

รายการอ้างอิง

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ภาคผนวก



ภาคผนวก ก.

กฎหมายสหรัฐอเมริกา เกี่ยวกับมาตรการบำบัดรักษาและฟื้นฟูสมรรถภาพ

ผู้เสพและผู้ติดยาเสพติด

The Narcotic Addict Rehabilitation Amendments of 1971

Section 3401. Declaration of policy

It is the policy of the Congress that certain persons charged with or convicted of violation Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health and return to society as useful members.

It is the further policy of the Congress that certain persons addicted to narcotic drugs who are not charged with the commission of any offense should be afforded the opportunity, through civil commitment, for treatment, in order that they may be rehabilitated and returned to society as useful members and in order that society may be protected more effectively crime and delinquency which from narcotic addiction.

Section 3402. State facilities and personnel for care and treatment; encouragement of adequate provision, benefit of experience of Surgeon General and Attorney General

The Surgeon General and the Attorney General are authorized to give representatives of States and local subdivisions thereof the benefit of their experience in the care, treatment, and rehabilitation of narcotic so that each State may be encouraged to provide adequate facilities and personnel for the care and treatment of narcotic addicts in its jurisdiction

Section 3411. Definitions For the purposes of this subchapter, the term-

- (a) "Narcotic addict" means any individual who habitually uses any narcotic drug as defined in section 802(16) of Title 21, so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of

such narcotic drugs as to have lost the power of self-control with reference to his addiction.

- (b) "Treatment" includes confinement and treatment in a hospital of the Service and under supervised aftercare in the community and includes, but is not limited to, medical, educational, social, psychological, and vocational services, corrective and preventive guidance and training, and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence, and his susceptibility to addiction.
- (c) "Surgeon General" means the Surgeon General of the Public Health Service.
- (d) "Hospital of the Service" means any hospital or other facility of the Public Health Service especially equipped for the accommodation of addicts, and any other appropriate public or private hospital or other facility available to the Surgeon General for the care and treatment of addicts.
- (e) "Patient" means any person with respect to whom a petition has been filed by a United States attorney as provided under subsection (b) of section 3412 of this title.
- (f) "Posthospitalization program" shall mean any program providing for the treatment and supervision of a person established by the Surgeon General pursuant to section 3417 of this title.
- (g) "State" includes the District of Columbia and Commonwealth of Puerto Rico.
- (h) "United States" includes the Commonwealth of Puerto Rico.
- (i) "Related individual" means any person with whom the alleged narcotic addict may reside or at whose house he may be, or the husband or wife, father or mother, brother or sister, or the child or the nearest available relative of the alleged narcotic addict.

Section 3412. Preliminary proceedings.

Petition for treatment

- (a) Except as otherwise provided in section 3421 of this title, whenever any narcotic addict desires to obtain treatment for his addiction, or whenever a related individual has reason to believe that any person is a narcotic addict, such addict or related individual may file a petition with the United States attorney for the district in which such addict or person resides or is found requesting that such addict or person be admitted to a hospital of the Service for treatment of his addiction. Any such petition filed by a narcotic addict shall set forth his name and address and the facts relating to his addiction. Any such petition filed by a related individual with respect to a person believed by such individual to be a narcotic addict shall set forth the name and address of the alleged narcotic addict and the facts of other data on which the petitioner bases his belief that the person with respect to whom the petition is filed is a narcotic addict.

Petition for confinement; consultations respecting availability of facilities

- (b) After considering such petition, the United States attorney shall, if he determines that there is reasonable cause to believe that the person named in such petition is a narcotic addict, and that appropriate State or other facilities are not available to such person, file a petition with the United States district court to commit such person to a hospital of the Service for treatment as provided in this subchapter. In making his determination with respect to the nonavailability of such facilities, the United States attorney shall consult with the Surgeon General, and other appropriate State or local officials.

Order for medical examination and hearing; personal service

- (c) Upon the filing of any such petition by a United States attorney, the court may order the patient to appear before it for an examination by physicians as provided under section 3413 of this title and for a hearing, if required under section 3414 of this title. The court shall cause a copy of such petition and order to be served personally upon the patient by a United States marshal.

Section 3413. Undicial proceedings; advisement of patient: counsel, retained physician's authority, treatment program of commitment, withdrawal, duration, confinement, post confinement, and recommitment; examination of patient: appointment of physicians, order of commitment, conduct and report of examination, and copies to patient and counsel; return of patient for further proceedings.

The court shall immediately advise any patient appearing before it pursuant to an order issued under subsection (c) of section 3412 of this title of his right to have (1) counsel at every stage of the judicial proceedings under this subchapter and that, if he is unable because of financial reasons to obtain counsel, the court will, at the patient's request, assign counsel to represent him; and (2) present for consultation during any examination conducted under this section, a qualified physician retained by such patient, but in no event shall such physician be entitled to participate in any such examination or in the making of any report required under this section with respect to such examination. The court shall also advise such patient that if, after an examination and hearing as provided in this subchapter, he is found to be a narcotic addict who is likely to be rehabilitated through treatment, he will be civilly committed to the Surgeon General for treatment; that he may not voluntarily withdraw from such treatment; that the treatment (including posthospitalization treatment and supervision) may last forty-two months; that during treatment he will be confined in an institution; that for a period of three years following his release from confinement he will be under the care and custody of the Surgeon General for treatment and supervision under a posthospitalization program established by the Surgeon General and that should he fail or

refuse to cooperate in such posthospitalization program or be determined by the Surgeon General to have relapsed to the use of narcotic drugs, he may be recommitted for additional confinement in an institution followed by additional posthospitalization treatment and supervision. After so advising the patient, the court shall appoint two qualified physicians, one of whom shall be a psychiatrist, to examine the patient. For the purpose of the examination, the court may order the patient committed for such reasonable period as it shall determine, not to exceed thirty days, to the custody of the Surgeon General for confinement in a suitable hospital or other facility designated by the court. Each physician appointed by the court shall, within such period so determined by the court, examine the patient and file with the court, a written report with respect to such examination. Each such report shall include a statement of the examining physician's conclusions as to whether the patient examined is a narcotic addict and is likely to be rehabilitated through treatment. Upon the filing of such reports, the patient so examined shall be returned to the court for such further proceedings as it may direct under this subchapter. Copies of such reports shall be made available to the patient and his counsel.

Section 3414. Hearings

Discharge of patient and dismissal of proceedings; notice of time and place; service; issues of fact; demand for jury or judicial determination

(a) If both examining physicians (referred to in section 3413 of this title) conclude in their respective written reports that the patient is not a narcotic addict, or is an addict not likely to be rehabilitated through treatment, the court shall immediately enter an order discharging the patient and dismissing the proceedings under this subchapter. If the written report of either such physician indicates that the patient is a narcotic addict who is likely to be rehabilitated through treatment, or that the physician submitting the report is unable to reach any conclusion by reason of the refusal of the patient to submit to a thorough examination, the court shall promptly set the case for hearing. The court shall cause a written notice of the time and place of such hearing to be served personally upon the patient and his attorney. Such notice shall also inform the patient that upon demand

made by him within fifteen days after he has been served, he shall be entitled to have all issues of fact with respect to his alleged narcotic addiction determined by a jury. If no timely demand for a jury is made, the court, in conducting such hearing, shall determine all issues of fact without a jury.

Evidence; patient's testimony; examinations and cross-examinations; judicial review of orders of commitment

(b) In conducting any hearing under this subchapter, the court shall receive and consider all relevant evidence and testimony which may be offered, including the contents of the reports referred to in section 3413 of this title. Any patient with respect to whom a hearing is held under this subchapter shall be entitled to testify and to present and cross-examine witnesses. All final orders of commitment under this subchapter shall be subject to review in conformity with the provisions of sections 1254 and 1291 of Title 28.

Detention of patient

(c) Any patient with respect to whom a hearing has been set under this subchapter may be detained by the court for a reasonable period of time in a suitable hospital or other facility designated by the court until after such hearing has been concluded.

Witness fees and mileage

(d) witnesses subpoenaed by either party under the provisions of this subchapter shall be paid the same fees and mileage as are paid to other witnesses in the courts of the United States.

Section 3415. Order of commitment for treatment to care and custody of Surgeon General; reports of Surgeon General

If the court determines after a hearing that such patient is a narcotic addict who is likely to be rehabilitated through treatment, the court shall order him committed to the care and custody of the Surgeon General for treatment in a hospital of the Service. The Surgeon General shall submit to the court written reports with respect to such patient at such times

as the court may direct. Such reports shall include information as to the health and general condition of the patient, together with the recommendations of the Surgeon General concerning the continued confinement of such patient.

Section 3416. Period of commitment to care and custody of Surgeon General; patient subject to posthospitalization program; release from confinement

Any patient committed to the care and custody of the Surgeon General pursuant to section 3415 of this title shall be committed for a period of six-month, and shall be subject to such posthospitalization program as may be established pursuant to section 3417 of this title; except that such patient may be released from confinement by the Surgeon General at any time prior to the expiration of such six month period if the Surgeon General determines that the patient has been cured of his drug addiction and rehabilitated, or that his continued confinement is no longer necessary or desirable.

Section 3417. Release from confinement

Notice and return to committing court; placing patient under care and custody of Surgeon General for posthospitalization treatment; recommendations of Surgeon General

(a) Whenever any patient under the care and custody of the Surgeon General pursuant to this subchapter to be released from confinement in accordance with the provisions thereof. The Surgeon General shall give notice of such pending release to the committing court within ten days prior there to and shall, at the time of the patient's release, promptly return him to that court. The court, after considering the recommendations of the Surgeon General with respect to posthospitalization treatment for any such patient so returned, may place such patient under the care and custody of the Surgeon General for the three-year period immediately following the patient's release, for treatment and supervision under such posthospitalization program as the Surgeon General may direct.

Return to committing court for recommitment and submission to posthospitalization treatment

(b) If, at any time during such three-year period, any patient (1) fails or refuses to comply with the directions and orders of the Surgeon General in connection with such patient's posthospitalization treatment and supervision, or (2) is determined by the Surgeon General to be again using narcotic drugs, the Surgeon General may order such patient's immediate return to the committing court which may recommit such patient to a hospital of the Service for additional treatment for a period of not to exceed six months, and may require such patient thereafter to submit to a posthospitalization program in accordance with subsection (a) of this section.

Section 3418. Petition for inquiry into health and general condition and necessity for continuation of confinement; order for release from confinement and return to court; placing patient under posthospitalization treatment

The court, upon the petition of any patient after his confinement pursuant to this subchapter for a period in excess of three months, shall inquire the health and general condition of the patient and as to the necessity, if any, for his continued confinement. If the court finds, with or without a hearing, that his continued confinement is no longer necessary or desirable, it shall order the patient released from confinement and returned to the court. The court may, with respect to any such patient so returned, place such patient under a posthospitalization program in accordance with the provisions of subsection (a) of section 3417 of this title.

Section 3419. Criminal conviction or criminal appellation from determination of being narcotic addict; criminal proceedings prohibited from using information gained in addiction inquiry

Any determination by the court pursuant to this subchapter that a patient is a narcotic addict shall not be deemed a criminal conviction, nor shall such patient be denominated a criminal by reason of that determination; The results of any hearing, examination, test, or procedure to determine narcotic addiction of any patient under this subchapter shall not be used against such patient in any criminal proceeding.

Section 3420. Evidence; examining physician competent and compellable witness; physician-patient privilege

Any physician conducting an examination under this subchapter shall be a competent and compellable witness at any hearing or other proceeding conducted pursuant to this subchapter and the physician patient privilege shall not be applicable.

Section 3421. Subchapter inapplicable to persons with criminal charge pending, on probation, or with sentence unserved; consent to commitment of such persons by authority with power over their custody

The provisions of this subchapter shall not be applicable with respect to any person against whom there is pending a criminal charge, whether by indictment or by information, which has not been fully determined or who is on probation or whose sentence following conviction on such a charge, including any time on parole or mandatory release, has not been fully served, except that such provision shall be applicable to any such person on probation, parole, or mandatory release if the authority authorized to require his return to custody consents to his commitment.

Section 3425. Penalties; escape or rescue from custody

Whoever escapes or attempts to escape while committed to institutional custody for examination or treatment under this subchapter, or whoever rescues or attempts to rescue or instigates, or whoever rescues or attempts to rescue or instigates, aids, or assists the escape or attempt to escape of such a person, shall be subject to the penalties provided in sections 751 and 752 of Title 18.

ภาคผนวก ข.

กฎหมายสวีเดน เกี่ยวกับมาตรการบำบัดรักษาและฟื้นฟูสมรรถภาพผู้เสพและผู้ติดยาเสพติด

The Care of Alcoholics, Drug Abusers and Abusers of Volatile Solvents

(Special Provisions) Act

Introductory provisions

Section 1

All care intended to help individual persons to discontinue their abuse of alcohol, narcotics or volatile solvents must be guided by the goals of public social services as defined in Section 1 of the Social Services Act (1980:620). Care must be based on respect for the self-determination and privacy of the individual and must as far as possible be designed and conducted in partnership with the individual.

Section 2

Care under the aegis of social services is supplied to an abuser on a basis of consensus with him, in accordance with the provisions of the Social Services Act (1980:620). An abuser shall, however, be provided with care regardless of his own consent, subject to the conditions defined in this Act (compulsory care).

The content and design of compulsory care are subject to the provisions of the Social Services Act, except where otherwise indicated in this Act.

Section 3

Compulsory care shall be aimed at motivating the abuser in such a way that he may be presumed capable of voluntary participation in continuing treatment and capable of receiving support in order to discontinue his abuse.

Provision of care

Section 4

A compulsory care order shall be made if any person, as a result of ongoing abuse of alcohol, narcotics or volatile solvents, is in need of care in order to discontinue his abuse and the necessary care cannot be provided under the Social Services Act (1980:620) or in any other way and, as a result of the abuse, he

1. is seriously endangering his physical or mental health.
2. runs an obvious risk of ruining his life, or
3. is liable to inflict serious injury on himself or some person closely related to him.

The provision of care for a shorter period of time under the Compulsory Mental Care Act (1991:1128) does not preclude the making of a compulsory care order under this Act. (1901: 1965).

Section 5

Compulsory care orders are made by the County Administrative Court.

Section 6

It is the duty of public authorities whose activities bring them regularly into contact with abusers to notify the Municipal Social Welfare Committee if it comes to their knowledge that any person may be presumed in need of care under this Act. This provision, however, shall not apply to authorities in the health and medical care sector, except as provided in subsection two.

A report shall be made to the Municipal Social Welfare Committee by any physician who, in the course of his activities, comes into contact with any person presumably in need of immediate care under Section 13 or of care under this Act, if in his opinion that person cannot be provided with satisfactory care or treatment by the physician himself or otherwise under the auspices of health and medical services. (1994:96)

Section 7

The Municipal Social Welfare Committee, having been apprised, by a report under Section 6 or in any other way, of possible grounds for any person being provided with compulsory care, is to open an investigation.

It is the duty of the public authorities referred to in Section 6 (1) to supply the Municipal Social Welfare Committee with all particulars of potential relevance to such an investigation. (1994:96).

Section 8

At the commencement of the investigation, the Municipal Social Welfare Committee shall appoint an officer of the committee to take charge of contacts with the abuser and with various caring agencies. (1994:96)

Section 9

When the investigation has begun, the Municipal Social Welfare Committee shall, except in cases where this is manifestly unnecessary, order a medical examination of the abuser and appoint a physician to conduct the examination. The physician shall certify the abuser's current health status. (1994:96)

Section 10

The investigation report by the Municipal Social Welfare Committee shall indicate the abusers circumstances together with measures previously taken and planned. The report shall also indicate the home to which the abuser can be admitted and the care planned outside the home if admission takes place. (1994:96).

Section 11

If, following investigation, the Municipal Social Welfare Committee finds that there is cause for providing any person with compulsory care, the Administration shall apply for such care to the County Administrative Court

The application shall be accompanied by the investigation report prepared by the Committee and, failing some special impediment, a medical certificate regarding the abuser's current health status.

The court may order a medical examination if the application does not contain a medical certificate or if an examination is needed for some other reason. (1994:96)

Section 12

On the court having made a compulsory care order, the municipal social welfare committee shall ensure that the order is enforced by providing the abuser with care in a residential institution as referred to in Section 22 or, in cases referred to in Section 24 (1) in hospital.

The court order will lapse if care has not commenced within four weeks of the day on which the order acquired force of law.

The order will also lapse if, since care was inaugurated, the abuser has, for not less than six consecutive months, been unlawfully absent from an institution referred to in Section 22 or been detained in custody or prison.

Immediate care

Section 13

The Municipal Social Welfare Committee or a police authority may issue an immediate care order for an abuser if

1. He can probably be provided with care by authority of this Act and
2. The court care order cannot be awaited, since presumably his health status will be severely impaired if he does not receive immediate care, or because there is an imminent risk that, due to his condition, he will seriously injure himself or some person closely related to him.

If the Social Welfare Committee's care order cannot be awaited, a care order may be issued by the Chairman of the Committee or by some other member acting by authority of the Committee. The order is to be reported at the next meeting of the Committee.

On the Social Welfare Committee having applied for compulsory care, the Court may also make an immediate care order for the abuser. (1994:96)

Section 14

Repealed in SFS 1994:96.

Section 15

An immediate care order made by the Municipal Social Welfare Committee or police authority is immediately to be submitted to the County Administrative Court or, in the event of the order having been made subsequent to the Social Welfare Committee having applied for compulsory care, to the court trying the question of care.

If the order has been made by the police authority, that authority is to inform the Social Welfare Committee of its decision immediately. (1994:96)

Section 16

In connection with an immediate care order being submitted to the court, the authority which made the order shall, if there is no obstacle to doing so, allow the person taken in charge to study the documents in the case and inform him of his right to:

1. Make a written statement to the court within a certain period of time,
2. Request verbal proceedings in court, and
3. Receive legal aid from the court in the form of public counsel.

The authority shall also inform him that the court may determine the case even if no statement is submitted.

Section 17

As soon as possible, and within four days of the order being submitted to the court or, if the order has not been enforced at the time of submission, of the order being enforced, the court is to consider whether the care order is to be upheld. This period may be extended to one week if necessary, on account of any particular circumstance.

If there are no grounds for taking in charge, the court is to cancel the care order immediately.

Section 18

If a care order has been made under Section 13 (1) or (2), an application for compulsory care must have been received by the County Administrative Court within one week of the County Administrative Court having upheld the taking in charge. If no application has been received within that time or if the County Administrative Court finds that grounds for taking in charge no longer exist, the County Administrative Court is to cancel the care order.

A care order will lapse when the question of care under this Act is determined by the court or if the person taken in charge is remanded in custody.

Section 19

The Municipal Social Welfare Committee shall ensure that a person taken in charge under Section 13 is, without delay, given care in an institution as referred to in Section 22 or, in cases referred to in Section 24 (1), in hospital.

Caring period

Section 20

Compulsory care is to be terminated as soon as the purpose of the care has been achieved and, at the latest, when it has been in progress for six months (the caring period). Care shall be deemed to have commenced when, on account of an immediate care order or compulsory care, the abuser has presented himself at or been taken to an institution as

referred to in Section 22 or a hospital. Care is terminated by a discharge order under Section 25

Section 21

The caring period does not include time during which the abuser

1. Is unlawfully absent from an institution as referred to in Section 22 or
2. Is remanded in custody or confined to prison.

Care

Section 22

Compulsory care is provided through residential institutions run by county councils or municipalities and specially intended for the provision of care under this Act ("LVM institutions"). An institution of this kind shall be directed by a board of governors appointed by the National Board of Institutional Care.

The board of governors is responsible for the care provided at the institution, insofar as this task has not been transferred to a special superintendent. (1993:3)

Section 23

For abusers requiring specially close supervision, there shall be LVM institutions adapted for such supervision (1993:3)

Section 24

Care shall begin in hospital if the conditions for hospital care are satisfied and this is judged appropriate in view of the general scheme of care. Any person requiring hospital care during the caring period shall be given the opportunity of such care.

The consultant of the hospital unit where the abuser is cared for shall ensure that the Municipal Social Welfare Committee or the person or body in charge of care at the LVM institution is informed immediately in the event of the abusers wishing to leave or having

already left the hospital. The consultant may order the abuser to be prevented from leaving the hospital during the time needed to ensure that the abuser can be transferred to an LVM institution. (1990:606)

Section 25

On an order having been made for compulsory care or immediate care under this Act, the National Board of Institutional Care, following notification by the Municipal Social Welfare Committee, shall provide a place in an LVM institution.

Decisions concerning admission to and discharge from an LVM institution are made by the person or body in charge of care at the institution.

The person or body in charge of care at an LVM institution may order the transfer of an inmate to another LVM institution if this is judged appropriate from the viewpoint of care and if the person or body in charge of care at the other institution consents to the transfer. (1993:3)

Section 26

The person or body in charge of care at an LVM institution shall keep the Social Welfare Committee continuously informed of the progress of care and shall consult the Committee on all matters of importance. Consultations are always to be held previous to transfer to another institution and previous to discharge.

Section 27

The person or body in charge of care at an LVM institution shall, as soon as the care schedule permits, make an order for the inmate to be given the opportunity of leaving the LVM institution for some other form of care.

The Municipal Social Welfare Committee shall ensure that care of this kind is arranged.

If care in some other form is no longer feasible, the person or body in charge of care at the LVM institution may order the abuser to be brought back to the institution.

Section 28

Before any other form of care begins, the Municipal Social Welfare Committee, acting in consultation with the inmate and with the person or body in charge of care at the LVM institution, shall draw up a plan (schedule) for continuing care.

Section 29

If an inmate has resided in an LVM institution for three months without any other form of care materializing, the superintendent shall report this fact to the governing body of the institution and indicate the cause.

Section 30

The Municipal Social Welfare Committee shall make active efforts to ensure that, after the caring period, the individual obtains housing and employment or education, and also to ensure that he receives personal support or treatment for the permanent discontinuation of his abuse.

Special powers

Section 31

A person receiving care under this Act in an LVM institution may not have in his possession alcoholic beverages, narcotics or volatile solvents or syringes, injection needles or other objects specifically suited for use in connection with the abuse or other handling of narcotics. Nor may he have in his possession anything else which may be detrimental to care or discipline of the institution. Any such property may be confiscated when found.

Section 32

If it is found justifiable, a person who is being cared for under this Act may be subjected to body search or superficial personal search on arrival at the LVM institution, to make sure

that he is not carrying anything which he is not allowed to have in his possession there. The same applies if, while he is residing at the institution, the suspicion arises of his having any such property about him.

Body search or superficial personal search may not be conducted more intimately than the purpose of this measure demands. All possible consideration compatible with the circumstances must be shown. A witness is to be present if possible.

Section 33

The provisions of Sections 31 and 32 shall apply to all persons receiving care in an LVM institution, if this is necessary for the provision of care and the maintenance of discipline of the institution and the Government or, by authority of the Government, the National Board of Institutional Care consents thereto. (1993:3)

Section 34

A person receiving care under this Act in an LVM institution for specially close supervision may be prevented from leaving the institution and may in other respects have his freedom of movement restricted to such an extent as is necessary in order for the care to be provided. His freedom of movement may also be restricted when necessary out of consideration for the safety of other inmates or the staff.

Section 35

Mail and other deliveries to a person receiving care under this Act in an LVM institution for specially close supervision may be checked, if this is necessary for the sake of discipline at the institution or in view of the inmate's special circumstances. If an incoming consignment contains property, the possession of which is prohibited under Section 31, the property may be confiscated.

Section 36

In the event of alcoholic beverages, narcotics or volatile solvents having been confiscated under Sections 31 or 35 or found in an LVM institution without their owner being known, the person or body in charge of care at the institution shall have the property destroyed or sold in compliance with the provisions on confiscated property contained in Section 2 (1) of the Alcoholic Beverages Etc. (Forfeiture) Act (1958:205). Proceeds of such sales accrue to the State.

The same shall apply concerning syringes, injection needles and other objects specifically suited for use in connection with the abuse or other handling of narcotics.

Procedural provisions

Section 37

Judicial and other proceedings under this Act are to be dealt with promptly.

Section 38

In judicial proceedings concerning the provision of compulsory care, in which a care order has been made under Section 13 (1) or (2), the county Administrative Court shall try the case within one week of the day on which an application for care was received or, if the care order was made subsequent to the Municipal Social Welfare Committee having applied for care, within one week of the day on which the order was submitted for approval. If an immediate care order has not been enforced when submitted or if the County Administrative Court has made an immediate care order under Section 13 (3), the case is to be tried within one week of the day on which the order was enforced.

The County Administrative Court may prolong these periods if further investigation is needed or if prolongation is necessitated by any other special circumstance. (1994:96)

Section 39

In judicial proceedings concerning the provision of compulsory care, the County Administrative Court and the Administrative Court of Appeal shall hold verbal proceedings except where this is manifestly unnecessary. In other judicial proceedings under this Act, the court will consider whether there are grounds for verbal proceedings.

Verbal proceedings shall be held at the instance of either party. The parties shall be informed of their right to request verbal proceedings.

If an individual party subpoenaed to enter appearance in person absents himself, the court may rule that he is to be brought to court, either immediately or on a later day.

Section 40

For proceedings in an Administrative Court of Appeal relating to other cases under this Act than immediate care orders, the court is to include lay assessors.

Section 41

In judicial and other proceedings under this Act, individual persons may not be served with documents as provided in Section 12 or 15 of the Service of Writs Act (1970:428).

Section 42

Provisions concerning public counsel and other legal aid in judicial and other proceedings under this Act are contained in the Legal Aid Act (1972:429).

Section 43

Care orders under Section 13 are immediately effective.

Transfer orders under Section 25 (2) may be immediately effective if necessary for purposes of care. Other orders by the person or body in charge of care at an LVM institution are immediately effective.

The court may rule that an order made by the court is to take effect immediately.

Provisions concerning appeal

Section 44

A decision by the person or body in charge of care at an LVM institution may be contested by the individual person by appeal to the County Administrative Court, if the decision refers to transfer under Section 25, rejection of a request for discharge or destruction or sale of property under Section 36.

Other decisions under this Act by the person or body in charge of care at an LVM institution are final.

Decisions concerning medical examination under Sections 9 or 11 (3) are final.

Care orders under Section 13 (1) or (2) are final. There is no time limit on appeals against care orders made by a court under Section 13 (3). (1994:96)

Police assistance

Section 45

The police authority shall render assistance in order

1. at the request of the Municipal Social Welfare Committee or the court, to convey an abuser to a previously ordered medical examination.
2. at the request of the Municipal Social Welfare Committee, to convey a person who is to be provided with care or who is the subject of an immediate care order under this Act to an LVM institution or hospital.
3. at the request of the consultant, in cases referred to in Section 24 (3), to convey the person who is to be provided with care or who is the subject of an immediate care order under this Act to an LVM institution, and
4. at the request of the person or body in charge of care at an LVM institution, to trace, collect or transfer any person who is to be admitted to the institution or who is receiving care there by authority of this Act. (1994:96)

Prosecution decisions

Section 46

If any person who has been provided with care under this Act is suspected of a criminal offence for which the maximum penalty does not exceed one year's imprisonment and which comes within the ambit of common prosecution, and if the crime was committed before the commencement of care or during the caring period, the prosecutor shall consider whether it is appropriate to prosecute. The governing body of the institution where the suspect is receiving care or, if the care has been terminated, the Municipal Social Welfare Committee shall be consulted in this connection, except where this is unnecessary.

Miscellaneous provisions

Section 47

The term "(Municipal) Social Welfare Committee" as employed in this Act refers to the social welfare committee of the municipality which, under Section 3 of the Social Services Act (1980:620) is responsible for the individual receiving the support and assistance which he needs. Section 72 of the Social Services Act sanctions the transfer of cases to another social welfare committee in certain situations.

Compulsory care orders under Section 5 and with reference to taking in charge under Section 13 are made by the County Administrative Court of the county in which the municipality responsible is located. The county administrative court, making the care order also decides questions referred to in Section 44 (1). (1994:96)

Section 48

Repealed in SFS 1993:3.

Interim provisions

1988:870

1. This Act enters into force on 1st January 1989, when the Care of Alcoholics and Drug Abusers (Special Provisions) Act (1981:1243) shall cease to apply.

2. The old Act shall, however, continue to apply with respect to applications for care under the same filed with the County Administrative Court before 1st January 1989.

3. A care order made under Section 8 of the old Act shall be deemed an order under Section 13 of the new Act if no application for care has been received by the County Administrative Court before 1st January 1989.

4. Reference in a statute or in a statutory instrument adopted by the Government to the old Act shall instead be deemed a reference to the present Act. If reference is made to a provision superseded by a provision of this Act, the new provision shall apply.

1993:3

This Act enters into force on 1st July 1993.

Earlier provisions apply concerning care provided between 1st July 1993 and 1st July 1994. If, however, the State, acting by authority of Section 23 a of the Social Services Act (1980:620), has before 1st July 1994 taken over a home referred to in Section 22 or 23, the new provisions shall apply with regard to care as from the day of the take-over.

1994:96

1. This Act enters into force on 1st July 1994.

2. If a case pending before the County Administrative Court before 1st July 1994 has not been determined by the time this Act enters into force, earlier provisions shall apply.

ประวัติผู้เขียนวิทยานิพนธ์



นางสาวพัชราวดี สุนทรศารทูล เกิดวันที่ 9 มีนาคม พ.ศ. 2520 ที่จังหวัดสระบุรี สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต จากคณะนิติศาสตร์ มหาวิทยาลัยธรรมศาสตร์ ในปีการศึกษา 2540 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2543