Civil Commitment, the Opioid Crisis, and State Protection of Civil Liberties

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Introduction

Lizabeth Loud was involuntarily committed at eight months pregnant by her mother.[1] After giving birth to her son and getting sober, Lizabeth said that her involuntary commitment was the wake-up call she needed.[2] Lizabeth has since reconciled with her mother, and she now focuses on raising her son and participating in competitive Muay Thai fighting.[3] Lizabeth now understands her mother's decision to involuntarily commit her, reflecting that she was "trying to save her daughter."[4]

David McKinley had been involuntarily committed three times.[5] During his third civil commitment, he complained to his mother about the conditions of the facility.[6] David said that the facility was dirty, the food was poor, and there were not enough substance abuse counselors.[7] A day after this conversation with his mother, David hanged himself in his cell.[8] Afterward, his mother stated, "You think it's going to be

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[*] George Mason University Antonin Scalia Law School, J.D. expected, 2023. This article is dedicated in memory of Garyc Epperhart and all other West Virginians who have lost their lives to drug overdose. I would like to thank my husband, Austin Cromack, my parents, Dr. and Mrs. Paul and Leigh Legg, and my brother, Casey Legg, for their support of my legal career.

[1] Philip Marcelo, *In the Addiction Battle, Is Forced Rehab the Solution?*, AP News (May 23, 2018), https://apnews. com/article/health-quincy-north-america-us-news-ap-top-news-75a4822a714b43a5b-6f7b7b988d641f6.

[2] *Id.*

[3] *See id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Philip Marcelo, *In the Addiction Battle, Is Forced Rehab the Solution?*, AP News (May 23, 2018), https://apnews.com/article/health-quincy-north-america-us-news-ap-top-news-75a4822a714b43a5b-6f7b7b988d641f6.

[8] *Id.*

helpful until you hear what it's like. If I had to do it over, I wouldn't send him to that place."[9]

To what extent can the government legally intervene to prevent individuals from making poor decisions? What are the limits of personal autonomy reach in America? Do people have legal license to act as they please so long as their choices do not harm others? These questions are particularly relevant when considering two current issues in American society: civil commitment and the opioid crisis.

Civil commitment has existed in the United States since the late 1700s.[10] It is a legal process by which family members, health care practitioners, or other persons can request a court to order the involuntary commitment of someone suffering from mental illness.[11] Civil commitment, also known as involuntary civil commitment, has been used to treat people with many different kinds of mental illness, including substance use disorders.[12] In recent years, much debate has centered on the use of civil commitment as a treatment option for those afflicted with substance use disorders, especially in light of the nation's current opioid crisis.[13]

The opioid crisis has devastated families and communities in America since the late 1990s.[14] Governing bodies, from presidential administrations to small town councils, have attempted to combat the crisis by passing criminal laws that curtail drug sales and instituting educational grassroots campaigns that stress the dangers of illicit drug use.[15] Several approaches have been taken to reduce drug abuse and help

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[9] *Id.*

[10] Adam Klein & Benjamin Wittes, *Preventive Detention in American Theory and Practice*, 2 HARV. NAT'L SEC. J. 85, 157 (2011).

[11] Abhiskek Jain et al., *Civil Commitment for Opioid and Other Substance Use Disorders: Does It Work?* 69 PSYCHIATRY SERVS. 374, 374 (2018); Candace T. Player, *Involuntary Civil Commitment: A Solution to the Opioid Crisis?*, 71 RUTGERS U. L. REV. 589, 593 (2019).

[12] Jain et al., *supra* note 11, at 374; Player, *supra* note 11, at 593-94.

[13] *See* Sally Satel, *In Fight Against Opioid Crisis, Civil Commitment Can Save Lives*, AM. ENTER. INST. (Nov. 04, 2015), https://www.aei.org/articles/in-fight-against-opioid-crisis-civil-commitment-can-save-lives/; *see also* Christine Vestal, *Support Grows For Civil Commitment of Opioid Users*, HUFFINGTON POST (June 15, 2017, 10:03 A.M.), https://www.huffpost.com/entry/support-grows-for-civil-commitment-of-opioid-users_b_594292fce4b03e17eee0898f.

[14] *See What is the U.S. Opioid Epidemic?* U.S. DEP'T OF HEALTH & HUM. SERVS. (Feb. 19, 2021), https://www.hhs.gov/opioids/ about-the-epidemic/index.html.

[15] *See infra* Background, Part II, Section A (discussing various criminal laws passed throughout American history in response to widespread drug addiction); *see generally* William Glenn Steiner et al., *Drug Use*, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/topic/drug-use (Nov. 25, 2019).

opioid addicts.[16] These methods include involuntary civil commitment, voluntary outpatient rehab, and needle exchanges.

States do not have a uniform approach to civil commitment. America's varied civil commitment laws, like the nation's overall handling of the opioid crisis, reflects flawed solutions to complex issues. As a result, individuals' lives and civil rights are at stake. Civil commitment laws and the opioid crisis both reveal deep issues concerning the regulation of individual autonomy and the proper scope of government intervention.

First, this Paper will examine the history of civil commitment in the United States. This Paper will discuss the development of civil commitment laws in the United States, as well as the expansion of legal safeguards to protect the mentally ill from abuse of civil commitment methods. The variations in state civil commitment laws will be examined in detail. Next, this Paper will expound upon the opioid crisis, including its causes and the difficulty of finding one-size-fits-all solutions for opioid addicts. Finally, this Paper will evaluate which state's civil commitment laws best protect the civil liberties of the mentally ill, specifically those struggling with drug addiction. In so doing, this Paper will address the legally permissible reach of the government over individuals to prevent people from hurting themselves or other, as well as the viability of civil commitment as a treatment option for those struggling with drug addiction.

This Paper will use the terms "drug addiction" and "substance use disorder" interchangeably. The American Psychiatry Association defines "substance use disorder" as "a complex condition in which there is uncontrolled use of a substance despite harmful consequences."[17] Addiction is understood to mean a "chronic, relapsing disorder characterized by compulsive drug seeking and use despite adverse consequences."[18] Individuals identified as "substance abusers" or "drug addicts" mean persons struggling with substance abuse.

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[16] *See infra* Analysis, Part I (discussing federal approaches to treating widespread drug addiction).

[17] *What is a Substance Use Disorder?*, AM. PSYCHIATRIC ASS'N (Dec. 2020), https://www.psychiatry.org/patients-families/addiction-substance-use-disorders/what-is-a-substance-use-disorder.

[18] Nora D. Volkow, *Drugs, Brains, and Behavior: The Science of Addiction*, NAT'L INST. ON DRUG ABUSE (July 2020), https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/preface.

BACKGROUND

I. CIVIL COMMITMENT

This Section will examine the history of civil commitment in the United States, including an examination of the first civil commitment laws in America. This Section will also evaluate civil commitment as a treatment option for substance use disorder, court decisions on civil commitment, and differing civil commitment laws among the states. Finally, a chart outlines the basic elements of each state's civil commitment law is provided.

A. *The History of Civil Commitment in the United States*

Civil commitment has existed in the United States since the late 1700s,[19] but its beginnings can be traced back to the fourth century B.C. in Greece.[20] It is a legal process by which people can request that a court order the involuntary commitment of another due to mental illness.[21] While no official laws on civil commitment existed in America until 1788, the colonies inherited the common law of England, which allowed the authorities to "restrain and confine" insane persons.[22]

Beginning in the 1400s, English law differentiated between "idiots"—those who "hath no understanding from [their] nativity"—and "lunatics"—those who "had understanding . . . but hath lost the use of [their] reason."[23] In short, the former category encompassed individuals with intellectual disabilities, and the latter class included those with mental illness.[24] In England, both groups were provided for by the King.[25] Due to a lack of infrastructure in the colonies, however, this

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[19] Klein & Wittes, *supra* note 10, at 157 (2011).

[20] SUBSTANCE ABUSE & MENTAL HEALTH SERVICES ADMINISTRATION, CIVIL COMMITMENT AND THE MENTAL HEALTH CARE CONTINUUM: HISTORICAL TRENDS AND PRINCIPLES FOR LAW AND PRACTICE 2 (2019) [hereinafter "CONTINUUM"].

[21] Player, *supra* note 11, at 593.

[22] Klein & Wittes, *supra* note 10, at 156-57; CONTINUUM, *supra* note 20, at 2.

[23] CONTINUUM, *supra* note 20, at 2.

[24] *Id.*

[25] *Id.* For the intellectually disabled, the King took control of their land and retained any profits in excess of the individuals' cost of care. *Id.* For the mentally ill, the King took control of their land until they came to "their right mind." *Id.*

system of classifying individuals with mental illness did not translate to America.[26]

Prior to the opening of the first asylum in America in 1817, the mentally ill who could not care for themselves and lacked outside support were relegated to prisons or shelters.[27] These solutions were driven by an interest in public safety with little regard to the civil liberties and needs of the mentally ill.[28] The first asylums primarily treated persons with dementia, seizures, and paralysis disorders.[29] All admissions were involuntary and because most asylums were privately funded, families could essentially pay to confine their relatives.[30] The first state-funded asylum opened in Massachusetts in 1833. By the beginning of the Civil War in 1861, commitment to a state-funded asylum required only a showing that a mentally ill person required care.[31]

The first civil commitment laws regulating substance abuse were passed in the nineteenth century to control alcoholism.[32] The passage of these laws sparked debates concerning efficacy and the role of coercion in civil commitment.[33] There were also concerns about the lack of judicial review of admissions.[34] By the twentieth century, largely due to the abuse of the involuntary commitment process, laws were enacted that helped protect the rights of persons being considered for commitment.[35] These protections included the potential inpatient's right to a trial with legal representation prior to admission.[36] Physicians were also required to examine a patient before testifying that the patient should be committed.[37] These changes took the decision of whether to

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[26] *Id.* at 3.

[27] Megan Testa & Sara G. West, *Civil Commitment in the United States*, 7 PSYCHIATRY (EDGMONT) 30, 31 (2010); *see* Stuart A. Anfang & Paul S. Appelbaum, *Civil Commitment—The American Experience*, 43 ISR. J. PSYCHIATRY RELATED. SCI. 209 (2006).

[28] Anfang & Appelbaum, *supra* note 27, at 210.

[29] Testa & West, *supra* note 27, at 32.

[30] *Id.*; *see* Anfang & Appelbaum, *supra* note 27, at 210. A patient's length of stay was often tied to the amount of financial support provided by the patient's family. *Id.*

[31] Anfang & Appelbaum, *supra* note 27, at 210.

[32] Ish P. Bhalla et al., *Law and Opioid Crisis: The Role of Civil Commitment in the Opioid Crisis*, 46 J.L. MED. & ETHICS 343, 344 (2018).

[33] *Id.*

[34] *Id.*

[35] Testa & West, *supra* note 27, at 32.

[36] *Id.*

[37] Anfang & Appelbaum, *supra* note 27, at 210.

commit someone from medical professionals and placed it in the hands of judges.[38]

B. *Civil Commitment as a Treatment Option for Substance Use Disorder*

Involuntary civil commitment programs specifically designed for those with substance use disorders have been present in America since the mid-1930s with the founding of the U.S. Narcotic Farm in Lexington, Kentucky.[39] This farm and other similar institutions were founded with the primary goal of rehabilitating patients who were convicted of a federal drug crime.[40]

Despite providing increased protections for the potential inpatients, legal safeguards often resulted in unnecessary wait times.[41] For example, a person awaiting trial might spend several days in jail waiting for a court-appointed attorney.[42] In response, the National Institute of Mental Health published the "Draft Act Governing Hospitalization of the Mentally Ill," which sought to reintroduce the physician's role in the commitment process.[43] Around the same time, medical professionals, and society at large, began to question the effectiveness of long-term hospitalizations.[44] Additionally, new medications were released that helped treat psychosis, lowering the number of potential inpatients that might previously have been committed.[45] These factors, among others, led to the deinstitutionalization movement in the United States.[46]

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[38] Testa & West, *supra* note 27, at 32.

[39] Player, *supra* note 11, at, 602-03.

[40] *Id.* at 602.

[41] Testa & West, *supra* note 27, at 32.

[42] *Id.*

[43] *Id.*; *see also* Paul S. Appelbaum, *The Draft Act Governing Hospitalization of the Mentally Ill: Its Genesis and Its Legacy*, 51 PSYCHIATRIC SERVS. 190, 191 (2000) (explaining the Draft Act represented a high point in paternalistic attitudes towards the mentally ill and placed a high value on potential inpatients' personal liberties).

[44] Anfang & Appelbaum, *supra* note 27, at 211.

[45] Testa & West, *supra* note 27, at 33.

[46] *See* CONTINUUM, *supra* note 20, at 7-8 (describing how other factors contributing to deinstitutionalization included the federal government's endorsement of community-based care for the mentally ill, changes in Medicaid laws that denied financial coverage for certain inpatients, and the passage of new federal disability laws).

C. *Court Decisions Affecting Civil Commitment Standards*

Several cases have established the modern criteria for civil commitment. In *Lessard v. Schmidt*, Alberta Lessard was picked up in front of her house by two police officers who took her to a mental health hospital nearby.[47] The officers filled out an "Emergency Detention for Mental Observation" form that allowed Ms. Lessard to be detained on an emergency basis.[48] Three days later, a judge affirmed Ms. Lessard's stay, and she was detained for an additional ten days.[49] The judge also ordered two psychiatrists to examine Ms. Lessard.[50] Ms. Lessard was not informed of any of these proceedings.[51] Ms. Lessard retained her own counsel and filed a class action lawsuit alleging that Wisconsin's civil commitment law was unconstitutional.[52]

The district court in *Lessard* found that, absent a finding of dangerousness to self or others, involuntary commitment was unconstitutional.[53] Quoting the Supreme Court case *Humphrey v. Cady*, the district court held that a person's "potential for doing harm, to himself or others, is great enough to justify such a massive curtailment of liberty."[54] The district court also ruled that dangerousness must be "imminent,"[55] although most states now do not require that the harm be imminent.[56] While this case was not decided by the Supreme Court, it transformed civil commitment laws across the nation.[57]

The Supreme Court has also weighed in to establish criteria for civil commitment. In *O'Connor v. Donaldson*, Kenneth Donaldson was civilly committed to a mental health facility in Florida for almost

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[47] Lessard v. Schmidt, 349 F. Supp. 1078, 1081 (E.D. Wis. 1972).

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 1081-82.

[53] Lessard v. Schmidt, 349 F. Supp. 1078, 1093-94 (E.D. Wis. 1972).

[54] *Id.* at 1093 (quoting Humphrey v. Cady, 405 U.S. 504, 509 (1972)).

[55] *Lessard*, 349 F. Supp. at 1094.

[56] Lisa Dailey et al., *Grading the States: An Analysis of U.S. Psychiatric Laws* 4, TREATMENT ADVOC. CTR. (Sept. 22, 2020), https://www.treatmentadvocacycenter.org/storage/documents/grading-the-states.pdf.

[57] *See Due Process and Dangerousness—Lessard v. Schmidt Case Summary*, MENTAL ILLNESS POL'Y CTR., https://mentalillnesspolicy.org/legal/due-process-lessard-schmidt.html (last visited Mar. 23, 2023).

fifteen years.[58] Throughout his commitment, Mr. Donaldson continually demanded release, stating that he was not mentally ill, was dangerous to no one, and was not receiving any sort of treatment at the facility.[59] Mr. Donaldson brought suit in 1971, alleging the hospital, its superintendent, and staff had maliciously deprived him of his liberty.[60]

The Supreme Court held that a person can only be involuntary committed upon a showing of mental illness and that the person is a danger to himself or others.[61] The Court also held that states could not force mentally ill individuals into state care simply so the state could ensure a higher living standard for those individuals.[62] The Court stated: "[T]he mere presence of mental illness does not disqualify a person from preferring his home to the comforts of an institution."[63] Further, the Court held that a non-dangerous person who was capable of surviving on his own or with the help of others could not be involuntarily committed "without more" than merely a finding of mental illness.[64]

Additionally, in *Addington v. Texas*, Frank Addington was involuntary committed several times between 1969 and 1975.[65] He had been committed under a "clear and convincing evidence" standard that he was mentally ill and posed a risk of harm to himself or others.[66] The Supreme Court addressed the standard of proof necessary in an involuntary commitment proceeding[67] and held that a clear and convincing standard of evidence was a proper constitutional threshold.[68] The "beyond a reasonable doubt" standard was rejected because it would impose too high of a burden on states and, thus, serve as a barrier to patients in need of care.[69] To the Court, the "clear and convincing" evidence standard was

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[58] O'Connor v. Donaldson, 422 U.S. 563, 564 (1975).

[59] *Id.* at 565.

[60] *Id.*

[61] *Id.* at 575; *see also* Lake v. Cameron, 364 F.2d 657, 661 (D.C. Cir. 1966) (holding that non-dangerous patients should not be confined against their will if a suitable alternative is available).

[62] *O'Connor*, 422 U.S. at 575.

[63] *Id.*

[64] *Id.* at 576.

[65] Addington v. Texas, 441 U.S. 418, 420 (1979).

[66] *Id.* at 420-21.

[67] *Id.* at 419-20; *see also* CONTINUUM, *supra* note 20, at 5 n. 5-7. "Proof beyond a reasonable doubt is the highest standard of proof . . . ." *Id.* Proof by clear and convincing evidence is the middle standard of proof, requiring that the "matter in question be more likely to be true than untrue." *Id.* Finally, proof by a preponderance of the evidence requires that the evidence tips the scale just slightly in one direction or the other. *Id.*

[68] *Addington*, 441 U.S. at 433.

[69] *Id.* at 432; *see also* Testa & West, *supra* note 27, at 34 (2010).

a "fair balance between the rights of the individual and the legitimate concerns of the state."[70]

D. *Differing Civil Commitment Laws Among the States*

All fifty states, the District of Columbia, and Puerto Rico have laws allowing for the involuntary commitment of someone who is struggling with mental illness.[71] States[72] have legal authority under their police powers and *parens patriae* powers to detain the mentally ill.[73] The police power requires states to protect the interests of their citizens, even if the liberties of some citizens are compromised for the benefit of society as a whole.[74] *Parens patriae* powers stem from English common law and allows the government to "intervene on behalf of citizens who cannot act in their own best interests."[75]

Involuntary commitment typically occurs in two or three steps. First, if a person refuses to undergo a voluntary psychiatric evaluation pursuant to a motion for him to be civilly committed, he can be placed under short-term emergency custody so an evaluation can be performed.[76] States differ on how long this emergency detainment can last.[77] Second, depending on the results of the psychiatric evaluation and any other factors prescribed in the state statute, the individual may

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[70] *Addington*, 441 U.S. at 431; *see also* William Brooks, *The Privatization of the Civil Commitment Process: Have the Mentally Ill Been Systematically Stripped of Their Fourteenth Amendment Rights?*, 40 DUQ. L. REV. 1, 28 (2001).

[71] CONTINUUM, *supra* note 20, at 1, 4; *see also* Gilberto De Jesús-Rentas & Joseph D. Bloom, *Civil Commitment in Puerto Rico: Private Versus State Action*, 36 J. AM. ACAD. PSYCHIATRY & L. ONLINE 589 (2008); Brooks, *supra* note 70, at 2.

[72] *See also* CONTINUUM, *supra* note 20, at 1 n.1 (indicating federal law could also authorize the civil commitment of persons in certain instances).

[73] *Addington*, 441 U.S. 425-26 (1979); *see also* Testa & West, *supra* note 27, at 31.

[74] Testa & West, *supra* note 27, at 31; *see also* Bhalla et al., *supra* note 32, at 344 ("In the public health context, the Supreme Court held that the states' police powers may be used to limit individual autonomy.").

[75] Testa & West, *supra* note 27, at 31.

[76] *See, e.g.*, *State Standards for Civil Commitment*, TREATMENT ADVOC. CTR. 9 (Sept. 2020), https://www.treatmentadvocacycenter.org/storage/documents/state-standards/state-standards-for-civil-commitment.pdf. [hereinafter "*State Standards*"].

[77] John P. Petrila & Jeffrey W. Swanson, *Short-Term Emergency Commitment Laws*, THE POL'Y SURVEILLANCE PROGRAM (Feb. 1, 2016), https://lawatlas.org/datasets/short-term-civil-commitment. To navigate this source, click on "profiles" above the interactive map; then scroll to each state and consult the answer to question three, "What is the duration of an emergency commitment?" For example, in Kentucky, the emergency hold period lasts 72 hours, but in New Mexico, the emergency hold can last up to seven days. *Id.*

be involuntarily committed to a hospital for mental health treatment.[78] Eventually, upon completion of mental health treatment, a judge may order an individual to participate in assisted outpatient treatment.[79]

To involuntarily commit an individual, every state requires, at a minimum, a showing upon clear and convincing evidence that the individual is mentally ill and a danger to themselves or others, although very few consider just those two factors.[80] For example, Delaware's inpatient involuntary commitment statute requires a showing that: (1) the person has a mental condition; (2) the person is dangerous to himself or others; (3) all less restrictive alternatives have been considered and deemed inappropriate; and (4) the person has declined voluntary inpatient treatment or lacks the capacity to knowingly and voluntarily consent to inpatient treatment.[81] Most states have a combination of these factors.

The Supreme Court has not mandated a specific definition for "mental illness" but has delegated responsibility to the states for determining the criteria for dangerousness within their own borders.[82] The dangerousness factor is a requirement for commitment in almost all states, but states vary on whether the danger to oneself or others must be imminent.[83] In some states, presenting a danger to others includes "serious emotional injury."[84] In general, however, dangerousness refers to a person's propensity to harm oneself or others.[85] Although all states have a dangerousness factor in the civil commitment analysis, states do not have a consistent definition for dangerousness.[86]

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[78] *See, e.g.*, *State Standards*, *supra* note 76, at 6 (California), 9 (Connecticut), 16 (Hawaii), 24 (Kentucky).

[79] *See id.* at 6-7 (California), 24 (Kentucky), 31 (Michigan).

[80] *See, e.g.*, *id.* at 2.

[81] *Id.* at 2; *see* Michele Joy, *A Guide to Involuntary Commitment in Delaware*, 2 DEL. J. PUB. HEALTH 36, 37 (2016).

[82] Player, *supra* note 11, at 600; *see also* Kansas v. Hendricks, 521 U.S. 346, 359 (1997) (opinion of Thomas, J.) ("[W]e have traditionally left to legislators the task of defining terms of a medical nature that have legal significance.").

[83] CONTINUUM, *supra* note 20, at 8.

[84] *See id.* at 8-9 (describing how Iowa defines "serious emotional injury" as "an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other mental health professional and which can be casually connected with the act or omission of a person who is, or is alleged to be, mentally ill").

[85] *Id.* at 9.

[86] *See* Dailey et al., *supra* note 56, at 18 (citing Oregon, for example, which does not further define "dangerousness to self or others.").

In a related category, some states also allow civil commitment on the basis of a "grave disability," which is generally defined as an inability to care for one's own basic needs such as food, clothing, and shelter.[87] In some states, such as North Carolina, however, language defining "grave disability" is included in the definition of "danger to self" without actually using the term "grave disability," evidencing that the term is not used consistently among state statutes.[88] Thus, dangerousness to others can mean violence, threats indicating risk of bodily harm, or property damage.[89] Dangerousness to oneself can mean suicide attempts or bodily harm, failure to meet one's basic needs, failure to protect oneself from harm, and psychiatric deterioration.[90] Further, a potential basis for civil commitment that has developed in recent decades is the "serious deterioration" factor.[91] For example, for a person to be involuntarily committed to an inpatient care facility in Alabama, the court must find by clear and convincing evidence that the person will "experience deterioration of the ability to function independently" in addition to a finding of mental illness, dangerousness, and an inability to make an informed decision about treatment.[92]

Who can bring a petition to civilly commit someone is another major discrepancy among states.[93] For example, in Alaska, a family member may seek an emergency hold for a psychiatric evaluation, but only a mental health professional can petition for someone to be involuntarily committed.[94] Conversely, in Ohio, any person may judicially petition for the involuntary commitment of another.[95]

Just as civil commitment laws vary among the states, the rates of commitment differ as well. In 2015, 43.8 per 1,000 persons with serious mental illness were involuntarily committed in Wisconsin, while only 0.23 per 1,000 persons were civilly committed in Hawaii.[96] Given the sometimes drastically different approaches to mental health

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87 CONTINUUM, *supra* note 20, at 9.

88 *Id.* at 10; N.C. GEN. STAT. § 122C-3(11)(a)(1)(I).

89 CONTINUUM, *supra* note 20, at 10.

90 *Id.* at 9; *see also State Standards*, *supra* note 76, at 13.

91 CONTINUUM, *supra* note 20, at 10.

92 *Id.* (citing Ala. Code § 22-52-10.4(a)(4)).

93 *See* Dailey et al., *supra* note 56, at 16.

94 *Id.*

95 Ohio Rev. Code Ann. § 5122.11 (2021).

96 CONTINUUM, *supra* note 20, at 8.

treatment—specifically relating to substance abuse—there are essentially 50 different health care systems in America.[97]

The chart below shows the varying state rules regarding inpatient civil commitment factors, including substance abuse provisions. The relevant code section for each state's civil commitment provisions is also displayed. As indicated, all states require, at a minimum, a demonstration of the presence of mental illness and dangerousness to self or others, although many states require more factors. In some states, civil commitment must be the least restrictive form of treatment deemed appropriate for the individual.[98] Thirty-five states, plus the District of Columbia, currently have specific provisions for civilly committing individuals with a substance use disorder.

State	*Code Provision*[99]	*Mental Illness Factor*	*Dangerousness Factor*	*Are There Other Factors Present?*	*Must Civil Commitment be the Least Restrictive Alternative?*	*Is There a Substance Abuse Provision?*[100]
Alabama	Ala. Code § 22-52-37 (2023)	Yes	Yes	Yes	Yes	No
Alaska	Alaska Stat. § 47.30.730 (2023)	Yes	Yes	Yes	Yes	Yes (Alaska Stat. § 47.30.913 (2023))
Arizona	Ariz. Rev. Stat. Ann. § 36-540 (2023)	Yes	Yes	Yes	Yes	No
Arkansas	Ark. Code Ann. § 20-47-207 (2023)	Yes	Yes	No	No	Yes (Ark. Code Ann. § 20-64-815 (2023))

97 Dailey et al., *supra* note 56, at 4.

98 *State Standards*, *supra* note 76, at 9 (explaining that the "least restrictive form of treatment" means that civil commitment is the least restrictive method of treating the person's health, as compared to outpatient treatment or some other solution that does not require the individual to be restrained against his will).

99 The listed code provisions are not necessarily exhaustive. Some information, such as whether involuntary commitment must be the least restrictive alternative, may be found at other places in the state's code.

100 In some states, the provisions authorizing civil commitment for substance abuse do not explicitly state that a showing of mental illness is a required factor. A "yes" in the last column does not necessarily mean that the substance abuse provision requires a separate showing of mental illness besides the demonstration of substance use disorder.

California	Cal. Welf. & Inst. Code § 5201 (Deering 2023)	Yes	Yes	No	No	Yes (Cal. Welf. & Inst. Code § 5225 (Deering 2023))
Colorado	Colo. Rev. Stat. § 27-65-106 (2023)	Yes	Yes	Yes	No	Yes (Colo. Rev. Stat. § 27-81-112 (2023))
Connecticut	Conn. Gen. Stat. § 17a-502 (2023)	Yes	Yes	No	No	Yes (Conn. Gen. Stat. § 17a-685 (2023))
Delaware	16 Del. Laws § 5011 (2023)	Yes	Yes	Yes	Yes	Yes (16 Del. Laws § 2211 (2023))
District of Columbia	D.C. Code § 21-545 (2023)	Yes	Yes	No	Yes	Yes (D.C. Code § 24-708 (2023))[101]
Florida	Fla. Stat. § 394.467 (2023)	Yes	Yes	Yes	Yes	Yes (Fla. Stat. § 397-675 (2023))
Georgia	Ga. Code Ann. § 37-3-1 (2023)	Yes	Yes	Yes	Yes	Yes (Ga. Code Ann. § 37-7-1 (2023))
Hawaii	Haw. Rev. Stat. § 334-60.2 (2023)	Yes	Yes	Yes	Yes	Yes (Haw. Rev. Stat. § 334-59 (2023))
Idaho	Idaho Code § 66-329 (2023)	Yes	Yes	No	Yes	No
Illinois	405 Ill. Comp. Stat. 5/1-119 (2023)	Yes	Yes	Yes	Yes	No[102]
Indiana	Ind. Code § 12-26-6-2 (2023)	Yes	Yes	Yes	No	Yes (Ind. Code § 12-23-11.1-1 (2023))
Iowa	Iowa Code § 229.6 (2023)	Yes	Yes	Yes	No	Yes (Iowa Code § 229.6 (2023))
Kansas	Kan. Stat. Ann. § 59-2946 (2023)	Yes	Yes	Yes	No	Yes (Kan. Stat. Ann. § 59-2946 (2023))

[101] Patients may be confined to a hospital only.

[102] 405 ILL. COMP. STAT. ANN. 5/1-129 (LexisNexis 2023). Section 5/1-129 specifically excludes substance use disorder from its definition of "mental illness."

Kentucky	Ky. Rev. Stat. Ann. § 202A.026 (LexisNexis 2023)	Yes	Yes	Yes	Yes	Yes (Ky. Rev. Stat. Ann. § 222.431 (LexisNexis 2023))
Louisiana	La. Stat. Ann. § 28:55 (2023)	Yes	Yes	Yes	Yes	Yes (La. Stat. Ann. § 28:52.4 (2023))
Maine	Me. Stat. tit. 34-B, § 3864 (2023)	Yes	Yes	Yes	Yes	Yes (Me. Stat. tit. 34-B, § 3801 (2023))
Maryland	Md. Code Ann., Health–Gen. § 10-632 (LexisNexis 2023)	Yes	Yes	Yes	Yes	No
Massachusetts	Mass. Gen. Laws ch. 123, § 8 (2022)	Yes	Yes	Yes	Yes	Yes (Mass. Gen. Laws ch. 123, § 35 (2023))
Michigan	Mich. Comp. Laws § 330.1401 (2023)	Yes	Yes	Yes	No	Yes (Mich. Comp. Laws §§ 330.1401, 330.1281a (2023))
Minnesota	Minn. Stat. § 253B.051 (2022)	Yes	Yes	Yes	Yes	Yes (Minn. Stat. § 253B.051 (2022))
Mississippi	Miss. Code Ann. §§ 41-21-63, 41-21-73 (2023)	Yes	Yes	Yes	Yes	Yes (Miss. Code Ann. § 41-31-3 (2023))
Missouri	Mo. Rev. Stat. 632.350 (2022)	Yes	Yes	No	Yes	Yes (Mo. Rev. Stat. 631.115 (2022))
Montana	Mont. Code Ann. § 53-21-126 (2021)	Yes	Yes	Yes	No	No[103]
Nebraska	Neb. Rev. Stat. § 71-925 (2022)	Yes	Yes	Yes	Yes	Yes (Neb. Rev. Stat. §§ 71-913, 71-921 (2022))

[103] MONT. CODE ANN. § 53-21-102 (2021). Section 53-21-102 specifically excludes addiction to drugs or alcohol from its definition of "mental disorder."

Nevada	Nev. Rev. Stat. § 433A.310, 0175 (2023)	Yes	Yes	Yes	Yes	No[104]
New Hampshire	N.H. Rev. Stat. Ann. § 135-C:34 (2023)	Yes	Yes	Yes	No	No[105]
New Jersey	N.J. Stat. Ann. § 30.4:27.1 (West 2023)	Yes	Yes	Yes	Yes	No[106]
New Mexico	N.M. Stat. Ann. § 43-1-11 (2023)	Yes	Yes	Yes	Yes	No
New York	N.Y. Mental Hyg. Law § 9.37 (LexisNexis 2023)	Yes	Yes	Yes	No	No
North Carolina	N.C. Gen. Stat. § 122C-268 (2023)	Yes	Yes	No	No	Yes (N.C. Gen. Stat. § 122C-281 (2023))
North Dakota	N.D. Cent. Code §§ 25-03.1-02, 25-03.1-07 (2023)	Yes	Yes	Yes	No	Yes (N.D. Cent. Code § 25-03.1-02 (2023))
Ohio	Ohio Rev. Code Ann. §§ 5122.01, 5122.11 (LexisNexis 2023)	Yes	Yes	Yes	No	Yes (Ohio Rev. Code Ann. § 5119.92 (2023))
Oklahoma	Okla. Stat. tit. 43A §§ 1-103, 5-410 (2023)	Yes	Yes	Yes	Yes	Yes (Okla. Stat. tit. 43A § 1-103 (2023))
Oregon	Or. Rev. Stat. § 426.232 (2022)	Yes	Yes	Yes	No	No[107]

104 NEV. REV. STAT. ANN. § 433A.0175 (2023). Section 433A.0175 specifically excludes from the definition of "mental illness" a person who has diminished capacity due to addiction to alcohol or other substances.

105 N.H. REV. STAT. ANN. § 135-C:2 (2023). Section 135-C:2 specifically excludes "dependence upon or addiction to any substance such as alcohol or drugs" from its definition of "mental illness."

106 N.J. STAT. ANN. § 30.4-27.1 (2023). Section 30.4-27.1 specifies that "mental illness" does not include "transitory reaction to drug ingestion."

107 OR. REV. STAT. § 426.495 (2022). Section 426.495 explicitly states that a "person with a mental illness" does not include a person with a mental disorder caused by substance abuse.

Pennsylvania	50 Pa Cons. Stat. § 7304 (2022)	Yes	Yes	Yes	No	Yes (50 Pa. Cons. Stat. § 1703, 71 Pa. Cons. Stat. § 1609.102 (2022))
Rhode Island	40 R.I. Gen. Laws § 1-5-8 (2022)	Yes	Yes	Yes	Yes	No[108]
South Carolina	S.C. Code Ann. § 44-17-580 (2023)	Yes	Yes	Yes	No	Yes (S.C. Code Ann. § 44-52-70 (2023))
South Dakota	S.D. Codified Laws § 27A-1-2 (2023)	Yes	Yes	Yes	No	Yes (S.D. Codified Laws § 34-20A-70 (2023))
Tennessee	Tenn. Code Ann. § 33-6-502 (2022)	Yes	Yes	Yes	Yes	Yes (Tenn. Code Ann. § 33-1-101 (2022))
Texas	Tex. Health & Safety Code Ann. § 574.034 (West 2021)	Yes	Yes	Yes	Yes	Yes (Tex. Health & Safety Code §§ 462.001, 462.062 (2021))
Utah	Utah Code Ann. § 62A-15-631 (LexisNexis 2022)	Yes	Yes	Yes	Yes	No
Vermont	Vt. Stat. Ann. tit. 18, § 7101 (2022)	Yes	Yes	Yes	No	Yes (Vt. Stat. Ann. tit. 18 § 8402 (2022))
Virginia	Va. Code Ann. § 37.2-817 (2023)	Yes	Yes	Yes	Yes	Yes (Va. Code Ann. § 37.2-800 (2023))
Washington	Wash. Rev. Code § 71.05.230 (2022)	Yes	Yes	Yes	Yes	Yes (Wash. Rev. Code § 71.05.160 (2022))
West Virginia	W. Va. Code § 27-5-2 (2023)	Yes	Yes	No	Yes	Yes (W. Va. Code § 27-5-2 (2023))

[108] *See* 23 R.I. GEN. LAWS § 1.10-10 (2022). Section 1.10-10 only mentions alcohol with respect to involuntary commitment.

Wisconsin	Wis. Stat. § 51.20 (2022)	Yes	Yes	Yes	Yes	Yes (Wis. Stat. § 51.20 (2022))
Wyoming	Wyo. Stat. Ann. §§ 25-10-109, 25-10-110 (2022)	Yes	Yes	Yes	Yes	No[109]

II. THE OPIOID CRISIS IN AMERICA

This Section will provide an overview of the history of the opioid crisis in America, including the most recent statistics on the epidemic's devastating effects. Legal responses to the opioid crisis and court decisions will also be examined.

A. *History and Statistics of the Opioid Crisis*

Opioids are drugs prescribed to treat severe pain.[110] This class of drugs is derived naturally from the poppy plant, but some forms, like fentanyl, are made synthetically.[111] Common opioid painkillers include oxycodone, hydrocodone bitartrate, and morphine.[112] In 2021, over 70,000 people died of a opioid-related drug overdose nationally.[113] Drug overdose was the leading cause of death for American adults under 50 in 2017.[114] Between 1999 and 2015, 183,000 Americans died from a prescription opioid overdose.[115] Of adults prescribed opioids for chronic pain, eight to twelve percent will develop an opioid use disorder.[116]

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109 WYO. STAT. ANN. § 25-10-101 (2022). Section 25-10-101 explicitly states that "mental illness" does not include addiction to drugs.

110 *What Are Opioids*, AM. SOC'Y OF ANESTHESIOLOGISTS, https://www.asahq.org/madeforthismoment/pain-management/opioid-treatment/what-are-opioids/ (last visited Mar. 23, 2023).

111 *Opioids*, JOHNS HOPKINS MED., https://www.hopkinsmedicine.org/opioids/what-are-opioids.html (last visited Mar. 23, 2023).

112 *Id.*

113 *See Drug Overdose Death Rates*, NAT'L INST. ON DRUG ABUSE, https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates (last visited Mar. 23, 2023).

114 *See* BETH MACY, DOPESICK: DEALERS, DOCTORS, AND THE DRUG COMPANY THAT ADDICTED AMERICA 5 (2018); *see also* Josh Katz, *The First Count of Fentanyl Deaths in 2016: Up 540% in Three Years*, N.Y. TIMES (Sept. 2, 2017), https://www.nytimes.com/interactive/2017/09/02/upshot/fentanyl-drug-overdose-deaths.html; Julie Vitkovskaya & Courtney Kan, *Why is Fentanyl So Dangerous?*, WASH. POST (Dec. 12, 2022, 12:39 P.M.), https://www.washingtonpost.com/nation/2022/11/03/fentanyl-opioid-epidemic/.

115 Player, *supra* note 11, at 592.

116 CONG. BUDGET OFF., THE OPIOID CRISIS AND RECENT FEDERAL POLICY RESPONSES 5 (2022).

Genetics, environmental factors, and a history of abuse may increase a person's risk of addiction.[117]

For most of western medical history, saving a patient's life was prioritized over reducing his suffering.[118] In the nineteenth century, new technical innovations changed the treatment of pain, including the isolation of morphine, cocaine, and heroine.[119] While these techniques provided effective ways to treat pain, some patients fell into addiction. Drug addiction first reared its ugly head in America during the Civil War, which produced thousands of morphine-addicted soldiers.[120] Later, morphine was synthesized to make a more powerful—and more addictive—substance known as heroin.[121] When heroin was first marketed in the late 1800s, it was believed to be nonaddictive.[122] Doctors prescribed it as an anti-diarrheal and respiratory medicine.[123] The drug's addictive qualities soon became clear and heroin addiction became prominent across America.[124]

In 1914, the Harrison Narcotics Control Act was passed in response to a surge in street heroin use.[125] The Act intended to narrow the distribution of narcotics to legitimate medical channels by requiring anyone who sold narcotics to register and pay a tax.[126] A subsequent government campaign characterized an addict as "a deviant, a crime-prone, weak-willed moral failure."[127] Heroin still thrived as a street drug, although doctors refrained from prescribing it and other opiates to treat pain.[128]

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117 *Alcohol and Drug Statistics*, AM. ADDICTION CTRS., https://americanaddictioncenters.org/rehab-guide/addiction-statistics (Mar. 22, 2023).

118 Martin S. Pernick, *The Calculus of Suffering in Nineteenth-Century Surgery*, 13 HASTINGS CTR. REP. 26, 27, (1983).

119 *Id.* at 26.

120 SAM QUINONES, DREAMLAND: THE TRUE TALE OF AMERICA'S OPIATE EPIDEMIC 52 (2015).

121 *Id.* at 53.

122 *Id.*

123 *Id.*

124 *Id.*

125 Mark R. Jones et al., *A Brief History of the Opioid Epidemic and Strategies for Pain Medicine*, 7 PAIN THERAPY 13, 15 (2018); *see also* QUINONES, *supra* note 120, at 53-54. While originally only a tax on opiates, the Act transformed into America's first prohibition statute when police began arresting doctors for prescribing opiates. QUINONES, *supra* note 120, at 54.

126 David T. Courtwright, *Preventing and Treating Narcotic Addiction—A Century of Federal Drug Control*, 373 N. ENG. J. MED. 2095, 2095-97 (2015).

127 QUINONES, *supra* note 120, at 54.

128 *See id.* at 54-55. Multiple doctors' signatures were required to prescribe even a low-dose opiate to a dying patient. *Id.* at 80.

In the 1980s, doctors began to look for new ways to treat pain.[129] Many physicians began prescribing opioids as pain relievers.[130] Doctors developed confidence that opioids would not cause addiction in part because of two narrow, retrospective studies.[131] The first was a single-paragraph letter to the editor of the New England Journal of Medicine which claimed that only 0.03 percent of patients who had been prescribed opioids for acute pain had become addicted.[132] The second, a review of 38 patients who were administered opioids for pain, reported that only two of the patients misused or abused the opioids.[133] These small, misleading statistics helped form the foundation for America's opioid epidemic and unintentionally "ignite[d] . . . a revolution in American medicine."[134]

While perceptions on the treatment of pain were shifting within America's borders, an international shift was occurring as well. Swedish physician Jan Stjernsward, then cancer chief of the World Health Organization (WHO), devised a ladder of treatment that assigned increasingly powerful drugs to intensifying levels of pain.[135] Stjernsward was inspired by her experience in Kenya where she witnessed cancer patients in extreme pain be refused opiates for fear they would become addicted.[136] Stjernsward and WHO also claimed that "freedom from pain [w]as a universal human right," which eased doctors' fears about the addictive qualities of opiates.[137] Consequently, international morphine use rose thirtyfold between 1980 and 2011.[138]

In response to the changing tides, the American Pain Society introduced pain as the fifth vital sign in 1995 and in 1999, the Veteran's Health Administration followed suit.[139] Additionally, the Joint

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129 Jones et al., *supra* note 125, at 15; *see also* Roger Collier, *A Short History of Pain Management*, CAN. MED. ASS'N J. (Jan. 2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5760261/.

130 *Id.* at 15-16.

131 *Id.*

132 *See* Jane Porter & Hershel Jick, *Addiction Rare in Patients Treated with Narcotics*, 302 N. ENG. J. MED. 123, 123 (1980); *see also* QUINONES, *supra* note 120, at 15-16

133 Russel K. Portenoy & Kathleen M. Foley, *Chronic Use of Opioid Analgesics in Non-Malignant Pain: Report of 38 Cases*, 25 PAIN 171, 171 (1986); *see also* QUINONES, *supra* note 120, at 314. Pharmaceutical companies funded Portenoy's travels around the country to promote the use of opiates for chronic pain. *Id.* at 313-14.

134 QUINONES, *supra* note 120, at 315.

135 *Id.* at 81.

136 *Id.*

137 *Id.* at 82.

138 Jones et al., *supra* note 125, at 15; *see also* QUINONES, *supra* note 120, at 82 (over 90 percent of morphine went to the world's wealthiest countries, defeating Stjernsward's original goal of making opiates available to dying patients in third-world countries).

139 Jones et al., *supra* note 125, at 16.

Commission mandated that doctors provide adequate pain control in 2000.[140] The result was an increased reliance on opioids that caught doctors off guard.[141] Critics began to describe doctors who did not prescribe opioids as "inhuman" and doctors risked denial of federal healthcare funds if they did not comply with the Joint Commission mandates.[142] The initial results from increased opioid prescriptions for chronic pain seemed positive, but addiction rates soon skyrocketed.[143] Other negative side effects of opioids surfaced as well, including hyperalgesia,[144] increased disability, and psychological issues.[145]

This new wave of addiction in America followed a different path than usual. Historically, drugs such as cocaine and heroin ravaged big cities and urban communities first before making their way to rural areas.[146] The opioid epidemic, however, began in rural communities where residents worked in high-risk industries and typically lived hours from treatment options.[147] These areas shared some common characteristics:

> They're home to large populations of disabled and chronically ill people who are in need of pain relief; they're marked by high unemployment and a lack of economic opportunity; they're remote, far from the network of Interstates and metropolises through which heroin and cocaine travel; and they're areas where prescription drugs have been abused—though in much smaller numbers—in the past.[148]

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140 *Id.*

141 *Id.* at 16.

142 *See id.* at 16 (describing how doctors could be labeled "inhumane" and even be sued for the undertreatment of pain.); *see also* QUINONES, *supra* note 120, at 137 (describing how doctors were under pressure from pain societies and other organizations to promote and prescribe opiates).

143 *Id.* at 15, 16.

144 *Hyperalgesia*, NAT'L CANCER INST., https://www.cancer.gov/publications/dictionaries/cancer-terms/def/hyperalgesia (last visited Mar. 24, 2023) (defined as "an increased sensitivity to feeling pain and an extreme response to pain.").

145 Jones et al., *supra* note 125, at 16; *see also Hyperalgesia*, *supra* note 144.

146 MACY, *supra* note 114, at 7–8.

147 *Id.*; *see also* Paul Tough, *The Alchemy of OxyContin*, N.Y. TIMES (Jul. 29, 2001), https://www.nytimes.com/2001/07/29/magazine/the-alchemy-of-oxycontin.html (reporting that the opioid crisis in America began in "rural Maine, rust-belt communities in western Pennsylvania and eastern Ohio[,] and the Appalachian areas of Virginia, West Virginia and Kentucky").

148 Tough, *supra* note 147.

Another example of this phenomena occurred when almost nine million pills were shipped to a West Virginia town with 382 residents over the course of two years.[149]

Pharmaceutical companies played a large role in the advent of the opioid crisis. These companies heavily marketed opioids, such as extended release oxycodone (OxyContin),[150] and paid for continuing medical education (CME) seminars to get more doctors to notice the benefits of opioids.[151] For example, Purdue Pharma (Purdue) funded pain societies, produced videos about how opiates relieve pain, and even offered free CME seminars on prescribing opiates for pain management.[152] Purdue sales representatives distributed coupons to patients that gave them a free limited-time prescription to OxyContin for seven to 20 days.[153] Sales representatives also assured doctors, many untrained in prescribing opiates for pain relief, that OxyContin was not addictive.[154] In 2000, only four years after the release of OxyContin, Purdue's sales of the drug amounted to $1.1 billion.[155]

One unintended consequence of the increased rate of OxyContin prescriptions was that OxyContin quickly became a gateway drug to heroin.[156] Heroin is a synthesized opioid and is three times more potent than morphine.[157] OxyContin users quickly built up a tolerance for heroin.[158] Additionally, OxyContin pills could cost $25 a piece but heroin was

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149 ERIC EYRE, DEATH IN MUD LICK: A COAL COUNTRY FIGHT AGAINST THE DRUG COMPANIES THAT DELIVERED THE OPIOID EPIDEMIC xi (2020).

150 Jones et al., *supra* note 125, at 16.

151 QUINONES, *supra* note 120, at 31; *see also* Art Van Zee, *The Promotion and Marketing of OxyContin: Commercial Triumph, Public Health Tragedy*, 99 AM. J. PUB. HEALTH 221, 221-22 (2009) ("It is well documented that this type of pharmaceutical company symposium influences physicians' prescribing, even though the physicians who attend such symposia believe that such enticements do not alter their prescribing patterns.").

152 QUINONES, *supra* note 120, at 136; *see also* Tough, *supra* note 147. Food & Drug Administration regulations prevented companies from directly advertising drugs to consumers. Tough, *supra* note 147. To circumvent this rule, Purdue marketed the concept of pain to consumers, implying that patients' pain should be treated and that opiates were a viable option for pain relief. *Id.*

153 Van Zee, *supra* note 151, at 222.

154 Tough, *supra* note 147.

155 Van Zee, *supra* note 151, at 221.

156 *See What Are Gateway Drugs, & Should Parents Be Concerned?*, TURNBRIDGE, https://www.turnbridge.com/news-events/latest-articles/what-are-gateway-drugs/# (last visited Mar. 23, 2023).

157 QUINONES, *supra* note 120, at 53; Camille Renzoni, *Differences Between Heroin and Morphine*, THE RECOVERY VILLAGE, https://www.therecoveryvillage.com/heroin-addiction/heroin-and-morphine/ (Apr. 29, 2022).

158 Tough, *supra* note 147.

cheap.[159] Thus, drug cartels later discovered they could increase their profits by mixing heroin, which is a derivative of the poppy plant, with fentanyl, a cheap, completely synthetic opioid.[160] Even more concerning, fentanyl is twenty-five to fifty times stronger than heroin.[161] Its potency addicted users more quickly and increased how "high" a person had to get to avoid becoming "dopesick."[162]

Countless legal cases have been brought against pharmaceutical companies since the addictive qualities of their misbranded drugs became clear. In 2007, Purdue pled guilty to one felony count of "misbranding a prescription opioid pain medication with the intent to defraud or mislead" and paid a total of $634.5 million in fines.[163] GlaxoSmithKline LLC paid a record $3 billion in a 2012 settlement with the Department of Justice for its unlawful promotion of certain drugs.[164] In 2009, Pfizer Inc. and its subsidiary, Pharmacia & Upjohn Company Inc., paid a $23 billion settlement for fraudulent marketing of pharmaceutical products.[165]

B. *The Supreme Court's Decision in* Robinson v. California *and Legal Solutions*

The federal government has addressed drug addiction through Supreme Court decisions and administrative regulation. In *Robinson v. California*, the Supreme Court held that states cannot criminalize drug addiction.[166] The defendant, Lawrence Robinson, was arrested after an

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159 *Id.*

160 *See Fentanyl: The Next Wave of the Opioid Crisis: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Com.*, 115th Cong. (2017) (statement of Matthew C. Allen, Assistant Director, Homeland Security Investigative Programs); *see also* QUINONES, *supra* note 120, at 53.

161 MACY, *supra* note 114, at 201.

162 *Id.*; *see also Dope Sick: What Does It Mean?*, ASHLEY ADDICTION TREATMENT, https://www.ashleytreatment.org/dope-sick/ (last visited Mar. 24, 2023). "Dopesick" is a slang term for opioid withdrawal symptoms.

163 United States v. Purdue Frederick Co., 465 F. Supp. 2d 569, 572-73 (W.D. Va. 2007).

164 Press Release, U.S. Dep't of Justice Off. Pub. Affs., GlaxoSmithKline to Plead Guilty and Pay $3 Billion to Resolve Fraud Allegations and Failure to Report Safety Data (July 2, 2012), https://www.justice.gov/opa/pr/glaxosmithkline-plead-guilty-and-pay-3-billion-resolve-fraud-allegations-and-failure-report.

165 Press Release, U.S. Dep't of Justice Off. Pub. Affs., Justice Department Announces Largest Health Care Fraud Settlement in Its History (Sept. 2, 2009), https://www.justice.gov/opa/pr/justice-department-announces-largest-health-care-fraud-settlement-its-history.

166 Robinson v. California, 370 U.S. 660, 667 (1962).

officer examined what he believed to be needle marks on the defendant's arm.[167] Two officers testified at trial that they observed scabs and discoloration on Mr. Robinson's arms indicative of injections from hypodermic needles.[168] One officer also testified that Mr. Robinson admitted during questioning that he occasionally used narcotics.[169] In response, Mr. Robinson testified that the marks on his arms were from an allergic condition and that he had never used narcotics.[170]

The trial judge instructed the jury that Mr. Robinson could be convicted either for having the "status" of one addicted to the use of narcotics *or* for committing the "act" of using narcotics.[171] The jury found Mr. Robinson guilty, and he appealed.[172] The Supreme Court then held that criminalizing the illness of drug addiction was cruel and unusual punishment under the Fourteenth Amendment.[173]

Although the Supreme Court has not addressed the constitutionality of a state-sponsored civil commitment program for substance abusers, the Court's dicta in *Robinson* suggested that such a program may be constitutional.[174] The Court stated: "The broad power of the State to regulate the narcotic drugs traffic within its borders is not here at issue."[175] The Court then suggested:

> Such regulation . . . could take a variety of valid forms. A State might impose criminal sanctions, for example, against the unauthorized manufacture, prescription, sale, purchase, or possession of narcotics within its borders. In the interest of discouraging the violation of such laws, or in the interest of the general health or welfare of its inhabitants, a State might establish a program of compulsory treatment for those addicted to narcotics.[176]

In *People v. Victor*, the California Supreme Court upheld a state compulsory drug treatment program that applied not only to those

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167 *Id.* at 636.

168 *Id.* at 661-62.

169 *Id.* at 661.

170 *Id.* at 662.

171 *Id.* at 662-63.

172 Robinson v. California, 370 U.S. 660, 663 (1962).

173 *Id.* at 664.

174 Player, *supra* note 11, at 597-98.

175 Robinson v. California, 370 U.S. 660, 664 (1962).

176 *Id.*

who were addicted to narcotics, but also those who were in "imminent danger of becoming addicted to narcotics."[177] The court stated that by allowing involuntary commitment of those in "imminent danger" of becoming addicted, the legislature had recognized the "fundamental medical fact that narcotics addiction is not so much an event as a process."[178] Ultimately, the court found that the statute was constitutional and that authorities "need not sit idly by" when an individual was in danger of becoming addicted to narcotics, thereby endangering himself and others.[179]

Various approaches have been taken in response to the opioid crisis. The National Institute of Health, a subsection of the Department of Health and Human Services, has explored chronic pain management strategies, medications to treat opioid addiction, and overdose reversal remedies.[180] Modern studies show that treatment for opioid addictions "is most effective when comprised of multimodal interventions that are both pharmacological and psychosocial."[181]

ANALYSIS

Having established the history and background of civil commitment laws and the opioid crisis, this Paper will now address the state civil commitment laws that best protect individual liberty. This Paper will also examine the ways the opioid crisis has tested the limits of governmental restraint.

I. STATE CIVIL COMMITMENT LAWS AND PROTECTING INDIVIDUAL LIBERTY

State civil commitment laws that best safeguard individual liberties are those that require commitment facilities to provide treatment for substance use disorder, specifically detail the criteria for dangerousness, and allow family members to petition for civil commitment. States vary in their protection of civil liberties for involuntarily committed persons. Few states have detailed procedures for how individuals with substance

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177 People v. Victor, 398 P.2d 391, 394 (Cal. 1965).

178 *Id.* at 404.

179 *Id.* at 408.

180 *Drug Overdose Rates*, *supra* note 113.

181 Jones et al., *supra* note 125, at 18.

use disorder are to be treated during their commitment.[182] As aforementioned, states' different standards for what constitutes dangerousness present a great threat to civil liberties simply based on the state in which a person resides.[183] Finally, not all states allow family members to petition for their loved ones to be civilly committed. Often, they must simply wait for the person to hit "rock bottom" and be picked up by the police who can petition for their commitment.[184] Family members regularly have the most complete knowledge of their loved one's condition and have the individual's best interest in mind, including a desire for his flourishing and independence.[185]

A. *Substance Abuse Treatment at Involuntary Commitment Facilities*

The treatment provided to patients at involuntary commitment facilities, while intended to affirm patients' dignity and assist them with withdrawal symptoms, does not always meet its goals. Conditions in civil commitment facilities sometimes resemble jail.[186] Patients are also not always given access to substance abuse counselors or medication to help ease withdrawal symptoms.[187] Being forced to detox from drugs while not receiving any substantive medical treatment has been deemed by some as "cruel and unusual punishment."[188] The use of medication treatment during involuntary commitment appears to be underutilized.[189] Not providing treatment to addicted individuals while they are civilly committed makes their commitment more or less equivalent to a prison sentence, for the individual is involuntarily detained without progressive rehabilitation.

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182 Paul P. Christopher et al., *Nature and Utilization of Civil Commitment for Substance Abuse in the United States*, 43 J. AM. ACAD. PSYCHIATRY L. 313, 318 (2015).

183 Dailey et al, *supra* note 56, at 18.

184 *Id.* at 17.

185 *Id.* at 18.

186 Elizabeth A. Evans et al., *Perceived Benefits and Harms of Involuntary Civil Commitment for Opioid Use Disorder*, 48 J.L. MED. & ETHICS 718, 726 (2020).

187 *Id.* at 726-27.

188 *Id.* at 728.

189 Paul P. Christopher et al., *Civil Commitment Experiences Among Opioid Users*, 193 DRUG ALCOHOL DEPEND. 137, 140 (2018) ("Medication treatment...clearly reduces all cause- and opioid-related mortality among opioid users who have previously overdosed.")

B. *Definitions of Dangerousness*

The different definitions of "dangerousness" used in state civil commitment laws threaten individual liberties because commitment largely depends on where the person lives. States widely vary as to what constitutes "dangerousness" for the purpose of civil commitment. For example, Alaska defines dangerousness as "likely to cause harm."[190] "Likely to cause serious harm" means that a person:

> (A) poses a substantial risk of bodily harm to that person's self, as manifested by recent behavior causing, attempting, or threatening that harm; (B) poses a substantial risk of harm to others as manifested by recent behavior causing, attempting, or threatening harm, and is likely in the near future to cause physical injury, physical abuse, or substantial property damage to another person; or (C) manifests a current intent to carry out plans of serious harm to that person's self or another.[191]

California provides no definition of what "danger to others, or to himself or herself" means.[192] Although these differences may seem small, the ramifications are that a person who is committed in Alaska may not be committed in California, simply based on where the person lives and not his or her actual mental condition, aptitude toward dangerousness, or medical needs.

C. *Allowing Family Members to Petition for Civil Commitment*

By allowing family members to petition for the civil commitment of a loved one, family members can offer a comprehensive picture of the loved one's struggles. While petitions by police officers and medical professionals can be helpful, family members can provide evidence and a background of the individual's struggles that may not be revealed in run-ins with the law or medical examinations. Ultimately, the more comprehensive picture a court can receive regarding an individual, the better informed a court is in deciding whether to order civil commitment.

Medical professionals only have the opportunity to observe an individual if that person comes in for treatment or if the doctor is

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[190] ALASKA STAT. § 47.30.735(c) (2023).

[191] ALASKA STAT. § 47.30.915(12) (2023). Notice the discrepancy between the requirement that the individual be likely to cause "harm" and the provision defining "serious harm."

[192] *See* CAL. WELF. & INST. CODE § 5250 (2021).

assigned by the court to evaluate the person for civil commitment. Medical professionals, however, often do not see addicts on a day-to-day basis. Family members more often see substance abusers in their day-to-day lives and might have a better understanding of when an individual needs involuntary help. Law enforcement officers often see substance abusers at low points, such as during a drug bust or when reviving an individual from an overdose and, thus, may be partial in civil commitment proceedings.

Increasing the number of people who may petition for the involuntary commitment of another poses dangers as well. For example, New Hampshire's civil commitment statute permits "[a]ny responsible person" to petition for the civil commitment of another.[193] Having this broad of a standard may also put people in danger of frivolous or ill-advised petitions for their involuntary commitment. Family members can also abuse their ability to petition for someone to be civilly committed. To protect individuals, it is important for states to have robust and clear civil commitment procedures. Courts can also help contribute to the protection of individual civil rights in this context; judges should not grant the involuntary commitment of someone unless it is clear the individual meets the statutory factors. Even if the individual meets the factors, some states have a requirement that the type of treatment mandated must be the least restrictive.[194] Competent courts and robust statutes with clear guidelines can help safeguard against family abuse of civil commitment.

II. OPIOID CRISIS TESTED THE LIMITS OF GOVERNMENT RESTRAINT

The opioid crisis in particular has tested the limits of what the government can legally do to restrain persons from the harmful consequences of their decisions. Although mental illness has existed in this country since its founding, a notable portion of the population struggling with drug addiction is a relatively new problem. Civil commitment laws were not developed with those suffering with drug addictions in mind.[195] Enacting civil commitment standards that protect the rights of those struggling with drug addiction is particularly important given that

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193 N.H. REV. STAT. ANN. § 135-C:35 (2023).

194 *See infra* Background Part I, Section D (charting comparisons between state law civil commitment prerequisites).

195 Bhalla et al., *supra* note 32, at 343.

the current opioid crisis is the worst drug addiction epidemic in American history.[196]

A. *Legal and Medical Definitions of Addiction*

Addiction is medically defined as a "treatable, chronic medical disease involving complex interactions among brain circuits, genetics, the environment, and an individual's life experiences."[197] According to federal law, an "addict" is defined as "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction."[198] Addiction can also be defined as a "primary, chronic disease of brain reward" characterized by an "inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response."[199] Further, addiction often involves "cycles of relapse and remission."[200]

There are two primary models of addiction. The disease model of addiction holds that addiction is a disease because: (1) it changes the way the brain responds in situations involving rewards, stress, and self-control; and (2) the brain changes are long-term and can continue even after an individual has stopped using drugs.[201] The choice model of addiction proposes that addiction is not a disease because it: (1) cannot be transmitted; (2) is not autoimmune, hereditary, or degenerative; and

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196 *'The Opioid Diaries': A Discussion with Photographer James Nachtwey and Senator Maggie Hassan*, TIME (Mar. 5, 2018, 10:32 PM), https://time.com/opioids-credits; *see also* Bhalla et al., *supra* note 32, at 343-44 ("In scope and kind, the opioid crisis appears to be beyond what the traditional legal framework of civil commitment has contemplated . . . . The tensions among the values of individual civil liberty, societal public health, autonomy of the individual to choose treatment or decline it, and the state's interest in protecting the welfare of its citizens give rise to difficult questions that require careful reflection and research.")

197 *Definition of Addiction*, AM. SOC'Y OF ADDICTION MED., https://www.asam.org/quality-care/definition-of-addiction (Sept. 15, 2019).

198 21 U.S.C. § 802 (2022).

199 *Public Policy Statement: Definition of Addiction*, AM. SOC'Y OF ADDICTION MED. (Aug. 15, 2011), https://sitefinitystorage.blob.core.windows.net/sitefinity-production-blobs/b0209701-2099-441a-92c3-eb60c4a387cb?sfvrsn=a8f645120 [hereinafter "*Public Policy Statement*"].

200 *Id.*

201 Amanda Lautieri, *What Is Addiction?: Causes, Risk Factors & Models*, AM. ADDICTION CTRS. (Nov. 30, 2021), https://americanaddictioncenters.org/rehab-guide/is-drug-addiction-a-disease.

(3) is self-acquired.[202] Proponents of the choice theory emphasize social and environmental factors that contribute to addiction.[203] The National Institute on Drug Abuse, the Substance Abuse and Mental Health Services Administration, and the National Institutes of Health all classify addiction as a disease.[204] Similarly, most of the United States medical community considers addiction to be a disease.[205]

Both law and medicine today recognize addiction as a disease. In other words, an individual is not legally responsible for addition or its cause. The first high might have been a choice, but any ensuing addictive habits are not the person's fault. The Controlled Substances Act (CSA) classifies drugs into five schedules based on their abuse potential, accepted medical use in the United States, safety, and potential for addiction.[206] The CSA prohibits the illegal manufacture, distributing, and dispensing of controlled substances.[207] As previously discussed, however, criminalizing drug addiction itself is cruel and unusual punishment.[208]

B. *Civil Commitment and Civil Rights Concerns*

Civil commitment is often seen as a viable option for those struggling with addiction because it prevents overdoses, potentially saving lives.[209] Although it is an option, it is not often used.[210] Perhaps some of the reluctance to use civil commitment as a treatment option for substance abusers is due to "societal ambivalence over whether substance abuse should be viewed as willed conduct or the consequence of unwilled affliction."[211] Addiction is medically defined as a disease, but many people still view it as a choice.[212] A few states have taken steps to

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202 *Id.*

203 *Id.*

204 *Id.* The American Psychiatric Association no longer uses the term "addiction" as a diagnosis to avoid confusion around the term and its "uncertain" meaning.

205 *See id.* (noting that "[t]here are few, if any, nationally recognized substance abuse-focused organizations whose views have not evolved to understanding addiction as a disorder or disease").

206 Leigh Ann Anderson, *Controlled Substances & CSA Schedules*, DRUGS.COM, https://www.drugs.com/csa-schedule.html (May 18, 2022).

207 *Id.*

208 Robinson v. California, 370 U.S. 660, 664 (1962).

209 *See Public Policy Statement, supra* note 199.

210 Bhalla et al., *supra* note 32, at 347.

211 *Id.* at 344.

212 Tom Hill, *Is Addiction a Choice?*, MENTAL HEALTH FIRST AID (Mar. 25, 2019), https://www.mentalhealthfirstaid.org/external/2019/03/is-addiction-a-choice/.

statutorily define substance abuse as a mental illness, further complicating the legal basis for civilly committing those with a substance use disorder.[213]

Probably the greatest perceived harm of involuntary commitment is that it forces individuals to receive treatment against their will.[214] Some people, after release from involuntary commitment, increase their drug use as a way to "rebel" against those who had them committed.[215] Concerns about the coercive nature of involuntary civil commitment remain, just as they have since the mid-1900s.[216]

Throughout America's history, and indeed even before its conception, protecting the rights of individuals has been seemingly high on the country's priority list, though have been great violations of this general principle. Involuntary civil commitment presents a difficult case in weighing the rights of individuals versus the government's ability to intervene. In the case of involuntary civil commitment as a treatment option for individuals with substance use disorder, the question is: To what extent may the government legally prevent persons from making bad—though not illegal—decisions?

Perhaps much of the answer to this question hinges on whether addiction is considered a disease or a choice. If addiction is considered a disease, those who suffer from it likely fall under the "suffering from a mental illness" requirement in all state civil commitment statutes. Involuntary commitment, given this presupposition, can be viewed as a good-faith effort to help someone receive treatment who is otherwise incapable of seeking that treatment for himself. If addiction is considered a choice, then involuntarily commitment forcibly restrains the liberty of individuals who do not have a mental illness and have not committed a crime.

Given the general consensus among the medical community today that addiction is a disease, involuntary commitment should be viewed as a possible method to treat substance use disorder in certain individuals. As detailed in Part I of this Analysis, there is no consensus among medical professionals as to the effectiveness of involuntary commitment as treatment for addiction.[217] To best protect individuals' civil rights and

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213 Bhalla et al., *supra* note 32, at 347.

214 *See* Evans et al., *supra* note 186, at 729.

215 *Id.*

216 Anfang & Appelbaum, *supra* note 27, at 211.

217 Bhalla et al., *supra* note 32, at 346.

liberties, involuntary civil commitment for substance abusers should be used as a last resort. When it is used, patients should be treated with dignity and allowed as much involvement in their treatment process as possible.[218] "People deserve to be treated with dignity even (and perhaps especially) in the face of being denied liberty."[219]

III. CIVIL COMMITMENT OFFERS A POSSIBLE BUT FLAWED SOLUTION TO THE OPIOID CRISIS

In recent years, friends and family members of drug addicts have lobbied for increased access to involuntary commitment procedures.[220] Those close to people struggling with addiction seek another avenue to get their loved ones the help they need because most people suffering from addiction do not seek treatment voluntarily.[221] As of 2021, 38 states and the District of Columbia had statutes recognizing substance abuse as a ground for civil commitment.[222]

Scientific studies have also been conducted to assess the benefits of involuntary commitment. One study interviewed 70 individuals, including 31 patients in opioid treatment facilities, and analyzed the benefits and harms of involuntary commitment.[223] Some participants reported that involuntary civil commitment was "a short-term solution that's going to lead to long-term problems."[224] The study concluded that there were several major benefits of involuntary commitment.[225] First, it saves lives in the moment[226] by protecting vulnerable individuals who are a danger to themselves or others.[227] Second, it gives families another option.[228] Individuals struggling with substance use disorder often will not submit to voluntary treatment, and involuntary civil commitment

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218 Evans et al., *supra* note 186, at 731.

219 Christopher et al., *supra* note 189, at 140.

220 Player, *supra* note 11, at 593.

221 *See id.*

222 *See Laws Authorizing Involuntary Commitment for Substance Use*, THE POL'Y SURVEILLANCE PROGRAM (Mar. 1, 2018), https://lawatlas.org/datasets/civil-commitment-for-substance-users.

223 Evans et al., *supra* note 186, at 719-21.

224 *Id.* at 729.

225 *Id.* at 721, 726. While the study suggests that the harms of involuntary commitment may outweigh the benefits if they remain unaddressed, the benefits are still worth noting for the sake of this analysis.

226 *Id.* at 721.

227 *Id.*

228 *Id.*

provides families with another treatment option for their loved ones.[229] Third, civil commitment allows individuals to receive immediate treatment and support.[230]

Medically, there is no consensus as to the effectiveness of civil commitment for substance abusers.[231] One study concluded that involuntary commitment was most appropriate for individuals deemed to be "out of control."[232] Being "out of control" was typically marked by having more than one non-fatal overdose in a short period of time.[233] Staff participants in the study perceived individuals to be incapable of making "good" decisions, which in turn made them a danger to themselves or others.[234] One patient in the study reported that he was angry when he was first committed, but was grateful by the time he left.[235]

Another study found several factors that were associated with a longer relapse time after individuals were released from involuntary commitment.[236] The factors included "higher perceived justice during the commitment hearing, an improved attitude about being committed, higher motivation for treatment at the end of commitment, and receiving medication treatment after commitment ends."[237] The study noted that there is little data on civil commitment for opioid use and that "the overall merits of a costly and controversial public policy like civil commitment must be evaluated in the broader context of the prevention and treatment services that are available for opioid use."[238]

There are, however, possible harms of involuntary civil commitment.[239] Patients have reported that involuntary treatment feels like jail; in fact, individuals are sometimes involuntary committed inside jails.[240]

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229 Evans et al., *supra* note 186, at 723.

230 *Id.* at 721.

231 Bhalla et al., *supra* note 32, at 346.

232 Evans et al., *supra* note 186, at 721-22.

233 *Id.* at 722.

234 *Id.* ("[T]he changes in the brain, and the memory loss and the impulsivity and the attention deficit and the depression, all of these things that are the end result [of addiction] . . . . I think a lot of folks really live moment to moment and can only really think about what they have to do today . . . [addiction] erodes your forward thinking, your ability to perceive things, manage problems . . . .")

235 *Id.* at 723.

236 Christopher et al., *supra* note 189, at 140.

237 *Id.*

238 *Id.*

239 Dan Werb et al., *The Effectiveness of Compulsory Drug Treatment: A Systematic Review*, 28 INT. J. DRUG POL'Y 1, 9 (2016).

240 Evans et al., *supra* note 186, at 726.

Patients have described the jail-like settings as "punitive," "degrading," "isolating," and "stigmatizing."[241] Individuals are often cuffed as they are transported to a courthouse for hearings or to the treatment facility itself, although they have committed no crime.[242] Involuntary commitment can also divide families.[243] If a family moves for involuntary commitment prematurely or unnecessarily, it can make an individual feel like his family does not have his best interests in mind.[244] States have different treatment protocols for individuals who are civilly committed.[245] This means that some states provide medication to patients in treatment, while others do not.[246] Some patients have described not being given access to methadone, a drug often used to treat opiate addiction,[247] as "cruel and unusual punishment" and "torture."[248]

When an individual is civilly committed, he loses access to illicit drugs. This, in turn, decreases a person's tolerance.[249] If a person is released from involuntary commitment without having support for continued treatment, the individual is likely to retreat to old habits.[250] Overdose and death can be more likely if a person uses the same amount of illicit substance as taken before involuntary treatment because of their reduced tolerance.[251]

The primary difficulty with civil commitment, as with any method attempting to help someone struggling with drug addiction, is that each person requires a different, albeit slightly, approach. The issue is that addiction treatment options are not one-size-fits-all. Just as, in the words of a former addict: "You can't just look at somebody and tell [they're addicted]," a simple overview of an addict's case does not provide all information necessary to help a court make the best treatment decision.[252]

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241 *Id.*

242 *Id.*

243 *Id.* at 727.

244 *Id.*

245 *Id.* at 718.

246 Elizabeth A. Evans et al., *Perceived Benefits and Harms of Involuntary Civil Commitment for Opioid Use Disorder*, 48 J.L. MED. & ETHICS 718, 728 (2020).

247 *Methadone*, MEDLINEPLUS, https://medlineplus.gov/druginfo/meds/a682134.html (last visited Mar. 24, 2023).

248 Evans et al., *supra* note 186, at 728.

249 *Id.* at 730.

250 *Id.*

251 *See id.* at 730.

252 Tough, *supra* note 147.

Part of this difficulty is related to a drug user's ability and willingness to make decisions for himself. Much of addiction treatment depends on the patient's voluntary cooperation.[253] Many states have increased the availability of naloxone, a medicine that can reverse the effects of a drug overdose.[254] While naloxone has helped save lives, however, it does not address the underlying addiction of substance abusers. Overcoming substance use disorder takes the intentional effort and choice of the individual struggling with addiction, often combined with medication and the support of friends, family members, and addiction specialists.

CONCLUSION

If anything is clear from a review of both civil commitment laws and the opioid crisis in America, it is that there is no one-size-fits all solution. States with laws that provide the most safeguards of individual liberties are those that require commitment facilities to provide treatment for committed individuals with substance use disorder, specifically detail the criteria for dangerousness, and allow family members to petition for civil commitment. These safeguards allow the existence of a system in which people can seek the well-being of drug addicts while still acknowledging the autonomy of the individual to make his or her own decisions. Civil commitment is a viable solution for some who suffer from drug addiction. Overcoming addiction is a unique battle in the life of each person struggling with substance use disorder, which is what makes enacting widespread policies to address addiction so difficult. Civil commitment laws that are consistent across state lines would help ensure people are treated fairly under state laws across America, regardless of the individual journey they undertake to address substance use disorder.

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253 Bhalla et al., *supra* note 32, at 347.

254 Player, *supra* note 11, at 630.