

Extended Commitment for Juvenile Offenders

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Massachusetts' Extended Commitment Statute for Juvenile Offenders Violates Substantive Due Process Requirements

In *Kenniston v. Department of Youth Services*, 900 N.E.2d 852 (Mass. 2009), Cameron Kenniston, Steve Stephen, and Jonathan Maldonado separately were adjudicated delinquent and committed to the Massachusetts Department of Youth Services (DYS) at age 16. DYS filed orders for their extended commitment when they were 18 years old, pursuant to a statute allowing the continued commitment of a youth in DYS's custody up to age 21 if DYS determines that the youth "would be physically dangerous to the public" (Mass. Gen. Laws ch. 120, §§ 17, 19). Plaintiffs' motions to dismiss the extended commitment order on the grounds that the statute violates procedural and substantive due process requirements under the United States Constitution and the Massachusetts Declaration of Rights were denied. The plaintiffs each sought relief from the Supreme Judicial Court (SJC) of Massachusetts and joined their cases. A single justice of the SJC remanded to county court for further proceedings, concluding that the extended commitment statute is unconstitutional because it violates substantive requirements under the Due Process Clause of the Fourteenth Amendment. The court noted that the statute's definition of "physically dangerous" is "unconstitutionally vague," that no degree of certainty about dangerous-

ness is provided, and that the statute does not limit the matter to youths with particular mental conditions.

Facts of the Case

This case arose in the context of Massachusetts' provisions for extending the jurisdiction of the Department of Youth Services beyond the maximum age of juvenile jurisdiction, which is 18 years, and for allowing continued juvenile jurisdiction, potentially until age 21. A statute allowing juvenile jurisdiction when youth are found mentally ill and dangerous was amended in 1990 so that mental disorder was no longer required for a defendant to be deemed physically dangerous. The plaintiffs in this case challenged the current statutory provision for extension.

Messrs. Kenniston, Stephen, and Maldonado, after being adjudicated delinquent and committed to DYS custody at age 16, were placed on probation and then remanded to a DYS facility after violating their probations at least once. Just before their 18th birthdays, separate extended commitment orders were filed by DYS on each plaintiff, specifically charging that if released, they would be "physically dangerous to the public." DYS initiated psychological evaluations to assist in determining whether extended commitment was warranted. Collateral information included DYS records of the plaintiffs' behavior while in custody and their delinquency histories, as well as interviews with treating therapists and family members of some plaintiffs. DYS's applications included parts of the psychological evaluations and statements of uncharged conduct made by the plaintiffs during their evaluations. Each evaluation also stated that the plaintiff had signs of "conduct disorder," and that the plaintiff had never been psychiatrically hospitalized or received a diagnosis of mental illness and was not currently prescribed psychotropic medications. Only one evaluation included the recommendation of continued confinement in a secure facility on the grounds that he would be physically dangerous if released.

Plaintiffs' motions were denied by their respective divisions of the Juvenile Court Department, and the plaintiffs sought injunctive and declaratory relief, writs of *habeas corpus*, and relief pursuant to the Mass. Gen. Laws ch. 211 § 3 (superintendence of inferior courts; power of SJC to issue writs and processes) from the single justice of the SJC. The justice reserved and reported the three questions to the full

court. Does the extension procedure set forth in Mass. Gen. Laws ch. 120, §§ 16-19 violate the procedural due process protections of the State and Federal Constitutions? Does the “dangerousness” standard for the extension order comport with substantive due process? Is the “dangerousness” standard for the extension order unconstitutionally vague?

Ruling

The SJC remanded to the county court for further proceedings, holding that the statute’s dangerousness standard does not comport with substantive due process. As such, the SJC did not address procedural due process inadequacies (i.e., the first question remained unanswered). Finally, the court ruled that the standard for dangerousness in the extended commitment statute is unconstitutionally vague.

Reasoning

The court first determined that the term “extended” commitment is a misnomer, in that the statute does not authorize extension of DYS’s custody on the basis of the original delinquency proceeding, but rather considers a separate commitment requiring a judicial proceeding and factual finding of present “dangerousness.” Thus, the court held that extended commitment under Mass. Gen. Laws ch. 120, §§ 17 and 18 is a civil commitment (which impinges on a fundamental liberty interest and therefore requires application of a strict scrutiny analysis in determining whether the statute comports with substantive due process) that requires certain due process protections.

The court looked to U.S. Supreme Court cases, such as *Kansas v. Crane*, 534 U.S. 407 (2002), and *Kansas v. Hendricks*, 521 U.S. 346 (1997), to demonstrate that civil commitment is constitutional only in “certain narrow circumstances,” particularly after a link between dangerousness and mental illness or an abnormality that causes the individual to have “serious difficulty” in controlling his behavior has been demonstrated. The SJC concluded that the state’s extension statute was flawed in that it permitted extended confinement solely on the basis of dangerousness, without any connection to a mental condition or volitional impairment.

Next, the court examined present statutory language and legislative history of the extended commitment statute, noting that in 1990, the Massachusetts legislature deleted statutory language requiring that

physical dangerousness be linked to mental or physical deficiency, disorder, or abnormality. Subsequently, when the statute was amended in 1996, the requirement of mental abnormality was not reinstated (despite the fact that four years earlier the U.S. Supreme Court ruled in *Foucha v. Louisiana*, 504 U.S. 71 (1992), that both mental illness and dangerousness are necessary to maintain an involuntary commitment). The SJC concluded that the current version of the state’s statute could not be interpreted to include the rejected requirement and that ultimately it was the legislature’s function to rewrite or revise the statute accordingly. Because of the removal of statutory language and the lack of clarity surrounding the statute’s stated goal (as punitive or regulatory), the SJC opined that the court was unable to determine the degree of due process protections that should be afforded (greater due process protections are required in the context of a statute that is punitive). The SJC pointed to statutory language in Mass. Gen. Laws ch. 123A §§ 1, 5, 9 (civil commitment for sex offenders) as an example of clear evidence of legislative intent in requiring that there be an element of dangerousness before civil commitment, in the form of a “present mental condition” that causes an inability to control one’s impulses.

Regarding the “dangerousness standard,” the SJC concluded that it was unconstitutionally vague because the statutory language did not address the nature or degree of dangerousness required, was silent regarding how such a determination should be made and with what certainty, and “did not limit consideration of dangerousness to any particular group of juveniles,” such as violent offenders. The court noted the “potential for abuse of unlimited discretion” (by DYS and/or a judge reviewing the petition), which it likened to issues raised in *Aime v. Commonwealth*, 611 N.E.2d 204 (Mass. 1993), in which the court invalidated a bail detention statute for violation of due process protections.

Discussion

The present case reaffirmed the requirement that there be a causal nexus between risk of physical harm and mental illness in cases of involuntary commitment, a link that has been considered many times by the U.S. Supreme Court in cases involving adults. For example, the Court held in *O’Connor v. Donaldson*, 422 U.S. 563 (1975), that there is no constitutional basis for confining persons with mental illness

involuntarily if they are not dangerous and can live safely in freedom. In the present case, the reverse circumstance was under consideration, as the statute allowed commitment of non-mentally ill persons who were deemed to be dangerous.

Although the specific circumstances under which a state could confine a dangerous individual were not addressed in *O'Connor v. Donaldson*, implicit in the decision was a consideration of the balance between police power and *parens patriae* (concepts that were distinguished four years later within the context of mental health commitment by the Court in *Addington v. Texas*, 441 U.S. 418 (1979)). That is, states have a legitimate interest under their *parens patriae* powers to provide care to mentally ill individuals who cannot care for themselves, but they also have authority under their police powers to protect the community from potentially dangerous individuals.

More analogous to the present case is *Foucha v. Louisiana*, 504 U.S. 71 (1992), in which the Court ruled that potential dangerousness is not justification for retaining a person found not guilty by reason of insanity if no mental illness is present. That is, insanity acquittees, as well as all convicted persons in general, must be both mentally ill and dangerous for involuntary commitment to be continued, implying that commitments of persons nearing the end of a penal term cannot be distinguished from commitments under other circumstances. In contrast, in the juvenile case of *Schall v. Martin*, 467 U.S. 253 (1984), the Court upheld a New York statute that provided for preventive detention of youths charged with a crime who presented a “serious risk” of committing another crime before trial for their current charges, indicating that a juvenile could be detained solely on the basis of the perceived likelihood of committing a crime (as determined by the judge).

In *Kenniston*, the SJC did not comment on the (in)adequacy of the state’s procedural protections, given its finding of substantive due process violation. It can be anticipated, however, that for a revised statute to be acceptable, the legislature will have to include significant protections in light of the fundamental liberty interest at stake, such as appropriate predeprivation proceedings and a trial focused on the question of commitment. In Massachusetts, it has been held that a defendant in an extended commitment proceeding should be afforded the same procedural safeguards as in a criminal trial (*Department of Youth Services v. A Juvenile*, 429 N.E.2d 709 (Mass.

1981)). Moreover, procedural protections under the Fourteenth Amendment’s Due Process Clause also were raised by the court in the context of relevance to the present case (e.g., in *Vitek v. Jones*, 445 U.S. 480 (1980), in which the involuntary transfer of a prisoner to a mental hospital was held to implicate a liberty interest under the clause’s protection).

The SJC’s holding that “physically dangerous” is an unconstitutionally vague term, and the implicit mandate that language outlining the contours of such dangerousness be included in the statute’s revision present an opportunity to the legislature to draft a statute reflective of scientific advancements in the fields of adolescent decision-making and violence risk assessment. Statutory language that calls for contextualization of risk, such as the nature of the anticipated dangerousness (e.g., likely targets, imminence), its estimated likelihood, and the level of certainty associated with the assessment, could be valuable. Provisions pertaining to how such determinations should be reached could also influence the boundaries of discretion held by triers of fact who review extended-commitment petitions.

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Capacity to Consent to Sexual Acts: Understanding the Nature of Sexual Conduct

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Competence to Consent to Sexual Intercourse Requires Not Only an Understanding of the Physical Act but Also of Some of Its Potential Consequences

In *North Dakota v. Mosbrucker*, 758 N.W.2d 663 (N.D. 2008), the Supreme Court of North Dakota