: Mark Bodner, Esq. Special Justice for the Fairfax County General District Court

READING ASSIGNMENT: Va. Code §§ 37.2-400, 37.2-805, 805.1, 814(B), 815(B), 54.1-2483, 825, 1101, 1102, 1103, 1104, 54.1-2483, -2983, 64.2-2000-007, 012, 019, 021; *Zinerman v. Burch*, 494 U.S. 113 (1990); *Mills v. Rogers*, 457 U.S. 291 (1982); *Rogers v. Commissioner of Department of Mental Health*, 390 Mass. 489 (1983); Zoe Christen Jones and Justin Carissimo, *Britney Spears' Conservatorship Explained*, CBS NEWS, (February 10, 2021, 6:37 p.m.) <https://www.cbsnews.com/news/britney-spears-conservatorship-updates/>.

Week 8, October 15

Criminal Process for Commitment to Mental Hospitals
Competency to Stand Trial

READING ASSIGNMENT: Va. Code §§ 18.2-254.3, 19.2-169.1 to 169.6; *Vitek v. Jones*, 445 U.S. 480 (1980);

Week 9, October 22

Administration of Medication Over Objection to Inmates

READING ASSIGNMENT: *Washington v. Harper*, 494 U.S. 210 (1990); *Riggins v. Nevada*, 504 U.S. 127 (1992); *Sell v. United States*, 539 U.S. 166 (2003); *U.S. v. Chatmon*, 718 F.3d 369 (4th Cir. 2013).

Week 10, October 29

Not Guilty by Reason of Insanity

Civil Commitment of Sexually Predators

Va. Code Ann. §§ 19.2-168, -168.1, -182.2 to -182.7, -264.3.1, -264.3:1.1, 264:3.1.2, -264.4, 37.2-900 to 921; *Boswell v. Commonwealth*, 61 Va. 860 (1871); *Price v. Commonwealth*, 228 Va. 452 (1984); *Godley v. Commonwealth*, 2 Va. App. 249 (1986); *Brown v. Commonwealth*, 68 Va. App. 746 (2018); *Johnson v. Comm.*, 70 Va. App. 45 (2019); *Stamper v. Commonwealth*, 228 Va. 707 (1985); *Schmuhl v. Commonwealth*, 69 Va. App. 281 (2018); *Williams v. Commonwealth*, 64 Va. App. 240 (2015).

Week 11, November 5

Juvenile Commitment Process

READING ASSIGNMENT: *Parham v. J.R.* 442 U.S. 584 (1979); Va. Code §§ 16.1-335 to 16.348

Week 12, November 12

Pros and cons of Mandatory Outpatient Treatment

READING ASSIGNMENT: Va. Code 37.2-817, 37.2-817.1 to 817.4; *Olmstead v. L.C., ex. Rel Zimring*, 527 U.S. 589 (1999).

Week 13, November 19

Review Session.

