Research Protocol for Laws Authorizing Involuntary Commitment for Substance Use

Prepared by the Health in Justice Action Lab
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Laws Authorizing Involuntary Commitment for Substance Use

I. Date of Protocol: March 2018

a. Scope: Compile, code and analyze state laws regulating involuntary commitment for substance use. Involuntary commitment laws for substance use authorize the involuntary arrest, detention, and/or treatment of an individual for substance use disorder. Building on the existing Involuntary Outpatient Commitment LawAtlas dataset, this cross-sectional dataset analyzes important features of involuntary commitment laws specifically focused on substance use, which were previously excluded from analysis. This includes the year of the authorizing legislation, the circumstances for commitment, the parties authorized to petition for a commitment, the requirement of a clinical assessment, the types of health professionals authorized to perform the assessment, the requirement of judicial review, the duration of the initial commitment, the provision of counsel, the extension of commitment without court order, the treatments authorized, the recommitment process and the rights provided to a committed individual. Latest data indicate that 38 jurisdictions in the United States have some form of involuntary commitment mechanism specifically for substance use.

II. Primary Data Collection


b. Dates covered in the dataset: March 1, 2018. This is a cross-sectional dataset analyzing involuntary commitment laws for substance use as they are in effect as of March 1, 2018. The effective date listed for each state is the date of the most recent version of the law or regulation within that state. If more than one law or regulation is included in the legal text for a state, the effective date reflects the date of the most recently amended or enacted law or regulation within the legal text.

c. Data Collection Methods: The Legal Assessment Research Staff (Team) building this dataset consisted of two legal researchers (Researchers), eight undergraduate coders (Coders) and one supervisor (Supervisor). State legislature websites were used to identify states with involuntary commitment for substance use laws in effect as of March 1, 2018. Secondary sources, including the National Alliance for Model State Drug Laws (NAMSDL), as well
as a subject matter expert from Northeastern University, Professor Leo Beletsky, were consulted to refine the scope of the laws included in this dataset.

d. **Databases Used:** Research was conducted using Westlaw Next, state-specific legislature websites, and secondary sources from NAMSDL.
   i. Full text versions of the laws collected were gleaned from state legislature web sites.

e. **Search Terms:**
   i. Keyword searches:
      a. “involuntary commitment”
         AND
         "substance use"
         “drug use”
         “chemical dependence”
         “alcohol use”
         “substance abuse”
         “alcoholism”
         “alcohol”
         "drugs"
         “drug”
      b. “civilly committed”
         AND
         "substance use"
         “drug use”
         “chemical dependence”
         “alcohol use”
         “substance abuse”
         “alcoholism”
         “alcohol”
         "drugs"
         “drug”
      c. "civil commitment"
         AND
         "substance use"
         “drug use”
         “chemical dependence”
         “alcohol use”
         “substance abuse”
         “alcoholism”
         “alcohol”
         "drugs"
         “drug”
d. “involuntarily committed”
   AND
   "substance use"
   "drug use"
   "chemical dependence"
   "alcohol use"
   "substance abuse"
   “alcoholism”
   “alcohol”
   "drugs"
   "drug"

ii. Key word searches were supplemented by reviewing the table of contents in chapters on involuntary commitment laws.

iii. Once all the relevant statutes and regulations were identified for a jurisdiction, a Master Sheet was created for each jurisdiction. The Master Sheet for each jurisdiction includes the most recent statutory history for each statute and regulation.

iv. All 51 jurisdictions were 100% independently, redundantly researched to confirm that all relevant law was collected by the Researchers.

v. Divergences, or differences between the original research and redundant research, were reviewed by the Supervisor and resolved by the Team.

f. Initial Returns and Additional Inclusion or Exclusion Criteria: Included laws pertain to state-level involuntary commitment specifically for substance use.

i. The following variables were included in the state involuntary commitment for substance use dataset:
   - Statute structure
   - Reason for commitment
   - Classes of petitioners
   - Clinical assessment requirements
   - Classes of clinicians performing assessments
   - Duration of commitment
   - Judicial review
   - Commitment extension without review
   - Recommitment process
   - Right to counsel
   - Rights provided
- Treatments authorized without consent

ii. Excluded variables include:
- Transport of patient
- Court Procedures (excluding clinical assessment, petitioners and judicial review)
- Rights to wear own clothes
- Rights to keep personal belongings with them
- Rights to an attorney after commitment
- Rights to be reassessed by clinician post-commitment
- Rights to petition commitment
- Recommitment procedure
- Commitment of minors

III. Coding

a. Development of Coding Scheme: The Supervisor and Team conceptualized coding questions, and then circulated them to staff at the Policy Surveillance Program and the subject matter expert for review. When the questions were finalized, the Team entered the questions into MonQcle, a web-based software-coding platform.

b. Coding methods: Below are specific rules used when coding the questions and responses in the state civil commitment for substance use laws dataset:

**Question:** “Is substance use disorder grounds for involuntary commitment under state law?”
- States were coded as “Yes” if there was a law or regulation that authorized involuntary commitment for substance use.
- States were coded as “No” if no law or regulation authorizing involuntary commitment for substance use exists. States that authorized involuntary commitment for mental health conditions that did not include substance use were coded as “No”

**Question:** “Does the statute explicitly authorize civil commitment of substance users?”
- States were coded as “Yes” if the above law or regulation explicitly authorizes involuntary commitment specifically for substance use.
- States were coded as “No” if their laws were general mental health commitment laws with either broad enough language to include substance use as a mental health condition, or with definitions of mental illness that specifically included substance use.
Question: “Is the statute a general mental health commitment law, using broad language to include substance use?”
- States were coded as “Yes” if the state law or regulation for involuntary commitment uses broad enough language to include substance use under the definition of mental health.
- States were coded “No” if the state law was specific for committing substance users or was a general mental health commitment law with a definition of mental illness that specifically included substance use.

Question: “Is the statute a general mental health commitment law with a definition of mental illness that includes substance use?”
- States were coded as “Yes” if the state law or regulation for involuntary commitment defines mental illness to include substance use.
- States were coded “No” if the state law was specific for committing substance users or was a general mental health commitment law with broad enough language to include substance use as a mental condition.

Question: “Under which circumstances can an individual be held for involuntary commitment due to substance use disorder?”
- Where the law authorized commitment because the individual was a danger to themselves, “danger to self” was coded.
- Where the law authorized commitment because the individual was a danger to others, “danger to others” was coded.
- Where the law authorized commitment to protect an unborn child, “To protect an unborn child” was coded.
- Where the law authorized commitment because the individual was gravely disabled, unable to take care of his or her basic personal needs or safety, or severely mentally disabled, “gravely disabled” was coded.
- Where the law authorized commitment due to intoxication, “intoxication” was coded.
- Where the law authorized commitment because the individual lacked capacity to seek treatment, “lacking capacity to seek treatment was coded” was coded.
- Where the law authorized commitment because the individual needs medical treatment, “needs medical treatment” was coded.
- Where the law authorized commitment because the individual lost power of self-control over substance use, “lost power of self-control over substance use” was coded.
  - When a law authorized the commitment of an individual due to their status as a “alcohol or drug dependent person”, “chemically dependent”, having “chemical dependency” “alcoholic”, “a drug dependent individual”, or a “drug abuser”, “lost power of self-control over substance use” was coded.
  - The phrase “By reason of substance abuse impairment” was coded as “lost power of self-control over substance use”.

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● Where the law authorized commitment because the individual is unwilling to seek voluntary admission, “unwilling to seek voluntary admission” was coded.

● Where the law authorized commitment because the individual would reasonably benefit from treatment, “would reasonably benefit from treatment” was coded.

● Where the law authorized commitment because the individual requires involuntary treatment, “requires involuntary treatment” was coded.

Question: “What is the maximum duration of an initial involuntary commitment?”

● Where the law authorizes 3 days of commitment, “3 days” was coded.

● Where the law authorizes 4 days of commitment, “4 days” was coded.

● Where the law authorizes 14 days of commitment, “14 days” was coded.

● Where the law authorizes 21 days of commitment, “21 days” was coded.

● Where the law authorizes 30 days of commitment, “30 days” was coded.

● Where the law authorizes 40 days of commitment, “40 days” was coded.

● Where the law authorizes 90 days of commitment, “90 days” was coded. When the law authorized 3 months of commitment, “90 days” was also coded.

● Where the law authorizes 120 days of commitment, “120 days” was coded. Where the law authorized 4 months of commitment, “120 days” was also coded.

● Where the law authorizes 180 days of commitment, “180 days” was coded. When the law authorized 6 months of commitment, “180 days” was also coded.

● Where the law authorizes one year of commitment, “one year” was coded.

● Where the law does not specify the length of commitment, “duration unspecified” was coded.

Question: “Who can initiate involuntary commitment?”

● Where the law states that a friend can initiate the involuntary commitment of an individual “friend” is coded.

● Where the law states that a family member can initiate the involuntary commitment of an individual “family” is coded. Where the law specifically identifies a single family member as authorized to initiate commitment (i.e. mother, father, sister), “family” is coded.

● Where the law states that a member of law enforcement can initiate the involuntary commitment of an individual “law enforcement” is coded.

● Where the law states that a general medical professional can initiate the involuntary commitment of an individual “general medical professional” is coded.
  ○ This includes all RNs, MDs, PA, clinical professionals without a mental health specialty.
- Where the law states that a mental health professional can initiate the involuntary commitment of an individual “mental health professional” is coded.
  - This includes all RNs, MDs, PA, clinical professionals with a mental health specialty. This also includes mental health and addiction counselors and specialists.
- Where the law states that the designated staff at a treatment facility can initiate the involuntary commitment of an individual, “the designated staff at a treatment facility” is coded. This includes medical professionals staffed by the facility as well as facility administrators.
- Where the law states that a government official can initiate the involuntary commitment of an individual, “government official” is coded.
- Where the law states that any interested person or party can initiate the involuntary commitment of an individual, “any interested person” is coded.
- Where the law does not state that any of the above can initiate involuntary commitment, “Individual who can initiate commitment not specified in the law” is coded.

**Question:** “Is judicial review of the involuntary commitment required”
- Where the law states that judicial review of involuntary commitment is required, “Yes” is coded.

**Question:** “Is a clinical assessment required to involuntarily commit a patient due to substance use disorder?”
- Where the law states that a clinical assessment is required to involuntarily commitment an individual, “Yes” is coded.
- Where the law states that a clinical assessment is not required to involuntarily commitment an individual, “No” is coded. Where the law states that the commitment procedure can proceed despite an individual’s refusal to undergo assessment, “No” is coded.

**Question:** “Is the clinical assessment binding on commitment decision?”
- Where the law states that the clinical assessment is binding on commitment decision, “Yes” is coded.
- If the language in the law does not require the judge or court to release the patient dependent on the clinician’s assessment, “No” is coded. If the law does not provide for these circumstances, “No” is coded. If the law states that the clinical assessment is nonbinding, “No” is coded.

**Question:** “What type of health care professional performs the assessment?”
- Where the law states that a medical doctor is authorized to perform the assessment, “MD” is coded.
- Where the law states that a registered nurse is authorized to perform the assessment, “RN” is coded.
- Where the law states that a nurse practitioner is authorized to perform the assessment, “NP” is coded.
● Where the law states that a physician assistant is authorized to perform the assessment, “PA” is coded.
● Where the law explicitly states that a practitioner with expertise in substance use and SUD treatment must perform the assessment, “practitioner trained in substance use treatment” is coded.
● Where the law states that a psychologist is authorized to perform the assessment, “psychologist” is coded.
● Where the law states that a psychiatrist is authorized to perform the assessment, “psychiatrist” is coded.
● Where the law states that a psychiatric RN is authorized to perform the assessment, “psychiatric RN” is coded.
● Where the law states that a psychiatric PA is authorized to perform the assessment, “psychiatric PA” is coded.
● Where the law states explicitly that a mental health professional is authorized to perform the assessment, “mental health professional” is coded.
● Where the law states that a counselor, social worker or similarly licensed individual is authorized to perform the assessment, “counselor/social worker” is coded.
● Where the law does not specify the assessor’s title or training, “professional with unspecific qualifications” is coded.

Question: “Does the individual have a right to counsel at the commitment hearing?”
● Where the law states that the individual has a right to counsel at the commitment hearing, “Yes” is coded.

Question: “Can an involuntary commitment be extended without a court order?”
● Where the law states that the involuntary commitment can be extended without a court order, for any period of time, “Yes” is coded.

Question: What must be provided to a patient who has been committed?
● Where the law states that a committed individual must or may have the right to make a phone call, “Right to make a phone call” is coded.
● Where the law states that a committed individual must or may have the right to make a phone call, “Right to have visitors” is coded.
● Where the law states that a committed individual must or may know the procedure for requesting release, “Right to know procedure for requesting release”
● Where the law does not states the provision of any of the above rights to the committed individual, “Accommodations for individuals who are committed are not specified in the law” is coded.

*Rights authorized but excluded from this dataset are listed in the excluded variables section
Question: What treatments can be performed without patient consent?
- Where the law states that a committed individual can receive medication without consent, “Forced medication” is coded. When only a specific member of the staff could force the patient to receive medication, “Forced medication” is coded. When forcing medication is only authorized to prevent harm to self or others, “Forced medication” is coded.
- Where the law states that a committed individual can undergo surgery without consent, “Surgery” is coded. When only a specific member of the staff could approve the surgery, Surgery” is coded. When surgery is only authorized to prevent harm to self or others, Surgery” is coded.
- Where the law states that a committed individual can receive electric shock therapy without consent, “Electric shock” is coded. When only a specific member of the staff could approve the electric shock therapy, “Electric shock” is coded. When electric shock is only authorized to prevent harm to self or others, “electric shock” is coded.
- Where the law states that a committed individual can be restrained without consent, “Restraints” is coded. When only a specific member of the staff or law enforcement could approve restraint “Restraints” is coded. When restraint is only authorized to prevent harm to self or others, “Restraints” is coded.
- Where the law states that a committed individual can be secluded without consent, “Seclusion” is coded. When only a specific member of the staff or law enforcement could approve seclusion, “Seclusion” is coded. When seclusion is only authorized to prevent harm to self or others, “Seclusion” is coded.
- Where the law does not authorize any treatments performed without consent, “Not specified in the law” is coded.

Question: Is there a recommitment process?
- Where the law states that the individual can be recommitted for an extended period of time, “Yes” is coded.

Question: Does it require external review?
- Where the law states that the recommittal of an individual requires external review outside of the hospital staff, “Yes” is coded.

IV. Quality Control
   a. Quality Control – Background Research: All 51 jurisdictions were 100% redundantly researched to confirm that all relevant laws were collected by the Researchers. The Researchers also consulted secondary sources to verify whether states had involuntary commitment for substance use laws within the scope of the dataset. The research showed that 38 jurisdictions have some form of involuntary commitment for substance users.

   b. Quality Control – Coding
i. **Original coding:** Quality control of the original coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed coding to examine the data for any missing entries, citations, and caution notes.

ii. **Redundant coding:** The redundant coding process is 100% independent, redundant coding by two Researchers of each jurisdiction. Redundant coding means that each jurisdiction (a record) is assigned and coded independently by the two Researchers. Divergences, or differences between the original coding and redundant coding, are resolved through consultation and discussion with subject matter experts and the Team.

Quality control of the redundant coding consisted of the Supervisor exporting the data into a Microsoft Excel document each day the Researchers completed redundant coding to calculate divergence rates. All (100%) of the records were redundantly coded throughout the life of the project.

After coding the first 10 jurisdictions (Batch 1), a coding review meeting was held and all divergences were resolved. Divergences were at an average rate of 24%. Questions that were causing confusion were edited for clarity and then checked back across the dataset to make sure coding was consistent. The Supervisor assigned the next 10 jurisdictions (Batch 2) for redundant coding.

Again, a coding review meeting was held and all divergences were resolved. Divergence reduced to an average of 18%. The Supervisor then assigned 100% redundant coding of the next 10 jurisdictions (Batch 3). Divergences were at a rate of 14% and were again resolved. The Supervisor then assigned for redundant coding of the next 10 jurisdictions (Batch 4). Divergences were at a rate of 10%. Another coding review meeting was held and all divergences were resolved. The final 11 jurisdictions were assigned for redundant coding and after a coding review, all divergences were resolved (8%).

iii. **Post-production statistical quality control (SQC):** To ensure reliability of the data, a statistical quality control procedure (SQC) is run at the completion of the dataset. To conduct SQC, the Supervisor takes a random sample of variables from the dataset for the Researchers to code blindly. SQC is run until divergences are below 5%. If not below 5%, divergences are reviewed and resolved and another round of SQC is run.

The Supervisor ran SQC after the dataset was completed on March 15, 2018. At that time, the divergence rate was 7%. Each divergence was then reviewed as a team and resolved. A second round of statistical
quality control was run on March 30, at which time the divergence rate was 5%. These divergences were also reviewed and resolved.

iv. **Post-production adjustments**
After review from the Policy Surveillance Program, several questions and answers were reformatted to more clearly reflect the collected data. This required re-coding, which was performed through the same redundant coding process. Two researchers independently and redundantly recoded 100% of the records according to the adjusted questions and answers. The Supervisor reviewed and resolved divergences with the re-coders (5%). The entire dataset was then randomly sampled for accuracy, with a divergence rate <5%.

v. **Final data check:** Once all of the coding was completed, the Researchers checked the final coding results against secondary sources. The secondary source used for comparison was NAMSDL. 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.