

a psychiatric evaluation. This case highlights that the dangerousness model is the current standard for determining whether hospitalization or police intervention is warranted.

*McLaughlin* highlights the complexities involved in decisions about psychiatric admission and discharge and the balance of police power or *parens patriae* principles with individual autonomy. In this case, the estate explored the possibility of reclaiming the *parens patriae* doctrine to minimize harm via a model of beneficent paternalism in the state known for case law rejecting that doctrine in favor of the dangerousness model. Whether this pendulum might swing again toward the direction attempted by the estate remains to be seen.

## Civil Commitment after Dismissal of Criminal Charges for Incompetent Defendants

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### Bridgewater State Hospital Maintains the Authority to Hold a Defendant and File for Civil Commitment After a Defendant's Charges Have Been Dismissed

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In *In re E.C.*, 92 N.E.3d 724 (Mass. 2018), the Supreme Judicial Court of Massachusetts held that Bridgewater State Hospital could amend a petition for civil commitment and hold a defendant whose charges were dismissed but who remained in need of psychiatric hospitalization while the petition for civil commitment was pending. In making the decision, the justices considered the due process rights of criminal defendants as well as the interests of safety for the public and the individual.

#### Facts of the Case

E.C. was charged in the Boston Municipal Court with malicious destruction of property worth more

than \$250 in May 2012. After a psychologist testified that E.C. was not competent to stand trial in July 2012, he was transferred to Bridgewater State Hospital for further competency evaluation. In August 2012, the judge ordered that E.C. return to Bridgewater for a 35-day hospitalization after Bridgewater reported that E.C. was not competent to stand trial. Then Bridgewater petitioned the court to commit E.C. for a six-month period of treatment as authorized by Massachusetts law, which was granted.

Before the end of the six-month commitment period, Bridgewater filed a petition in the Brockton Division of the District Court Department for a one-year extension of the commitment of E.C., in accordance with Massachusetts law. One week before the scheduled hearing, E.C. filed a motion to dismiss his criminal charge, which was granted. Bridgewater was not informed about the dismissal until six days later. Bridgewater thereafter immediately filed a motion to amend its original petition to a petition for civil commitment under a separate provision of Massachusetts law.

Bridgewater reasoned that the law allowed for civil commitment of defendants whose charges had been dismissed. E.C. opposed the motion, reasoning that dismissal of his criminal charge ended his original commitment order. The judge denied Bridgewater's motion to amend, finding that the hospital could not detain E.C. after dismissal of his criminal charges. Furthermore, the judge ruled that the hospital did not have the authority to begin civil commitment proceedings since E.C. could no longer be considered a patient at Bridgewater after dismissal of his criminal charges. E.C. was discharged from Bridgewater in March 2013.

Bridgewater filed a motion for reconsideration by the district court, which was denied in March 2013. The Appellate Division of the District Court affirmed that decision in November 2013. The appeals court reversed that decision in August 2016. The Supreme Judicial Court of Massachusetts then reviewed the matter.

#### Ruling and Reasoning

To reach its decision, the court aimed to determine the legislature's intent in passing the law allowing for one-year extensions of the initial six-month commitment, given that the statute "does not address the procedure to follow if criminal charges are dismissed while a petition for recommitment is

pending” (*E.C.*, p 732). The court examined the history of the statute, which was intended to protect individuals with mental illness from being confined to psychiatric hospitals for years without review. The statute guaranteed a process of regular review in attempting to balance the rights of the incompetent mentally ill with “the Commonwealth’s interest in ‘protecting the public from potentially dangerous persons’ who may be unable to control their actions because of their mental condition” (*E.C.*, p 730, citing *Commonwealth v. Calvaire*, 66 N.E.3d 1028 (Mass. 2017)). The court concluded that this review process would not be violated by Bridgewater’s amended petition, since a hearing would be held within 14 days of the filing of the new petition.

Even with dismissal of E.C.’s criminal charges, the court felt that Bridgewater had the statutory authority to hold him under the provision which allows Bridgewater to retain an individual while a petition for civil commitment is pending. They also looked to other statutes for guidance, such as the provision that grants authority to the medical director of Bridgewater to petition the district court for commitment of any individual “when it is determined that the failure to hospitalize in strict security would create a likelihood of serious harm by reason of mental illness” (Mass. Gen. Law ch. 123, § 7 (b) (2012)). Furthermore, they noted that, while the statute provides a timeline for dismissal of criminal charges for defendants who are incompetent to stand trial, “it does not state . . . that the person immediately must be released from commitment” after dismissal of the charges (*E.C.*, p 731).

The court also reasoned that E.C.’s understanding of the statute was inconsistent with the understanding illustrated in Massachusetts law that untried defendants may require further hospitalization for treatment after dismissal of criminal charges.

Furthermore, the court disagreed with E.C.’s argument that Bridgewater’s authority to hold him pending a hearing on its motion to amend was a violation of due process. The court pointed out that Bridgewater was required to provide the incompetent individual with notice and a hearing, and to prove beyond a reasonable doubt each of the requirements articulated by the legislature for civil commitment to Bridgewater. The court found that none of the due process protections would be violated by Bridgewater pursuing a petition for commitment un-

der the civil procedures rather than under the one-year extensions under the criminal procedures.

The court concluded that the judge abused her discretion in declining to allow Bridgewater to amend its petition and reversed the judgment.

#### Discussion

The question of how long, and on what basis, a hospital can hold a competency restoration patient after criminal charges have been dismissed is of great relevance to forensic psychiatrists and mental health policy makers. Concern for clarifying the mental health policy implications of the portion of the Massachusetts statute that deals with competency restoration proceedings formed the basis of Bridgewater State Hospital’s decision to pursue the appeals process for this case (O’Donnell E, counsel for Bridgewater, personal communication, August 2018).

Without the process clarified, the hospital ran the risk, on the one hand, of violating civil liberties if it was legally improper to continue hospitalizing a defendant whose criminal charges have been dismissed. On the other hand, discharging defendants simply because of the dismissal of the criminal charge(s) that brought them to the attention of authorities but who still met criteria for civil commitment could put the safety of the public and the individual at risk. The Massachusetts Supreme Judicial Court reasoned in this case that the statutory language supported the continued retention of such a defendant and that the interests of public safety and the potential need for defendants to receive ongoing mental health treatment after criminal charges are dropped outweigh concerns about the restriction of civil liberties involved in an involuntary hospitalization, especially because civil commitment proceedings and incompetency to stand trial proceedings involve the same due process rights protections.

In balancing due process considerations with concerns about risk to the public, there are often several factors that must be considered, including severity of illness, nature of the crime, and risk of recidivism. How these factors are weighed may vary based on whether the hospitalization is pursued for purposes of involuntary commitment or competency restoration. In their discussion of the case, the justices opined, “When criminal charges are dismissed, the government’s interest in protecting the individual and the public remains, but the calculus is different,” shifting from competency restoration toward

safety of the individual and the public (*E.C.*, p 730). The court’s decision affirmed the authority of the hospital to file petitions according to its judgment of a patient’s risk, rather than be forced to discharge an individual as soon as criminal charges were dismissed.

Even though *E.C.* asserted that there was a gap in the statute, a plain face reading of the statute did not suggest this conclusion. It would be prudent for hospital administrators faced with a similar situation to examine what guidance their own state statutes give about responding to such situations.

## Competency to Be Executed and the Dynamic Nature of Mental Status in Psychotic Illness

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**The Fifth Circuit Court of Appeals Reviewed the District Court’s Ruling That a Prisoner Who Had Not Been Evaluated in Seven Years for Competency to Be Executed Did Not Require Funds for Experts to Conduct a New Evaluation**

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In *Panetti v. Davis*, 863 F.3d 366 (5th Cir. 2017), the U.S. Court of Appeals for the Fifth Circuit, in reversing and remanding for fact-finding the 2014 decision of the U.S. District Court for the Western District of Texas, ruled that Scott Panetti was denied due process in that he was not afforded an opportunity to refute the state’s position and evidence against him regarding his competency to be executed. The Fifth Circuit Court of Appeals ruled that the failure to provide Mr. Panetti and his counsel the same notice of his execution date that the state received, as well as the failure to provide funds for the appointment of paid counsel and experts, denied him a timely and fair opportunity to present his case and

oppose his execution. Without the funds to hire a mental health expert to evaluate his mental status and competency to be executed, Mr. Panetti could not satisfy the legal requirements for establishing a lack of this competency.

### Facts of the Case

In 1992, Mr. Panetti was charged with capital murder for killing his wife’s parents in front of his wife and three-year-old daughter. He had a lengthy history of schizophrenia and multiple hospitalizations. Mr. Panetti insisted on representing himself at trial and ultimately received the death penalty. In 1999, he filed his first *habeas* petition, claiming that he had been incompetent to waive counsel and stand trial. The district court rejected those claims, and his execution was set for February 4, 2004. In December 2003, Mr. Panetti filed a claim in state court asserting for the first time that he was incompetent to be executed. He cited Tex. Code Crim. Proc. Ann. art. 46.05 (2003), which provides “a person who is incompetent to be executed may not be executed.” The motion was denied without a hearing. He filed a second *habeas* petition in state court on January 2004 under *Ford v. Wainwright*, 477 U.S. 399 (1986), which ruled that carrying out a death sentence on a prisoner who is insane is prohibited by the Eight Amendment. The state hired two experts, received their reports, and denied relief without conducting an evidentiary hearing. The federal district court found that the state court’s failure to afford Mr. Panetti a hearing denied due process under *Ford*. The district court held an evidentiary hearing and concluded that Mr. Panetti understood the reason for his execution and found him competent to be executed. The U.S. Supreme Court granted *certiorari* and reversed the district court’s decision. In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the Supreme Court concluded it is not enough that a prisoner has a factual understanding of the state’s reasons for execution but must also possess a rational understanding. It did not, however, establish specific competency criteria, acknowledging that “rational understanding” is often difficult to define. Mr. Panetti was eventually found competent to be executed by the standard established in *Panetti v. Quarterman*. Mr. Panetti’s claims in subsequent years were all denied.

By chance, Mr. Panetti’s counsel learned his execution date was set for December 3, 2014, when he read it in the newspaper, as no notice was required to