



November 24, 2009

To: Members, IHA Behavioral Health Constituency Section

From: MaryLynn M. Clarke, MS, JD, Senior Director, Health Policy and Regulation

Subject: **Illinois Appellate Court declares 2008 revisions to Illinois' Involuntary Commitment Standard Unconstitutional**

The Fourth District Illinois Appellate Court, in a November 17, 2009 decision titled *In Re Torski C.*, declared Illinois' modified civil commitment standard unconstitutional. The standard for involuntary admission had been lowered with the passage of Public Act 95-602, which took effect on June 1, 2008. The court held that the definition of dangerous conduct, as set forth in the 2008 revised statute, does not provide a sufficient standard to justify the involuntary hospitalization of a mentally ill individual.. Concerned that the new standard would seem to allow commitment for virtually any conceivable harm, be it "psychological, emotional or financial harm, regardless of severity," the court stated that a more definite statutory categorization of anticipated danger is necessary. As a result, the court held section 1-104.5 of the Code unconstitutionally vague and violates substantive due process.

The court's holding means that persons bringing actions to involuntarily admit a person with mental illness into a mental health facility such as a private hospital will be governed by the provisions of the Mental Health Code as they existed before enactment in 2008 of the revised standard held unconstitutional under *Torski*.

The court held that the definition of dangerous conduct as set forth in section 1-104.5 was "void for vagueness." It further held that the application of that definition in section 1-119 violated substantive due process. The court did not strike down the other sections of the involuntary admission process. The language of the overturned provisions are underlined in the Public Act 95-0602 below:

Public Act 095-0602

SB0234 Enrolled

LRB095 07027 DRJ 27149 b

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Mental Health and Developmental
Disabilities Code is amended by changing Section 1-119 and by

adding Section 1-104.5 as follows:

(405 ILCS 5/1-104.5 new)

Sec. 1-104.5. "Dangerous conduct" means threatening behavior or conduct that places another individual in reasonable expectation of being harmed, or a person's inability to provide, without the assistance of family or outside help, for his or her basic physical needs so as to guard himself or herself from serious harm.

(405 ILCS 5/1-119) (from Ch. 91 1/2, par. 1-119)

Sec. 1-119. "Person subject to involuntary admission" means:

(1) A person with mental illness and who because of his or her illness is reasonably expected to engage in dangerous conduct ~~infract serious physical harm upon himself or herself or another in the near future~~ which may include threatening behavior or conduct that places that person or another individual in reasonable expectation of being harmed; ~~or~~

(2) A person with mental illness and who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without the assistance of family or outside help; or ~~or~~

(3) A person with mental illness who, because of the nature of his or her illness, is unable to understand his or her need for treatment and who, if not treated, is reasonably expected to suffer or continue to suffer mental deterioration or emotional deterioration, or both, to the point that the person is reasonably expected to engage in dangerous conduct.

In determining whether a person meets the criteria specified in paragraph (1), (2), or (3) ~~or (2)~~, the court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness. (Source: P.A. 93-573, eff. 8-21-03.)

Effective Date: 6/1/2008

Public Act 095-0602

SB0234 Enrolled

LRB095 07027 DRJ 27149 b

PA 95-602 amended section 1-119 to provide as follows:

(405ILCS5/1-104.5)

Sec. 1-104.5. "Dangerous conduct" means threatening behavior or conduct that places another individual in reasonable expectation of being harmed, or a person's inability to provide, without the assistance of family or outside

help, for his or her basic physical needs so as to guard himself or herself from serious harm.

(Source: P.A. 95-602, eff. 6-1-08.)

(405 ILCS 5/1-119) (from Ch. 91 1/2, par. 1-119)
Sec. 1-119. "Person subject to involuntary admission"

means:

(1) A person with mental illness and who because of his or her illness is reasonably expected to engage in dangerous conduct which may include threatening behavior or conduct that places that person or another individual in reasonable expectation of being harmed;

(2) A person with mental illness and who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without the assistance of family or outside help; or

(3) A person with mental illness who, because of the nature of his or her illness, is unable to understand his or her need for treatment and who, if not treated, is reasonably expected to suffer or continue to suffer mental deterioration or emotional deterioration, or both, to the point that the person is reasonably expected to engage in dangerous conduct.

In determining whether a person meets the criteria specified in paragraph (1), (2), or (3), the court may consider evidence of the person's repeated past pattern of specific behavior and actions related to the person's illness.
(Source: P.A. 95-602, eff. 6-1-08.)

The mental health Code prior to enactment of PA 95-602 reads as follows:

Additional litigation regarding the involuntary commitment standard is expected. Appeals challenging the constitutionality of the commitment standard have been or will be filed in other districts, although we do not expect a decision in any of these districts for many months. The Illinois Supreme Court will be asked to consider this case. The Appellate Court's decision in Torski will become effective in 35 days from the date of the decision. Until that time, the opinion is considered to be persuasive. Following this date, it will be law. In order to be in compliance with the law, you may wish to amend the Petition and Certificate forms used in involuntary admission proceedings to reflect your conformance with the pre 2008 standard. As of this writing the Division of Mental Health has not amended these forms. You may wish to add a sentence that states the patient/respondent ...is reasonably expected to inflict serious physical harm upon himself or herself or another in the near future..., which is the standard in effect prior to the 2008 revisions.

We encourage you to consult your in-house or hospital's attorney for additional guidance in this matter.