Alcoholics Detention LD 1430

Detention, Temporary

STATE OF MAINE

Inter-Departmental Memorandum Date June 27, 1977

To The Honorable Swift Tarbell, III Dept. House of Representatives

From Stephen L. Diamond Dept. Attorney General

Subject Opinion on the Constitutionality of Committee Amendment "A" to H.P. 1201 L.D. 1430

FACTS

The proposed amendment to Maine's Alcoholism and Intoxication Treatment Act, 22 M.R.S.A. §1361 et seq., authorizes the temporary detention in a county jail or local lockup of a person who appears to be incapacitated by alcohol in a public place. Such detention is permitted only if the police or the emergency service patrol are unable to place the person in a treatment facility or in his home or in some other suitable residence. The amendment further provides that the person may be detained "until he is no longer incapacitated by alcohol or for a period of 12 hours from the time he was first taken into protective custody, whichever time is less." For purposes of its implementation, the amendment relies on the present statutory definition of "incapacitated by alcohol," which reads as follows:

> "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment. 22 M.R.S.A. §1362(9).

QUESTION

Does the proposed Committee Amendment "A" violate the "due process of laws" clause of Article I, Section 6-A of the Constitution of Maine?

ANSWER

The proposed amendment violates Article I, Section 6-A of the Constitution of Maine, insofar as it authorizes a constitutionally impermissible deprivation of liberty.

REASONING

A. Maine Precedent

In 1975, the Supreme Judicial Court of Maine rendered an advisory opinion in which it held somewhat similar detention

provisions of the State's version of the Alcoholism and Intoxication Treatment Act unconstitutional. Opinion of the Justices, 339 A.2d 510 (Me. 1975)[1]. Given the existence of a judicial decision dealing with such closely analogous issues, it is clear that the present proposal must be judged in accordance with the standards set out in that decision. Thus, the answer to the pending question will be based almost entirely upon the Court's opinion.[2]

Under the Supreme Judicial Court's interpretation of Article I, Section 6-A of the Maine Constitution, restraint is constitutional only if it satisfies two criteria. First, an important governmental interest must compel the restraint. Second, the restraint authorized must be no greater than is necessary to fulfill that interest. Opinion of the Justices, supra at 517. Each of these requirements will be briefly described.

1. There must be an important governmental interest.

For purposes of analysis, this requirement can be labelled the general test, in that it does not look to the specific nature of the detention but only to its underlying objective. If the restraint serves a valid governmental interest, it becomes necessary to ascertain whether the particular restraint is designed to realize that interest. If the restraint does not serve a valid governmental interest, then the second question becomes a moot point.

In the context of Maine's Alcoholism and Intoxication Treatment Act, the Court indicated that either or both of the following two interests could conceivably be invoked to justify the invasion of the person's liberty:

> (1) A concern of government as "parens patriae" to provide protective care, or treatment, (or both) to persons emergently in need of it because alcohol has impaired the proper functioning of their bodies or faculties; or
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> (2) A "police power" interest to protect against the dangers to the public safety posed by persons so impaired. Opinion of the Justices, supra at 518.

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1. There are at least two important differences between the legislation considered by the Court and that which is under scrutiny here. First, the prior legislation allowed custodial restraint of a far broader category of persons. Second, although it did not distinguish between the two, the Court dealt with detention in both treatment and police facilities. By contrast, this opinion is limited to the question of detention in police facilities, insofar as that is the primary objective of Committee Amendment "A". While it is beyond the scope of this opinion, it should be mentioned that the constitutionality of the already enacted "treatment detention"

The Court further explained that to insure compliance with the Maine Constitution, legislative enactments authorizing detention must be narrowly drawn so as not to encompass persons who do not clearly fall within either of the above interests.

The Court's holding with respect to the prior legislation was predicated on its conclusion that all three categories of persons subjected to custodial restraint by that measure were drafted in such a manner as to exceed the "parens patriae" and "police power" authority of the State. Thus, the first category, "incapacitated by alcohol," included individuals in private places. The second and third categories[3] did not involve sufficient impairment to justify "parens patriae" restraint, nor did they require an adequate showing of dangerousness to be sustainable as a legitimate exercise of the State's police power. In short, the Court determined that because of the overbreadth of the bill, it did not meet the requirement that there be an important governmental interest in the restraint.

2. The restraint must be necessary for the fulfillment of the governmental interest involved.

This requirement can be designated the specific test since the essential inquiry is not whether any custodial restraint of the person would be justified, but rather whether the particular restraint is justified. The Court's holding that the detention provisions in the bill before it exceeded any legitimate governmental interest eliminated the need to resolve this issue. The language of the Court's opinion, however, gives some guidance on the underlying question.

> . . . [W]e find it unnecessary to consider the additional, and serious, question whether once government has seen fit to invade the personal liberty of some of its citizens by assuming "parens patriae" responsibilities toward them, such particular means as are here utilized would qualify as a sufficiently substantial governmental effort toward realization of the "parens patriae" objective involved to withstand the rigid scrutiny required by due process in relation to governmental restraints of personal liberty. Opinion of the Justices, supra at 518, n.1.

It is imperative for an understanding of the problem to recognize that while the State may have a legitimate interest in

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provisions is not entirely free from doubt. See State v. Hughes, 343 A.2d 882, 883 (1975).

2. Since that decision was predicated on the Maine Constitution, it is doubtful whether the case law of other jurisdictions would be relevant to the pending question. Despite the widespread adoption of Alcoholism and Intoxication Treatment Acts, moreover, there is a surprising absence of cases in other states.

restraining a given class of individuals, the nature of the restraint may be such that it is inconsistent with the otherwise legitimate interest. This could occur either if the detention were not designed to accomplish its objective or if the detention exceeded the means necessary to reach that objective. In either case, the result would be an unconstitutional deprivation of liberty.

B. Application of the Precedent to Committee Amendment "A".

When Committee Amendment "A" is measured against the standards established by the Supreme Judicial Court, two features of the bill emerge as critical. First, the primary purpose of the amendment is to allow detention in jails and lockups, insofar as the authority to restrain in treatment facilities already exists under present law. Second, the persons subjected to this detention include those who, as a result of the use of alcohol, are either unconscious or are otherwise so impaired that they are incapable of realizing and making a rational decision with respect to their need for treatment. Thus, the underlying question is whether this category of persons can constitutionally be confined in a non-treatment setting, namely, a jail or a lockup. This question is susceptible to analysis along the lines of the two tests articulated by the Court.

1. Is there an important governmental interest in the detention of persons "incapacitated by alcohol in a public place?"

Since this opinion ultimately relies on the conclusion that the bill fails to comply with the second, or "specific" test, it is unnecessary to resolve the above question. It is nonetheless relevant to observe that the Opinion of the Justices, supra, can be read as suggesting that "incapacitated by alcohol in a public place," constitutes a sufficiently narrow category so as not to include individuals whom the State has no valid interest in restraining. 339 A.2d at 518. The language of the Court must, however, be read in the context in which it occurs, namely, the Court's discussion of the "parens patriae" doctrine. In light of the rationale behind its decision, the Court never reached the

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3. These categories read as follows: (1) "Any person who, . . . as the result of the use of alcohol, is disorderly;" and (2) "Any person who, . . . as the result of the use of alcohol, . . . is likely to cause or incur physical harm to himself or another."

issue of whether the category would be constitutionally justifiable, on "parens patriae" grounds, for detention without treatment.

Unlike the decision of the Court, this opinion must examine the constitutional parameters of non-treatment detention. Thus, for purposes of this opinion, it may be assumed, without deciding, that the category, "persons incapacitated in a public place," reflects an important governmental interest and does not suffer from inherent overbreadth.

2. Is the important governmental interest in the detention of persons "incapacitated by alcohol in a public place" fulfilled by the detention of those persons in county jails and local lockups?

Turning to the specifics of Committee Amendment "A", it is clear the sole effect of the custodial restraint in a jail or lockup is to immobilize the person and not to afford him treatment. Any doubts about this proposition are dispelled by the bill itself, insofar as it authorizes the detention only if treatment facilities are unavailable. Accordingly, Committee Amendment "A" squarely poses the issue of what circumstances will justify non-treatment detention.

While the relevant case law does not contain specific guidelines, the decisions do share a common denominator, which may be stated as follows: Non-treatment detention requires a clear showing that the person to be detained poses a threat of harm to himself or others. See, e.g., Lynch v. Baxley, 386 F.Supp. 378, 390 (1974) (3-judge Court). In discussing the authority to confine, without treatment, an allegedly mentally ill individual, the United States Supreme Court articulated the limits beyond which a state may not go.

> In short, a State cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. O'Connor v. Donaldson, 422 U.S. 563, 576 (1975)[4]

The Supreme Court of Maine has placed equally stringent limitation on the summary detention of the mentally ill.

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4. The Supreme Court specifically refused to decide (1) whether a dangerous person who is confined has a right to treatment; and (2) whether a nondangerous person can be confined for purposes of treatment. 422 U.S. at 563.

> 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).

The thrust of the case law, then, is that non-treatment detention requires a showing of dangerousness. When the detention is summary in nature, as is the case with Committee Amendment "A", the danger must be immediate. In short, the constitutionality of the bill turns upon whether its provisions are clearly limited to persons who pose the threat of imminent harm to themselves or others.

When viewed in terms of the imminent harm requirement, the category, "persons incapacitated by alcohol in a public place," is clearly overinclusive. It brings within its scope individuals who appear, as a result of the use of alcohol, to be so impaired that they are incapable of realizing and making a rational decision with respect to their need for treatment. Thus, the definition of "incapacitated by alcohol" does not explicitly, or even implicitly, incorporate the concept of immediate danger. In light of the maxim that the legislative enactments authorizing an infringement of individual liberty must be narrowly drawn, Opinion of the Justices, supra at 517, Committee Amendment "A" violates Article I, Section 6-A of the Maine Constitution.[5]

The genesis of the problem lies in the history of the legislation. The Maine statute utilizes the definition of "incapacitated by alcohol" found in the Uniform Alcoholism and Treatment Act. Uniform Act §2(9). That Act, however, permits confinement only when it is accompanied by inpatient services and care. Accordingly, Committee Amendment "A" applies a standard, formulated for treatment detention, to detention without treatment. As a result, it exceeds the permissible limits of the Maine Constitution.[6]

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5. There is no need for this opinion to deal with persons who are unconscious as a result of the use of alcohol. Although the fact that a person is unconscious in a public place is a clearer indication of his immediate danger, there may be some question whether mere detention is a constitutionally appropriate response to the problem. It is understood, however, that under a proposed addition to Committee Amendment "A", examination by a physician would be a precondition to such detention.

6. No opinion is expressed as to the constitutionality of either the Uniform Act or the present Maine Law. See State v. Hughes, supra.