

the court avoids having to define the age at which a child is dependent on a parent or guardian. The court's ruling rejects the notion that the presence of substance abuse can be equated with child neglect and provides parents with a chance to rebut arguments that their substance abuse results in an inability to provide regular care for a child.

By rejecting the notion that the mere presence of a parent's substance abuse is enough to conclude that a child is in danger, this decision by the California Supreme Court echoes the landmark Supreme Court finding in *Robinson v. California*, 370 U.S. 660 (1962), where the Court determined that the mere status of being addicted to drugs could not be criminalized. In a similar way, the holding in the current case works to soften the stigma of drug abuse as evidence of wrongdoing in and of itself.

Dependency laws should balance both parental rights and the state's interest in protecting vulnerable individuals. Here, the court appears to have attempted to maintain such balance in its decision by broadening the definition of substance abuse while at the same time rejecting the notion that the presence of substance abuse is *prima facie* evidence of child neglect or abuse.

Confinement and Treatment of Sexually Dangerous Persons

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Illinois' Sexually Dangerous Persons Act Is Constitutional; the Prison Litigation Reform Act Determines Limitations of Injunction Against Program

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Key words: sexually dangerous persons; Prison Litigation Reform Act; civil commitment; sex offenders; dangerous offenders

In *Howe v. Hughes*, 74 F.4th 849 (7th Cir. 2023), the U.S. Court of Appeals for the Seventh

Circuit evaluated an injunction ordered by the federal court for the Southern District of Illinois regarding the state's Sexually Dangerous Persons (SDP) Act, which allows for the civil commitment of sex offenders who are considered too dangerous for release. The director of the Illinois Department of Corrections (currently Ms. Latoya Hughes) has the authority to commit and indefinitely detain individuals who have been charged with a crime and found to have a mental illness as well as the propensity to commit future sexual offenses, including sexual assault and child molestation. The Act stipulates that individuals committed under its authority must receive treatment "to effect recovery" and be discharged once they are determined to be "no longer dangerous." The question brought before the court in this case regards whether the Illinois SDP Act meets these constitutional requirements as enacted at the Big Muddy River Correctional Center and where the limitations lie in the district court's injunction to correct any violations.

Facts of the Case

James Howe, Jacob Kallal, and George Needs were each civilly committed and held at Big Muddy River Correctional Center under the SDP Act of Illinois, which mandates treatment for individuals determined to be likely to commit future sexual crimes. The SDP Act requires the state to prove that an individual has committed a sexually violent offense and may benefit from sex offender treatment; the individual may then be held indefinitely to undergo this treatment. Mr. Howe was incarcerated from 2013 to May 2023 (when he obtained a conditional release) after being charged with aggravated criminal sexual assault, following a sexually dangerous persons petition hearing that included testimony from three psychiatrists who examined Mr. Howe, four women who previously had relationships with Mr. Howe, and two police officers who had investigated past incidents for which Mr. Howe had been convicted. He had previously been convicted for felony violation of order of protection in 2003, misdemeanor criminal sexual abuse by the use of force in 2004, and felony unlawful restraint and failure to register as a sex offender in 2009. Mr. Kallal was civilly committed in 2001 after being charged with sexual abuse of an eight-year-old girl. Mr. Needs was committed in 1980 after being charged with sexually assaulting a four-year-old girl.

Mr. Howe, Mr. Kallal, and Mr. Needs filed suit in 2014, alleging that the program to which they were committed was “constitutionally deficient,” with inadequate treatment to justify their continued detainment. In 2018, the district court heard testimony in a two-day bench trial, including from Mr. Howe, Mr. Kallal, Mr. Needs, and Dr. Dean Cauley, an expert witness on civil commitment and treatment for sexually violent individuals. The factual findings of this hearing described the treatment program at Big Muddy River Correctional Center, which consists of four sequential phases, with the detainees advancing based upon their disciplinary record, progress in therapy, and completion of assessments. Detainees are evaluated semiannually and are provided with a copy of their evaluations and a six-month treatment plan. Wexford Health Sources, the company contracted to provide health care for the Illinois Department of Corrections, regularly reviews detainees for release and recommends discharge, conditional discharge, or continuation in the program. Dr. Cauley testified for Mr. Howe, Mr. Kallal, and Mr. Needs that the program at Big Muddy River Correctional Center fell short of professional norms in the following manner: it offered only one weekly group therapy session for a total of one hour of weekly core therapy, below the national average of seven and a half hours per week and the generally accepted minimum of five hours per week; certain offense-specific and didactic groups had been indefinitely canceled; and Wexford’s evaluators did not consider age or passage of time when considering detainees’ petitions for discharge.

In 2021, the federal court for the Southern District of Illinois granted a permanent injunction requiring that detainees under the SDP Act at Big Muddy River Correctional Center receive at least seven and a half hours of core group therapy per week, that all inactive offense-specific and didactic groups be reinstated, and that evaluations for discharge must be conducted by independent evaluators unconnected to Wexford Health Services. The state moved for reconsideration, claiming that the injunction went beyond its proscribed scope under the Prison Litigation Reform Act (PLRA) (18 U.S.C. § 3626 (1997)), but the district court denied the state’s motion. The decision was appealed to the Seventh Circuit.

Ruling and Reasoning

The Seventh Circuit found that the Sexually Dangerous Persons Act does not violate the due

process clause; it was already reviewed and found compliant by the U.S. Supreme Court in *Allen v. Illinois*, 478 U.S. 364 (1986), and the court found no reason to disagree with that previous assessment. The court stated that, because the Act is not intended as punishment, treatment is available and release is realistically possible, there is no inherent violation of the Fourteenth Amendment, and the Act is constitutional. The court then evaluated the application of the Act in practice.

The Seventh Circuit found that individuals subject to civil commitment are entitled to due process as stipulated under the Fourteenth Amendment and that Big Muddy River Correctional Center was in violation, but the court found that the injunction ordered by the district court was too broad, exceeding the scope of the PLRA in that it enforced more extensive action than necessary to correct the violations against Mr. Howe, Mr. Kallal, and Mr. Needs. The court found that the numeric requirements laid out in the injunction (seven and a half hours of core therapy per week) exceeded the constitutional minimum necessary to remedy the violations (stipulated at five hours of core therapy per week, as noted by the expert witness Dr. Cauley), and that the injunction was overly prescriptive in precluding the possibility of other forms of treatment meeting the requirement. The injunction was also overbroad in specifically requiring the reinstatement of particular canceled groups, rather than allowing the treatment team to provide programs based on the demonstrated need of detainees, and in prohibiting Wexford from providing evaluation services; both of these components were found to exceed the necessary means to correct the constitutional violations.

The court vacated the injunction and remanded the case to the district court to draft a new injunction more consistent with the Seventh Circuit’s opinion and the requirements of the PLRA. The court stipulated that all parties should specifically state what they consider to be the constitutional floor for treatment, that the district court must connect any specific requirements in their new injunction to individual constitutional violations under the Fourteenth Amendment and ensure their injunction addresses only these concerns, that the state may not use cost and logistics as a basis to avoid meeting constitutional requirements, and that the case should be resolved and violations corrected as swiftly as possible. With these stipulations, the

case has now been returned to the district court for further review.

Discussion

The Constitution does permit states to utilize civil commitment for individuals deemed sexually dangerous; however, the laws, regulations, and programs involved in this commitment process must meet the requirements of the due process clause under the Fourteenth Amendment, including providing adequate treatment to permit the realistic possibility of symptomatic improvement facilitating release. Remedies ordered to address any violations of these constitutional requirements should be guided by the PLRA, which stipulates that ordered corrective actions should extend no farther than required to meet constitutional requirements.

It should be noted that there is no clear evidentiary basis for a particular number of hours of treatment a week that should represent the constitutional floor; psychiatric treatment for sexually dangerous persons has limited efficacy, and it is unclear what set of requirements would be most likely to result in symptomatic improvement sufficient for reasonably safe release. Indeed, the classification of “sexually dangerous person” does not correlate to any particular psychiatric diagnosis, and it is unlikely that any universally standardized course of treatment could adequately address the treatment needs of all individuals committed under the SDP Act. But legislation is clearly needed to protect the public while also protecting the individual liberty interests of individuals committed.

Civil commitment, which may allow individuals to be held indefinitely, differs from typical criminal conviction, which generally involves a sentence with a definitive release date. Civilly committed individuals should only be held for the purpose of decreasing public risk by treating their illness and should be regularly evaluated to see whether they have improved to the point of qualifying for release. Programs to which individuals may be civilly committed have a constitutional responsibility to provide adequate care that carries a true likelihood of addressing the symptoms of the individual’s relevant illness. Further study should be conducted to establish the efficacy of various treatment modalities in this population, and evaluators involved in the civil commitment process should take care when advising the courts on the course of action most

likely to facilitate each individual’s progress toward recovery sufficient for release.

Mental Impairment and Petitions for Post-Conviction Relief

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Mental Impairment May Be Considered When Assessing Applicability of the Escape Clause to the Two-Year Limitations Period for a Post-Conviction Relief Petition

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In *Ingle v. Matteucci*, 537 P.3d 895 (Or. 2023), the Oregon Supreme Court held that post-conviction courts may consider a petitioner’s mental impairments when determining whether the escape clause to the two-year statute of limitations applies in a petition for post-conviction relief.

Facts of the Case

The petitioner, Matthew Ingle, was charged with two counts of second-degree manslaughter and one count of driving under the influence of intoxicants. Mr. Ingle waived the right to a jury trial based on his defense attorney’s recommendation. During a stipulated facts trial, Mr. Ingle raised an insanity defense and was found “guilty except for insanity,” which he did not appeal. Petitioners who do not appeal their conviction have two years from the date the judgment was entered to petition for post-conviction relief according to Or. Rev. Stat. § 138.510(3) (2024). The Oregon post-conviction relief statute contains an escape clause that provides an exception to the two-year limitation in cases where the grounds for post-conviction relief “could not reasonably have been raised” (*Ingle*, p 902) within that period.

Mr. Ingle petitioned for post-conviction relief several years after the statute of limitations expired,