Mental Health Commitment Procedures
Pineland Center Admissions
34 MRSA §2152

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MEMORANDUM

TO: George A. Zitnay, Commissioner - Mental Health and Corrections

FROM: Joseph E. Brennan, Attorney General

DATE: 19 May 1977

SUBJECT: INVOLUNTARY COMMITMENT PROCEDURE TO PINELAND CENTER

SYLLABUS:

The Superintendent of the Pineland Center may delegate to the staff Diagnostic and Evaluative Team at Pineland the responsibility to determine whether a person is both mentally retarded and also in need of training, education, treatment and care and, therefore, a "proper subject" for Pineland admission. This decision is determinative only after appropriate application by a physician for emergency admission. The team may make a similar determination for purposes of discharge.

Admissions to Pineland must comply with the Due Process Clause of the Fourteenth Amendment of the United States Constitution. In light of the constraints of the Due Process Clause, we interpret 34 M.R.S.A. §2152 to require the consent of the proposed patient before a voluntary admission. Emergency admission may be used only if there is imminent danger to the patient or others. Long-term involuntary admissions require a full court hearing. Patients admitted under voluntary or emergency provisions should be advised of their right to request discharge. The Superintendent may admit new residents if he determines appropriate services can be provided. The Superintendent may retain a resident whose release is duly requested under 34 M.R.S.A. §2156 only if resident meets the standards for an emergency admission. The Superintendent is required to retain a resident, committed under 34 M.R.S.A. §2152(3), but no longer a proper person for Pineland, only long enough to give reasonable notice to those who initiated the original commitment proceedings. A resident committed by probate court order may request a rehearing of his continuing need for services at Pineland.

FACTS:

The Director of Client Planning and Evaluation through the Superintendent at Pineland has asked several questions regarding admission and discharge procedures at Pineland. The questions have been paraphrased to assist us in answering:

QUESTIONS AND ANSWERS:

QUESTION 1:

Does the recommendation of the Diagnostic and Evaluative Team determine who is a "proper subject" for Pineland?

ANSWER:

The Diagnostic and Evaluative Team may determine this question only after appropriate application for emergency admission. See Reasons.

QUESTION 2:

How may an unwilling proposed patient be admitted to Pineland? Must the Superintendent release a Pineland resident who requests his release?

ANSWER:

Unless application for probate court commitment is made, the Superintendent must release a patient who was admitted under the voluntary or emergency admissions provisions, 34 M.R.S.A. §2152(1) and (2) and who is unable to comprehend the nature and purpose of the commitment or who requests his release. An unwilling patient may only be admitted under the emergency or probate court admission procedures, 34 M.R.S.A. §2152(2) and (3). See Reasons.

QUESTION 3:

Can a person be committed to Pineland if, in the judgment of the clinical staff, the facility does not have "suitable accommodations"?

ANSWER:

The Superintendent can admit a patient to Pineland for purposes of observation, diagnosis, training, education, treatment and care. The Superintendent and clinical staff must make a determination of whether such services can be provided.

QUESTION 4:

In section 2156, dealing with Pineland Center's initiation of involuntary commitment of a resident who asks to be released, reference is made to initiating the process when the resident is deemed to be "unsafe to himself or others." What is the definition of this phrase?

ANSWER:

"Unsafe to himself or others" in this context means that, if the patient is discharged, there is a substantial likelihood of harm to the patient or others. See Reasons.

QUESTION 5:

If a resident is committed to Pineland Center by probate court, is there an understood minimum length of time for which the individual must be retained and treated?

ANSWER:

No, qualified. See Reasons. A patient committed by the probate court can petition for rehearing six months after his original commitment and one year after any previous rehearing.

REASONS:

Question 1:

The quoted language appears in 34 M.R.S.A. §2152(2) and (3), relating to emergency admissions and admissions through the probate court. The discharge provision, 34 M.R.S.A. §2156 has similar language, referring to "proper persons." The analysis of these provisions is handled in our answer and reasoning in Question 2.

Question 2:

We interpret your second question to ask (1) what procedures are appropriate for admission to an unwilling proposed patient, and (2) must the superintendent release a Pineland resident who requests his own release under 34 M.R.S.A. §2156.

I. Admission of an Unwilling Patient

The answer to the first part is that voluntary procedures are not appropriate for an unwilling proposed patient and that certain procedural protections must be afforded such a patient before admission. 1/ In reaching this result, we have been guided by a frequently employed rule of statutory interpretation that legislation should be read to comply with constitutional requirements unless there is unequivocal evidence that the Legislature intended otherwise, Pool Beach Association v. City of Biddeford, 328 A. 2d 131, 137 (Me. 1974). Such a reading is referred to as

1/ We note that this statute also allows for admission of mentally ill children, as well as mentally retarded persons. Since we understand that admissions of mentally ill children are rare, we will not specifically deal with such admissions.

a "saving construction," Id. at 136. The underlying rationale is that one must presume that the Legislature intended to do only that which it is constitutionally allowed to do, Oxford County Agr. Soc. v. School Administrative District No. 7, 220 A. 2d 485 (Me. 1965). To comply with this rule, it is necessary to consider relevant constitutional law before discussing the specific statutory language in Pineland's admissions provisions.

Both the Fourteenth Amendment of the United State Constitution and Article I §6-A of the Maine Constitution provide that the State shall not deprive any person of "life, liberty or property without due process of law." This provision is considered "The basic and essential term in the social compact which defines the rights of an individual and delimits the powers which the state may exercise," In re Gault, 387 U.S. 1, 20 (1967). In requiring procedural protections such as notice and a hearing, the basic function of the Due Process Clause is to guard against the fallibility of a decision-maker by providing a forum for presenting different viewpoints and by providing standards to allow for effective review. The United States Supreme Court has interpreted this provision to require various procedural protection in a wide range of circumstances, including prosecution of juvenile offenders, In re Gault, 387 U.S. 1 (1967), termination of welfare benefits, Goldberg v. Kelly, 397 U.S. 254 (1969), suspension from school, Goss v. Lopez, 419 U.S. 565 (1975).

More particularly, the Supreme Court has required procedural protection before hospital commitment of criminal defendants in Jackson v. Indiana, 406 U.S. 715 (1972), and has found that due process protections apply to persons committed to mental hospitals, O'Connor v. Donaldson, 422 U.S. 563 (1975). The Supreme Court has not yet directly considered civil commitment procedures for the mentally ill and mentally retarded. The Maine Supreme Judicial Court has considered civil commitment of the mentally ill and has decided that procedural protections are required, Sleeper, Applt., 147 Me. 302 (1952); Opinion of the Justices, 151 Me. 1, 117 A. 2d 53 (1955), citing Article I, Section 6-A of the Maine Constitution. Several federal courts and other state courts have found that procedural protections are required for civil commitment of the mentally ill, See e.g. In re Barnard, 455 F. 2d 1370 (D.C. Cir. 1971); Barry v. Hall, 98 F. 2d 222 (D.C. Cir. 1938); Bell v. Wayne County Hospital, 384 F. Supp. 1085 (E.D. Mich. 1974); Lessard v. Schmidt, 349 F. Supp. 1078 (E.D. Wis. 1972), vacated on procedural grounds 414 U.S. 473 (1974), on remand 379 F. Supp. 1376 (E.D. Wis. 1974), vacated on procedural grounds 421 U.S. 957 (1975), on remand 413 F. Supp. 1318 (E.D. Wis. 1976), Hawks v. Lazaro, 202 S.E. 2d 109 (W. Va. 1974).

Protections of the Due Process Clause have been applied to the institutionalization of the mentally retarded, N.Y.S.R.A. and Parisi v. Carey, 357 F. Supp. 752 (E.D. N.Y. 1973); Welsch v. Likins, 373 F. Supp. 487 (D. Minn. 1974). Another federal court found that the Due Process Clause required hearings for mentally

retarded persons committed to an institution, Saville v. Treadway, 404 F. Supp. 430 (M.D. Tenn. 1974) (three-judge court).

The fact that there may be good motives behind admission to an institution or that a parent or guardian has allowed admission does not make a forced admission or retention any less a deprivation of liberty for purposes of the Constitution. In its consideration of the commitment of a mentally retarded boy, one United States Court of Appeals stated:

> "It is the likelihood of involuntary incarceration--whether the punishment as an adult for a crime, rehabilitation as a juvenile for delinquency, or treatment and training as a feeble-minded or mental incompetent--which commands observance of the constitutional safeguards of due process." Heryford v. Parker, 396 F. 2d 393, 396 (10th Cir. 1968).

Cf. Danforth v. State Department of Health and Welfare, 303 A. 2d 794, 800 (Me. 1974) (involving neglect proceedings against parents). Moreover, consent of a parent or guardian would not make an admission immune to constitutional limitations. At least two federal courts have decided that a parent or guardian may not waive due process rights for minors. J.L. and J.R. v. Parnham, 412 F. Supp. 112 (M.D. Ga. 1976), Bartley v. Kremens, 402 F. Supp. 1039 (E.D. Pa. 1975). The United States Supreme Court will hear these two cases this term. Kremens v. Bartley, 44 U.S.L.W. 3531 (March 22, 1976), J.L. v. Parnham, 45 U.S.L.W. 3063 (May 21, 1976). The specific procedural requirements of the Due Process Clause vary with circumstances, but generally become more demanding when personal liberties are at stake, Danforth, supra, 303 A. 2d at 798. We will discuss specific requirements the courts have imposed as we consider each portion of the statute in light of constitutional constraints.

Title 34 M.R.S.A. §2152 provides for admission to Pineland Center by three different methods: Voluntary admittance, emergency admittance, and admittance by order of the probate court.

A. Voluntary Admittance

The "voluntary admittance" provision states in part:

> "Application for voluntary admittance of any person to the Pineland Center shall be made to the Superintendent in writing by a parent, relative, spouse or guardian of the person, a health or public welfare officer, or the head of any institution in which such person may be . . . "
> 34 M.R.S.A. §2152 (1) (A).

The question presented is whether the statute might be read to mean that notwithstanding the use of the word "voluntary," the consent of the person to be institutionalized is not required. As discussed earlier, committed to an institution such as

Pineland is a deprivation of liberty whatever treatment is received. The rule of statutory construction that statutes "in restraint of liberty" should be strictly construed, In re Pierce, 16 Me. (4 Shep) 255 (1839), would suggest that participation by the patient is inherent in the term "voluntary." Furthermore, an elemental rule of statutory construction is to give words their ordinary and usual meaning, Opinion of the Justices, 142 Me. 409, 60 A. 2d 903 (1948). The dictionary defines "voluntary" as "brought about by one's own free choice" or "acting or done without compulsion or persuasion," Websters New World Dictionary 1592-93 (2nd ed. 1974). A law dictionary uses similar language: "unconstrained by interference" and "proceeding from the free and unrestrained will of the person," Black's Law Dictionary, 1746-47 (4th ed. rev. 1968). Black's goes on to suggest a more specialized meaning: "The word, especially in statutes, often implies knowledge of essential facts," Id. at 1747.

Legislative intent may also be found beyond the language of the present statute. Although there is no legislative history to assist us in interpreting this section in its present form, we may look to prior relevant statutes and analyze subsequent revisions. See Condon v. Hamilton, 325 Mass. 371, 90 N.E. 2d 549 (1959); 2A C. Sands, Statutes and Statutory Construction §48.03 (4th ed. 1973). The language in section 2152 (1)(A) is very similar to that first enacted in 1957. Prior to 1957, admission to what is now called the Pineland Center was by court commitment only, ch. 27 §145 of the Revised Statutes of 1954. By Laws of Maine of 1957, ch. 315 (1957), the Legislature enacted a section very similar to the present "voluntary admittance" provision which allows application for voluntary admission to be made by parents and others. By Laws of Maine of 1959, ch. 189 (1959), the Legislature provided for admission of children with mental disabilities upon application of parents or others, but there was no suggestion that such admission had to be "voluntary." When the statute was revised in 1963, the two provisions above were consolidated into essentially its present form to provide for admission of "any person" upon application of a parent or specified others, and the "voluntary" language was retained, Laws of Maine of 1963, ch. 351 §7 (1963). The "voluntary" language cannot be considered surplusage, especially since the Legislature was working with very similar language in one of the statutes being revised which did not contain the term "voluntary." If the Legislature had intended to allow "voluntary" admissions without the consent of the proposed patient it could have used explicit language. As a statute in restraint of liberty with such a history of revisions this section must be construed to provide that application can be made by these persons listed, but that the proposed patient himself must give consent to the admission. Even if the Legislature did not intent this result, we would be compelled to construe the statute to require consent of the proposed patient, because to construe it otherwise would pose substantial constitutional problems.

A further word is necessary regarding consent. To give valid consent to admission, the proposed patient must be able

to understand the nature and purpose of admission to Pineland. Therefore, the voluntary admittance provision may not be used when the proposed patient lacks the mental capacity to give such consent. A proposed patient who is unable or unwilling to give consent may be admitted by means of the procedures provided for in 34 M.R.S.A. §2152(2) and (3).

B. Emergency Admissions

Subsection 2 provides:

> "Whenever it is made to appear to the Superintendent of the Pineland Center that a person, a proper subject for the Pineland Center, is in need of immediate care and treatment and admittance is requested by a licensed physician with the approval of a parent, relative, spouse or guardian of the person, the person may be admitted solely on the basis thereof for a period not to exceed 15 days."

Although the exact meaning of "proper subject" in unclear, since it appears in conjunction with the "mentally retarded" requirement in one instance in §2152 and in conjunction with the "in need of care and treatment" requirement in another, we are of the opinion that an individual found to be both mentally retarded and in need of training, education, treatment and care would be a "proper subject" for Pineland. "In need of immediate care and treatment" is not further defined in the statute but we may use constitutional requirements to assist us.

The courts have determined that summary detention is allowable only in limited circumstances:

> "Immediate detention without notice and opportunity to be heard can only be justified when the immediacy of such action is required for the safety of either the person restrained or for the safety of others," Sleeper, Applt., 147 Me. 302, 312 (1952).

See also Lessard v. Schmidt, 349 F. Supp. 1078, 1091 (E.D. Wis. 1972); Bell v. Wayne County Hospital, 384 F. Supp. 1085, 1097 (E.D. Mich. 1974). Danger to himself may include an inability or unwillingness to care for himself which "poses a real and present threat to his well-being," Lynch v. Baxley, 386 F. Supp. 378, 391 (1974). This danger must be evidenced by a recent overt act indicating a substantial likelihood that dangerous behavior will occur in the immediate future, Id.; Opinion of the Justices, 339 A. 2d 510, 519 (Me. 1975) (citing Lynch with approval).

We are of the opinion that "in need of immediate care and treatment" must mean that because of mental retardation the proposed patient is imminently dangerous to himself or others and that danger is evidenced by a recent overt act.

The emergency admissions provision, §2152(2), requires that "it be made to appear to the Superintendent" that the person is a proper subject and in need of immediate care and treatment. The Superintendent can delegate the responsibility for making this determination to staff members on the Diagnostic and Evaluative team. The same subsection provides that admittance must be requested by a physician. Before requesting admission, a physician must make a clinical determination of the appropriateness of emergency admission, i.e. that the person is a proper subject for Pineland and in need of immediate care and treatment. If the Diagnostic and Evaluative team and the requesting physician both make such a finding, then a proposed patient may be admitted as an emergency admission under §2152(2).

The statute limits detention under the emergency admissions procedure to 15 days unless further detention is considered necessary. In such a case, subsection 2 provides for voluntary admission. Of course, if the consent standards described above cannot be met, then a hearing for involuntary commitment would be required, Sleeper, Applt., 147 Me. 302, 313 (1952). Whichever means of admission is to be used, subsection 2 permits detention under the emergency procedure for only 30 days. Any further admission must be effected within this time period. (Note the possibility of a 20-day limit on detention in our discussion of discharge).

C. Admittance by Order of Probate Court

Under 34 M.R.S.A. §2152(3) involuntary admissions may be accomplished by order of the probate court:

> "Whenever it is made to appear that a person is a proper subject for Pineland Center and voluntary admittance cannot be accomplished, application may be made to the judge of probate, within whose jurisdiction the individual may be, by a friend, a licensed physician, a health or public welfare officer, or the head of any institution in which such a person may be."

Application may be made "(W)henever it is made to appear (to the applicant) that a person is a proper subject for Pineland." If the applicant is the Superintendent of Pineland, the responsibility for making this decision may be delegated to the staff Diagnostic and Evaluative team. However, this is not the final decision as to whether the proposed patient is a "proper subject" since other people may make application and the

final decision is made by the probate judge with the assistance of the two mental health professionals.

This provision does not require consent of the proposed patient, but it does require that hearing be held and that notice be given. Notice must be given to the patient and others at the time of the application and again at least 72 hours before the hearing. However, the statute also provides that notice to the patient may be omitted if the probate judge finds that "notice will be injurious to the patient."

The latter provision requires further comment. The courts have held that notice of time, place, and nature of an impending hearing is constitutionally required to give the person whose liberty is at stake an opportunity to participate in the preparation for that hearing, In re Gault, 387 U.S. 1, 33, (1967); Lessard v. Schmidt, 349 F. Supp. at 1092; Lynch v. Baxley, supra at 388; Sleeper, Applt., supra at 312. The Supreme Judicial Court has even indicated that a personal notice requirement may be read into a statute in some situations, Pool Beach Association v. City of Biddeford, 328 A. 2d 131, 137 (Me. 1974). Because any provision for omitting notice to a proposed patient is constitutionally suspect, and this particular standard of "injurious to the proposed patient" is particularly vague, we advise that notice be given to the proposed patient in every instance.

Subsection 3 also provides that the proposed patient be given the opportunity to appear at the hearing to testify and to cross-examine witnesses. If the proposed patient is not represented by counsel, the court must appoint counsel. The findings necessary for commitment are that the patient is "mentally retarded" and because of retardation is "in need of education, training, treatment and care at the Pineland Center," 34 M.R.S.A. §2152(3). Though not explicit in the language of the statute, it is our opinion that a finding is required that the need for care and treatment is so great that failure to hospitalize would result in danger to the patient or others. Such danger cannot be merely a distant possibility but must be imminent, Lessard v. Schmidt, 349 F. Supp. at 1094. We reach this conclusion by following the maxim to strictly construe statutes "in restraint of liberty," In re Pierce, 16 Me. (4 Shep.) 255 (1839) with due regard to the Due Process requirements found in cases cited earlier, e.g. Lynch v. Baxley, supra at 391. The Supreme Court has also required a finding of dangerousness for involuntary commitment in a case involving a patient who was not receiving treatment, O'Connor v. Donaldson, 422 U.S. 563, 575, (1975).

Strict construction also requires us to read an additional necessary finding implicit in the determination that services at Pineland are needed, i.e., a finding that, with due regard for the danger considerations discussed above, the proposed patient could not receive the necessary services in some other manner. Such a reading is also supported by analogy to the mental health

admission law which requires a finding that "inpatient hospitalization is the most appropriate means for treatment," 34 M.R.S.A. §2334. Finally, this interpretation is required by the Maine Supreme Court's opinion that restraint of liberty should be no greater than strictly necessary, Opinion of the Justices, 339 A. 2d 510, 517 (Me. 1974).

II. Discharge

Our answer to the second part of question 2 is that the Superintendent must release any Pineland resident who was admitted under 34 M.R.S.A. §2152(1) and (2) and who requests his own release. This answer is based upon a reading of the statutory provision for discharge, 34 M.R.S.A. §2156, in light of the analysis above of the voluntary admittance provisions.

Since the consent of a patient is necessary for admission without a hearing, then the withdrawal of that consent removes the basis for that voluntary admission, Sleeper, Applt., supra. Even when a person is confined upon a constitutionally adequate basis, confinement cannot continue after that basis no longer exists, O'Connor v. Donaldson, 422 U.S. 563, 575, (1974). When consent is withdrawn the institution must either discharge the patient or attempt to use involuntary procedures to continue hospitalization, Melville v. Sabbatino, 313 A. 2d 886 (Conn. Sup. Ct. 1973).

The discharge provision, 34 M.R.S.A. §2156 reads in part:

> "No patient received under §2152 sub-§1 or 2 [the voluntary and emergency admission provisions] shall be detained for more than 10 days after the parent, guardian or person or agency having right to custody of such a patient has filed with the superintendent a written request for discharge . . ."

The legislative history of this provision does not assist us in its interpretation. In order to have the statute applied consistently with the constitutional principles described above, we construe the language, "person . . . having right to custody of the patient," to include the patient himself. This is not a difficult reading since a competent adult is presumed to be responsible for his own affairs and own person, i.e., have the "right to his (own) custody." The language is more difficult to interpret in this way when the patient is a minor or has a guardian. However, because of the decisions regarding the commitment of minors, e.g. Bartley v. Kremens, 402 F. Supp. 1039, prob. juris. noted, 44 U.S.L.W. 3531 (March 22, 1976), and the Supreme Court's opinion regarding a minor's rights in the juvenile justice system in In re Gault, 387 U.S. 1 (1967), we are of the

opinion that minors and patients with guardians must be given the same procedural protections as the other patients admitted under the same provisions.

This analysis leads to the conclusion that any patient admitted to Pineland under 34 M.R.S.A. §2152 (1) and (2) may request his own release under 34 M.R.S.A. §2156 and must be released within ten days of that request for release unless application for commitment is made to the probate court as provided for in section 2156, and the court decides that "release would be unsafe for the patient or for others." (See Answer and Reasons for Question 4). If there is such a finding, release can be delayed up to 10 additional days.

We should note that section 2156 applies these time limits for persons admitted under section 2152 (2), the emergency admittance provision. Because it does, a person admitted under the emergency admittance theoretically could immediately request discharge and thereby reduce the time for a probate court hearing from a thirty-day maximum in section 2152 (2) to a twenty-day maximum in section 2156. In order to make the right to request release meaningful, the superintendent should inform patients of this right. See In re Lee and Wesley, No. 68 J 15805 (Cir. Ct. of Cook County, Ill., Feb. 29, 1972).

Question 3:

The answer to your third question is affected somewhat by the repeal of the language you quote, Laws of Maine of 1975, ch. 718, §5 (1975). By the enactment, the first sentence of 34 M.R.S.A. §2152 was amended to read: "(T)he Superintendent may receive for observation, diagnosis, training, education, treatment and care any person whose admittance is applied for under any of the following procedures." The reference to "suitable accommodations" was dropped, the mandatory "shall" was changed to "may." By this change, the Legislature gave the Superintendent more flexibility in admissions policy. The Statement of Fact in the original bill, L.D. 2222, points out that this provision makes permissive the obligation to serve mentally ill children. There is no mention of the deletion of the "suitable accommodations" language in the Statement of Fact and no debate in the Legislative Record.

The purpose of admission to Pineland remains clear. Section 2151 provides that Pineland be maintained to provide certain listed services and charges the Superintendent with the responsibility of providing those services. Section 2152 provides that

the Superintendent accept patients for the purpose of those listed services. Therefore, the Superintendent may admit a patient for purposes of observation, diagnosis, training, education, care, or treatment. The Superintendent or clinical staff must make a determination as to whether Pineland can provide those services for a particular patient.

Question 4:

In answer to your fourth question, we have found no judicial definition of the phrase "unsafe to himself or others" as it appears in 34 M.R.S.A. §2156. The language apparently originated in an amendment to the Pineland Statute by the Laws of Maine of 1959, ch. 189, §5 (1959). We found no legislative history to assist us in interpreting the phrase. This language describes a special circumstance when the Superintendent may delay the release of a patient originally admitted without a hearing. In such circumstances, as discussed above, the Superintendent can constitutionally hold the patient only if the requirements for an emergency admission are met. Therefore, we are of the opinion that "unsafe to himself or others" in this context means that if the patient were released there would be a substantial likelihood of harm to the patient or to others in the immediate future, Lynch v. Baxley, 386 F. Supp. at 391; Opinion of the Justices, 339 A. 2d at 519.

Question 5:

There is no statutory commitment period for persons committed pursuant to 34 M.R.S.A. §2152 (3). The Superintendent has full authority under 34 M.R.S.A. §2154 to conditionally release residents. Under section 2156 the Superintendent is required to discharge any resident whom he finds to be no longer a proper person for Pineland. The only factors which might require Pineland to retain a resident for longer than a day are the notice requirements in both statutory provisions. The resident may waive notice to next of kin before conditional release, but section 2156 requires that notice to be given "to the person or agency initiating the original application within a reasonable length of time preceding discharge." A "reasonable length of time" would vary with the circumstances, e.g. what arrangements the agency or person would have to make for receiving the person discharged.

We note that by virtue of 34 M.R.S.A. §2157 any person admitted by probate court order is entitled to a rehearing to consider his continuing need for Pineland services. The section lists several persons who may petition for rehearing, and that list does not include the patient himself. We are of the opinion that rehearing must also be given upon petition of the patient. This finding is required because confinement in an institution cannot continue after the basis for such confinement no longer exists, O'Connor v. Donaldson, 422 U.S. at 575, and the Due Process Clause requirement that the person restrained have the

opportunity to test the necessity of his confinement, Bell v. Wayne County Hospital, 384 F. Supp. 1085 (E.D. Mich. 1974).

Section 2157 provides that rehearing may be required six months after the original commitment and one year after any previous rehearing.

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