

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



FILED  
OSAH

MAY 23 2014

*Jenna Judy*  
Jenna Judy, Legal Assistant

GEORGIA DEPARTMENT OF  
BEHAVIORAL HEALTH &  
DEVELOPMENTAL DISABILITIES,

Petitioner,

v.

Docket No.:  
OSAH-DBHDD

Respondent.

**ORDER TO PRODUCE EVIDENCE OF EFFORTS TO TRANSITION RESPONDENT  
AND GRANTING PETITION FOR CONTINUED HABILITATION FOR SIXTY DAYS**

**I. INTRODUCTION**

On October 11, 2013, Judge Oakley denied the Department's *Petition for Order Authorizing Continued Habilitation in a Facility* on the basis that the Department had not produced sufficient information on Mr. W's criminal charges and on the legal authority for continuing commitment. Following the denial, the Department submitted a *Motion for Reconsideration and Brief in Support* thereof, with attached exhibits and affidavits from J and E. The submitted documentation reaffirmed Judge Oakley's conclusion that protecting Mr. W from the speculative consequences of open criminal charges from approximately seventeen years prior, does not constitute legal justification to continue to indefinitely commit him. In an Order, issued November 7, 2013, Judge Oakley granted continued habilitation for a period not to exceed six months, the minimum length of time the Department asserted would be needed to successfully transition Mr. W to an appropriate community placement with requisite supports. *Brief in Support of Motion for Reconsideration.*

On May 1, 2014, the Department filed a second *Petition for Order Authorizing Continued Habilitation in a Facility*. This petitioner omitted reference to Judge Oakley's directive to transition Mr. W to an appropriate community placement within six months. In fact, the listed justification for the Department's *Petition* is that "[Mr. W ] placement cannot be finalized until his court date is established and his pending charges are settled." See *Comprehensive Functional Assessment ("CAF"), page 3*. The CAF also used identical language to that used in the CAF previously filed by the Department on September 26, 2013, which Judge Oakley held was insufficient to authorize indefinite continued habilitation. The grant of an additional six months of habilitation was in response to the Department's asserted need "to locate placement, obtain funding, and pass through the various reviews that are now required for any discharge of any individual who has developmental disabilities from a [Department] hospital." *Brief in Support of Motion for Reconsideration*. Nevertheless, the Department has not filed anything with this Court to report on the progress it has made toward discharging Mr. W to an appropriate placement; rather, the Department simply submitted a recycled individual support plan. Accordingly, the Court feels the need to address the lack of legal justification to grant continued habilitation for another year.

## II. FACTS

On May 29, 1996, the Walker County Superior Court found Mr. W incompetent to stand trial, pursuant to Code Section 17-7-130, on pending charges of child molestation. Subsequently, at the Superior Court's behest, the Department petitioned the Probate Court of Floyd County for a determination of Mr. W's status. The Probate Court committed Mr. W to the custody of the Department's predecessor, the Georgia Department of Human Resources ("DHR"), on December 19, 1996.<sup>1</sup> Mr. W has remained committed to a

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<sup>1</sup> Code Section 37-4-40, under which Respondent was initially committed, has since been repealed. H.B. 324, 151st Gen. Assemb., Reg. Sess. (Ga. 2011).

facility from that time forward as a result of annual orders authorizing continued habilitation. On two occasions, in 2004 and in 2008, the Department informed the Superior Court of Walker County that Mr. W is competent to stand trial. The Superior Court of Walker County has not held a trial on the question of Mr. W's competency. *Brief in Support of Motion for Reconsideration; Exhibit P-B.*

In its submissions of October 30, 2013, the Department made clear that Mr. W continues to be hospitalized primarily due to a fear of what might occur to Mr. W were he to be released and his criminal case proceed to trial. *Affidavit of Marriott.* Mr. Marriott, the DD Case Expeditor swore that

Mr. W has shown no sexually inappropriate behavior for at least the last 10 years. In fact, in Mr. W's psychological reports from Gracewood indicate a gentleman who is generally thought of as friendly. He works on campus and enjoys the job he does. He readily runs errands for others. He does not have a Behavioral Support Plan nor is he on any psychotropic medication.

In addition, he has been found to be a low risk for committing sexual offenses in the future. Past efforts to transition Mr. W to the community were halted due to the uncertainty regarding his open criminal charges.<sup>2</sup> *Affidavit of Marriott.*

### III. ANALYSIS

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<sup>2</sup> Although it is of no import here, this Court notes that in the event an individual becomes mentally competent to stand trial, the Department must notify the superior court and, "within 45 days of receiving the [D]epartment's evaluation [of competency]," the superior court shall hold a bench trial on the question of competency. O.C.G.A. § 17-7-130(d)(1), (f). According to the submissions of the Department, the Superior Court of Walker County was informed on two occasions—in 2004 and again in 2008—that Mr. W was competent to stand trial. *Brief in Support of Motion for Reconsideration; Exhibit P-B.* Nevertheless, the Superior Court has yet to hold a hearing and rule on Mr. W's competency to stand trial. *Affidavit of Bentley.* While the Department continues to fret over the outcome of any criminal proceeding, it should note that approximately ten years have elapsed since the Superior Court has been informed of Mr. W's competency. Surely, defense counsel might raise a claim regarding a speedy trial violation. See *Barker v. Wingo*, 407 U.S. 514 (1972); *Gibbs v. State*, 235 Ga. 480, 481-82. In *Gibbs*, the Georgia Supreme Court found that "under the circumstances"—conflicting evidence of competency to stand trial—it "was not error to refuse to dismiss the indictments because of the delay in bringing [the accused] to trial" on murder charges. 235 Ga. at 481-82. In that case the delay until trial was approximately three years from the date the accused allegedly became competent to stand trial, *Id.* at 480-81, as opposed to the decade in Mr. W's criminal case. See *Brief in Support of Motion for Reconsideration.*

Under Georgia law, when a court finds an accused incompetent to stand trial in a felony case and there is no substantial probability that the accused will become competent in the near future, the court has the option of petitioning the probate court of the jurisdiction of the accused's residence for an order of civil commitment.<sup>3</sup> When that occurs, the Department must adhere to the procedures for civil commitment. See O.C.G.A. § 17-7-130(a)(2) ("Civil commitment" is defined as "the accused's involuntary inpatient or outpatient commitment pursuant to Chapter 3 [mental illness] or 4 [habilitation of the developmentally disabled] of Title 37, as appropriate.") To continue to be civilly committed pursuant to Chapter 4 of Title 37, the individual must continue to need habilitation. O.C.G.A. § 37-4-42(a). "Habilitation" is defined as "the process by which program personnel help clients acquire and maintain those life skills which will enable them to cope more effectively with the demands of their own persons and of their environment and to raise the level of their physical, mental, social, and vocational abilities." O.C.G.A. § 37-4-2(8). If the individual ceases to meet the need for habilitation, the individual must be released. O.C.G.A. § 37-4-44(b); see also O.C.G.A. § 37-4-42. Once the Department decides to seek an order of continued habilitation, which it must do annually, an administrative law judge ("ALJ") reviews the submitted documentation and makes an independent determination whether habilitation continues to be necessary. O.C.G.A. § 37-3-83(h). If the ALJ "concludes that continued habilitation may not be necessary," he or she must hold a hearing no later than the expiration of the current commitment order. O.C.G.A. § 37-4-42(g), (h).

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<sup>3</sup> The alternative procedural route for committing the accused—which was not taken in Mr. W s case—allows the court to hold a trial at which the state must prove by clear and convincing evidence that the accused meets the criteria for civil commitment. If the court so finds, it can issue an order civilly committing the accused. This order of commitment must be revisited by the court on an annual basis to determine whether the accused continues to meet the requirements of civil commitment. O.C.G.A. § 17-7-130(e)(2)(B). Where the accused has been charged with a violent crime, a category including sexual offenses, O.C.G.A. § 17-7-130(11)(A), the period of civil commitment cannot exceed the maximum sentence which could have been imposed for the most serious offense charged. If the court chooses this route, the accused may only be released from civil commitment by order of that court. If the charges are dropped, jurisdiction of the case is transferred to the probate court for further civil commitment. O.C.G.A. § 17-7-130(e)(2)(B).

Here, based on the Department's submissions of October 30, 2013, this Court **ORDERS** the Department to submit evidence of efforts and progress made to transition Mr. W to an appropriate community placement. The *Petition for Order Authorizing Continued Habilitation in a Facility* is **GRANTED** for a period of sixty days to allow the Department to comply with this Order and to continue efforts to transition Mr. W to an appropriate community placement.

**SO ORDERED** this 23 day of May, 2014.



**M. Patrick Woodard Jr.**  
**Administrative Law Judge**