

compliance with a separate federal court order to reduce the state's prison population (see e.g., *Brown v. Plata*, 563 U.S. 493 (2011)). Senate Bill 1391 furthers the goals of this order and prevents the indiscriminate release of many prisoners as fewer juveniles will be sent to adult prison in the first place. Finally, Senate Bill 1391 narrowed the subset of minors who may be subject to review by the juvenile courts for potential transfer to criminal court, a decision made by the judge and not a prosecutor.

#### Discussion

California statutes regarding the trial of minors in adult criminal courts have oscillated over several decades. As more scientific research became available, a shift in the California Legislature reflected our ever-evolving understanding of adolescent neurocognitive development, ultimately leading to implementation of age-appropriate sentences and a rethinking of punitive measures suitable for minors. The ruling in this case addresses several key areas of interest for forensic psychiatrists working with juvenile offenders. We know that psychiatric illness, substance use disorders, and evolving personality traits are commonly present in this juvenile population. Psychosocial factors, including family conflict, early exposure to violence, incarcerated parents or caregivers, and other trauma and neglect may contribute to delinquent activity. As noted in this case, minors adjudicated through juvenile court are more likely to engage in the rehabilitative programs, as compared with the adult justice system. Engaging in skills training and education, and addressing underlying psychopathology and individual environments aids youth in building the skills necessary for success upon reentry into the community.

We now know that adolescent brains are not equivalent to adult brains, an important consideration for psychiatrists conducting juvenile forensic evaluations, which in turn, guides age-appropriate treatment. As we note changes in our understanding of the developing adolescent brain, which has been variably reflected in California state statute over the years, mental health professionals must continue to consider juvenile psychiatric illness, psychosocial environments, neurocognitive maturity, and potential

for rehabilitation and reentry into the community when addressing this population.

## Due Process Protections in Involuntary Civil Commitment

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### Due Process Protections Shall Be Afforded to Individuals Facing Involuntary Civil Commitment and the Burden of Proof for Civil Commitments is Clear and Convincing Evidence

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**Key words:** civil commitment; due process; burden of proof; clear and convincing; involuntary hospitalization; ED boarding

In *A.S. v. LincolnHealth*, 246 A.3d 157 (Me. 2021), the Supreme Judicial Court of Maine ruled that the superior court erred in finding that hospital LincolnHealth did not violate Maine statutory procedure for emergency involuntary hospitalization. A.S. presented evidence that at no time during his involuntary thirty-day emergency department (ED) detention was a judicial authorization obtained by the hospital, as Maine's statute required. The court also ruled that the superior court violated A.S.'s due process rights by applying the standard of preponderance of the evidence, rather than clear and convincing evidence, to determine dangerousness at the time of A.S.'s habeas hearing.

#### Facts of the Case

A.S. (otherwise unnamed in the opinion) was brought by law enforcement officers to LincolnHealth Miles Hospital Campus in Damariscotta, Maine, on February 24, 2020. A.S. was subsequently detained involuntarily in the ED for the next 30 days while

LincolnHealth searched for psychiatric hospitalization placement. LincolnHealth completed 16 forms for emergency involuntary hospitalization while they searched, though at no point did LincolnHealth file the forms with the court, nor did they acquire judicial endorsement of A.S.'s detention. On the 18th day of his detention in the ED, A.S. filed a petition for a writ of *habeas corpus* in superior court, seeking his release.

At the subsequent habeas hearing, LincolnHealth presented several witnesses who discussed the process of finding a psychiatric hospitalization placement for A.S. A.S. then moved for a judgment as a matter of law based on the evidence that at no point did LincolnHealth comply with the portion of Maine statute outlining requirements for an emergency involuntary hospitalization, specifically the step that required judicial review and authorization. In response, LincolnHealth argued that their intention was to find A.S. psychiatric placement, and that because they were unable to identify psychiatric placement, they were unable to seek judicial endorsement. LincolnHealth stated when psychiatric placement was found, at that point, A.S.'s due process rights articulated in the involuntary hospitalization statute would become relevant. They acknowledged that there was no court authority supporting this interpretation but noted that this practice had been occurring for several years without any objections.

The superior court denied A.S.'s motion for judgment as a matter of law and A.S.'s habeas petition. The court concluded, without addressing the statutory judicial review requirement, that the emergency involuntary hospitalization process "can be reset every 48 hours, based upon a new Blue Paper being completed based upon a new evaluation by a physician" (A.S., p 161). The court also rejected A.S.'s other argument that the heightened standard typically required in an involuntary commitment hearing should be applied in this case. The court concluded that the "proper standard" for adjudicating the habeas petition in this case was "whether as of now, an applicant for emergency involuntary admission to a psychiatric hospital could be granted. . . ." (A.S., p 161).

A.S. appealed with two claims: first, that the superior court was wrong in concluding that LincolnHealth did not violate Maine's statutory procedure for emergency involuntary hospitalization; and second, that the superior court violated his due process rights by applying a standard of preponderance of the evidence, rather than clear and convincing evidence, to determine whether he

posed a likelihood of serious harm at the time of his habeas hearing. While his appeal was pending, A.S. was discharged from LincolnHealth's ED.

#### Ruling and Reasoning

The Supreme Judicial Court of Maine vacated the superior court judgment. The court began by commenting that it typically would not review cases in which the legal questions are moot, such as in this case, where A.S. had already been released from the ED while his appeal was pending. But, the court heard the case, citing the wide-reaching implications for protecting the public from improper application of civil commitment legislation and the possibility for similar cases to repeat in the future.

The court issued two major findings. First, the court held the superior court erred by finding LincolnHealth was not in violation of statutory procedure for emergency involuntary hospitalization, as defined in Maine statute. The court explained Maine's statute, Me. Rev. Stat. Ann. tit. 34-B, § 3863 (2020), allowed for emergency involuntary admission to a psychiatric hospital when "there is a concern that an individual poses a likelihood of serious harm to himself or other persons because of a mental illness" (A.S., p 163). The court explained that the statute required the completion of three steps, including that a person must first complete an application seeking the emergency admission, a medical practitioner must examine the individual the applicant is seeking to admit and sign a certificate supporting the application, and, finally, a judicial review and endorsement must occur. The court noted the statute specified that an individual should not be detained in the hospital longer than 24 hours without judicial review after an examiner has executed a certificate, though acknowledged that with a shortage of psychiatric beds, Maine had amended this statute to reflect the burden of ED boarding. These amendments did not change the original wording but allowed hospitals a longer duration of detention after the judicial review, provided that the hospital could show continued efforts to find a bed and the individual remained at risk for serious harm due to mental illness. Maine's supreme court highlighted that in this case A.S.'s involuntary detainment in the ED for greater than 24 hours without judicial review was a due process violation. The court noted they could not agree with LincolnHealth's interpretation of the statute "that provides no legal

protections for patients before an actual placement in a psychiatric hospital occurs” (*A.S.*, p 167).

The court’s second holding pertained to the superior court’s incorrect application of the standard of proof. The court found that A.S.’s due process rights were violated when the superior court applied a standard of preponderance of the evidence, rather than clear and convincing evidence, to determine his likelihood of harm at the time of his habeas hearing. The court specifically referenced the U.S. Supreme Court ruling in *Addington*, which recognized that “civil commitment for any purpose constitutes a significant deprivation of liberty” and that due process requires the State to justify confinement by a clear and convincing standard of proof (*Addington v. Texas*, 441 U.S. 418 (1979), p 425).

#### Discussion

*A.S. v. LincolnHealth* addresses several topics of relevance to the forensic psychiatrist and mental health professional. First, the case highlights a hospital’s inattention to statutory procedure and due process in an involuntary civil commitment case. Although the hospital was stating that its priority was the safety of the individual and community, the court nevertheless found that it did not appropriately balance these concerns with A.S.’s due process rights and ultimately found that it violated laws intended to protect an individual’s right to liberty. The hospital noted that it had been practicing in this manner for years without objection. Although the findings of the case are specific to Maine, the ruling serves as a reminder for professionals to be aware not only of “common practice” hospital procedures for emergency involuntary civil commitment, but also statutory procedures designed to protect the individual with mental illness being considered for commitment.

Historically, the grounds for civil commitment were founded on two principles, *parens patriae* (providing care to mentally ill individuals who are unable to take care of themselves) and police power (states’ protection of the community from dangerously mentally ill individuals). Forensic and mental health professionals should be aware of these principles and that they could create biases that could lead to hospital staff, lawyers, and judges weighing the dangerousness of the individual more heavily against the deprivation of their liberty. Throughout history there have been many differing opinions on how to weigh the benefit of involuntary commitment versus restriction of liberty, with swings to either extreme at various points. The 1979 U.S. Supreme Court ruling in *Addington*,

cited by the court in this case, acknowledged that the deprivation of liberty, stigma of civil commitment, and mandated treatment required a standard of proof higher than preponderance of evidence. Providers should be aware that an emphasis on treatment without due consideration of liberty deprivation could lead to the unintended consequence of due process violations in the pursuit of *parens patriae* and police power, as seen in *A.S. v. LincolnHealth*.

## Failure to Present Mental Health History at Federal Capital Sentencing

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### Defense Attorney’s Failure to Present a Defendant’s Mental Health History May Lead to Prejudice at Federal Capital Sentencing

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**Key words:** capital punishment; Sixth Amendment; mitigating factors; mental health history; abuse history

In *United States v. Barrett*, 985 F.3d 1203 (10th Cir. 2021), the Tenth Circuit Court of Appeals considered whether the district court erred in denying relief to a defendant where it found the defense counsel’s performance was deficient but without prejudice. The defendant, Kenneth Barrett, was sentenced to death for intentionally killing a state police officer. On appeal, Mr. Barrett asserted ineffective assistance of counsel at sentencing in violation of the Sixth Amendment, arguing that counsel’s omission of evidence regarding his mental impairments and abusive upbringing was deficient performance and resulted in prejudice. The Tenth Circuit reversed the district court’s ruling and found prejudice, vacated Mr. Barrett’s capital punishment sentence, and remanded for resentencing.