

## **Mental Illness Law**

### **Law 357-001**

**Fall 2022**

**Course Schedule/Meeting Times:** In Person Friday 4-6 p.m.

**Antonin Scalia Law School – George Mason University**

**Instructor:** Mary Mertz Parnell [mmertzpa@gmu.edu](mailto:mmertzpa@gmu.edu) or [mparnell59@gmail.com](mailto:mparnell59@gmail.com)

**Hours:** By appointment

**Required Course Materials:** No textbook. Weekly assignments from Virginia statutory and case law, as well as law review articles and periodicals. ASSIGNMENTS MAY CHANGE AND CHANGES MAY BE ANNOUNCED AT THE END OF EACH CLASS.

**Learning Outcomes:** By the end of the course, students should have acquired:

- Basic understanding of mental health law in Virginia.
- How to identify issues in defending or prosecuting an involuntary commitment case in Virginia.

**Course Structure:** Weekly class sessions will consist of lectures and/or guest speakers.

**Grading:** The grade will consist of 90 percent final exam and 10 percent class participation

The final exam will consist of 15 short-answer questions and two essay questions presenting fact-patterns that ask the students to identify issues in defending or prosecuting the case, or ask the student to write an opinion regarding Virginia mental health law. The exam will be open book and open note. The exam will be two hours long. However, students are not permitted to record any lectures, or reference any such recordings during the exam.

**Attendance:** Regular and punctual attendance is required to earn academic credit for this course. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Instructor may monitor attendance by any method she deems appropriated including, but not limited to, circulating a sign-in sheet, roll-call or visually surveying the class. Moreover, a student who is absent for at least 75 percent of a session of the course is absent from that session.

**Class Recordings Prohibited:** Pursuant to Academic Regulation 5-2.2, no portion of a class session or examination may be preserved by means of a recording device such as an audio recording device or camera.

### **Preliminary Assignment Schedule**

#### **Week 1: August 27**

Course overview and Expectations

Definitions of Mental Illness

Deprivation of Constitutional Rights of the Mentally Ill

READING ASSIGNMENT: Va. Code Ann. §§ 37.2-100, 800; 12 Va. Admin. Code § 35-105-20; Steven S. Sharfstein, Big Pharma and American Psychiatry: The Good, the Bad, and the Ugly, PSYCHIATRY ONLINE, August 19, 2005,

<https://psychnews.psychiatryonline.org/doi/10.1176/pn.40.16.00400003>; Gavin Francis *Changing Psychiatry's Mind*, 68 *The New York Review of Books* 26-29, 1/14/2021 (reviewing Anne Harrington, Mind Fixers: Psychiatry's Troubled Search for the Biology of Mental Illness (2019) and Nathan Filer, This Book Will Change Your Mind About Mental Health: A Journey into the Heartland of Psychiatry (2019) (GMU Law Library online); Zeb Larson, America's Long Suffering Mental Health System, ORIGINS, Ohio State University, Stanton Foundation, 2019 [https://origins.osu.edu/article/americas-long-suffering-mental-health-system?language\\_content\\_entity=en](https://origins.osu.edu/article/americas-long-suffering-mental-health-system?language_content_entity=en); Paul S. Applebaum, A History of Civil Commitment and Related Reforms in the United States, Lessons for Today, 25 *Dev. Of Mental Health L. I*, Jan. 2006, p. 13 (GMU LAW LIBRARY ONLINE); Gerald Grob, Mental Illness Policy in America: Myths and Realities, 11 *Health Affairs* 3, Fall 1992 (GMU Law Library online).

## **Week 2: September 2, 2022**

History of Mental Illness Law to 1940s

READING ASSIGNMENT. Va. Code Ann. § 54.1-2976, *et seq.*; Megan Testa and Sara G. West, Civil Commitment in the United States, *Psychiatry*, Oct. 7, 2010 30-40; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3392176/>; *In re Josiah Oakes*, 8 *Law Reporter* 12 (Mass. 1845) <http://www.disabilitymuseum.org/dhm/lib/detail.html?id=1305&page=all>; Gerald Grob, Mental Illness and American Society, 1875-1940; Ch. 6 *Mental Hygiene*, pp. 144-78 (1983); *Mallory v. Virginia Colony for the Feeble-Minded*, 123 Va. 205 (1918); *Hall v. Verdel*, 40 F. Supp. 941 (W.D. Va. 1941); *Buck v. Bell*, 274 U.S. 200 (1927); *The Supreme Court Ruling that Led to 70,000 Forced Sterilizations*; NATIONAL PUBLIC RADIO (March 7, 2016) <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>; p. 3-5; *Poe v. Lynchburg Training Schools*, 518 F. Supp. 789 (1981)

## **Week 3, September 9:**

Deinstitutionalization and the Shift to Community-Based Treatment

READING ASSIGNMENT: Gerald Grob, Public Policy and Mental Illnesses: Jimmy Carter's Presidential Commission on Mental Health, *Milbank Q.* 425-56 (Sept. 2005)(First four pages); <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2690151/>; : William A. Wray, The Commitment of the Mentally Ill in Virginia, 2 *Wm. & Mary L. Rev.* 407 (1960) (HeinOnline); *Lake v. Cameron*, 364 F.2d 657 (1966); *Lessard v. Schmidt*, 349 F.Supp. 1078 (1972), 379 F.Supp. 1376 (1974); *O'Connor v. Donaldson*, 422 U.S. 563 (1975); *Addington v. Texas*, 441 U.S. 418 (1979); *Jackson v. Indiana*, 406 U.S. 715 (1972); Daniel Yohanna, Deinstitutionalization of People with Mental Illnesses: Causes and Consequences, *AMA Journal of Ethics* 2013: 15(10) 886-891, <https://journalofethics.ama-assn.org/article/deinstitutionalization-people-mental-illness-causes-and-consequences/2013-10>; Mira E. Singer, Virginia's Mental Health System: How it Evolved and What Remains to be Improved, 90 *The Virginia Newsletter* 3, May 2014, *The Weldon Center for Public Service* (HEINONLINE).

#### **Week 4, September 16:**

Virginia civil involuntary commitment criteria for adults,

Impact of Policy Changes on Delivery of Services

Steps in the Commitment Process

- Petition
- Emergency Custody Order
- CSB Examination
- Prescreen Report
- Execution of TDO
- Medical Clearance
- Probable Cause

READING ASSIGNMENT: VA. CODE ANN. §§37.2-100, - 808, -809, -809.1, -814—813 to 815, -816, -817; 18.2-254.3, 19.2-271.6, 19.2-303.6 (2022); Richard Bonnie, et. al, Mental Health System Transformation After the Virginia Tech Tragedy, 28 Health Affairs 3, 793-804 (2009)

[https://www.researchgate.net/publication/24401217\\_Mental\\_Health\\_System\\_Transformation\\_After\\_The\\_Virginia\\_Tech\\_Tragedy](https://www.researchgate.net/publication/24401217_Mental_Health_System_Transformation_After_The_Virginia_Tech_Tragedy);

Megan Pauly, Deaths in Virginia State Hospitals on the Rise, VIRGINIA PUBLIC MEDIA, June 18, 2019, <https://vpm.org/news/articles/3589/deaths-in-virginia-state-psychiatric-hospitals-on-the-rise>;

Jenna Portnoy, Virginia Orders 5 State Hospitals to Stop Taking New Admissions Amid Shifting Staff Crisis, The Wash. Post, July 9, 2021, [https://www.washingtonpost.com/local/virginia-politics/virginia-mental-health-hospitals-closed/2021/07/09/c9a7253c-e0e6-11eb-ae31-6b7c5c34f0d6\\_story.html](https://www.washingtonpost.com/local/virginia-politics/virginia-mental-health-hospitals-closed/2021/07/09/c9a7253c-e0e6-11eb-ae31-6b7c5c34f0d6_story.html).

Michael Martz, Giles County Agency Sues State for Denying Hospital Bed to Youth in Psychiatric Crisis, The Richmond Times-Dispatch, March 3, 2022

[https://richmond.com/news/state-and-regional/govt-and-politics/giles-county-agency-sues-state-for-denying-hospital-bed-to-youth-in-psychiatric-crisis/article\\_ff681e5d-af18-5878-952d-069b858a3cf7.html#:~:text=A%20youth%20in%20foster%20care,and%20the%20state's%20only%20mental.](https://richmond.com/news/state-and-regional/govt-and-politics/giles-county-agency-sues-state-for-denying-hospital-bed-to-youth-in-psychiatric-crisis/article_ff681e5d-af18-5878-952d-069b858a3cf7.html#:~:text=A%20youth%20in%20foster%20care,and%20the%20state's%20only%20mental.)

#### **Week 5, September 23:**

Steps in the Involuntary Commitment Process

- Probable Cause
- Appointment of Counsel
- Independent Examination
- Determination of Capacity to Volunteer
- Reasonable Degree of Medical Certainty
- Hearing
- Clear and Convincing Evidence
- Outcomes of Involuntary Commitment Hearing

READING ASSIGNMENT: Va. Code Ann. §§ 37.2-803, 808, 809, 813 to 815, -817, 825;

*Lagumen v. Richardson*, 80 Va. Cir. 51 (Chesapeake 2010); *Raub v. Bowen*, 960 F. Supp. 2d 602 (E.D. Va. 2013); *Raub v. Campbell*, 3 F. Supp. 3d 526 (E.D. Va. 2014); *Zinerman v. Burch*, 494 U.S. 113 (1990); 113 *Great Eastern Resort Corp. and Lib. Ins. v. Gordon*, 31 Va. App. 608 (2005); *Commonwealth v. Allen*, 269 Va. 262 (2005).

**Week 6, September 30:**

GUEST SPEAKER: Deputy Fairfax County Attorney, Cynthia Tianti

Appeals

Loss and Restoration of Gun Rights

Red Flag Laws

READING ASSIGNMENT: Va. Code Ann. §§ 37.2 -814 to -819, -821, -844, -845, 846, 1101; 18.2-308.1:3, 19.2-152.13, -14; 18 U.S.C. 992(g), -925(C); 27 CFR 478.11, 144; *Paugh v. Henrico Area Mental Health and Developmental Services*, 286 Va. 85 (2013); *Ingram v. Commonwealth*, 62 Va. App. 14 (2013); *McLeod v. Commonwealth of Virginia*, 2021 WL 1235421; Lisa H. Gold and Donna Vanderpool, The Legal Restoration of Firearms Rights After Mental Health Prohibition, *The Journal of the American Academy of Psychiatry and the Law*, Sept. 2018, 298-308 <http://jaapl.org/content/46/3/298> ; *United States v. Bean*, 537 U.S. 71 (2002); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *Keyes v. Lynch*, 195 F.Supp. 3d (M.D. Pa. 2016); *Mai v. United States*, 952 F.3d 1106 (9<sup>th</sup> Cir. 2020); *New York State Rifle & Pistol Association v. Buren, Superintendent of New York City Police Department*, 20-843, slip op. (U.S. June 23, 2022). Post-Conviction Restoration of Civil Rights CRM 1435 Justice/gov/archives/jm/criminal/-resource-manual-1435-post-conviction-restoration-civil-rights; Giffords Law Center, Mental Health Reporting in Virginia, April 19, 2021 <https://giffords.org/lawcenter/state-laws/mental-health-reporting-in-Virginia/#:~:text=Federal%20law%20also%20generally%20prohibits,commission%2C%20or%20other%20lawful%20authority>

**Week 7, October 7:**

GUEST SPEAKER: Defense Attorney, Deborah Kramer

Loss of Gun Rights

Appellate Process

READING ASSIGNMENT: Same as Week 6

**Week 8, October 14**

TDO Exercises

Administration of Medication Over Objection-Civil

Orders for emergency medical or psychological treatment

Alternatives to Involuntary Commitment

Conservatorships and Guardianships

Powers of Attorney

READING ASSIGNMENT: Va. Code §§ 37.2-400, 805.1, 825, 1101, 1102, 1103, 1104, 1105 54.1-2983, 64.2-1600-1606, 2000 to 007, -012, -019, -021; 12VAC35-115-146; *Mills v. Rogers*, 457 U.S. 291 (1982);

*Rogers v. Commissioner of Department of Mental Health*, 390 Mass. 489 (1983); Zoe Christen Jones and Justin Carissimo, *Britney Spears' Conservatorship Explained*, CBS NEWS, (February 10, 2021, 637 p.m.) <https://www.cbsnews.com/news/britney-spears-conservatorship-updates>.

### **Week 9, October 21**

TDO Exercises

Pros and Cons of Mandatory Outpatient Treatment

Right to Treatment

Involuntary Commitment of criminal Defendants

READING ASSIGNMENT: Va. Code 37.2-805, 814(B), 815(B), -817, 37.2-817.1 to 817.4; *Olmstead v. L.C., ex. Rel Zimring*, 527 U.S. 581 (1999); *Vitek v. Jones*, 445 U.S. 480 (1980); *Evans v. Paderick*, 443 F. Supp. 583 (1977).

### **Week 10, October 28**

TDO Exercises

TDO Process for criminal defendants

Diversion Docket

Lack of capacity defense

Incompetence to stand Trial

Not Guilty by Reason of Insanity

Involuntary Administration of Medication-Criminal Defendants

Va. Code §§ 18.2-254.3, 19.2-168.1, 19.2-169.1 to 169.4, -169.6, -169.7; 19.2-271.6 *Washington v. Harper*, 494 U.S. 210 (1990); *Riggins v. Nevada*, 504 U.S. 127 (1992); *Sell v. United States*, 539 U.S. 166 (2003); *U.S. v. Chatmon*, 718 F.3d 369 (4<sup>th</sup> Cir. 2013); *Vernon v. Commonwealth*, 2022 WL 15477888 (Va. App. Ct. No. 1279-20-4, May 17, 2022) (Unpublished); *Comm. V. Shaw*, 2022 WL 793425 (Arl. Cir. Ct. Cr. 21000393-00, March 9, 2022); *Grattan v. Commonwealth*, 278 Va. 602 (2009); *Bartosch v. Commonwealth*, 2022 WL 145154 (Va. App. Ct. No. 1249-20-4, Jan. 18, 2022) (Unpublished); Jeremy A. Theisen, *A New Standard for Admissibility of Evidence Regarding a Criminal Defendant's Mental Condition*, Virginia Lawyer, Virginia State Bar, August 2021 [https://virginialawyer.vsb.org/publication/?i=715507&article\\_id=4081399&view=articleBrowser&ver=html5](https://virginialawyer.vsb.org/publication/?i=715507&article_id=4081399&view=articleBrowser&ver=html5).

NGRI CITES: Va. Code Ann. §§ 19.2-169.5, -168, -168.1, -182.2 to -182.7, *Boswell v. Commonwealth*, 61 Va. 860 (1871); *Price v. Commonwealth*, 228 Va. 452 (1984); *Godley v. Commonwealth*, 2 Va. App. 249 (1986); *Brown v. Commonwealth*, 68 Va. App. 746 (2018); *Downing v. Commonwealth*, 26 Va. App. 717 (1998); *Commonwealth v. White*, 272 Va. 619 (2006); *Schmuhl v. Commonwealth*, 69 Va. App. 281 (2018); *Wright v. Commonwealth*, 234 Va. 627 (1988); *Dandridge v. Commonwealth*, 72 Va. App. 669 (2021)

**Week 11, November 4**

Involuntary Administration of Medication-Criminal Defendants  
Civil Commitment of Sexually violent Predators

READING ASSIGNMENT: 37.2-900 to 921; *Kahler v. Kansas*, 140 S.Ct. 1021 (2020); *Kansas v. Crane*, 534 U.S. 407 (2002); *Boswell v. Commonwealth*, 61 Va. 860 (1871); *Commonwealth v. Shivaee*, 270 Va. 112 (2005); *Townes v. Commonwealth*, 269 Va. 234 (2005).

**Week 12, November 11**

Juvenile Commitment Process

READING ASSIGNMENT: Divya Kiran Chhabra, *Mental Health and the Juvenile Justice System: Where has History Taken Us?* PSYCHIATRY ONLINE Oct. 1, 2017

<https://psychiatryonline.org/doi/full/10.1176/appi.ajp-rj.2017.121001>;

Thomas L. Hafemeister, "Parameters and implementation of a Right to Mental Health Treatment for Juvenile Offenders," 12 Va. J. Soc. Pol'y & L. 61 (2004). (Westlaw), pp. 1-12, 22-26; *Robinson v. Winstead*, 189 Va. 100 (1949); *Parham v. J.R.* 442 U.S. 584 (1979); Va. Code §§ 16.1-335 to 16.348

**Week 13, November 18**

Review Session.