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## NJ'S INVOLUNTARY OUTPATIENT COMMITMENT LAW POSES CIVIL LIBERTIES ISSUES FOR PEOPLE WITH MENTAL ILLNESS

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### I. Introduction

New Jersey's Involuntary Outpatient Commitment Law,<sup>2</sup> enacted in 2009, grants New Jersey judges the authority to mandate mental health treatment for potentially dangerous people.<sup>3</sup> In 2014, Governor Christie dedicated an additional \$4.5 million to expand the program into all twenty-one counties.<sup>4</sup> Previously, only six of the state's counties – Burlington, Essex, Hudson, Ocean, Warren and Union – had offered the controversial program, which assigns patients to intensive case management to ensure that they have housing, are seeking employment, and are receiving necessary

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1. B.A., Psychology, Drew University, 2004; Ed.M., Counseling Psychology, Rutgers University, 2005; J.D. Candidate 2016, Rutgers School of Law.

2. N.J. STAT. ANN. § 30:4-27.1 (West 2010).

3. Susan K. Livio and Alexi Friedman, *For People with Serious Mental Illness, N.J. Offers Controversial, Court-Monitored Treatment*, NJ.COM, (Feb. 24, 2013, 11:05 AM), [http://www.nj.com/politics/index.ssf/2013/02/for\\_seriously\\_mentally\\_ill\\_peo.html](http://www.nj.com/politics/index.ssf/2013/02/for_seriously_mentally_ill_peo.html) [hereinafter *Court-Monitored Treatment*].

4. Susan K. Livio, *Chris Christie Takes Mental Health Commitment Law Statewide*, NJ.COM, (May 01, 2014, 11:35 AM), [http://www.nj.com/politics/index.ssf/2014/03/chris\\_christie\\_takes\\_mental\\_health\\_commitment\\_law\\_statewide.html](http://www.nj.com/politics/index.ssf/2014/03/chris_christie_takes_mental_health_commitment_law_statewide.html) [hereinafter *Commitment Law*].

treatment.<sup>5</sup> Patients who fail to comply and are deemed by their treatment team to be a danger to themselves, to property, or to others “in the foreseeable future” can be ordered by a judge to be committed into a psychiatric hospital until they are stable.<sup>6</sup>

This law has divided the mental health community. Advocates of the measure say it will reduce homelessness, institutionalization, and acts of violence committed by those with untreated mental illnesses.<sup>7</sup> Opponents say it gives judges too much discretion in determining whether a person can be involuntarily committed to the program and will trample the constitutional rights of people with mental illness.<sup>8</sup> This note will discuss whether this law should have been enacted by weighing the interest in public safety against the potential civil liberties violations posed by mandating individuals into treatment.

Part II of this note will explain the legislative history of the bill and events that precipitated its enactment. Part III will address the substantive due process concerns the law raises. Part IV will discuss reasons this program may not prove to be as effective as its proponents believe it will be, including difficulty in identifying those who pose a danger to themselves or others and shortcomings of the mental health system. Part V will suggest possible alternative approaches to remedying the mental health crisis.

## **II. History**

### **A. Forms of Treatment**

Outpatient commitment allows individuals diagnosed with mental disorders to be involuntarily mandated to an outpatient treatment facility rather than detained in a psychiatric

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5. *Id.*

6. *Id.*

7. *Court-Monitored Treatment*, *supra* note 3.

8. *Id.*

hospital.<sup>9</sup> Such a measure may be warranted where a mentally ill person presents a foreseeable to their own safety or to the safety of others.<sup>10</sup> Traditionally, commitment of such individuals has been reserved for inpatient facilities, i.e. psychiatric hospitals, where they receive intensive treatment and are not permitted to leave until deemed by staff to be mentally stable and no longer a danger to themselves or others.

Outpatient treatment programs are less intensive, involving periodic psychiatric evaluations and counseling services at a mental health center, a hospital outpatient department, practitioner's office, or a community-based outpatient clinic.<sup>11</sup> Cognitive-behavioral therapy<sup>12</sup> (CBT) is often implemented in conjunction with prescription of psychotropic medications.<sup>13</sup> In between inpatient and outpatient treatment are partial care programs, where clients attend group therapy sessions during the day and receive individual counseling and psychiatric treatment as needed before returning home. Outpatient and partial care clients may attend such programs on a voluntary basis or be mandated to attend if on probation or parole or as a condition of release from a psychiatric hospital.

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9. *Involuntary Outpatient Commitment Myths and Facts*, NATIONAL COALITION FOR MENTAL HEALTH RECOVERY, <http://www.ncmhr.org/downloads/NCMHR-Fact-Sheet-on-Involuntary-Outpatient-Commitment-4.3.14.pdf>.

10. *Court-Monitored Treatment*, *supra* note 3.

11. Definitions of Inpatient and Outpatient Behavioral Health Services, MASS.GOV, <http://www.mass.gov/eohhs/docs/eohhs/healthcare-reform/120730-duals-demo-rfr-appendix-b.doc>.

12. Ben Martin, *In-Depth: Cognitive Behavioral Therapy*, PSYCHCENTRAL, <http://psychcentral.com/lib/in-depth-cognitive-behavioral-therapy/> (“Cognitive behavioral therapy is a short-term, goal-oriented psychotherapy treatment that takes a hands-on, practical approach to problem-solving. Its goal is to change patterns of thinking or behavior that are behind people’s difficulties, and so change the way they feel.”).

13. *Mental Health Medications*, NATIONAL INSTITUTE OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/topics/mental-health-medications/mental-health-medications.shtml> (“Medications are used to treat the symptoms of mental disorders such as schizophrenia, depression, bipolar disorder (sometimes called manic-depressive illness), anxiety disorders, and attention deficit-hyperactivity disorder (ADHD).”).

Outpatient commitment, also known as assisted outpatient treatment (AOT), refers to a process whereby a judge orders a qualifying person with symptoms of severe mental illness to adhere to a mental health treatment plan while living in the community.<sup>14</sup> Forty-five states currently permit the use of assisted outpatient treatment.<sup>15</sup> A person mandated to outpatient commitment must follow a strict treatment plan, usually requiring the person to take psychotropic medications and dictating where the person can live and what daily activities are required.<sup>16</sup> Under outpatient commitment, an individual may initially be mandated to receive outpatient treatment, but may subsequently be forced into psychiatric hospitalization if they fail to comply with the plan or order they are placed under.<sup>17</sup>

### B. Enactment

In 2009, New Jersey Governor Jon Corzine signed the Involuntary Outpatient Commitment Law (IOC).<sup>18</sup> The law grants judges the authority to mandate a mentally ill person into outpatient treatment if that person is determined to be a danger to himself, to others, or to property in the foreseeable future.<sup>19</sup> As opposed to limiting involuntary commitment to inpatient facilities, the bill allows for involuntary commitment to clinically appropriate treatment, which may be inpatient care, outpatient care, or a combination of inpatient and outpatient care.<sup>20</sup> Like every state, New Jersey's civil commitment law sets criteria for determining when involuntary commitment is appropriate.<sup>21</sup>

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14. *Assisted Outpatient Treatment Laws*, TREATMENT ADVOCACY CENTER, <http://www.treatmentadvocacycenter.org/solution/assisted-outpatient-treatment-laws>.

15. *Id.*

16. *Outpatient Treatment: Myth vs. Reality*, TREATMENT ADVOCACY CENTER <http://www.treatmentadvocacycenter.org/resources/assisted-outpatient-treatment/about-aot/1403?task=view>.

17. *Commitment Law*, *supra* note 4.

18. *Court-Monitored Treatment*, *supra* note 3.

19. *Id.*

20. § 30:4-27.1.

21. *Legal Resources New Jersey*, TREATMENT ADVOCACY CENTER, <http://www.treatmentadvocacycenter.org/legal-resources/new-jersey>.

For a person to be court-ordered into treatment, that person must be shown to be a danger to themselves,<sup>22</sup> others, or property, be unwilling to admit themselves voluntarily and be in need of treatment.<sup>23</sup>

The commitment process when someone is admitted involuntarily has two steps. Screening service staff must first determine whether by clear and convincing evidence a person's condition meets the dangerousness standard. Then the screening staff must decide how to treat the committed person, by considering the least restrictive treatment setting appropriate to ameliorate the danger presented and providing services directed to the wellness and recovery of the person.<sup>24</sup> Under the new law, the determination shall take into account a person's history, recent behavior and any recent act, threat or serious psychiatric deterioration.<sup>25</sup> If a person who is ordered by the court to outpatient treatment fails to comply with the program, then that person can be committed to inpatient care.<sup>26</sup>

### C. Precipitating Factors

OIC was first proposed more than a decade before its enactment, largely spurred by the tragic death of seventh-grader Gregory Katsnelson, who was abducted and stabbed to death while riding his bike near his home in Evesham, New Jersey in October 2002.<sup>27</sup> Gregory's assailant, Ronald Pituch, had beaten his mother to death earlier that day using a barbell.<sup>28</sup> Despite his mother's pleadings, Pituch was not taking the prescribed medication for treatment of his paranoid schizophrenia.<sup>29</sup>

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22. *Id.*

23. *Id.*; *See also* § 30:4-27.2(m).

24. § 30:4-27.15a(a).

25. § 30:4-27.2(I).

26. § 30:4-27.15a(a).

27. *Court-Monitored Treatment, supra* note 3.

28. *Id.*

29. *Id.*

New Jersey modeled its law after Kendra's Law,<sup>30</sup> enacted in New York in 1999 after an untreated mentally ill person pushed Kendra Webdale in front of a New York City subway train.<sup>31</sup> Though the majority of mentally ill people do not commit violent crimes, Katsnelson's death struck a nerve with mental health advocates who had long heard pleas from family members of people with mental illness for a way to get their loved ones the help they needed.<sup>32</sup>

A major impetus to expand New Jersey's outpatient commitment law was the prevalence of mass shootings in the U.S. in 2012, which caused much public anxiety across the nation about violent acts being committed by mentally unstable people.<sup>33</sup> There were sixteen mass shootings across the country that year, leaving at least eighty-eight people dead.<sup>34</sup> This statistic includes twelve people who were shot to death while attending a midnight screening of *The Dark Knight Rises* and twenty-six people killed in the Sandy Hook Elementary School shooting in Newtown, Connecticut.<sup>35</sup> In many of these instances, the perpetrator either had a significant history of mental illness prior to committing the shooting<sup>36</sup> or was believed to have suffered from an untreated mental illness at the

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30. *Id.*

31. *An Explanation of Kendra's Law*, N.Y. STATE OFFICE OF MENTAL HEALTH, [http://www.omh.ny.gov/omhweb/Kendra\\_web/Ksummary.htm](http://www.omh.ny.gov/omhweb/Kendra_web/Ksummary.htm).

32. *Court-Monitored Treatment*, *supra* note 3.

33. *Id.*

34. George Zornick, *Sixteen US Mass Shootings Happened in 2012, Leaving at Least 88 Dead*, THE NATION (Dec. 14, 2012, 4:18 PM), <http://www.thenation.com/blog/171774/fifteen-us-mass-shootings-happened-2012-84-dead>.

35. *Id.*

36. Lauren Fox, *Report: Sandy Hook Shooter Adam Lanza Was Obsessed with Mass Shootings*, U.S. NEWS AND WORLD REPORT (Nov. 25, 2013, 5:56 PM), <http://www.usnews.com/news/articles/2013/11/25/report-sandy-hook-shooter-adam-lanza-was-obsessed-with-mass-shootings> [hereinafter *Sandy Hook Shooter*] (“[Adam] Lanza struggled with mental illness, a history of obsessive-compulsive behaviors and a fascination with mass shootings - particularly the 1999 school shooting in Columbine, Colo., the report said. Yet, none of the mental health specialists he had a record of meeting with predicted he was capable of lashing out violently. While Lanza had seen professionals for his mental issues, but declined medicines prescribed to help him manage his symptoms.”).

time of the shooting which likely caused the violent act.<sup>37</sup> Proponents of the IOC Law believe that expansion of the commitment program may help to curtail such worries and to prevent such tragedies by ensuring that potentially dangerous individuals are identified and treated before they commit acts of violence.

#### D. Substantive Change in Law

New Jersey's IOC isn't novel, but does significantly change the standard an individual must meet to be mandated into treatment. Judges long have had the authority to commit people against their will to a psychiatric hospital if they presented a danger to themselves or others that was "imminent."<sup>38</sup> The new outpatient law gives judges even more power by allowing them to commit a person to the program who would pose a risk to himself, other people or property "within the reasonably foreseeable future."<sup>39</sup> The "reasonably foreseeable future" language sets a lower standard that a person must meet to be committed to the program, compared to "imminent danger."<sup>40</sup> Furthermore, the language of the statute is rather nebulous as to the meaning of "reasonably foreseeable future."<sup>41</sup> The bill defines this standard as "a time frame that may be beyond the immediate or imminent, but not longer than a time frame as to which reasonably certain judgments about a person's likely behavior can be reached."<sup>42</sup> Even with this definition, the "reasonably foreseeable future" standard is much more ambiguous than the "imminent danger" standard; how

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37. Scott Bonn, *James Holmes and the Bloody "Dark Knight" Massacre*, PSYCHOLOGY TODAY, (March 3, 2014), <https://www.psychologytoday.com/blog/wicked-deeds/201403/james-holmes-and-the-bloody-dark-knight-massacre> ("Holmes was hospitalized after attempting suicide several times while in jail in November 2012." It was ruled that Holmes would have to undergo a second sanity evaluation by the state mental hospital because the first was "incomplete and inadequate. . . . The second evaluation is now completed. The verdict on insanity is up to the jury but the conclusion of the state hospital's evaluation is critical evidence in that decision. Jury selection in the trial is set to begin January 20, 2015.")

38. *Court-Monitored Treatment*.

39. *Id.*

40. *Id.*

41. § 30:4-27.1.

42. *Id.*

far such a time frame extends is very much open to interpretation.<sup>43</sup>

### E. Opposing Views

The legislation has divided the mental health community. Proponents of the law say that had it existed earlier, it could have prevented Gregory Katsnelson's murder, as well as many other violent crimes committed by people with untreated mental illnesses.<sup>44</sup> Proponents also cite to the case of Gustav Ibranyi, who was among the first patients in New Jersey to be admitted to the program after attacking his father.<sup>45</sup> Ibranyi, who was 30 when he was admitted, was able to gain stability through the program and was finally receiving the treatment he needed.<sup>46</sup> Executive Director of the Mental Health Association of Essex County Bob Davison<sup>47</sup> has said, "While it is rare, it cannot be denied, the connection between untreated mental illness and violence. The law's supporters estimated that 400 people a year would be enrolled, which would be less than one percent of the approximately 400,000 with a diagnosed mental illness."<sup>48</sup>

Opponents say the increased authority granted to judges under the measure may violate the constitutional rights of mentally ill patients.<sup>49</sup> Ronald Chen, law professor and Dean of Rutgers School of Law in Newark, expressed concern that the new law grants judges too much discretion in determining who can be mandated into treatment.<sup>50</sup> Chen worries that judges may be more likely to mandate people into the outpatient program under the new law because they may consider it less

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43. *Court-Monitored Treatment*. Ronald Chen, Dean of Rutgers School of Law in Newark, a former public advocate for New Jersey and an ACLU-NJ board member, is one of the bill's critics. He opined, "That was a big, substantive change. Clearly there's a civil liberties issue....How would I prove that I'm not going to be a danger to someone in the future?"

44. *Court-Monitored Treatment*, *supra* note 3.

45. *Id.*

46. *Id.*

47. *Id.* Davison chaired a mental health task force formed by former Governor Richard Codey and advocated for the law that had already passed in forty-two other states.

48. *Id.*

49. *Commitment Law*, *supra* note 4.

50. *Id.*



severe than committing them to a psychiatric hospital.<sup>51</sup>

Even people who lobbied to pass the law are not entirely satisfied with its provisions.<sup>52</sup> Phillip Lubitz, director of advocacy programs for the National Alliance on Mental Illness of New Jersey, said he is disappointed the program is being used for people discharged from hospitals, rather than intervening before they are hospitalized in the first place.<sup>53</sup>

Opponents also predicted the new legislation would fail because there was no extra money for mental health treatment.<sup>54</sup> The law was delayed for two years due to state cash shortage.<sup>55</sup> After this delay, the Department of Human Services awarded \$2 million in contracts to community mental health agencies in the six counties that had initially offered the program.<sup>56</sup> Governor Christie's proposed \$32.9 billion budget last year dedicated \$12.8 million to treatment and housing facilities for the mentally ill, but no money to expand the outpatient commitment law.<sup>57</sup> Christie was soundly criticized by Lubitz and Codey, as well as mental health advocates and families who supported the law and expected it to be implemented in all twenty one New Jersey counties last year.<sup>58</sup> The \$4.5 million that Christie dedicated to the program earlier this year brings the program's total budget to \$6.5 million.<sup>59</sup>

In its first few months the program had mixed results, with some people benefitting, others being committed to psychiatric hospitals or incarcerated and others even fleeing the state.<sup>60</sup> Mental

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51. *Court-Monitored Treatment*, *supra* note 3.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Susan K. Livio, *Gov. Christie's budget contains no new money to expand controversial mental health program*, NJ.COM (Feb 28, 2013, 2:10 PM), [http://www.nj.com/politics/index.ssf/2013/02/gov\\_christies\\_budget\\_contains.html](http://www.nj.com/politics/index.ssf/2013/02/gov_christies_budget_contains.html).

58. *Id.*

59. *Commitment Law*, *supra* note 4.

60. *Court-Monitored Treatment*, *supra* note 3.

health professionals in Essex and Union counties, however, have praised the expansion of the program and credit it with reducing violence, homelessness, arrests and hospitalizations.<sup>61</sup> Davison asserts that the IOC is working and that it has proven to be “a very effective tool to help those most impaired by mental illness.”<sup>62</sup>

### **III. Due Process Issues**

A major concern with New Jersey’s outpatient commitment law, and similar laws in other states, is that it permits a person to be committed without requiring that they committed an illegal act.<sup>63</sup> The issue is whether the law violates a person’s due process rights. The Fifth Amendment to the U.S. Constitution provides that no person shall “be deprived of life, liberty or property without due process of law.”<sup>64</sup> The Fifth and Fourteenth Amendments both have due process clauses, which prohibit the federal and state governments, respectively, from interfering with these rights.<sup>65</sup> Substantive due process prohibits unfair and unreasonable governmental intrusions into fundamental rights and liberties, and requires that any such intrusions be “in furtherance of a legitimate governmental interest.”<sup>66</sup>

New Jersey’s IOC has significant implications for the substantive due process rights of the mentally ill population. Even if a person suffers from a mental illness, that individual has a constitutional right not to be forced into treatment absent any threatening behavior. Mandating individuals to outpatient treatment, and possibly inpatient treatment when no crime has been committed could trample the civil liberties of these individuals. However, there is a significant

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61. *Commitment Law*, *supra* note 4.

62. *Id.*

63. Lawrence Stevens, *Is Involuntary Commitment for "Mental Illness" a Violation of Substantive Due Process?* ANITPSYCHIATRY, <http://www.antipsychiatry.org/due-proc.htm>.

64. U.S. CONST. amend. V.

65. U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

66. *Substantive Due Process*, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/substantive\\_due\\_process](https://www.law.cornell.edu/wex/substantive_due_process).

public interest in ensuring that such individuals receive the necessary treatment, whether willingly or unwillingly, to prevent them from committing harmful acts to themselves, or from committing violent acts to others, like the one perpetrated against Gregory Katsnelson.

Weighing these two competing interests is not an easy task. Essentially, the state must weigh an individual's right to be free of unjust confinement against the public's interest in safety.<sup>67</sup> The IOC law should be able to identify individuals who pose an obvious risk and should be committed to treatment, without unfairly targeting people who may exhibit symptoms but do not pose such a danger.

There are several due process concerns regarding the IOC law, including who can initiate court proceedings for involuntary commitment, what constitutes clear and convincing evidence that the person is dangerous, how to determine the least restrictive treatment setting, and how to determine liability in civil actions for wrongful confinement.

#### **A. How is Involuntary Commitment Initiated?**

Pursuant to New Jersey Court Rule 4:74-7(b), “[a]n action for commitment to treatment shall be commenced either through a screening service referral or upon independent application for a temporary court order . . . .”<sup>68</sup> A person who is involuntarily admitted to a short-term care or psychiatric facility or hospital “may be detained by the facility or the hospital without court order for not more than 72 hours from the time the original screening certificate was executed.”<sup>69</sup>

Court proceedings for involuntary commitment can be initiated by submitting a clinical

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67. § 30:4-27.1(b) (“Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment.”).

68. N.J. Ct. R. 4:74-7(b).

69. N.J. Ct. R. 4:74-7(b)(1).

certificate prepared by a mental health professional.<sup>70</sup> For involuntary commitment to inpatient or outpatient treatment, a short-term care or psychiatric facility or a psychiatric hospital can initiate court proceedings.<sup>71</sup> A screening service or outpatient treatment provider can also initiate court proceedings for commitment to outpatient treatment.<sup>72</sup> For any person not referred by a screening service, court proceedings may be initiated by submitting two clinical certificates, at least one of which must be completed by a psychiatrist.<sup>73</sup> A family member or friend may not initiate court proceedings for involuntary commitment, but may contact Psychiatric Emergency Screening Services (PESS) to have the individual screened and may provide information to the screening staff.<sup>74</sup> The IOC law does not require that a designated screening center be located at a hospital, so long as the assessment is conducted in a setting where staff can determine whether involuntary psychiatric commitment is actually necessary.<sup>75</sup>

### **B. What is Clear and Convincing Evidence?**

One way in which the IOC law tries to prevent people from being wrongfully committed is by establishing there must be “clear and convincing evidence” that the person is a danger.<sup>76</sup> This is a medium level burden of proof<sup>77</sup> that is more stringent than the “preponderance of evidence” standard, which only requires something to be proven more likely than not to be true.<sup>78</sup> However, it

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70. § 30:4-27.10.

71. *Id.*

72. *Id.*

73. *Id.*

74. § 30:4-27.1 (2010).

75. *Warren Hosp. v. N.J. Dep’t of Human Servs., Div. of Mental Health Servs.* 972 A.2d 449, 451 (N.J. Super. Ct. App. Div. 2009).

76. § 30:4-27.1 (2010).

77. *Clear and Convincing Evidence*, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/clear\\_and\\_convincing\\_evidence](https://www.law.cornell.edu/wex/clear_and_convincing_evidence).

78. *Preponderance*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/preponderance>.

is not as rigorous as the “reasonable doubt” standard used in criminal trials.<sup>79</sup> Warning signs that someone is a risk to themselves or to others include specific threats made toward a particular person or group,<sup>80</sup> command hallucinations,<sup>81</sup> self-injurious behaviors<sup>82</sup> and medical treatment non-compliance. The more prevalent these warning signs are, the more likely the person is to be a danger.

Where a patient files a claim for deprivation of liberty, the State bears the burden of proving that the commitment was lawful by clear and convincing evidence.<sup>83</sup> Courts have maintained that this burden “should not be placed on the civilly committed patient to justify his right to liberty.”<sup>84</sup> The appellate court *In re Commitment of J.R.* held that the state failed to meet this burden and reversed the Superior Court’s order for Plaintiff’s continued treatment at Ancora Psychiatric Hospital.<sup>85</sup> A psychiatrist at the hospital testified on the state’s behalf that in the past J.R. had been verbally assaultive and engaged in “careless smoking” and that there was a risk J.R. would stop taking his meds if discharged, but the court held that this was not enough to meet the clear and convincing evidence standard that he was a danger to himself, to others, or to property.<sup>86</sup> It’s worth noting, however, that this case was decided in 2007, *before* the enactment of the current IOC law. Had it been decided today, the state would still have to meet the same standard of proof, but it would apply

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79. *Reasonable Doubt*, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/reasonable\\_doubt](https://www.law.cornell.edu/wex/reasonable_doubt).

80. *See Tarasoff v. Regents of the Univ. of Cal.*, 551 P.2d 334 (Cal. 1976). Prosenjit Poddar murdered Tatiana Tarasoff. Two months earlier, Poddar confided his intention to kill Tarasoff to a psychologist employed by the Cowell Memorial Hospital at the University of California at Berkeley. The court held that the psychologist owed a duty to warn Tarasoff of the threats.

81. *Command Hallucination*, THE FREE DICTIONARY, <http://medical-dictionary.thefreedictionary.com/command+hallucination> (last visited March 15, 2015).

82. *Cutting and Self-Harm*, HELPGUIDE, <http://www.helpguide.org/articles/anxiety/cutting-and-self-harm.htm>.

83. *In re Commitment of J.R.*, 916 A.2d 463, 467 (N.J. Super. Ct. App. Div. 2007).

84. *Id.* (citing *State v. Fields*, 390 A.2d 574, 583 (N.J. 1978)).

85. *Id.* at 468-69.

86. *Id.* at 468.

to harm in the “reasonably foreseeable future,” not “imminent” danger, and the outcome may have been different.<sup>87</sup>

### C. What is the Least Restrictive Environment?

Making the proper determination as to which level of care a person is committed is another due process issue. The term “least restrictive environment” means that the level of care to which the individual is mandated is no higher than necessary to treat his symptoms.<sup>88</sup> Persons with bipolar disorder or depression, for example, will often require less intensive treatment than someone who suffers from a psychotic disorder such as schizophrenia.<sup>89</sup> Under the statute, the screening service team would evaluate the individual and determine if the person requires involuntary commitment, and if so to what level of care.<sup>90</sup> A psychiatric hospital is a much more restrictive environment than outpatient or partial care programs, and while some people with mental disorders may acquiesce to psychiatric hospitalization, others find the thought of it extremely distressing and vehemently refuse to be hospitalized.

This issue was presented in *Wood v. Hogan*, where a patient who was civilly committed to the Ann Klein Forensic Center in New Jersey sued 17 employees at AKFC for failing to provide adequate treatment in the least restrictive setting.<sup>91</sup> Wood claimed “defendants ... denied plaintiff the ability to access adequate treatment programs or any form of treatment, and deliberately and willfully

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87. Under § 30:4-27.1, the state would have to show that there was clear and convincing evidence that J.R. was a danger to himself, to others, or to property in the reasonably foreseeable future, rather than being an “imminent” threat. Though the standard of proof is the same, it would be easier to meet this burden since more is needed to show someone will be a danger in the immediate future than the foreseeable future.

88. § 30:4-27.2. “Least restrictive environment” is defined in the bill as “the available setting and form of treatment that appropriately addresses a person’s need for care and the need to respond to dangers to the person, others or property and respects, to the greatest extent practicable, the person’s interests in freedom of movement and self-direction.”

89. *See id.*

90. § 30:4-27.1.

91. *Wood v. Hogan*, 2014 U.S. Dist. LEXIS 62347 at \*10 (D.N.J. May 6, 2014).

den[ied] him adequate treatment which resulted in a form of punishment rather than adequate treatment ... in violation of the Due Process Clause of the Fourteenth Amendment.”<sup>92</sup> The court dismissed Wood’s claims for failing to state facts connecting any of the defendants to a failure to provide adequate treatment in the least restrictive setting.<sup>93</sup> This case illustrates how it can be difficult for someone mandated to treatment to show that such treatment was not the least restrictive setting necessary for adequate care. This is often a subjective determination that can vary from one professional to another, especially where an individual exhibits moderate levels on mental illness.<sup>94</sup>

#### **D. What is the Test for Determining Liability?**

Another issue is what test to apply to determine if a person is wrongfully detained. The court must determine how egregious the error was in order to overturn a decision. This issue was addressed in *Obado v. UMDNJ Behavioral Health Center*, where a patient sued the Behavioral Health Center at the University of Medicine and Dentistry of New Jersey and Trinitas Psychiatric Hospital alleging that his involuntary commitment violated substantive due process rights, the Americans with Disabilities Act (ADA), and the Rehabilitation Act.<sup>95</sup> Defendants were awarded summary judgment, and the appellate court affirmed, finding that UMDNJ’s decision to recommend Obado to inpatient treatment did not “shock the conscious,” and that there was no evidence of discrimination based on his mental health history.<sup>96</sup>

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92. *Id.*

93. *Id.*

94. Patients diagnosed with schizoaffective disorder, for example, suffer from a combination of mood and psychotic symptoms. This disorder is generally more severe than bipolar or clinical depression, but slightly less severe than schizophrenia, so the proper level of care for such individuals can range from outpatient to inpatient, depending on their symptomology at a given time and the subjective assessment of the mental health professional. (cite?)

95. *Obado v. UMDNJ*, 524 Fed. Appx. 812, 814 (3d Cir. N.J. 2013).

96. *Id.* at 815 (“In *Benn v. Universal Health System, Inc.*, 371 F.3d 165 (3d Cir. 2004), we held that the appropriate test for assessing liability in the context of involuntary commitment decisions is

Relying on the *Benn v. Universal Health System, Inc.* and *County of Sacramento v. Lewis* decisions, the court determined that the “shocks the conscious” standard was the appropriate test for assessing liability in the context of involuntary commitment decisions.<sup>97</sup> In other words, the screening staff could only be found liable if their decision to keep Obado in inpatient care was manifestly and grossly unjust.<sup>98</sup>

However, applying the “shock the conscious” standard to claims brought against judges or mental health professionals by a person who believes they were wrongfully committed or detained makes it very difficult for a person to win such a case; the error would need to be egregious in order for the court to find that detainment was wrongful.

### **E. Are Judges Qualified to Order People into Treatment?**

Though mental health professionals make the initial screening and determine what treatment, if any, the person requires, judges are granted the power to issue court orders mandating that person to treatment if he fails to comply. But are judges qualified to make such a determination? The law appears to grant judges wide discretion in making this determination, but it’s certainly debatable whether judges should have such power, considering some judges may not have much of expertise in this area. A judge with little or no understanding of psychiatric disorders would not know what symptoms or behaviors present a risk factor. Or they blindly trust the judgment of the facility or psychiatrist who submitted the clinical certificate. If judges are allowed to order people into treatment, it would be beneficial to ensure they have a basic knowledge of symptoms of different mental illnesses, particularly before permitting them to ordering people into

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the “shocks the conscience” standard announced in *County of Sacramento v. Lewis*, 118 S.Ct. 1708 (1998).”.

97. *Id.*

98. *Shocks the Conscious*, LEGAL INFORMATION INSTITUTE, [http://www.law.cornell.edu/wex/shocks\\_the\\_conscience](http://www.law.cornell.edu/wex/shocks_the_conscience) (last visited Oct. 3, 2015).  
(is wiki a valid cite)



treatment.

#### **IV. Efficacy**

Since the commitment program is still in its infancy, only time will tell how effective it will be. The goals of IOC should be not only the promotion of public safety by preventing people with untreated mental illness from committing violent acts, but also to assist these people to get the help they need to lead healthy and fulfilling lives. In determining how effective IOC is in accomplishing these goals, two questions must be asked: 1) Will the law target the correct group of people, i.e., people who have an untreated mental illness and pose a danger to themselves, to others, or to property? 2) Will ordering these people into a treatment program help treat their symptoms and substantially improve their mental well-being?

##### **A. How do we know who is a danger?**

Proponents of the law seem to presume that mentally ill people who perpetrate violent acts usually present with obvious warning signs well before the act. Ronald Pituch may have exhibited such signs before he murdered his mother and Gregory Katsnelson,<sup>99</sup> but in many instances there are no clear threats made by the person or warning signs that the individual will act out violently. Often the warning signs are much more subtle, like the person becoming withdrawn, isolative, and not maintaining proper diet or grooming.<sup>100</sup> What seems to happen in these instances is a hindsight bias, where warning signs of violence appear much more obvious after the violent act has been committed. It's easy to say that after the fact that the perpetrator should have been medicated or hospitalized, but in reality it's often difficult to predict when someone suffering from psychiatric

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99. *Court-Monitored Treatment*, *supra* note 3.

100. *Schizophrenia*, NATIONAL INSTITUTE OF MENTAL HEALTH, <http://www.nimh.nih.gov/health/publications/schizophrenia/index.shtml>. These are examples of negative symptoms, i.e. the absence of normal thoughts, perceptions or behaviors, as compared to positive symptoms, which include the presence of abnormal thoughts, perceptions or behaviors, such as delusions and hallucinations.

illness will commit a heinous act such as a shooting spree, even for mental health professionals.

Take, for instance, Adam Lanza, the 20 year-old who killed twenty first-graders and six adults at Sandy Hook Elementary before turning the gun on himself.<sup>101</sup> Lanza suffered from mental illness for much of his life and had a history of obsessive-compulsive behaviors and a fascination with mass-shootings, particularly the infamous 1999 shooting at Columbine High School.<sup>102</sup> However, none of the mental health professionals who evaluated Lanza had “predicted that he was capable of lashing out violently.”<sup>103</sup> Lanza, who had become increasingly isolative in the months before the shooting, was evaluated by several mental health specialists and prescribed medications to treat his symptoms, but declined to take them, according to a 2013 report.<sup>104</sup>

In the aftermath of the shooting, reports of Lanza's violent video game playing were pervasive. Yet, the report indicates Lanza played many nonviolent video games as well, including Dance Dance Revolution and Super Mario Brothers. He also spent much of his time assembling computers and writing poetry. According to the report, the only other sign that Lanza had a propensity for violence was when he wrote a short story in the fifth grade about a “woman who has a gun in her cane and shoots people.”<sup>105</sup>

Just months before the massacre at Sandy Hook Elementary, James E. Holmes shot and killed 12 people at a movie theatre in Aurora, Colorado.<sup>106</sup> Holmes graduated with highest honors from the University of California, Riverside with a bachelor's degree in neuroscience in 2010.<sup>107</sup> He was enrolled as a Ph.D. student in neuroscience at University of Colorado Anschutz Medical

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101. *Sandy Hook Shooter*, *supra* note 36.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Colorado Theater Shooting Fast Facts*, CNN (Aug. 28, 2015, 8:45 PM), <http://www.cnn.com/2013/07/19/us/colorado-theater-shooting-fast-facts/>.

107. *Id.*

Campus, but dropped out of the program in June 2012, just one month before the shooting.<sup>108</sup> He had met with at least three mental health professionals associated with student mental health services before withdrawing from the school, and was “brought to the attention of the university’s Behavior Evaluation and Threat Assessment team.”<sup>109</sup> University of Colorado police were contacted to perform a background check on Holmes, but what happened afterwards is unclear.<sup>110</sup> Dr. Richard Martinez, a director of forensic psychiatry with Denver Health Medical Center, said: “At the moment you determine that there is a credible threat here, a credible possibility, the duty to warn is triggered . . . .”<sup>111</sup> It’s possible the University Police did not believe Holmes was a threat, considering his clean history; the sole contact authorities in Colorado appeared to have had with Holmes was a speeding summons in 2011, according to Aurora police.<sup>112</sup>

The largest mass-shooting in U.S. history was perpetrated by Seung-Hui Cho, who massacred 32 students at Virginia Tech on April 16, 2007.<sup>113</sup> There were much more compelling warning signs of violence with Cho than with Lanza or Holmes.<sup>114</sup> Cho, was described by professors as “a troubled loner,” and was once asked to leave a class for disturbing other students and was accused of stalking two female students in 2005, though neither of the students pressed charges.<sup>115</sup> Cho was taken to a psychiatric hospital after making a suicidal statement to a suitemate, but was

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108. *Id.*

109. *James Holmes Saw Three Mental Health Professionals Before Shooting*, CBS NEWS (Sept. 19, 2012, 4:00 PM), <http://www.cbsnews.com/news/james-holmes-saw-three-mental-health-professionals-before-shooting> [hereinafter *Holmes*].

110. *Id.*

111. *Id.*

112. Mariano Castillo and Chelsea J. Carter, *Background of Colorado Shooting Suspect Full of Contrasts*, CNN, (July 22, 2012, 10:46 AM), <http://www.cnn.com/2012/07/20/us/colorado-theater-suspect-profile>.

113. *Seung-Hui Cho*, BIOGRAPHY, <http://www.biography.com/people/seung-hui-cho-235991> (last visited Oct. 17, 2015) [hereinafter *Seung-Hui Cho*].

114. *Id.*

115. *Id.*

soon discharged with an order to receive outpatient treatment.<sup>116</sup> Cho purchased two handguns in the weeks prior to the shooting, and it was clear from evidence found in his dorm room that he had been planning the assault for some time.<sup>117</sup>

In the case of Lanza and Holmes, it's unclear if an IOC law would have prevented them from committing their respective acts of violence. Lanza had been seen by professionals, all of whom failed to see Lanza as having the potential for violence.<sup>118</sup> Holmes had also been evaluated by professionals and was considered a potential danger, though his psychiatric symptoms appeared to be more acute, perhaps stemming more from the stress of the Ph.D. program than a lifelong pattern of illness.<sup>119</sup> In either case, it's unclear if they would have been involuntarily committed to an outpatient program. The case of Cho raises the issue of the efficacy of such treatment. He *was* psychiatrically hospitalized and subsequently ordered to receive outpatient treatment, but it clearly did not do much to improve his mental health or reduce his propensity for violence.<sup>120</sup>

### **B. Efficacy of the Mental Health System**

For the IOC program to be effective, it's not enough that potentially dangerous people are committed to treatment, but the treatment they receive must be of a high enough quality to manage the psychiatric symptoms that make them a danger. The quality of care in New Jersey's treatment facilities, overcrowding in the state's psychiatric hospitals and treatment programs, and lack of funding for those facilities are other issues that need to be examined. These factors contribute to the ineffectiveness of both outpatient and inpatient treatment facilities, including why many people admitted to such facilities fail to show any significant improvement and often deteriorate.

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116. *Id.* ("Documents released in June 2007 indicate that he did attend at least one court-ordered counseling session at the Cook Counseling Center.").

117. *Id.*

118. *Sandy Hook Shooter*, *supra* note 38.

119. *See Holmes*, *supra* note 109.

120. *Seung-Hui Cho*, *supra* note 113.

Overcrowding of outpatient programs and psychiatric hospitals has been an ongoing concern in New Jersey. After Marlboro Psychiatric Hospital closed its doors in 1998,<sup>121</sup> overcrowded treatment rooms and hospitals can often provoke symptoms such as anxiety, irritability, or mania, and have a negative effect on a person's mental health.<sup>132</sup> Overcrowding also prevents patients from receiving the individual attention they need, such as one-on-one counseling to discuss their symptoms and learn proper coping strategies. Overcrowding may also limit the amount of time each patient can be evaluated by the facility's psychiatrist, leading to misdiagnosis or failure by the doctor to prescribe the medications that will best treat each patient's symptoms. Lack of proper treatment can foster mistrust of the mental health system and make people more likely to avoid treatment.

The expansion of the IOC program into all 21 New Jersey counties should provide enough facilities to prevent overcrowding, but funding is another issue, as each facility must receive enough funding to ensure that it is equipped to provide the care these individuals need. The total money dedicated to the program thus far is \$6.5 million. While this may seem like a substantial sum at first glance, consider that this funding must be divided among all the IOC centers across the state. Even if each county has only one facility (and it's likely that more than that may be needed), that still equates to roughly \$300,000 per facility. Considering costs such as food, staffing, and supplies, this

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121. Iver Peterson, *At 67, Marlboro Mental Hospital Closes*, N.Y. TIMES, (July 1, 1998), <http://www.nytimes.com/1998/07/01/nyregion/at-67-marlboro-mental-hospital-closes.html>; See also Maiken Scott, *U.S. ends investigation of Ancora Psychiatric Hospital in N.J.*, NEWSWORKS, (April 13, 2012), <http://www.newsworks.org/index.php/local/healthscience/36953-us-ends-investigation-of-ancora-psychiatric-hospital-in-nj> (describing the federal investigation of Ancora Psychiatric Hospital, which ended in 2012). "Overcrowding was one of the main issues leading to unsafe conditions for patients . . . The hospital has since reduced its patient population significantly, going from close to 800 to about 500." *Id.*

132. See Mona Marshy, *Social and Psychological Effects of Overcrowding in Palestinian Refugee Camps in the West Bank and Gaza - Literature Review and Preliminary Assessment of the Problem*, INTERNATIONAL DEVELOPMENT RESEARCH CENTRE, (Aug. 1999), <http://prn.mcgill.ca/research/papers/marshy.htm>.

hardly seems like a significant amount, especially in an era where the cost of a sports stadium often exceeds \$1 billion.<sup>122</sup> Depending on the total number of facilities under the program and the number of clients expected to be admitted to each one, a larger sum of money may need to be dedicated to the program to ensure that those who are committed receive proper treatment.

One should also consider whether the money going toward the IOC program would be better spent on new inpatient facilities or expanding existing ones. New Jersey fails to meet the minimum number of beds in psychiatric hospitals per capita necessary to provide adequate treatment for those with severe mental illness.<sup>123</sup> In 2010, New Jersey only had 1,922 such beds (898 fewer than in 2005), equaling only 21.9 beds per 100,000 state residents.<sup>124</sup> Outpatient programs may be less costly than in-patient facilities, but may not be the appropriate setting for those with the most severe mental illnesses, who are often the ones in need of civil commitment. It is important that people who are committed receive the least restrictive treatment to adequately treat their symptoms, but also that people in need of inpatient care are not committed to outpatient due to lack of space in the hospitals.<sup>125</sup> Outpatient care is much less structured than inpatient, and people with severe psychosis often fare poorly in such programs and decompensate.

### **V. Alternative Approaches**

There are a number of viable alternatives or modifications that can be made to New Jersey's

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122. Andrew Cohen, *How Stadium Construction Costs Reached the Billions*, ATHLETIC BUSINESS (July 2012), <http://www.athleticbusiness.com/stadium-arena/how-stadium-construction-costs-reached-the-billions.html>.

123. *Legal Resources New Jersey*, *supra* note 21 (“A minimum of 50 beds per 100,000 people is considered necessary to provide minimally adequate treatment for individuals with severe mental illness. Like every state, New Jersey fails to meet this minimum standard.”).

124. *Id.*

125. Though this may appear to contradict the earlier points about not trampling civil liberties, it is important to realize that it can do just as much harm to a person to place him in treatment insufficient to meet his needs. Many severely ill people wind up in outpatient or partial-care programs due to lack of beds in psychiatric hospitals and decompensate due to inadequate supervision, therapy, and medication monitoring.

IOC Law. One such way the law could be revised is to change the language of the statute so that court-ordered treatment is not made based on the person's likelihood of being "dangerous," but rather based on his "need for treatment." The purpose of this change would not be to reduce or increase the number of people involuntarily committed, but to reduce the stigma associated with being committed. Emphasizing the person's dangerousness sends the message that having a mental illness makes that person a threat, and that public safety is more important than that person's interests. Emphasizing the person's need for treatment conveys the message that the individual's well-being is as important as public safety.

Another way the statute could be modified is to appoint a mental health professional to consult with the judge in determining who will be mandated into the IOC program, as opposed to giving judges direct authority to order people into treatment. Those who have significant experience working in psychiatric facilities, particularly hospitals, would be best suited to determine when there is a foreseeable risk that a person is likely to act out violently. Where a mentally unstable person is brought before the court for making threats or other undesirable behavior, the judge could defer to the mental health professional to decide whether the individual is a suitable candidate for the IOC program.

Another alternative is to order people to take anger management classes as opposed to psychiatric treatment where the individual displays clear signs of anger and aggression, but does not present with a mental illness. Many people who have severe anger management issues and are prone to violence and aggression do not meet the criteria for a psychiatric diagnosis (though they may often be misdiagnosed as bipolar or schizophrenic). Such individuals may not benefit from psychiatric counseling or medications, but may benefit from anger management. Such classes help people to identify triggers to their anger and develop coping strategies such as deep breathing, thought stopping, and meditation.

Another consideration is the use of court-ordered treatment for people convicted of a crime who may benefit more from intensive outpatient treatment than from incarceration. Overcrowding of state penitentiaries is a growing concern across the country. “Both in raw numbers and by percentage of the population, the United States has the most prisoners of any developed country in the world — and it has the largest total prison population of any nation.”<sup>126</sup> Many of these inmates suffer from mental disorders that are being left untreated behind prison bars.<sup>127</sup> New Jersey, as every other state in the U.S., incarcerates more individuals with mental illness than it places in psychiatric hospitals.<sup>128</sup> In addition to focusing on people who are potentially dangerous but have not committed a crime, the statute should focus on how to treat those convicted of a crime who meet the criteria for a psychiatric diagnosis. Such individuals are often incarcerated for petty crimes such as shoplifting or drug possession, and treatment would prove more beneficial to them than incarceration, as well as help to reduce prison overcrowding.

A final consideration is the enactment of stronger gun laws. In the cases of Lanza, Holmes, Cho, and the shooting at Columbine High School in 1999,<sup>129</sup> the acts were perpetrated with the use of a handgun or firearm. Had these individuals not been able to obtain these weapons, they would have been unable to carry out these heinous acts. Obviously, a person can commit acts of violence

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126. Nicole Flatow, *The United States Has the Largest Prison Population in the World — And It’s Growing*, THINK PROGRESS, (Sept. 17, 2014, 9:08 AM), <http://thinkprogress.org/justice/2014/09/17/3568232/the-united-states-had-even-more-prisoners-in-2013/>.

127. See Dean Aufderheide, *Mental Illness in America’s Jails And Prisons: Toward a Public Safety/Public Health Model*, HEALTH AFFAIRS BLOG, (April 1, 2014), <http://healthaffairs.org/blog/2014/04/01/mental-illness-in-americas-jails-and-prisons-toward-a-public-safetypublic-health-model/> (discussing the prevalence of Schizophrenia and other mental illnesses in U.S. prisons).

128. *Legal Resources New Jersey*, *supra* note 21.

129. *Columbine High School Shootings*, HISTORY, <http://www.history.com/topics/columbine-high-school-shootings> (On April 20, 1999, Eric Harris and Dylan Klebold went on a shooting rampage at their high school. Harris and Klebold, who also placed homemade bombs around the school, killed 12 students and one teacher, in addition to injuring more than 20 others, before taking their own lives).



with another type of weapon such as a knife or a bat or even with their bare hands, but it would be much more difficult to kill a large number of people without the use of some type of gun. States that have high rates of gun ownership and weaker gun laws have the highest rates of gun deaths nationally.<sup>130</sup> New Jersey has among the strongest guns laws in the U.S.<sup>131</sup> and are among the lowest in gun death rate,<sup>132</sup> but many people are still senselessly killed each year in New Jersey as a result of gun violence.<sup>133</sup>

## **VI. Conclusion**

I want to emphasize that I don't want to minimize the importance of proper treatment for people who suffer from severe mental illnesses. Diseases of the mind such as bipolar disorder, schizophrenia, and schizoaffective disorder significantly affect moods, behaviors, emotional state, and one's perception of reality. They can impair a person's ability to maintain employment, affect familial and interpersonal relationships, and impair a person's ability to care for oneself. Unfortunately, it's those who are the most severely ill who often have the most difficulty accepting that they have a mental disorder and are most likely to refuse treatment, even if diagnosed by a professional or encouraged by friends and family.<sup>134</sup> Sadly, these individuals are most likely to commit acts of violence, destruction, or suicide because their symptoms. I fully understand the stance of those who support New Jersey's IOC Law and the importance of finding ways to ensure these individuals receive the treatment they need. However, it's equally important to be aware of the

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130. David Matthau, *Study: NJ's Gun Death Rate Among Lowest in the Nation*, NEW JERSEY 101.5, (July 11, 2014, 5:05 AM), <http://nj1015.com/study-njs-gun-death-rate-among-lowest-in-the-nation/>.

131. *Id.*; *New Jersey State Law Summary*, LAW CENTER TO PREVENT GUN VIOLENCE, (Sept. 21, 2015), <http://smartgunlaws.org/new-jersey-state-law-summary/>.

132. *Id.*

133. *Id.*

134. *Why do some individuals with serious mental illness refuse to take medication?*, TREATMENT ADVOCACY CENTER, <http://treatmentadvocacycenter.org/resources/consequences-of-lack-of-treatment/anosognosia/1375-why-individuals-with-severe-psychiatric-disorders-often-do-not-take-their-medications>.

shortcomings of this law and the dangers it presents, not just to those afflicted with mental illness, but to all New Jersey citizens.

Though people with severe mental disorders usually experience the onset of symptoms by their teens or early twenties, it's possible for a person at any age with no psychiatric history to experience symptoms.<sup>135</sup> Thus, the IOC law can affect anyone, not just those with a history of mental illness. Though a person who has a family history of mental illness has a greater risk of being diagnosed, a person's mental health can be affected by a number of other factors, such as stress, sleep habits, diet and exercise, and relationship issues. Furthermore, mental illnesses are not always chronic, or long-term, but are often acute, meaning temporary. People who suffer from acute mental illnesses may suffer just one or a handful of episodes over the course of their life. Such individuals may require treatment for only a temporary period, or may return to their prior level of functioning without treatment. A person may not require the same form of treatment if they are suffering from an acute episode as opposed to a chronically ill individual. It's important to consider not only a person's recent behaviors, but their behavioral history, as well as any outside factors that may be affecting the person's current mental state. Determining the severity and longevity of a person's symptomology and its underlying cause is essential to determine what course of treatment, if any, would be most beneficial to that person.

It's also important to understand reasons a person may avoid certain forms of treatment, even if that individual clearly suffers from a mental illness. It's usually not because such people don't care about their personal welfare or the safety of others. People suffering from the most severe illnesses, such as schizophrenia, often lack insight into their symptomology and fail to recognize their disorder. Even if a person recognizes their symptoms, they may have difficulty

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135. *Mental Illness Exacts Heavy Toll, Beginning in Youth*, NATIONAL INSTITUTE OF MENTAL HEALTH, (June 6, 2005), <http://www.nimh.nih.gov/news/science-news/2005/mental-illness-exacts-heavy-toll-beginning-in-youth.shtml>.

accepting their diagnosis due to the stigma associated with it. As much as our understanding of mental illness has evolved since the days of insane asylums and full frontal lobotomies, the general public still has a negative and unrealistic view of the mentally ill. Most people that suffer from mental illness are not violent and are often extremely intelligent, creative people. Mandating people to treatment based on a possibility of dangerousness may further stigmatize the mentally ill population and make those concerned that they may have such an illness more likely to try to conceal it and to avoid treatment.

If New Jersey's Involuntary Outpatient Commitment Law is to maximize the benefit to the public, it needs to be utilized prudently. Judges must take care that only those who are clearly a danger to themselves or to others *and* exhibit symptoms of mental illness are ordered into treatment. Judges who wish to order people into the IOC program should be educated so they have a basic understanding of the symptoms and warning signs that pose the greatest risk, and should emphasize that the purpose of the program is not just to ensure public safety, but the safety of the individual as well. Judges need not use the statute for the sake of squelching public anxiety about mental ill people acting violently or to make an example of people who have broken no law. Doing so will only reinforce the stigma associated with mental illness and trample the civil liberties of those punished under the statute.