

# MENTAL HEALTH LAW IN TENNESSEE GENERAL SESSIONS COURTS

<https://www.tn.gov/behavioral-health.html>



*Tennessee Department of Mental Health  
and Substance Abuse Services*



# Overview

- Title 33
  - 11 Chapters
  - Chapter 1 definitions
  - Chapter 5 Intellectual Disability statutes
  - Chapter 6
    - Mental health service system
    - involuntary commitment statutes (emergency & judicial)
    - Mandatory outpatient treatment
    - Discharge procedures
  - Chapter 7 forensic evaluation statutes

# Mental Health Services Defined

- Title 33, Chapter 6, Part 1
  - Obligates the department to develop services system for publicly funded service recipients
  - Identifies adults with severe disabling mental illness and youth with SED as the priority population
  - Obligates the department to “maintain a community-based screening process designed to provide alternatives to hospitalization, minimize length of confinement, promote speedy return to the community, and maximize each service recipient's ability to remain in a community setting.”
  - Authorizes department to designate mandatory prescreening agents

# Mental Health Services cont.

- Title 33, Chapter 6, Part 1
  - Requires a certificate of need completed by an MPA (or physician or licensed psychologist if MPA not available within two hours) for a person to be involuntarily admitted to a state-operated hospital
  - Authorizes the department to establish a toll-free crisis line, telephone & in-person triage, crisis respite, and crisis stabilization units.
  - 855 274-7471
  - OR
  - 988 (July 16, 2022)

# INVOLUNTARY COMMITMENT T.C.A. §§33-6-

- -401 person may be detained for examination
- -402 person may be detained without warrant by LEO or certain MH professionals designated by the commissioner
- -403:
  - Person has mental illness or serious emotional disturbance;
  - Person poses an immediate *substantial likelihood of serious harm* due to MI or SED ;

# Likelihood of Serious Harm

## T.C.A. § 33-6-501

IF AND ONLY IF

**(1) (A)** a person has threatened or attempted suicide or to inflict serious bodily harm on the person, OR

**(B)** the person has threatened or attempted homicide or other violent behavior, OR

**(C)** the person has placed others in reasonable fear of violent behavior and serious physical harm to them, OR

**(D)** the person is unable to avoid severe impairment or injury from specific risks, AND

**(2)** there is a substantial likelihood that the harm will occur unless the person is placed under involuntary treatment,

THEN

**(3)** the person poses a "substantial likelihood of serious harm" for purposes of this title.

# INVOLUNTARY COMMITMENT T.C.A. §§33-6-

- -403
  - Person has mental illness or serious emotional disturbance;
  - Person poses an immediate substantial likelihood of serious harm due to MI or SED;
  - Person needs care, training or treatment for MI or SED;
  - All available less drastic alternatives to placement in a hospital are unsuitable to meet the needs of the person
- -404
  - Certificate of Need completed by MH professional
  - Security of transportation & need for restraint determined by MH professional
  - Confirm Available Suitable Accommodations

# INVOLUNTARY COMMITMENT T.C.A. §§33-6-

- (-405 reserved)
- -406 sheriff to transport, how long to stay, alternative transportation, use of telehealth for second CON
- -407 requires second CON done by licensed physician, allows for turn-aways, provides immunity from civil liability and affirmative defense to criminal liability for hospital & professionals
- If the second CON is completed, the person is admitted with no judge involved so far.



# General Sessions Court: duties & authority

- §33-6-413(a): GS court to be notified of admission and provided with CONs & “such other information as the court may desire” which the hospital possesses. Court may find probable cause that the defendant meets criteria under §33-6-403 and order defendant held for not more than five days for probable cause hearing.
- §33-6-413(b): requires GS court to notify defendant of the probable cause hearing and various rights of the defendant.
- §33-6-418: probable cause hearing to be conducted in conformity with §§33-3-610-615

# §§33-3-610-615

- Hearing held in place where court is usually held or not harmful to patient; court may exclude the public
- Hospital transports unless defendant has charges then sheriff transports
- Court to give notice to defendant, plaintiff, and others to whom the clerk is required to give notice of hearing with opportunity to appear, testify, present evidence and cross-examine witnesses
- Defendant may waive appearance or be excluded
- Hearing shall be informal
- Testimony in person unless defendant agrees to deposition or affidavits

# Probably Cause Hearing

- 33-6-419: the defendant gets an attorney, and the court may appoint a guardian ad litem (in addition to the attorney)
- 33-6-420: the defendant may waive the hearing in writing
- 33-6-421: hospital's chief officer files two Certificates of Need (by two MDs or one MD and one Ph.D.) certifying the person meets the standard of *judicial* commitment under 33-6-502-same as 33-6-403 except no requirement for *imminent* risk of harm.

# Finding Probable Cause 33-6-422

- If the person probably meets 33-6-502 criteria:
  - Person has mental illness or serious emotional disturbance;
  - Person poses a substantial likelihood of serious harm due to MI or SED;
  - Person needs care, training or treatment for MI or SED;
  - All available less drastic alternatives to placement in a hospital are unsuitable to meet the needs of the person
- And: if involuntary treatment is not continued the defendant's condition resulting from mental illness or serious emotional disturbance is likely to deteriorate rapidly to the point that the defendant would be again admissible under § 33-6-403,
- Then: the court may order the defendant held for care and treatment pending a hearing under chapter 6, part 5 of this title, for not more than fifteen (15) days after the probable cause hearing unless a complaint is filed under chapter 6, part 5 of this title, within the fifteen (15) days.

# Indefinite Commitment

- 33-3-603: indefinite commitment under Title 33, Chapter 6, Part 5 heard in
- Chancery court; Circuit court; Juvenile courts in proceedings held by judges who are lawyers or by referees;
- Probate court in counties having a population of more than four hundred thousand (400,000) according to the 1980 federal census or any subsequent federal census; and
- Court of general sessions in counties having a metropolitan form of government and having a population of more than four hundred thousand (400,000) according to the 1990 federal census or any subsequent federal census; provided, that the jurisdiction conferred by this subdivision (b)(5) is conferred only for petitions concerning mandatory outpatient treatment.

# Venue?

- 33-3-603: Except for complaints filed in accordance with § 33-7-301 or § 33-7-303.
- 33-7-301(b): Commitment hearing held in criminal court before which the case is pending or that would hear the case, if the defendant were bound over to the grand jury
- 33-7-303: NGRI The criminal court shall order evaluation under §33-7-303(a) to determine if the acquittee meets commitment standards under Title 33, Chapter 6, Part 5.
- Forensic Evaluations on pre-trial defendants ordered by general sessions, circuit, or criminal court under §33-7-301

# Tennessee Statutes on Forensic Services

- Reaction to *Jackson v Indiana* (1972)
- Tennessee's new statutes passed 1974
- §33-7-301(a): court may order evaluation of competency to stand trial and/or mental capacity at the time of the crime if the defendant "is believed to be incompetent to stand trial, or there is a question about the defendant's mental capacity at the time of the commission of the crime:"
  - On an Outpatient Basis
  - By Evaluator Designated by the Commissioner
  - May order inpatient evaluation **"if and only if"** outpatient evaluator recommends inpatient evaluation
- Evaluations conducted either in jail or at CMHC or videoconference

# Outpatient Evaluations:

- Mental Health Professional is contracted/trained/certified and reimbursed by the TDMHSAS
- Nine community agencies covering all the courts
- 1,800-2,000 evaluations per year
- Outpatient evaluators determine when inpatient evaluation & treatment are needed
- Inpatient referral rate 24% (~460 per year)
- Defendants in jail can be admitted on emergency basis through regular involuntary civil commitment procedures
- Counties billed for misdemeanor-only cases (§33-7-304, July 2009)



# Inpatient Evaluation

- §33-7-301(a) If and only if outpatient evaluator concludes need for “further evaluation and treatment” are needed, if the defendant is placed in “custody of the commissioner it is for not more than 30 days” subject to “available suitable accommodations”
- Reason #1: Psychosis. Reason #2: ? Malingering.
- 11-year average 460 inpatient evaluations per year
- Four Secure Regional Mental Health Institutes +
- Maximum Security: Forensic Services Program

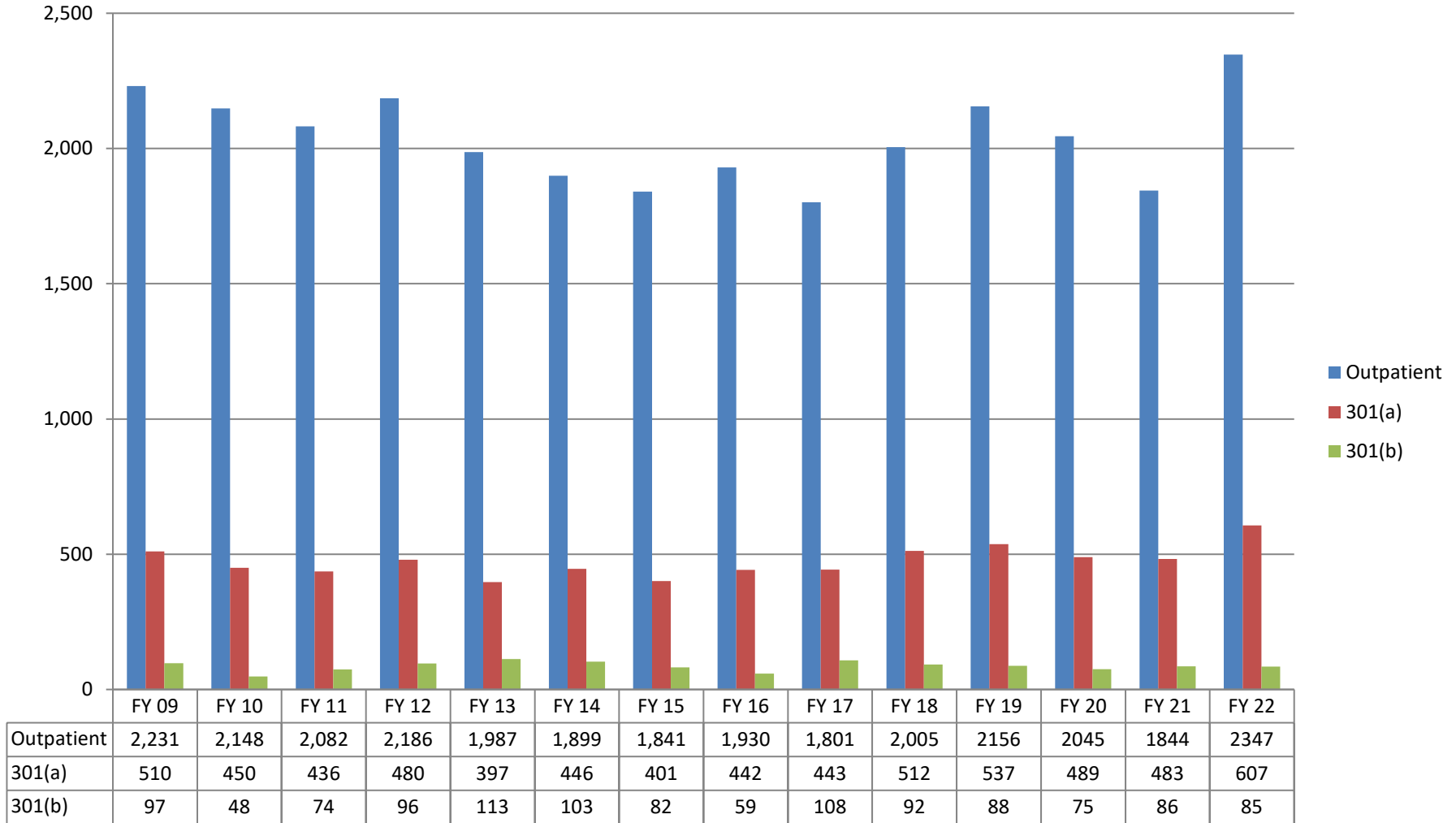
# Inpatient Evaluation and Treatment

- Outpatient evaluator recommends RMHI vs FSP
  - Risk of violence especially w/weapon
  - Risk of escape
- About 10% require FSP; 24 beds
- Patient at RMHI may be transferred into FSP
- §33-6-107 Treatment Review Committees
- Physical intervention for involuntary medication only to prevent imminent harm
- Average LOS 21 days; 67%-75% competent & not committable

# Forensic Standards

- Competency to Stand Trial: “. . . whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him.” Dusky v US (1960); State v Johnson (1984)
- Insanity Defense: 39-11-501: as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of such defendant’s acts.
- Diminished Capacity: *mens rea* culpable mental states defined in 39-11-302; see also State v. Hall, 958 S.W.2d at 679–90 - 1997; State v. Wilson, 2015 WL 5170970

# Tennessee Pre-Trial Evaluation and Treatment



# Does anything help get evaluations done?

- Visit <https://www.tn.gov/behavioral-health/mhsa-law/forensic-juvenile.html> for sample court orders at the “Forensic & Juvenile Court Services Forms” link
- Include collateral information (e.g., arrest report, case investigation) with court order for evaluation
- Nothing replaces person-to-person communication
- Discover contact person at community agency and appropriate RMHI
- Please include legible name of presiding judge and contact information for assistant district attorney general and attorney for the defense in collateral information

# Contact Information

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