

ARIZONA LAW REVIEW

VOLUME 20

1978

NUMBER 1

CONTENTS

Articles

Page

PRESERVING THE RIGHT TO TREATMENT:

A CRITICAL ASSESSMENT AND CONSTRUCTIVE
DEVELOPMENT OF CONSTITUTIONAL RIGHT
TO TREATMENT THEORIES.....

Roy G. Spece 1

Authorities are now embracing the notion that virtually all involuntarily civilly committed persons are entitled to psychological treatment. This right to treatment has been founded on several distinct arguments, all of which are at odds with both precedent and a proper application of constitutional standards of review. The author concludes that the standard right to treatment arguments should be disregarded and replaced with an argument—the least restrictive alternative right to treatment theory—which is consistent with logic, precedent, and proper constitutional analysis.

MENTAL HEALTH AND HUMAN RIGHTS:

REPORT OF THE TASK PANEL ON LEGAL
AND ETHICAL ISSUES.....

Task Panel, 49

President's Commission on Mental Health

How society can best provide for and assist the mentally ill and developmentally disabled is a problem which presents a serious challenge to all levels of government. The Task Panel on Legal and Ethical Issues of the President's Commission on Mental Health discusses many of the complex issues faced by decisionmakers and recommends actions for reform, emphasizing the need for a strong "patient's rights" perspective.

THE WAIVABILITY OF RECOMMITMENT

HEARINGS *David B. Wexler* 175

Courts are now recognizing that due process requirements apply to recommitment decisions affecting civil committees. The author examines the recommitment process and the extent to which patients facing recommitment should be able to waive the recommitment hearing, concluding that waiver should be allowed in certain circumstances.

Commentary

- STATE CONTROL OF DEVIANT BEHAVIOR: A
CRITICAL ESSAY ON SCULL'S CRITIQUE OF
COMMUNITY TREATMENT AND
DEINSTITUTIONALIZATION *Leonard V. Kaplan* 189

There is currently underway a de-emphasis on the total incarceration of social deviants and a movement toward deinstitutionalization and community treatment. In discussing a recent criticism of this trend, the writer answers some of the attacks on the deinstitutionalization alternative and points out the lack of an acceptable substitute.

Notes

- CONSTITUTIONAL STANDARDS FOR RELEASE
OF THE CIVILLY COMMITTED AND NOT
GUILTY BY REASON OF INSANITY:
A STRICT SCRUTINY ANALYSIS *Barry Kirschner* 233

Despite his acquittal, a person found not guilty by reason of insanity may be confined for purposes related to criminal law rather than civil commitment. In discussing the differences in release procedures between the civil committee and the person found not guilty by reason of insanity, the writer argues that the justifications for such distinctions are not compelling and concludes that the distinctions raise the possibility of a violation of equal protection.

- PROCEDURAL DUE PROCESS FOR FOSTER
CHILDREN: LIBERTY AND PROPERTY INTERESTS
IMPLICATED BY TEMPORARY CUSTODY
DETERMINATIONS *Beverly Knaak Cline* 279

Foster care is an increasingly used alternative for the placement of abused and neglected children but often does not provide the child with a stable environment. In exploring the legal rights of foster children to be protected from arbitrary administrative action, the writer advances possible constitutionally protected property and liberty interests as one solution to this instability.

- WRITERS GUILD OF AMERICA, WEST, INC. v. FCC:
A FIRST AMENDMENT BLOW TO FCC
JAWBONING *Corinne Cooper* 315

Television has a significant impact on our daily lives, and program content may be a source of significant amounts of litigation. The writer analyzes the limits of FCC regulation and whether individual licensee action is state action for the purposes of invoking constitutional protections.

Book Review

- STATE BAR OF ARIZONA: ARIZONA
APPELLATE HANDBOOK *Mary M. Schroeder* 351