Use of Summons in Involuntary Civil Commitment

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Washington state provides a number of mechanisms through which mentally ill individuals may be involuntarily committed. One method that has drawn considerable attention of late is a procedure whereby individuals may be summoned to an evaluation and treatment facility for 72 hours* by a county-designated mental health professional (CDMHP) in nonemergency circumstances. The issuance of a summons in a nonemergency situation is the subject of a recent Washington Supreme Court ruling, *in re Harris*, 98 Wash. 2d 276, 654 P.2d 109 (1982), and is the basis for the discussion that follows.

In this article we discuss the summons procedure used prior to the *Harris* case and the changes required by the *Harris* decision. We present empirical data which describe pre-*Harris* use of the summons and the attributes of clients who were summoned for involuntary commitment. We then discuss the implications of *Harris* and the likelihood that *Harris* will accomplish the objectives stated by the court.

Background

Washington State's Experience

Before 1973, the Washington state involuntary commitment law was fairly typical in setting standards for involuntary hospitalization. At that time, following the national trend toward deinstitutionalization of the mentally ill and the development of community treatment alternatives, the Involuntary Treatment Act of 1973 (ITA73) was adopted, limiting commitment to an individual who, "as a result of a mental disorder presents a likelihood of serious harm to others or himself or is gravely disabled."[1] Likelihood of serious harm to self was indicated by behavior that threatened or attempted self-inflicted physical harm. Danger to others was defined as behavior that caused harm or substantial risk of harm in the past or that would place others in reasonable fear of being harmed. ITA73 defined grave

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* Since 72 hours excludes weekends and holidays, an individual may actually spend a maximum of six days in detention under certain circumstances.

disability as a "condition in which a person, as a result of a mental disorder, is in danger of serious physical harm resulting from failure to provide for his essential human needs."[1]

Some of the most important features of ITA73 were the procedural safeguards designed to end indefinite commitments and shorten the length of hospital stays. A 72-hour "evaluation and treatment" period was established and additional, nonrenewable, commitments of 14 and 90 days were made available. Renewable commitments of 180 days were allowed along with specific procedures for initiation and review of all confinement.

ITA73 established a formal involuntary commitment network in the state of Washington. Prior to 1973, evaluation and detention of an alleged mentally ill individual was placed in the hands of two licensed practicing physicians. As a result of ITA73, counties were authorized to establish involuntary commitment offices in each county throughout the state. Through those offices, CDMHPs† were to investigate and evaluate the appropriateness of all complaints of mental disorder that might lead to involuntary detention.[2]

In 1979, after six years of working within narrowly drawn commitment criteria, Washington state broadened its civil commitment authority through revisions that included an expanded definition of "grave disability," made provisions for revoking conditional releases more stringent, and expanded the scope of "likelihood of serious harm" to include destruction of property.[3] The 1979 Washington amendments (ITA79) were made in response to complaints by many families and mental health professionals who were often frustrated in their attempts to obtain involuntary commitment of mentally ill community members. The 1979 change was designed to expand commitment authority while maintaining due process safeguards.

Use of the Summons in Involuntary Civil Commitment

1. How the Summons Works ITA73 and its 1979 revisions provided a procedure whereby a CDMHP could serve or cause to have served a summons requiring an individual to appear at an evaluation and treatment facility for an initial evaluation period of 72 hours (excluding weekends and holidays.)[4] Such a summons could be issued directly by the CDMHP to detain a person meeting this commitment criteria in the state of Washington. A probable cause hearing was required only if detention was sought beyond the 72-hour period. The statute states that the summons can be issued only after investigation into the specific facts and credibility of persons providing information. Before *Harris*, the CDMHP was the sole

† CDMHPs were defined by law as a psychiatrist, psychologist, psychiatric nurse, social worker or other individual with training and/or experience in mental health.

judge of mental status, deciding what investigation was appropriate and deciding whether or not the summoned individual met the specific criteria for commitment.

2. *In re Harris* Pursuant to Washington Rev. Code 71.05.150, a CDMHP issued a summons which ordered Mary Ann Harris to report to Harborview Medical Center, an evaluation and treatment center in Seattle. The summons was served on Harris at her residence shortly before midnight on the Friday before the Memorial Day weekend. The summons was based upon an affidavit by Harris' 67-year-old mother who described an alleged physical confrontation between herself and her daughter for which she had to seek medical attention. Harris had a history of previous psychiatric hospitalization and one year before, Harris allegedly assaulted her mother, causing serious injury. Harris did not report to the hospital as ordered, resulting in the issuance of an authorization to take her into custody. Before custody was obtained, Harris contacted an attorney who sought a temporary restraining order and initiated the court action. The CDMHP subsequently dismissed the mental illness proceeding. The case was given discretionary review by the State Supreme Court.

The State Supreme Court held that the summons procedure for detaining mentally ill persons violated due process and it imposed a requirement for a judicial finding of "probable dangerousness" prior to issuance of the summons. The court characterized the summons procedure as nonemergent because the pertinent section of the statute did not include the term "imminent" and because an individual is given 24 hours to report to a treatment center. Therefore, the court felt that there should be time for judicial scrutiny before nonemergency detention.

The court also noted that no attempt was made to personally interview Ms. Harris or to convince her to submit to examination voluntarily. The court decided that the statute vested more power in the CDMHP than was needed to satisfy the state's interest in nonemergency detentions and concluded that review by a magistrate was necessary to ensure that the system not be abused.

The court made clear that magistrates are not intended to rubber stamp approval of CDMHP recommendations. A three-step process should be used so that a judge is satisfied that: (1) probable dangerousness exists; (2) sufficient investigation has been conducted; and (3) a less restrictive alternative is not available and/or appropriate.

Washington State's Use of Summons, 1977 to 1981

Research on Involuntary Civil Commitment In 1981, we began a retrospective analysis of changes that occurred in the mental health system as a

result of the 1979 revision in the ITA. We collected individual case records from more than 3,500 people who were referred to the Involuntary Commitment offices in King (Seattle) and Pierce (Tacoma) counties. Approximately 38 percent of the investigative requests resulted in detention of 72 hours or longer. Complete case records were collected for those who were detained and those whose cases were investigated but where no action was taken.

While the study was geared toward the impact of ITA79, case record information from the two counties included a random sample of all individuals who were summoned between September 1979 and August 1981. A complete history of those confinements was obtained, including the circumstances surrounding the commitment decision (e.g., type of behavior exhibited, type of authority) and the final disposition (e.g., 72 hours, 14 days, etc.).

These data allow us to compare people who were summoned to appear for confinement and people who were detained without use of the summons for the period of 1977 to 1981. Although our data do not allow us to evaluate the effect of *in re Harris* on the summons process, they do allow us to observe the way in which the summons was used prior to the *Harris* decision in December 1982. This allows us to make some conclusions about clients who may be most affected by the *Harris* decision.

Summoned Versus Nonsummoned Detainees The summons was used in only about 7 percent of all involuntary commitments from 1977 to 1981. However, the summons was used twice as much in King County (the most populace county) (8.2 percent or 495 commitments) than in Pierce County (the second most populace county) (4.6 percent or 137 commitments).

Although the CDMHP can issue a written order which allows a person to be taken into custody immediately under the emergency detention section of the statute, the summons procedure gives a person a 24-hour period to report on his/her own to a treatment center. The general nonemergency quality to the use of the summons may be seen through (1) description of demographic characteristics of summoned individuals and (2) overview of what happens during the commitment process.

1. WHO was summoned? There are distinguishable demographic and behavioral characteristics of summoned individuals.

a. Demographic characteristics are summarized in Table 1. People who were summoned tended to be older, female, widowed, and lived alone compared with those committed without use of the summons. They had a greater number of previous involuntary mental health contacts and were more likely to meet the state's definition of "chronic."‡

‡ Washington's Community Mental Health Act defines chronic as an individual having undergone two or more episodes of hospital care for a mental disorder within the preceding two years or as having a

Table 1. Demographic Characteristics of Summoned Versus Nonsummoned Detainees

Characteristics	Summoned	Not Summoned	χ^2
Sex (%)			
Male	52.8	55.3	
Female	47.2	44.7	
Age			
Mean	42.1	37.0	
Chronic (%)			
Yes	58.7	51.4	12.33*
No	41.3	49.6	
Marital status (%)			
Single	48.4	54.6	14.49†
Married	19.3	17.1	
Widowed	7.1	4.4	
Divorced/separated	25.2	23.9	
Living alone (%)			
Yes	50.5	39.1	28.01*
No	49.5	60.9	
Previous contact with mental health system			
Mean	2.3	1.9	

* Value is significant at $P < .05$ level.
† Value is significant at $P < .001$ level.

b. Behavioral characteristics also reflected the nonemergent nature of the summons. Detainees who were summoned were more likely to have exhibited bizarre behavior or actions involving passive neglect felt by mental health professionals to be hazardous to their health and safety. This included a sizable number of individuals who were wandering, unable to care for themselves, or decompensating as a result of going off their medications. While this subgroup fits the overall description of Washington's involuntarily committed population, detainees who were summoned tended to exhibit less of an active threat to themselves or others than nonsummoned committees (Table 2).

2. WHAT happened in the summons process? It is useful to look more closely at a number of elements of the detention and retention process for committed patients. Certain differences do set summoned individuals apart from other detainees.

a. Referral source. We know from our analysis of involuntary commitments that approximately 35 percent of all referrals came from family or friends. While this was true also of summoned individuals, the latter were notable for the absence of referrals from the police and the emergency room. In our larger study of all referrals and commitments, we found that almost 20 percent of the referrals came through the emergency room and 16.6 percent entailed police involvement.[5]

continuous psychiatric hospitalization or residential treatment exceeding a duration of six months within the preceding year.

Table 2. Behavioral Characteristics of Summoned Versus Nonsummoned Detainees*

Behavior	Summoned (%)	Not Summoned (%)
Bizarre	62.8	53.9
Health and safety	45.9	33.3
Suicide attempt	3.4	11.8
Suicide ideation	6.7	14.3
Suicide threat	1.9	7.0
Cognitive and volitional	38.1	37.3
Alcohol involvement	10.4	13.8
Drug involvement	5.8	12.8
Stress	4.5	7.0
Medical problems	9.8	12.1
Disruptive	6.1	5.4
Violent behavior	43.2	35.7
Violence to property	9.1	8.4
Violent threats	18.6	20.7
Refused treatment	21.8	22.1
Active	19.4	21.3
Passive	29.8	30.8

*Values represent the percentage of cases where that particular behavior was cited as a basis for referral. Counts of cases were duplicated where more than one type of behavior was indicated. Percentages will therefore not sum to 100%.

From these findings we conclude that the referral that results in a summons usually comes from family or friends rather than from formal authorities such as the police or emergency room.

b. Type of authority. Given the types of behavior which we saw associated with the summons, it is not surprising to find that grave disability for health and safety reasons was used as a commitment authority in a larger proportion of summoned *v.* nonsummoned detentions (Table 3). Summoned individuals were also less often dangerous to themselves. The urgent nature of a suicide threat (often the basis of detention for dangerousness to self) steers authorities away from the issuance of a summons.

Danger to others was the chosen authority for detention in 41.9 percent of all summoned cases. Although this figure is almost identical to that for nonsummoned detainees, it demonstrates that the summons was used in situations where dangerousness was implicit.

c. Length of stay. Most individuals are detained for only 72 hours, then released without further action. However, people who were summoned tended to stay in hospitals longer than nonsummoned individuals. They were likely to stay for 14 days (King County) or even 90 days (Pierce County) before release. Since summoned individuals were gravely disabled in more than 54 percent of all cases, their extended length of stay was most likely the result of factors associated with the more lengthy *parens patriae* detentions.

d. Changes over time. After implementation of the broadened commitment authority of ITA79, virtually all voluntary detentions dropped out of

Table 3. Type of Authority for Summoned Versus Nonsummoned Detainees*

	Summoned (%)	Nonsummoned (%)	Total (%)
Gravely disabled			
Health and safety	27.8	16.8	17.6
Cognitive and volitional	14.9	14.0	14.1
Unspecified	31.4	28.9	29.0
Danger to self	13.8	32.3	31.1
Danger to others	41.9	38.4	38.6
Danger to property	1.9	1.9	1.9

* Values represent the percentage of cases where that particular authority was cited as a basis for commitment. Counts of cases were duplicated where more than one authority was indicated. Percentages will therefore not sum to 100%.

the state hospital system (including county-based holding facilities).[5] By 1980, state hospitals were crowded beyond capacity. A "cap" was placed on admissions to Western State Hospital, a facility serving all of western Washington, limiting admissions to 90 percent of the capacity. After the cap was imposed, the use of the summons dropped sharply in Pierce County (the location of Western State Hospital). However, during the same period use of summons in King County grew steadily until late 1981 (the end of our study period), at which time King County mental health professionals used a summons in more than 8.8 percent of all detentions.

Discussion

Clients who were summoned to the involuntary commitment system do represent a somewhat different population than people detained without the use of a summons. The majority of reasons (behaviors) which led to a referral appear to represent nonemergent circumstances, although a sizable volume of clients (41.9 percent) exhibited dangerous behavior. Referrals were most likely to come from family members and detention periods tended to be lengthier for summoned than for nonsummoned detainees. Summoned detainees were more likely to be older, "chronic," female, widowed, and living alone than those clients committed under emergency commitment authority.

The growth of the involuntary commitment system during our study period appears to have influenced the use of the summons. The sharp drop in summons in Pierce County may have been due to the increased pressure to detain emergency committees to an overcrowded system rather than the nonemergency client.

The growth in the use of the summons in King County during the same period may have been due to the perception of the summons procedure as a convenient means for bringing in a large and growing number of alleged mentally ill people to county involuntary commitment facilities. Trends

that emerged in both King and Pierce counties following ITA79 are under investigation by our research team.

Conclusions and Implications

The *Harris* decision was expected to add another safeguard to the involuntary commitment process in order to prevent inappropriate commitments. In its ruling the State Supreme Court expressed its desire for greater judicial control over nonemergency commitments.

On its face, the *Harris* decision seems sound. In nonemergency circumstances, there should be sufficient time for judicial scrutiny before a summons is issued and detention takes place. If an emergency exists, the CDMHP may detain a person immediately for 72 hours.

However, as a practical matter, the safeguards offered by *Harris* are illusory. The CDMHP remains the sole decision maker as to whether a situation is "imminently" dangerous (requiring immediate, emergency detention) or not (requiring predetention judicial review). Since the CDMHP can authorize a 72-hour emergency detention without judicial review, there is no motivation for CDMHPs to use the more complex, time-consuming method required by the summons.

We predict that the *Harris* decision will lead to almost total abandonment of the use of the summons procedure in Washington. Local mental health professionals tell us that the summons procedure has now become impractical and that they rely increasingly on emergency detentions. They report that the summons procedure prior to *Harris* had served a practical purpose because it was often used for clients who required detention but who the CDMHP was relatively certain would report to a treatment facility on their own after being allowed to go home to pack belongings. This is reflected in our data which show that summoned patients were often chronic users of the mental health system and presumably known to the CDMHP through prior contacts.

The purpose of the *Harris* decision was not to eliminate the nonemergency detention. That could have been accomplished directly had the court chosen to require imminence as a basis for commitment as did the U.S. Court of Appeals for the Ninth Circuit.[6] Application of such a standard would allow involuntary commitment only in those cases where the harm which the state is seeking to avoid is likely to occur in the very near future, thereby requiring all detentions to be emergent in nature. *Harris* was expected to stop the use of the summons for nonemergency situations where probable dangerousness was not evident.

If the volume of summons was to remain at the level prior to *Harris*, predetention judicial review would be added to approximately 200 com-

mitments per year in King and Pierce counties. If *Harris* leads to the virtual elimination of the summons in Washington as we predict, those same 200 commitments will very likely be made under the emergency section of the involuntary commitment statute and *Harris* will result in the subtraction of a useful procedure for initial detention.

Proponents of broadened civil commitment laws may characterize *Harris* as misguided intervention in the work of CDMHPs, increasing administrative burdens of mental health professionals and courts while adding little to the protection of the individual. Advocates of legalization, on the other hand, may point to *Harris* as a clear message to CDMHPs that courts expect to exercise a check on the power of the CDMHP.

Both of these conclusions may be accurate: the administrative burden of judicial review will very likely curtail the use of the summons procedure and the court did specifically hold that the statute vested more power in the CDMHP than was needed to satisfy the state's interest in nonemergency detention. However, it appears that the judicial review for the issuance of a summons is an unlikely decision point for the courts to exercise influence on the detention process. If the court wishes to ensure that probable dangerousness exists, that sufficient investigation has been conducted, and that a less restrictive alternative is not available and/or appropriate, it will need to impose a check on all detentions which are initiated by CDMHPs rather than on the issuance of a summons.

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