

## Procedures Governing the Involuntary Commitment of a Minor to a Drug and Alcohol Treatment Program

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### Minimal Due Process Protections Required for Involuntary Commitment of Juveniles to a Drug and Alcohol Treatment Program

In *The Interest of F.C. III*, 2 A.3d 1201 (Pa. 2010), the Supreme Court of Pennsylvania held that the state statute permitting a parent or guardian to petition for civil involuntary commitment of their drug-dependent child to a drug and alcohol treatment program did not violate the due process protections provided by the Fourteenth Amendment of the United States Constitution. The court concluded that the related evaluation is civil and therapeutic, the constitutional rights of juveniles are not equivalent to those of adults, and parents' or guardians' right to make decisions for the care and custody of their children is paramount.

#### Facts of the Case

F.C. was a 14-year-old boy in the custody of his grandmother, C.K. She reported difficulty managing F.C. because of his regular drug use, stealing, truancy, and tendency to run away from home. He also had a history of outpatient mental health treatment. In 2007, C.K. filed a petition pursuant to Act 53 of the Pennsylvania Drug and Alcohol Abuse Control Act (1972, amended 1997) to compel F.C. to receive drug and alcohol abuse treatment on an involuntary basis. She also requested assistance in ensuring that F.C. attend the hearing on her petition. Subsequently, Allegheny County sheriffs' deputies took custody of F.C. at his home and transported him to juvenile court. There, he was interviewed by a certi-

fied addiction counselor. F.C. told the counselor that for approximately one year he had been smoking marijuana daily and sometimes had used alcohol. The counselor diagnosed cannabis dependence and recommended that F.C. have inpatient therapy. Based on this testimony, the juvenile court granted C.K.'s petition and ordered F.C. to receive treatment. He was taken to an inpatient drug treatment facility with a review scheduled within 45 days.

On appeal, F.C. argued that he had been denied due process and his right to counsel when, based solely on the Act 53 petition, he was detained and assessed in a manner in which he was "compelled to divulge private information without being given notice" and without counsel present. In addition, he argued that he was denied due process because he was restrained in shackles during the juvenile court proceeding and his right to counsel was therefore infringed on because he could not communicate with counsel. The superior court upheld the constitutionality of Act 53, explaining that the procedures underlying the Act were fundamentally fair and provided constitutionally adequate protections for minors, given the important goal of facilitating treatment. The court also denied F.C.'s contention that he was denied due process by virtue of being in visible restraints during his hearing, because the proceedings involved a judge rather than a jury, the hearing was very brief, F.C. was considered a flight risk, and the restraints did not impede his ability to communicate with counsel.

The Supreme Court of Pennsylvania granted F.C.'s further appeal on the question of whether Act 53 on its face violates the due process protections provided by the Fourteenth Amendment to the United States Constitution and whether shackling and detaining F.C. during the civil Act 53 hearing violated his due process rights.

#### Ruling and Reasoning

The Supreme Court of Pennsylvania affirmed and held that Act 53 provides sufficient protection to pass constitutional muster. The court relied on *Parham v. J.R.*, 442 U.S. 584 (1979), to guide its inquiry into the constitutionality of Act 53. In *Parham*, the U.S. Supreme Court held that a parent or a guardian can commit a minor to a mental institution if a physician certifies that the minor should be committed, even if the minor strenuously objects. The Supreme Court specifically rejected claims that commitment of a mi-

nor by a parent or guardian without an adversarial hearing is a deprivation of the minor's liberty without due process of law.

In *The Interest of F.C. III*, the court first pointed out that Act 53 is a civil statute, the purpose of which is not to punish the child but to aid parents and guardians in facilitating substance abuse treatment for their dependent minors. As the *Parham* Court recognized, issues of civil commitment are essentially medical.

Second, the court recognized that the Fourteenth Amendment guarantees persons procedural fairness in matters affecting life, liberty, or property and acknowledged that Act 53 implicated F.C.'s liberty interest. However, the court asserted that due process is a flexible concept with procedural protections dependent on the particular circumstances involved. Moreover, constitutional protections do not necessarily apply equally to children and adults. The court noted that, consistent with *Parham*, a minor's constitutional rights are generally limited by a state's special interests in guiding children's lives, a state's *parens patriae* power to care for its citizens, and traditional state deference to parental autonomy in child rearing. Given the presumption that (in the absence of abuse or neglect) parents act in the best interest of their children, the court held that the right of parents to make decisions for the care, custody, and control of their children is paramount. The filing of a petition to initiate the Act 53 process involves a statement of facts and good reason for treatment and is subject to penalty of unsworn falsification to authorities. The filing merely triggers an assessment process and therefore provides sufficient protection to the minor.

The *Parham* Court further held that an adversarial hearing is not required before commitment for treatment, because a confrontational proceeding would undermine the purpose of the assessment, which is essentially for medical diagnosis. Likewise, the Supreme Court of Pennsylvania held in this case that the assessment outlined in Act 53, which by statute must be conducted by specific clinicians, satisfies *Parham's* requirement of a decision made by appropriate medical personnel. Because due process requires only an informal determination regarding the necessity of treatment, there need not be notice of the assessment and no counsel need be present. The substance abuse assessment is civil and therapeutic, and

thus its administration need not be challenged by the juvenile's attorney.

In addition, the court found that the protections provided by Act 53 at the hearing to determine the necessity of treatment met the minimum protections required by the Constitution. In this formal hearing, a neutral judge considers testimony regarding the propriety of involuntary treatment, and the minor's counsel is permitted to cross-examine witnesses. If the judge finds by clear and convincing evidence that the child is drug dependent, is incapable of or unwilling to accept voluntary treatment, and will benefit from involuntary treatment, the judge orders the juvenile to treatment for a period not exceeding 45 days. Additional 45-day periods of treatment can be ordered only after a review hearing with the same safeguards noted above. The court underscored that the process is civil and therapeutic and concerns a parent or guardian seeking medical treatment for a child; treatment, if ordered, is brief.

The court concluded that the procedures set forth in Act 53, on their face, strike an appropriate balance between a minor's right to avoid unnecessary confinement for medical treatment; a parent's or guardian's right to make decisions concerning the care, custody, and control of his or her child; the state's interest in using its resources appropriately; and the need to avoid imposing unnecessary procedural obstacles that would discourage children or their families from seeking necessary help.

Finally, the court concluded that F.C.'s due process rights were not violated by virtue of his being shackled, restrained, and detained during the hearing. It noted that the right to appear free from physical restraint in court is not absolute and may be compromised when there is a danger of escape. In addition, there was no jury in the case, and there is no indication that the restraints biased the judge against F.C. Also, the restraints did not hinder him from communicating with his counsel.

#### Dissent

Justice Saylor dissented, arguing that Act 53 does not provide sufficient procedural protections to satisfy due process. He pointed out that the minor's initial commitment of up to 45 days is not predicated upon a risk of immediate bodily injury or death. Also, the court can order successive 45-day confinement periods indefinitely if it finds that the minor will continue to benefit from inpatient treatment.

Although Justice Saylor agreed that a juvenile's constitutional due process rights are not equivalent to those of an adult, he argued that the same standards apply equally when the Due Process Clause is concerned, with avoiding factual error as a basis for liberty deprivations. In addition, unlike the situation in *Parham* that related to a psychiatric admission, the drug-dependency assessment specified by Act 53 may be initiated by a one-sentence petition by a parent, followed by a relatively short interview by a non-physician who is not required to conduct a thorough background evaluation based on school and social service records. Justice Saylor cautioned that Act 53 permits such "heavy handed actions" against minors in a "purely civil context," including arrest and shackling by multiple law enforcement agents followed by transport and evaluation at court, such that due process protections were inadequate.

#### Discussion

In this case, the court addressed the procedural requirements governing the involuntary commitment of a minor to a drug and alcohol treatment program. As the court pointed out, statutes providing for involuntary commitment for substance abuse treatment for minors in several other states offer different protections. For example, in Oklahoma and Indiana, a petition can be filed only when the minor has been evaluated by a medical professional. Unlike Act 53, several other state statutes (e.g., those of Delaware, Michigan, and Wisconsin) grant juveniles the right to an assessment by an independent examiner. Moreover, many states including Florida, Massachusetts, and Utah, require a showing that a youth is a danger to himself or others as a result of drug or alcohol dependence. Finally, many state statutes (e.g., those of Oklahoma, Utah, and Wisconsin) require the determination that inpatient treatment is the least restrictive setting that is consistent with treatment goals.

The court articulates the explicit presumption that parents and guardians (in the absence of abuse or neglect) will act in the best interest of their children and characterizes the parent or guardian's right to determine the child's care and custody as paramount. Nevertheless, Act 53 and similar statutes place the evaluator in the unique position of assessing the appropriateness of the parent or guardian's request. It is, after all, the evaluator who is tasked with assessing whether the juvenile is truly in need of inpatient

commitment. Although this case describes these evaluations as therapeutic rather than punitive, best practices generally involve the review of additional sources of information to ensure that the evaluator's conclusion regarding the juvenile's need for treatment is indeed in his or her best interests and meets the local jurisdictional standard for commitment.

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## Treatment Disclosures in Sex Offender Civil Commitment Evaluations

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### Statements Made During Treatment-Related Activities May Not Be Privileged for Purposes of Sex Offender Civil Commitment Evaluations

In the case of *In the Interest of Maedche*, 788 N.W.2d 331 (N.D. 2010), the district court involuntarily committed Thomas Maedche as a sexually dangerous individual. On appeal, the North Dakota Supreme Court decided whether North Dakota's sexual offender civil commitment statute should be voided because of vagueness and whether treatment-related disclosures should be precluded from sex offender commitment proceedings on the basis of the self-incrimination and due process protections of the U.S. Constitution.

#### Facts of the Case

Thomas Maedche pled guilty and was convicted of indecent exposure for exposing himself and masturbating in front of a nine-year-old girl during a sleepover at a hotel. He submitted to a sex offender risk assessment and psychological evaluation as part of the presentence investigation report. The risk assessment, which included administration of the Static-99 and Minnesota Sex Offender Screening Tool, Revised (MnSOST-R), indicated a high risk of reoff-