

Law 357-001 | Mental Illness Law | Spring 2025 | 2 credits

Professor(s): Mary Mertz Parnell

Mon. 8:30 – 10:30 am EST | Final Exam: N/A

Reading(s): 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.

Communication(s): mmertzpa@gmu.edu or mparnell59@gmail.com

Office Hours: By appointment

COURSE OBJECTIVES

By the end of the course, students should have acquired:

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

GRADING & PARTICIPATION

Course Structure: Weekly class sessions will consist of lectures and observations of involuntary commitment hearings.

Grading: The grade will consist of: 10 Percent Class Participation

- 10 Percent Assignment 1: Closing Arguments from Petitioner’s Attorney
Due March 3 (2 to 4 pages)
- 20 Percent Assignment 2: Memorandum Supporting Motion to Strike
At Close of Petitioner’s
Due March 31 (5 pages Max)
- 60 Percent Assignment 3: Critique of Involuntary Commitment Process
May 1 (12 pages Minimum)

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 appropriate including, but not limited to, circulating a sign-in sheet, rollcall 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.

COURSE SCHEDULE & ASSIGNMENTS

Week 1: Jan. 27

Course Overview and Expectations
Definitions of Mental Illness
Deprivation of Constitutional Rights of the Mentally Ill
Formation of a Legal Standard for Commitment

READING ASSIGNMENT: Va. Code Ann. §§ 16.1-336; 37.2-100, 37.2-800 (“Mental Illness Definition”) 12 Va. Admin. Code § 35-105-20 (“Mental Illness Definition”); Steven S. Sharfstein, Big Pharma and American Psychiatry: The Good, the Bad, and the Ugly, PsychiatryOnline, 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; 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); 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>; *Mallory v. Virginia Colony for the Feeble-Minded*, 123 Va. 205 (1918); *Hall v. Verdel*, 40 F. Supp. 941 (W.D. Va. 1941); *Lake v. Cameron*, 364 F.2d 657 (1966); *Lessard v. Schmidt*, 349 F. Supp. 1078 (1972), 379 F. Supp. 1376 (1974).

Week 2, Feb. 3

Involuntary Commitment Process in
Virginia Steps in the Commitment Process

- Petition
- Emergency Custody Order
- CSB Examination
- Prescreen Report
- Execution of TDO

READING ASSIGNMENT: VA. CODE ANN. §§37.2-100 (“Developmental Disability” “Mental Illness”), - 808 (“Emergency Custody Orders”), -809 (“Temporary Detention Orders”), - 809.1 (“Facility of Temporary Detention”), -813, 814 (“Release”) (“Petition”) -816 (“CSB exam and Prescreen Report”) ; *Jackson v. Indiana*, 406 U.S. 715 (1972); *O’Connor v. Donaldson*, 422 U.S. 563 (1975); *Addington v. Texas*, 441 U.S. 418 (1979); *Evans v. Paderick*, 442 F.Supp. 583 (1977); 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); 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);

Week 3, Feb. 10:

Steps in the Involuntary Commitment Process:

- Probable Cause
- Medical Clearance
- Appointment of Counsel
- Independent Examination
- Reasonable Degree of Medical Certainty
- Determination of Capacity to Volunteer

READING ASSIGNMENT: Va. Code Ann. §§ 37.2-803 (“Special Justice”), -805 (“Voluntary Admission”), -808 (“Emergency Custody Orders”), -809 (“Temporary Detention Orders”), -809.1 (“Facility of Temporary Detention”), --813, 814 (“Release,” “Petition”) -814, -815 (“Hearing, Counsel, Written Explanation,”) -816 (“CSB exam and Prescreen Report”) ; 825 (“Capacity”); *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); *Burruss v. Riley*, 192F. Supp. 655 (2016); *Fletcher v Brown*, 2016 WL 179226 (2016); *Doe v. Sutton-Wallace*, 2019 WL2061969 (2019); *Lawhorn v. Edwards*, 477 F. Supp. 428 (2020); *Lagumen v. Richardson*, 80 Va. Cir. 51 (Chesapeake 2010) *Zinnermon v. Burch*, 494 U.S. 113 (1990)

Week 4, Feb. 17:

Steps in the Virginia Involuntary Commitment Process

- Hearing
- Clear and Convincing Evidence
- Outcomes of Involuntary Commitment Hearing
- Decline in availability of Services
- Bed Registry
- Mandatory Outpatient Treatment
- Closing Arguments

READING ASSIGNMENT: Va. Code Ann. §§ 37.2-308.1 (“Acute Bed Registry”), -817 to 819 (“Involuntary Commitment”)(“Mandatory Outpatient Treatment”) (“Recordings”), (“CCRE Report”); 113 *Great Eastern Resort Corp. and Lib. Ins. v. Gordon*, 31 Va. App. 608 (2005); *Commonwealth v. Allen*, 269 Va. 262 (2005) Va. Prac. Trial Handbook § 36.5; 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; Laura Vozella, Virginia State Sen Creigh Deeds settles lawsuit over his son’s death for \$950K, The Washington Post, Oct. 18, 2018, *republished at*

<https://www.newsleader.com/story/news/local/2018/10/18/virginia-state-sen-creigh-deeds-settles-lawsuit-over-his-sons-death/1680675002/>

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>.

Week 5, Feb. 24:

Observe Hearings

Alternatives to Involuntary Commitment

Conservatorships and
Guardianships Powers of Attorney
Certification to a Training Center

READING ASSIGNMENT: Va. Code §§ 37.2-400 (“Rights of Individuals”); 805.1 (“Advanced Directives”), 37.2-817.1 to 817.4 (“Mandatory Outpatient Treatment”), -1101 (“Medication Over Objection”), -1102 (“Unauthorized Actions”), 1103, 1104 (“Medical Orders”), 1105 (“Appeals of Treatment Over Objection”); 54.1-2983 (“Advanced Directives”), 64.2-1600-1606 (“Guardianships”), 2000 to 007 (“Incapacity”), -012 (“Restoration”), -019 (“Guardianships”), -021 (“Guardianships”); 12VAC35-115-146 (“Authorized Representatives; Zoe Christen Jones and Justin Carissmo, *Britney Spears’ Conservatorship Explained*, CBS NEWS, (February 10, 2021, 637 p.m.) <https://www.cbsnews.com/news/britney-spears-conservatorship-updates>

Week 6, March 3

Assignment 1 Due

Appeal process

Loss and Restoration of Gun Rights Red Flag Laws

Motion to Strike the Evidence.

READING ASSIGNMENT: Va. Code Ann. §§ 37.2 -814 -819, -821 (“Gun Rights”), -844, -845, 846 (“Appeals”) 18.2-308.1:3 (“Gun Rights”), 19.2-152.13, -14 (“Red Flag Law”); 18 U.S.C. 992(g), -925(C); 27 CFR 478.11, 144 (“Federal Gun Law”); *Paugh v. Henrico Area Mental Health and Developmental Services*, 286 Va. 85 (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); *Mai v. United States*, 952 F.3d 1106 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 256 (2021); 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](#), December 2023; <https://giffords.org/lawcenter/state-laws/mental-health-reporting-in-virginia>; *Va. Prac. Trial Handbook*, § 34:3 (WESTLAW).

Week 7, March 17:

Observe Hearings

Eugenics

Movement Right

to Treatment

Refuse Treatment

READING ASSIGNMENT: Va. Code §§ 37.2-400 (“Rights of Individuals”); 805.1 (“Advanced Directives”), 37.2-817.1 to 817.4 (“Mandatory Outpatient Treatment”), -1101 (“Medication Over Objection”), -1102 (“Unauthorized Actions”), 1103, 1104 (“Medical Orders”), 1105 (“Appeals of Treatment Over Objection”); 54.1-2983 (“Advanced Directives”), -54.1-2976 *et seq* (“Involuntary Sterilization”), -64.2-1600-1606 (“Guardianships”) 64.2- 2000 to 007 (“Incapacity”), -012 (“Restoration”), -019 (“Guardianships”), -021 (“Guardianships”); 12 Va. Admin. Code § 35-115-146 (“Authorized Representatives”); Gerald Grob, [Mental Illness and American Society 1875-1940](#), Ch. 6 “Mental Hygiene,” pp. 144-78 (1983); *Buck v. Bell*, 274 U.S.200 (1927); *Mills v. Rogers*, 457 U.S. 291 (1982); *Rogers v. Commissioner of*

Department of Mental Health, 390 Mass. 489 (1983); *Olmstead v. L.C., ex. Rel Zimring*, 527 U.S. 581 (1999) (majority opinion only).

Week 8, March 24

Administration of Medication Over Objection--Civil
Incompetence to Stand Trial

READING ASSIGNMENT: Va. Code §§ 37.2-805 (“Voluntary Admission”) *Rogers v. Commissioner of Department of Mental Health*, 390 Mass. 489 (1983); *Olmstead v. L.C., ex. Rel Zimring*, 527 U.S. 581 (1999); 19.2-169.1, -169.2, -169.3:1, -169.4, -169.6, -169.7 (“Competency to Stand Trial”); *Grattan v. Commonwealth*, 278 Va. 602 (2009) *Vitek v. Jones*, 445 U.S. 480 (1980); *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 (4th Cir. 2013); *Bartosch v. Commonwealth*, 2022 WL 145154 (Va. App. Ct. No. 1249-20-4, Jan. 18, 2022) (Unpublished *Suhay v. Commonwealth*, 75 Va. App. 143 (2022); *Ingram v. Commonwealth*, 62 Va. App.14 (2013).

Week 9, March

31 Assignment 2

Due Observe

Hearings

Administration of Medication Over Objection—Criminal

Cases Deferred Disposition

Behavioral Health Docket

Not Guilty by Reason of Insanity

Va. Code §§ 18.2-254.3 (“Diversion Docket”)19.2-169.1, -169.2, -169.3:1, -169.4, -169.6, -169.7 (“Competency to Stand Trial”) ; 19.2-303.6 (“Deferred Disposition”); 19.2-271.6 (“Diminished Capacity”); *Ray v. Commonwealth*, 2023 WL 3061796 (Va. App. Ct. No. 1080-22-3, April 25, 2023) (Unpublished) Jeremy A. Theisen, [A New Standard for Admissibility of Evidence Regarding a Criminal Defendant’s Mental Condition](https://virginialawyer.vsb.org/publication/?i=715507&article_id=4081399&view=articleBrowser&ver=html5), Virginia Lawyer, Virginia State Bar, August 2021

https://virginialawyer.vsb.org/publication/?i=715507&article_id=4081399&view=articleBrowser&ver=html5; *Stamper v. Commonwealth of Virginia*, 228 Va. 707 (1985).

Week 10, April 7

Not Guilty by Reason of Insanity

Lack of Capacity

Diminished Capacity

Va. Code Ann. §§ 19.2-168; 19.2-168.1, (“Lack of Capacity”) 19.2-169.5, -168, -168.1, -182.2 to -182.7, (“NGRI”); *Price v. Commonwealth*, 228 Va. 452 (1984); *Godley v. Commonwealth*, 2 Va. App. 249 (1986); *Clark v. Commonwealth*, 73 Va. App. 695 (2021); *Kahler v. Kansas*, 589 U.S. 271 (2020); *Johnson v. Commonwealth*, 2022 WL 15477888 (Va. App. Ct. No. 1279-20-4, May 17, 2022)(Unpublished); *Schmuhl v. Commonwealth*, 69 Va. App. 281 (2018).

19.2-271.6 (“Diminished Capacity”); *Howard v. Harris*, 80 Va.App. 365 (2024); *Calokoh v.*

Commonwealth, 76 Va. App. 717 (2023); *Temple v. Commonwealth*, 1022 WL 4828743 (Va. App. Ct.

October 2022) (Unpublished); *Commonwealth v. Shaw*, 79 Va. App. 485 (2024).

Week 11, April 17

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Mon. 8:30 – 10:30 am EST | Final Exam: N/A

Observe Hearings

Diminished

Capacity

19.2-271.6 (“Diminished Capacity”)

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

Week 12, April 21

Juvenile Commitment Process

READING ASSIGNMENT: Divya Kiran Chhabra, Mental Health and the Juvenile Justice

System: Where has History Taken Us? PsychiatryOnline, Oct. 1, 2017

Thomas L. Hafemeister, 6, 12 Va. J. Soc. Pol’y & L. 61 (2004). (Westlaw), pp. 1-12, 22-26; *D.L.G. v. Commonwealth*, 60 Va. App. 77 (2012); *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, April 24

Observe Hearings/Lecture

Final Paper Due: May 1