Research Protocol for Long-Term Involuntary Commitment Laws

Prepared by the Policy Surveillance Program Staff

May 2016
Long-Term Involuntary Commitment Laws

I. Dates of Protocol: November 15, 2014; December 1, 2014; December 21, 2014; January 7, 2015; January 21, 2015; March 4, 2015; May 1, 2016

II. Scope: To compile statutes and regulations governing long-term involuntary commitment. This cross-sectional dataset includes coding questions about long-term involuntary, such as: who may initiate a commitment, how long someone may be kept upon admission to a hospital without additional proceedings, what kind rights are given to patients upon admission, if there is judicial oversight with a right to council, and if an long-term involuntary commitment restricts a person’s firearm rights.

III. Primary Data Collection

a. Project dates: October 1, 2014 to March 5, 2015

b. Dates covered in the dataset: April 2, 2008 to March 1, 2015. This is a cross-sectional dataset intended to capture present day law. There are laws within the entries themselves that were enacted prior to April 2, 2008; however they are all still effective, thus, the “effective date” is the date of the most recent law within each entry.

c. Data collection methods: The research team consisted of two legal researchers (“Researcher #1” and “Researcher #2” or “Researchers”) and one supervisor (“Supervisor”). The Researchers were each assigned half of the states at random. They submitted initial background policy memorandums and state summary memorandums in October 2014. The team met in mid-November 2014 to discuss and identify key research questions, including: who can initiate a commitment, the duration of a long-term involuntary commitment, the procedure for extending the commitment, and also the rights of the patients at commitment hearings and during commitment.

d. Databases used: Searches were conducted using Westlaw Next and state legislature websites.

   i. Full text versions of the laws collected were pulled from each respective state legislature’s website.

   ii. The team consulted the following secondary sources:
1. *Possession of Firearms by People with Mental Illness* published by the National Conference of State Legislature
2. *State Standards for Assisted Treatment* published by The Treatment Advocacy Center

e. **Search terms:** The team employed the following search terms to conduct research: mentally ill, civil commitment, involuntary commitment, involuntary treatment, mental illness procedures, and institutionalization procedures. The researchers used these terms to access the section of the code that governs civil commitment and subsequently reviewed all laws, paying close attention to collect only the laws that pertained to long-term involuntary commitment.

f. **Information about initial returns and additional inclusion or exclusion criteria:**
   i. The Researches pulled gun laws for each state. Under federal law, guns shall not be given to those who have been adjudicated mental ill. States vary on whether or not involuntary long-term commitment always triggers the loss of firearm rights. The relevant law was collected, regardless of whether or not long-term involuntary commitment would trigger the gun loss provision. Interpretation of the provision was performed at the coding stage. Gun laws are included in this dataset, however we kept the scope of the question very broad.
   ii. Initially, the team included separate statutes addressing substance abuse and sexual violence since they can be a reason for commitment. However, the team decided to scope out both substance abuse and sexual violence because the provisions for involuntary commitment varied greatly from standard long-term involuntary commitment laws. A separate dataset would be needed to adequately capture the variation in these laws.

IV. Coding

a. **Development of coding scheme:** In October 2014, the coding development questions were reviewed and edited. A Researcher entered the questions into Workbench. The first 10 states were then coded independently by two Researchers. The team decided to exclude minors from the coding scheme, further defining the scope of the dataset.

b. **Coding methods:** Coding procedures were further developed and the questions were solidified. The team reaffirmed its decision to code only questions related to the commitment of adults due to the large number of laws relating to all aspects of civil commitment and time constraints. The team also adopted the same assumptions
used in PHLR’s Short-Term Emergency Commitment Laws dataset, a few of which are explained below.

i. Coding methods and clarifications for specific coding questions are as follows:

1. “What are the criteria for involuntary commitment of an individual?”
   a. The criteria coded include both mandatory and permissive criteria within the scope of the dataset. In other words, one or more of these criteria may be required for commitment, but some of them may only be required in certain circumstances. Reference the legal text coded to determine whether the criterion is mandatory or permissive.
   b. The answer “danger to self and others” was coded only when the law does not explicitly consider the danger to be a product or result of mental illness. Some states permit involuntary commitment if the individual is plainly a danger to self or others without being mentally ill.
   c. The answer “danger to self or others due to mental illness,” was coded when the law explicitly conditions the danger on the existence of mental illness. In many states, the law states that an individual must be mentally ill and a danger to oneself or others in order to petition for the involuntary commitment of the individual.
   d. The answer “mental illness” was coded when mental illness alone can be used as a criterion to commit an individual.

2. “Who can initiate involuntary commitment?”
   a. An assumption the team adopted from Short-Term Emergency Commitment Laws is that the answers “Peace officer” and “Police officer” are distinguishable, and must not be merged into one answer choice. “Police officer” is only coded when it is explicitly stated within the law.
   b. No inferences were made when the law permits any adult, person or individual to initiate involuntary commitment proceedings. If the law permits any individual to initiate, “Any adult” is coded, but not other answers that may be inferred such as “Relative,” “Guardian.”

3. “What is the maximum period of extended commitment?”
   a. The Researchers coded the maximum duration that an individual may be committed, even if consecutive
extensions must be granted before the maximum period is attained.

i. For example, in North Carolina, the initial period of involuntary commitment is up to 90 days. Commitment may be extended to 180 days, and then extended a second time for up to one year, see N.C. Gen. Stat. § 122C-276(f). In North Carolina, the coded answer is “One year” to account for the maximum extended duration.

4. “What rights must be provided to a committed patient?”

a. If the law allows committed individuals the right to private communication, other answers beyond “Right to private communication” were not inferred (“Right to make phone calls,” “Right to mail”) unless those rights are also explicitly provided in the law.

b. Likewise, if the law allows individuals the right to refuse treatment, the answers “Right to refuse medication” or “Right to refuse convulsive treatment” are not coded unless those rights are also explicitly provided in the law.

c. Rights that are exceptions to a state’s general rules are not coded.

i. For example, in Vermont, an individual that refuses medication may still be administered such medication under any one of six conditions, one of which is that the patient is under the Commissioner’s care; see Vt. Stat. tit. 18 § 7624. The answer “Right to refuse medication” is not coded, as that right is only provided to the individual if none of the six aforementioned conditions are present.

c. **Quality control:** In November 2014, the Researchers redundantly researched and coded 100% of the first ten states that were coded (10 records). The initial redundant rate of divergence was 43.5%. The team met to discuss each divergence, and concluded that many questions required edits. Each coder recoded using the modified coding scheme, and the rate of divergence dropped to 17%. The team met and discussed each remaining divergence and all divergences were resolved. In November of 2014, one Researcher recoded to adhere to the resolutions.

i. In January 2015, 8 records were redundantly coded. The rate of divergence was 36% due to the complexity of an outlier state. All divergences were resolved.
ii. On January 28, 2015, a naïve coder coded 20% of the total number of records, or 10 records. The initial rate of divergence was 37%. This dataset has a very specific coding scheme leading to the high rate of divergence for the naïve coder. Once the scheme was explained, all divergences were discussed and resolved.

iii. On February 10, 2015, a naïve coder coded 4 additional records. The rate of divergence was 16%. The Supervisor, Researchers and the naïve coder discussed the coding scheme and divergences, and each was resolved.

iv. Prior to publication, the Supervisor downloaded all coding data into Microsoft Excel to do a final review of coding answers, statutory and regulatory citations, and caution notes. All unnecessary caution notes were deleted, and all necessary caution notes were edited for publication.

V. Updated (May 2016)

a. Scope: This dataset originally began as a cross-sectional dataset capturing laws effective as of March 1, 2015. During the May 2016 update, the dataset became longitudinal and now captures all relevant laws in effect from March 1, 2015 through May 1, 2016.

i. For the question, “What are the criteria for involuntary commitment of an individual?” the following responses were modified:

1. The responses “Danger to self” and “Danger to others” were merged into one response, “Danger to self or others”. The responses, “Danger to self due to mental illness” and “Danger to others due to mental illness” were also merged into one response, “Danger to self or others due to mental illness”. These responses were merged because they were coded together in every jurisdiction where they applied.

2. “Gravely disabled” was removed as a response, because it overlapped with the existing response, “Inability to provide for basic needs”. This overlap occurred because the law always defines “Gravely disabled” as being unable to provide for basic needs.

ii. For the questions, “Who can initiate long-term involuntary commitment,” and “Who performs the court-ordered evaluations,” “Physician’s assistant” was changed to “Physician assistant”, to reflect how the profession is written in the law.

b. Data collection methods: One update Supervisor and two Researchers checked all existing legal citations on Westlaw and legislative tracking websites for pending and proposed legislation since March 1, 2015. The team determined that 34 jurisdictions had amendments to relevant laws. The Researchers created new records with updated legal text for states with new laws or changes to existing laws that affected answer choices. Researchers cloned records and updated the legal text for states with changes that did not affect answer choices.
c. Coding Updated Findings: During the May 2016 update, the team found that seven states: Florida, Hawaii, Maryland, Massachusetts, Nevada, North Dakota, and Wyoming had substantive changes to the law, meaning that these changes affected an answer choice, which required coding. One Researcher coded the updates for these states. The other Researcher redundantly coded these states. The Supervisor reviewed the coding. All divergences were discussed and resolved. The team also found that 27 jurisdictions: Alabama, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin had non-substantive changes to the law, meaning these changes did not affect an answer choice. Because the changes did not affect an answer choice, these records were cloned and not coded or redundantly coded. Once these records were cloned, the legal text for each record was updated with the new law.

i. Coding methods:
   1. For the question: “Does the law explicitly permit the individual to seek an additional independent medical opinion?” the Researchers noted that this question refers to an independent medical opinion in conjunction with a court’s decision to commit a person, not a second medical opinion that a person may seek while committed. Second medical opinions that a patient may seek while committed were coded as “right to request reexamination” for the question “What rights must be provided to a committed patient?”
   2. For the question: “What rights must be provided to a committed patient?” the Researchers coded a committed patient’s right to receive visits from a clergy member as the “right to religious practice.”

d. Quality Control: The Supervisor downloaded records into Excel and ran divergence calculations on the redundantly coded records. Supervisor also compared newly coded entries to previously coded entries for consistency. The Researchers researched and coded the states in batches of 10 or 11 states (5 or 6 states for each Researcher). In batch 1, the divergence rate was 7.6%. In batch 2, the divergence rate was 8.5%. Batch 3’s divergence rate was 1.2 %. In batch 4, the divergence rate rose to 24.3 %, in part because of a particularly challenging state. Batch 5 did not require coding because there were not changes to the law that affected coding. All divergences were discussed and resolved. Researchers re-coded as necessary after divergences were resolved.