

USC Gould

School of Law

Mental Health Law – Law 403 – Spring 2020 [draft as of October 23 2019]

Units: 4

Term—Day—Time: Spring 2020, Thursday, 3:30pm-6:50pm

Location: WPH 103

Instructor: Gregory L. Pleasants

Office: TBD

Office Hours: arranged as needed by student request

Contact Info: gpleasants@law.usc.edu / (657) 274-0224 (work cell)

Course Description

This course explores foundational mental health law and legal practice concepts through three intersecting systems: the mental health system; the criminal system; and the immigration enforcement system. We focus on the vindication (or not) of legal rights at points within these systems where people with mental health conditions may be deprived of freedom and choice, including involuntary commitment, incarceration, and immigration detention. We review established and emergent safeguards and accommodations to protect those rights. We explore some of the difficult ethical questions that arise in this context, including consent, the allocation of authority between the lawyer and the client, the definition of competence, and the role of an advocate. We review client-centered practice skills, with emphasis on how to work in a collaborative and recovery-oriented way with people with mental health conditions.

Learning Objectives

- Identify, employ, analyze, and critique major mental health legal and policy concepts in class discussion
- Identify and explain interconnections of the mental health, criminal, and immigration enforcement systems for people with mental health conditions by the end of the course
- Describe and demonstrate some basics of client-centered, recovery-oriented practice skills by the end of the course
- Analyze, critique, and postulate answers for introductory ethical scenarios involving people with mental health conditions by the end of the course

Prerequisite(s); co-requisite(s), or recommended preparation:

None.

Required Text

Law and the Mental Health System: Civil and Criminal Aspects – Slobogin, Hafemeister, Mossman, Reisner (6th Ed.)

Through USC Bookstore or at https://www.amazon.com/Mental-Criminal-Aspects-American-Casebook/dp/0314267298/ref=sr_1_fkmr0_1?keywords=Law+and+the+Mental+Health+System%3A+Civil+and+Criminal+Aspects+%E2%80%93+Slobogin%2C+Hafemeister%2C+Mossman%2C+Reisner+%286th+Ed.%29&qid=1566505933&s=gateway&sr=8-1-fkmr0

Optional Materials

Additional readings to be distributed by Instructor throughout course.

Description and Assessment of Assignments [additional assignments forthcoming for Law 403]

Assignments – TBA

Midterm – TBA

Final Exam – an end-of-semester, in-class, written exam. The exam is a spot-the-issue and apply-the-law-to-the-facts hypothetical.

Grading Breakdown [additional assignments forthcoming for Law 403]

Assignment	% of Grade
Assignment (s)	TBA
Midterm	TBA
Final Exam	TBA
Total	100

Plus other opportunities for Extra Points

Course-specific Policies [policies may be modified for Law 403]

Professionalism and Respect

Students are required to treat this class and one another with professionalism and respect. That does not require agreement on the merits, but it does require listening, consideration of others' views, and thoughtful engagement.

Preparation

Being prepared is an essential trait of effective lawyers. Students will be called on in class and expected to give informed, thoughtful responses.

Participation

Participation is expected but does not form part of the course grade. Students will be called on in class and expected to give informed, thoughtful responses.

Attendance

Attendance is required because it is essential for learning. Each student is permitted one, no-questions-asked, unexcused absence. Each absence thereafter must be excused. Whether an absence is excused is determined by the Instructor's discretion and applicable University policy. Excessive unexcused tardiness that results in partial attendance may constitute an unexcused absence. Each unexcused absence will result in a cumulative penalty to the course grade, up to and including course failure / no credit. A student whose attendance is not regular and punctual may be withdrawn from enrollment at the discretion of the Dean of Students and the instructor.

Use of Computers, Cellphones, and Like Devices

Use of such devices to take notes and to engage in coursework is encouraged. Use of such devices for other reasons during course hours is generally not permitted. If a student anticipates attending to an important communication during class, prior notice to the Instructor is appreciated.

Update of This Syllabus

The “Course Schedule” section of this syllabus, below, will be updated during the semester by the Instructor. The Instructor will distribute each updated syllabus on the course Blackboard. The latest version of this syllabus will always be noted at the very end of this document (accessible by clicking the “last updated” link in the document navigation pane).

Course Schedule: A Weekly Breakdown [course calendar and reading assignments may be modified for Law 403]

The course calendar follows. A few things to note:

- “Text” refers to the Required Text, above.
- Instructor will add supplementary readings in lieu of Text readings or as optional readings as the course progresses.
- The items in red are the overarching conceptual sections of the course.
- The items in bold each week denote the general topics and will not change.
- The items in italics will be covered, but because of time limitations, not all will be covered at equal length. Some items in italics may be removed from the syllabus for time reasons; the Instructor will affirmatively let students know where that happens.
- The course readings are still being reviewed. Readings marked “TBA” will be assigned several weeks in advance. Students should closely read what is marked (read) and may quickly skim what is marked (skim).

	Topics/Daily Activities	Readings
Week 1 January 16 2020	Course Introduction <ul style="list-style-type: none"> • <i>Personal introductions</i> • <i>Review syllabus</i> • <i>Review “The Stakes”</i> • <i>Hypo review</i> 	TBD
Week 2 January 23 2020	The Mental Health System Brief Introduction to the Mental Health System <ul style="list-style-type: none"> • <i>Shape: patchwork nature of mental health law and policy</i> • <i>Scale</i> • <i>Role of federal government</i> • <i>Payment and parity</i> • <i>Deinstitutionalization</i> • <i>Jails and prisons as new “hospitals”</i> • <i>Homelessness, substance abuse, and mental health</i> • <i>CA: Mental Health Services Act</i> • <i>Mental Health System > Criminal System Pipeline</i> Introduction to Mental Health Conditions <ul style="list-style-type: none"> • <i>Definition of mental health condition</i> • <i>Impairment, functioning, competence</i> • <i>Models: biomedical; social determinants of health / person in the environment</i> • <i>Labels, stigma, and race</i> • <i>Professions</i> • <i>DSM-V / review of selected mental health conditions</i> • <i>Recovery, Rogerian Triad, people-first language, trust</i> 	Text, pp.1-30 (read) Text. pp. 1497-1507 (skim) Reading: Ragins, M. <i>Road to Recovery</i> , pp. 1-8 (read) (uploaded to Blackboard)

<p>Week 3 January 30 2020</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Introduction to “competence:” conceptual predicates; incompetent to do what?</i> • <i>Race, gender, and labeling as “incompetent”</i> • <i>Competence for other tasks (briefly)</i> 	<p>Text, pp.1037-1053 (read)</p>
<p>Week 4 February 6 2020</p>	<p>Competence in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Informed consent</i> • <i>Right to Refuse and Consent to Psychiatric Treatment</i> 	<p><i>Informed Consent</i> Text, pp. 307-315 (stopping at Section II); 343-353 (stopping at section III) (read)</p> <p><i>Right / competence to refuse treatment:</i> Text, pp. 1081 (starting with “The Right to Refuse...” – 1112 (includes <i>Washington v. Harper</i>, 494 U.S. 210) (1990)) (read)</p>
<p>Week 5 February 13 2020</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary commitment - police power basis</i> • <i>Dangerousness</i> • <i>CA: Lanterman-Petris-Short Act and patients’ rights (short introduction)</i> 	<p>Text, pp. 803-849 (read)</p> <p>Optional: Text, 922-932 (<i>Addington v. Texas</i>, 441 U.S. 418 (1979), and commentary)</p>
<p>Week 6 February 20 2020</p>	<p>Conditions of Confinement in the Mental Health System</p> <ul style="list-style-type: none"> • <i>Involuntary Commitment – parens patriae basis</i> <p>Least Restrictive Alternative Doctrine</p>	<p>Text, pp. 854-888-854-872 (read) -872 (starting with 2. Implementing...) – 888 (skim)</p> <p>Text, pp. 888-903 (read)</p>
<p>Week 7 February 27 2020</p>	<p>Right to Treatment in Commitment Setting</p> <ul style="list-style-type: none"> • <i>O’Conner v. Donaldson, Youngberg v. Romeo</i> 	<p>Text, pp. 1233-1268 (very top, stopping at III.) -May skim 1234, <i>Nocera</i> – 1246, <i>Fisher et. al.</i> -Please read 1246-1268, <i>Donaldson</i> and <i>Youngberg</i>, closely</p>

<p>Week 8 March 5 2020</p>	<p>Right to Treatment in the Community</p> <ul style="list-style-type: none"> • <i>Olmstead v. L.C. ex rel. Zimring</i> • <i>Right to treatment in the community</i> • <i>Right to discharge planning</i> <p>Discrimination: Americans with Disabilities Act, Rehabilitation Act of 1973 (Introduction)</p> <ul style="list-style-type: none"> • <i>Discrimination – cognizable</i> • <i>Reasonable accommodations and safeguards</i> • <i>Undue burden / hardship</i> 	<p>Text, pp. 1306-1331 -1306-1317- note 4 (skim) -1317, note 4-1331 (read); please read <i>Olmstead</i> closely</p> <p>Text, pp. 1401-1416</p>
<p>Week 9 March 12 2020</p>	<p>The Criminal System</p> <p>Brief Introduction to the Criminal System</p> <ul style="list-style-type: none"> • <i>Context: scale; race; mass incarceration</i> • <i>Basics: actors; pre-trial detention and bond; pleas (overwhelming prevalence); sentencing and incarceration</i> • <i>Where “competence” comes up</i> • <i>Police encounters with people with mental health conditions</i> • <i>Prevalence of mental health conditions in jails and prisons; right to treatment?</i> • <i>Mental Health System > Criminal System Pipeline</i> <p>Ethics: Allocation of Authority</p> <ul style="list-style-type: none"> • <i>Allocation of authority in the lawyer-client relationship</i> • <i>General rule</i> • <i>Relevant Model Rules; Restatement (3rd) rules</i> • <i>Protective action and scope</i> • <i>Substitution of judgment, expressed interest, hybrid</i> • <i>CA: state of law and ethical guidance in flux</i> 	<p>John D. King, <i>Candor, Zeal, and the Substitution of Judgment: Ethics and the Mentally Ill Criminal Defendant</i>, 58 Am. U. L. Rev. 207 (2008). Read closely.</p>

Week 10 March 19 2020	Spring Recess	No Class
Week 11 March 26 2020	Competence in the Criminal System <ul style="list-style-type: none"> • <i>Review - competence to do what?</i> • <i>Competence to stand trial and “restoration”</i> • <i>Competence to represent oneself / reject a public defender</i> • <i>Competence to enter a plea</i> • <i>Competence to be subjected to state execution</i> • <i>Other tasks / junctures</i> 	TBA
Week 12 April 2 2020	Conditions of Confinement in the Criminal System <ul style="list-style-type: none"> • <i>Diversion and reentry</i> • <i>Pre-trial detention and bond</i> • <i>Mental health and dangerousness</i> • <i>Kalief Browder</i> • <i>Solitary confinement / segregation</i> • <i>Mental health care: forced medication (Washington v. Harper; Riggins; Sell); right to treatment (Youngberg v. Romeo revisited); deliberate indifference and reasonably safe conditions (Farmer v. Brennan)</i> 	TBA

<p>Week 13 April 9 2020</p>	<p>The Immigration Enforcement System</p> <p>Brief Introduction to the Immigration Enforcement System</p> <ul style="list-style-type: none">• <i>Context: scale; race; mass incarceration</i>• <i>Basics: actors; immigration detention; immigration court; bond</i>• <i>Immigration Judge: racial and mental health bias; lack of judicial independence</i>• <i>Representation rates and the effect of no representation on due process and outcomes</i>• <i>Criminal System > Immigration Enforcement System Pipeline</i> <p>Americans with Disabilities Act, Rehabilitation Act of 1973, and Discrimination – Revisited</p> <ul style="list-style-type: none">• <i>Franco-Gonzalez v. Holder</i> <p>Competence in the Immigration Enforcement System</p> <ul style="list-style-type: none">• <i>Competence to represent self in immigration proceedings – Matter of M-A-M; Franco Pro Se Competence Standard</i>	<p>TBA</p>
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<p>Week 14 April 16 2020</p>	<p>Conditions of Confinement in the Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>What is the applicability – if any – to the law and concepts we have reviewed to immigration detention? Is there any?</i> • <i>Least restrictive alternative?</i> • <i>Right to safety, freedom from restraints and segregation, and treatment in immigration detention?</i> • <i>Right to treatment in the community?</i> • <i>Deliberate indifference to unsafe conditions?</i> • <i>Solitary confinement / segregation?</i> <p>Ethics: Selected Mental Health Issues: Immigration Enforcement System</p> <ul style="list-style-type: none"> • <i>Lawyer or Guardian Ad Litem or Both? John D. King, Candor, Zeal, and the Substitution of Judgment - revisited</i> • <i>Best interests vs. expressed interests when detained client can “choose” deportation at any time.</i> <p>Client-Centered Practice Skills</p> <ul style="list-style-type: none"> • <i>Fundamental role of client trust; how to foster client trust</i> 	<p>TBA</p>
<p>Week 15 April 23 2020</p>	<p>TBD</p>	<p>TBD</p>
<p>Week 16 April 30 2020</p>	<p>Course Wrap-up, Review</p> <p>Evaluations</p> <p>Final Exam Discussion and Tips</p>	<p>None – all review!</p>

Statement on Academic Conduct and Support Systems

The current **Statement on Academic Conduct and Support Systems** is a required component of all USC syllabi.

Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” policy.usc.edu/scampus-part-b. Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, policy.usc.edu/scientific-misconduct.

Support Systems:

Student Health Counseling Services - (213) 740-7711 – 24/7 on call

engemannshc.usc.edu/counseling

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

National Suicide Prevention Lifeline - 1 (800) 273-8255 – 24/7 on call

suicidepreventionlifeline.org

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Relationship and Sexual Violence Prevention Services (RSVP) - (213) 740-4900 – 24/7 on call

engemannshc.usc.edu/rsvp

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

Office of Equity and Diversity (OED) | Title IX - (213) 740-5086

equity.usc.edu, titleix.usc.edu

Information about how to get help or help a survivor of harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following protected characteristics: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations.

Bias Assessment Response and Support - (213) 740-2421

studentaffairs.usc.edu/bias-assessment-response-support

Avenue to report incidents of bias, hate crimes, and microaggressions for appropriate investigation and response.

The Office of Disability Services and Programs - (213) 740-0776

dsp.usc.edu

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

USC Support and Advocacy - (213) 821-4710

studentaffairs.usc.edu/sssa

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

Diversity at USC - (213) 740-2101

diversity.usc.edu

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call

dps.usc.edu, emergency.usc.edu

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call

dps.usc.edu

Non-emergency assistance or information.

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Syllabus Law 403 last updated 10 23 2019 GLP