

Involuntary Civil Commitment Laws: The Role of “Danger”

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Abstract

The large number of mass murders occurring over the last ten years in the United States has warranted debate over whether involuntary civil commitment laws are too strict, thus limiting the ability to adequately prevent violence and danger.¹ Through use of a comparative case study analyzing the definition of danger in the involuntary civil commitment laws of Wisconsin, New Jersey, and Mississippi, the impact of broad and narrow definitions of danger on the frequency by which involuntary civil commitment is used is examined. Findings suggest that the definition of danger alone does not widely impact the frequency by which involuntary civil commitment is used. However, a different factor, the number of psychiatric beds available in psychiatric facilities, plays a role. I was able to conclude that when sufficient bed availability exists in a state, the definition of danger is able to play a larger role in the frequency that individuals are diverted into involuntary civil commitment programs.

Keywords: Involuntary, Civil, Law

1. Introduction

Over the last fifty years, fifteen of the twenty-five largest shootings in the world have taken place right here in the United States.² After such shootings, many of the perpetrators were found to have been suffering from mental illness prior to the crime. The perpetrator in the 2012 Aurora, Colorado movie-theater shooting that killed twelve and injured several others had been previously diagnosed with schizophrenia.³ The shooter at a Connecticut elementary school that killed thirteen people had comorbid (multiple) diagnoses for obsessive-compulsive and anxiety disorder.⁴ How do we prevent such incidences from occurring? One solution is a more aggressive use of the process of involuntary civil commitment, or the process of taking persons who suffer from mental illness into custody to provide treatment and prevent potential violence to the individual or to others.⁵

The United States Supreme Court has required since *O’Conner v. Donaldson* 422 US 563, (1975) that involuntary civil commitment be limited to mentally ill individuals at risk of danger to himself or others. The Court did not, however, specify how danger was to be legally defined, essentially leaving it up to state legislatures to determine.⁶ Many states, in order to protect the civil liberties of citizens, defined danger very narrowly and imposed strict criteria for the kind of behavior that qualifies for involuntary civil commitment. Some forensic psychiatrists, as well as mental health policy analysts, argue that these laws are so narrowly defined that an individual would essentially need to be caught committing a dangerous act in order to be civilly committed. At that stage it is too late. The problem with narrowly defined laws is their reliance on the presence of “imminent” danger, or danger that may occur within about hours 24-48 hours. This provision requires that psychiatrists are able to predict the future. A prediction about the future actions of a person is difficult to make accurately, even for experts.⁷

Supporters of narrow definitions of danger in involuntary civil commitment laws, such as advocates of civil rights, have argued that involuntary civil commitment laws should not be broadened. Supporters of narrow definitions of danger argue that expanding laws to include more behaviors that qualify for the use of involuntary civil commitment

would increase the risk of violating the civil liberties of individuals. The purpose behind strict provisions was to protect the Due Process rights of individuals. Due Process protects individuals from being taken into custody without sufficient cause. Without clear justification for believing an individual is dangerous, taking individuals into custody would be a violation of these Due Process protections and further, of civil rights.⁸

In this paper, I explain why the definition of danger in an involuntary civil commitment law is significant to our society and to our government. I then go on to highlight the existing research on the topic of involuntary civil commitment. To follow, I discuss my data and my use of a comparative case study on the states of Wisconsin and New Jersey. I then explain the theory I began my research with: the broader the definition of danger is in a state's involuntary civil commitment law the higher frequency of civil commitment that state will see. My theory was incorrect. From my case studies on New Jersey and Wisconsin I am able to conclude that the impact that the definition of danger has on the use of involuntary civil commitment is limited. I then incorporate a case study of Mississippi to further my research. My results from all three case studies led to the determination that a factor other than the definition of danger, namely bed availability, plays a larger role in the frequency by which a state uses involuntary civil commitment. However, when combining a sufficient number of psychiatric beds are available and a broad definition of danger in a civil commitment law, the ability of the system to divert individuals into treatment with greater frequency is possible.

2. Significance

Involuntary civil commitment can be achieved through multiple routes. The most common occurs when a mentally ill individual commits a crime. In this case, the individual will go to trial and plead not guilty by reason of insanity. This means that the individual claims that their mental illness caused them to act in ways beyond their control. If the jury accepts this plea, the individual will **not** go to jail; rather they will go to a mental health facility to treat their illness.

The other route to civil commitment was created as a form of prevention. In this scenario, each state designates in their involuntary civil commitment law who can petition for a mentally ill individual to be involuntarily civilly committed. Most states allow for mental health experts to petition, but some extend the role of petitioning to family and friends close to the individual. In this scenario, persons familiar with the mentally ill individual will explain how the mentally ill person meets the criteria for involuntary civil commitment and why they believe that person should be committed. The hearing takes place before a judge who will make the final determination of whether that person will be civilly committed.⁹

A major source of conflict arises out of the use of involuntary civil commitment involving the 8th Amendment. This conflict is relevant to both scenarios. The question is this: at what point are the individual's rights being violated? How long is *too long* to hold a person against their will? How dangerous is dangerous *enough* to take away one's liberty in the interest of the state? The answers to these questions are unclear and raise a great deal of concern about the violation of human rights.¹⁰ The role of involuntary civil commitment laws is to try to resolve such issues. These laws provide the criteria needed to create a clear notion of what behavior puts the state's interests of protecting individuals and society above the right to individual liberty. These laws are meant to supply time limits on the initial commitment of individuals, as well. Time constraints on involuntary civil commitment help to ensure that Due Process rights are not violated. Involuntary civil commitment laws play a major role in providing the means for states to protect their own interests, to attempt to prevent danger before it occurs, and to protect the rights of individual human beings with mental illness.

The end results of the civil commitment system are important to the mentally ill population, the government, and society as a whole. Without access to treatment, many mentally ill persons are homeless. Statistics show about 500,000 individuals are homeless in the United States and about one-third of them are mentally ill. Studies on the number of mentally ill persons in jail vary in their results, however some have found percentages ranging from 10% to 27%.¹¹ Large numbers of mentally ill persons in jail is problematic; the Supreme Court ruled in *Brown v. Plata* 131 US 1910 (2011) that the incarceration of mentally ill persons without treatment was a violation of 8th Amendment rights that prohibit cruel and unusual punishment.¹²

The inability of the civil commitment system to admit dangerous (or potentially dangerous) individuals into treatment programs is problematic for the government and society, as well. Because of the number of untreated mentally ill persons who are homeless, city streets are not safe. Violence, harassment, and other antisocial behavior become more frequent in the streets where mentally ill individuals linger.¹³ It is obvious that mass shootings, such as Columbine, the Connecticut school shooting, and the Aurora Movie Theater shooting are a danger to our society, but lower scale violent acts occur more often than people are aware of as a result of untreated mental illness. In April of

2001 Benjamin Flores, who had been diagnosed with schizophrenia, attacked a police officer with scissors. In February of 2004 another man diagnosed with schizophrenia killed his own brother. These are just a couple of the violent acts that have been committed due to untreated mental illness, but they are not the only ones. Studies show that 5-10% of seriously mentally ill persons will commit a violent crime each year, due in part to a lack of treatment.¹⁴ Such violence is a threat to society and it demonstrates that the government has not been able to adequately protect society from the violence that can be associated with mental illness.

All of these issues indicate the importance of research on the definition of danger in involuntary civil commitment laws. If individuals who would benefit from involuntary civil commitment are not diverted into treatment, civil commitment cannot accomplish its goal of preventative treatment, the government cannot adequately protect its citizens, and the rights of human beings are violated. The intentions of a law may only be met if that law is written in a way that allows for implementation. If involuntary civil commitment laws define danger too narrowly it would be nearly impossible to make use of involuntary civil commitment. It is also important to note that laws that are so broad that they appear vague and unclear run the risk of violating individual rights and being invalidated by the courts system. Individuals who are mentally ill and potentially dangerous cannot be diverted into involuntary civil commitment programs if they do not meet the criteria provided in those laws. When these individuals cannot be diverted into involuntary civil commitment programs, the aforementioned consequences may, and do, occur. Thus lawmakers must find a balance between defining danger too narrowly and too broadly.

3. Literature Review

Studies carried out by TAC have provided crucial information on the subject of involuntary civil commitment laws. "Mental Health Commitment Laws: A Survey of the States" (2014) laid out criteria important to the use and administration of civil commitment laws and gave each state a letter grade based on this criteria. "Mental Health Commitment Laws" looks at several aspects of civil commitment, among them involuntary inpatient civil commitment, outpatient treatment, and the use of laws. "Mental Health Commitment Law" explains how each aspect of civil commitment is graded and separates the grades by involuntary inpatient civil commitment and outpatient civil commitment. The breakdown of this grade is important to my research as I am solely looking at involuntary inpatient civil commitment.

It is important to note that while TAC provides important insight to the use of involuntary civil commitment laws where imminent danger does not exist, TAC's "use of law" grade is **not** equivalent to the frequency by which involuntary civil commitment is used. TAC's "Mental Health Commitment Laws" measures the use of laws in terms of imminent danger. I am looking at the use of involuntary civil commitment laws in terms of overall use, both with and without the presence of imminent danger.

For TAC, the use of involuntary civil commitment outside of the presence of imminent danger is important, as TAC holds the belief that imminent danger is too strict a provision for adequate use of such programs.¹⁵

"More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States" (2010), also carried out by TAC, analyzes the use of hospitals versus incarceration to determine which is more widely used for the mentally ill once they have committed a crime. "More Mentally Ill Persons Are in Jails and Prisons" found that, in most states, the likelihood of a mentally ill person being imprisoned is much greater than the likelihood of them being hospitalized. This same study also found that New Jersey is able to make better use of hospitalization as opposed to incarceration of mentally ill offenders than is Wisconsin.¹⁶

"The Shortage of Public Hospital Beds for Mentally Ill Persons" conducted also by TAC in 2008, analyzes the lack of sufficient bed availability (50 beds/100,000 people) across all fifty states. "The Shortage of Public Hospital Beds for Mentally Ill Persons" discovers that only one state in the country meets the minimal bed requirement for sufficiently supporting the mentally ill population: Mississippi. "The Shortage of Public Hospital Beds" also found that 42 out of 50 states had less than half of the minimum number of beds for sufficiently supporting the mentally ill population.¹⁷

The majority of existing research focuses on the impact of mental illness on recidivism rates. Specifically, most of this research examines the role of treatment in lowering the recidivism rates of sexual predators. Duwe (2014) ran a study on sexual offenders who had gone through the civil commitment process and found that civil commitment reduced recidivism within 4 years by 12%.¹⁸ Jeglic et. al. (2011) found that those who underwent civil commitment actually recidivated.¹⁹ Morrow and Peterson (1966) found a 5% recidivism rate, as well.²⁰ Harris et. al. (1991) found that 60.3% of individuals who had been treated for at least two years did not recidivate, however psychopaths, even those who received treatment, were most likely of the mentally ill individuals to recidivate.²¹ Lurigio et. al. (2013)

found that only half of mentally ill offenders that were treated recidivated, as opposed to 75% of those left untreated.²² A study by Nadeau (2007) found that mental illness increased the chances that an individual would recidivate and a study done by Harris and Koepsell (1996) found that recidivism rates between untreated and non-mentally ill criminals were relatively similar, however the mentally ill criminals were likely to be re-incarcerated sooner.²³

In addition, Segal (2011) produced noteworthy findings on the relationships between civil commitment laws and homicide rates. The study concluded that there was a correlation between broad civil commitment laws and lower homicide rates.²⁴

4. Data and Methodology

I conducted a comparative analysis using multiple case studies. I began by identifying two states that have involuntary civil commitment laws on opposite ends of the spectrum. Based on TAC results from “Mental Health Commitment Law”, the state of Wisconsin has a relatively broad involuntary civil commitment law and the state of New Jersey has narrow involuntary civil commitment law. I later incorporated a third state, Mississippi, after noting that they were the only state with sufficient bed availability (50/100,000) to determine if bed availability played a role in determining the frequency of civil commitment in a state with a broad definition of danger.²⁵

Two provisions that the TAC deems important to involuntary civil commitment laws are a “need for treatment” and a “gravely disabled” provision. Each provision’s specific definition varies among states, but there is a general consensus on what each means across the country. A need for treatment provision allows for the use of involuntary civil commitment on the basis that a mentally ill individual needs treatment, but due to their illness they will not seek it. Without this treatment, the individual’s overall health is in jeopardy. A gravely disabled provision allows for the use of civil commitment on the basis that an individual is in jeopardy of harm to himself because of his illness. For example, an illness may result in an individual neglecting basic needs, such as food.²⁶ Wisconsin’s law makes use of both of these provisions.

Wisconsin also incorporates a sort of danger to oneself that is not limited to physical danger, such as self-injury or suicide. Wisconsin’s definition of danger includes actions that could be detrimental to a person’s health or that allows for a loss of control, or the ability to survive in society on their own.²⁷ An example of this kind of danger can be seen in the Wisconsin court case *State v. Dennis H. 01, WI 0374, (2002)*. Dennis, the plaintiff in this case, was not in danger of committing suicide or inflicting physical pain to himself or others. However, Dennis was not taking care of himself and was exhibiting behaviors that had previously led to hospitalization. This previous hospitalization had put him at major risk for kidney failure. Because of this behavior, the highest state court in Wisconsin ruled that he was a danger to himself and therefore, it was justifiable and constitutional to involuntarily hospitalize him through civil commitment.²⁸

The state of New Jersey has a narrow involuntary civil commitment law, according to TAC “Mental Health Commitment Laws”. New Jersey does not provide a gravely disabled provision, but utilizes a need for treatment provision.²⁹ Recall that a need for treatment provision allows for involuntary civil commitment on the basis that an individual needs treatment, but because they are mentally ill they will not seek it out on their own. A gravely disabled provision allows for involuntary civil commitment on the basis that an individual is in jeopardy of harming himself by neglecting his basic needs.³⁰

Similar to Wisconsin, Mississippi makes use of both a need for treatment and a gravely disabled provision in their civil commitment law. Mississippi is considered to have a broad involuntary civil commitment law. Mississippi has treatment that extends beyond 30 days upon initial petition for commitment and anyone can petition for an individual to be civilly committed. Like New Jersey, civil commitment is warranted on grounds outside of the presence of imminent danger for violence or suicide.³¹

Upon identifying the states I used in my study, I developed a scoring system based on the results of specific factors in each state: TAC grades on the use of the laws and the quality of laws, homicide rates, interviews, bed availability, and the likelihood of incarceration versus hospitalization.

The statistics I used for bed availability were calculated in “A Shortage of Public Hospital Beds” based on the number of beds per 100,000 of the mentally ill population. “More Mentally Ill Persons in Prisons and Jails” determined ratios for the likelihood of incarceration versus hospitalization based on how many mentally ill persons were hospitalized for treatment compared to how many were found untreated in prisons after committing a crime.

I used the grades given by the TAC for both the quality of involuntary civil commitment laws and the use of these civil commitment laws in each state. The “quality of the law” grade given by TAC was based on who can petition for civil commitment, the time limit upon the first petition for involuntary civil commitment, and the existence of both

the need for treatment provision and the gravely disabled provision in each state. The TAC awarded 0-10 points for the presence of a gravely disabled provision. 0-25 points were awarded for the presence of a need for treatment provision. 0-5 points were awarded on the basis of who can petition for commitment: 3 points for family members and 2 points for other concerned persons. Finally, 1 point was awarded for an initial commitment order exceeding 14 days and 3 points for an initial order exceeding 30 days.³²

The “use of law” grades produces an overall grade on how often involuntary civil commitment is used in a state. The “use of law” grade was broken up into two parts: the use of inpatient and the use of outpatient civil commitment. Each part was graded separately and then combined for an overall score.³³ For my purposes, I neglect the overall grade, as I am only interested in the use of the inpatient civil commitment law. The individual inpatient use of law grade was out of 5 points: 0 points were awarded if commitment outside of the presence of imminent danger is rare in the state, 3 points if such commitments are used in some parts of the state, and 5 points if they are commonly used across the state. This information was accumulated on the basis of a questionnaire given to medical directors of public psychiatric hospitals. The questionnaire included questions such as, “how widespread, if it occurs at all, is the practice of pursuing hospital commitments of people with severe mental illness who do NOT appear to present an imminent risk of violence to self or others?”³⁴ As was previously mentioned, TAC’s “use of law” grades do not measure the frequency by which involuntary civil commitment is used in the same way that I do. TAC grades were based solely on how often involuntary civil commitment is used in each state in terms of imminent danger. For TAC, the “use of law” grade is based only on how often mentally ill persons are diverted into involuntary civil commitment programs **when imminent danger is not present**. I am looking at the use of involuntary civil commitment on a much broader basis. TAC’s grades are helpful in determining the frequency that involuntary civil commitment is used in terms of imminent danger, but not the use of involuntary civil commitment as a whole. It is possible that a state that only uses involuntary civil commitment when imminent danger is present may still have a high frequency by which the state uses involuntary civil commitment, but TAC excludes this possibility. TAC “use of law” grades, combined with the other factors I identified, aid in determining the frequency that involuntary civil commitment is used generally, both with and without the presence of imminent danger.

5. Theory

My hypothesis is that the broader a civil commitment law’s definition of danger is, the more frequent that state’s civil commitment programs will be used. My unit of analysis is the state level. It is important to note that I am **not** analyzing the type of treatment mentally ill persons receive in involuntary civil commitment programs or the ability of this treatment to rehabilitate the patient, rather I am simply looking to see that the civil commitment system is able divert such individuals into these programs. I argue that the frequency that involuntary civil commitment is used is directly linked to the definition of danger because this definition is what determines the criteria that must be present in order to make use of involuntary inpatient civil commitment. I analyze a number of variables in determining which definition of danger leads to a more frequently used system. These factors include the grades given to the laws of each state by the TAC, homicide rates, the likelihood of a mentally ill person being incarcerated rather than hospitalized, statistics for the beds available in civil commitment facilities, and an interview with psychiatrists involved in involuntary civil commitment. Although most existing research involves recidivism rates, I chose not to rely on these rates for my study. This is because I believe that recidivism rates better reflect the type of treatment provided in a civil commitment program as opposed to the frequency that involuntary civil commitment is used. I use the grades given by TAC because their study looked at many factors involved in involuntary commitment, such as the duration of the commitment and who can petition a mentally ill person for commitment, and these factors are important in diverting an individual into a civil commitment program.³⁵ I chose to use homicide rates as a factor, as well. If a state with a broader involuntary civil commitment law has a lower recidivism rate, according to the relationship reported by Segal (2008), it would suggest that involuntary civil commitment is accomplishing its goal of prevention. In order to accomplish such a goal, individuals must first be diverted into civil commitment programs. Lower homicide rates where broad civil commitment laws exist would indicate that treatment intervention plays a role in the number of homicides committed by mentally ill persons.³⁶ It should be noted that homicide rates are affected by an abundance of factors and there may not be direct causation between lower homicide rates and broad civil commitment laws. I conducted a short phone interview with psychiatrists to get their professional opinion on the use of New Jersey’s involuntary civil commitment programs, however I was unable to do the same for Wisconsin and³⁷ Mississippi.

As for incarceration versus hospitalization and bed availability, I determined that these variables are important indicators for the frequency by which civil commitment is used in any state. Typically, states with lower bed

availability have a higher likelihood of incarcerating mentally ill persons rather than hospitalizing them. For example, in New Jersey there are about 22 psychiatric beds available for every 100,000 people and the likelihood of being incarcerated versus being hospitalized is 1.6 to 1.³⁸ By contrast, Wisconsin has only 9.8 beds available for every 100,000 people and there is a 3.9 to 1 ratio for incarceration to hospitalization.³⁹

When there is less space in civil commitment facilities, individuals with a mental illness are more likely to be incarcerated than hospitalized.⁴⁰ I argue this might have affected Wisconsin because that state has a broad civil commitment law and this should theoretically allow for greater use of involuntary civil commitment. New Jersey, despite the lesser and more narrowly defined criteria for involuntary civil commitment, uses civil commitment more than Wisconsin does.⁴¹ New Jersey has more space, so there is less room for hesitation in making use of the civil commitment laws when needed, even when imminent danger does not exist. Although space should not aid in the determination of whether civil commitment is to be used or not, it is not feasible to civilly commit individuals if there is nowhere to put them. If these mentally ill individuals have committed some type of offense and cannot be hospitalized, there is no other option than to incarcerate them.⁴² Because of this finding, I argue that bed availability and the likelihood of incarceration versus hospitalization aid in determining the frequency by which involuntary civil commitment is used in any given state.

Upon incorporating Mississippi, I began to postulate that a state may be hindered on their use of civil commitment, even if their law's definition of danger provides various criteria for commitment, if that state is limited in their availability of beds. I incorporated Mississippi because it was the only state to have what was considered sufficient bed availability, and I sought to determine if there was a correlation between bed availability and the frequency that involuntary civil commitment is used.⁴³

After receiving the information needed for each variable in each state, I assign a point value to them. The points are determined by the states' standing in comparison to the national average for each variable. I awarded either 1 or 2 points to the states in better standing than the national average. The state in the best standings received 2 points and any state better than the national average, but worse than the best state received only 1 point. Any states in better standings than the national average and tied with each other received one point each. The state in the worst standings did not receive any points. The state with the highest number of points indicates that that state, based on the variables used for evaluation, made the most use of civil commitment by committing qualifiers most frequently. While these variables cannot directly determine which state uses civil commitment with the highest frequency, combined they provide a likely prediction. This prediction is possible due to the relationship between each variable and the use of civil commitment. Government data would provide more accurate conclusions, and would better indicate if other factors play a role in the frequency that civil commitment is used in a state. My research is limited in that it can indicate correlations, but it cannot make a causal determination about the relationships between the variables and the outcome.

6. Results

When I began my research, I expected to find a difference between the civil commitment systems of states with broadly defined laws and those of states with narrowly defined laws. Specifically, I expected a broader law to allow for greater use of involuntary civil commitment. To my surprise, I discovered that New Jersey, despite its narrow law, used involuntary civil commitment more frequently than did Wisconsin. Due to this finding, I added Mississippi into my analysis to determine the role of bed availability in determining the frequency that involuntary civil commitment is used.

Homicide rates seemed to follow suit with the previously conducted study by Steven Segal for Wisconsin. The national average for homicide as of the year 2013 was about 4.7%. While both New Jersey and Wisconsin had lower homicide rates than the national average, Wisconsin, the state with the broader law, had the lower homicide rate of the two. Wisconsin's homicide rate was calculated at 2.4% in 2013, while New Jersey's was measured to be 4.3% in 2013. In contrast however, Mississippi's homicide rate of 6.5% placed them in worse standings than both other states and the national average.⁴⁴ It is important to note that this finding does not follow suit with Segal's findings. For this category, Wisconsin received two points, New Jersey received one point, and Mississippi did not receive any points.

TAC's "Mental Health Commitment Law" that analyzed civil commitment laws in all 50 states gave Wisconsin an A in the quality of their law. Their grade for the use of their **inpatient** involuntary treatment law was a 0 out of 5. The TAC's study analyzed the law on the basis of a need for treatment criteria, a gravely disabled standard, who can petition for involuntary civil commitment, and how long the initial hospitalization typically lasts. Wisconsin has both a need for treatment and a gravely disabled standard and in that state anyone could petition for civil commitment. The

length of hospitalization in Wisconsin could extend beyond 30 days. Wisconsin fell short in the use of their laws, however. Although the law allows for the use of involuntary inpatient civil commitment outside of the presence of imminent danger, the law is rarely used where such a danger does not exist.

New Jersey scored much lower than Wisconsin for the TAC quality of the law grade. New Jersey received an F for this grade. New Jersey's law does not have a gravely disabled standard, however it does have a need for treatment. New Jersey's law, though narrow, makes use of civil commitment in certain parts of the state without the presence of imminent danger, thus allowing New Jersey to receive 3 out of 5 points for their **inpatient** civil commitment law. The national average for the inpatient civil commitment laws throughout the country was 1.8 out of 5 points, allowing New Jersey to receive the point this time. The national average for the quality of laws in each state was an F, placing Wisconsin above New Jersey in this category.

According to "Mental Health Commitment Laws", involuntary civil commitment in Mississippi was graded an A+ for quality of law and a score of 5 out of 5 points for the use of inpatient civil commitment.⁴⁵ Mississippi scored higher than both the national average, and both other states, so it received two points for TAC grades, New Jersey received one, and Wisconsin did not receive any points for this category.

As noted, Mississippi has the largest number of available beds, and New Jersey has a larger number of available beds than does Wisconsin. Both Mississippi and New Jersey have a larger number of available beds than the national average, allowing for two points to be given to Mississippi and one point to New Jersey. No points were awarded to Wisconsin.

New Jersey makes the best use of hospitalization than incarceration for mentally ill, and is above the national average. Mississippi outperformed Wisconsin once again, but performed lower than New Jersey in this category, allowing New Jersey to receive two points, Mississippi one point, and Wisconsin no points.

Because New Jersey uses involuntary civil commitment outside of the presence of imminent danger, more hospital beds are available in New Jersey, and because New Jersey makes greater use of hospitalization of mentally ill offenders as opposed to incarceration, one can infer that New Jersey uses involuntary civil commitment more frequently than Wisconsin. Because Wisconsin does not make much use of involuntary civil commitment outside of the presence of imminent danger, is more likely to incarcerate a mentally ill person as opposed to hospitalizing them, and has low numbers of available beds in psychiatric facilities, one can infer that Wisconsin makes use of involuntary civil commitment less frequently than New Jersey.

In theory, a broader involuntary civil commitment law should lead to more frequent diversion of individuals into treatment. This should be the case, as broader laws typically provide more criteria and more venues that can be used to divert individuals into treatment. Looking at the factors I have identified, New Jersey, the state with the more narrow law, seems to use involuntary civil commitment more frequently than does Wisconsin. This could be due to a number of factors. TAC gave the state of Wisconsin an A in the wording of their laws, but no points for their specific use of inpatient laws.⁴⁶ Their study on the use of laws involved a survey of psychiatrists. Psychiatrists in Wisconsin claimed that civil commitment was rarely used outside of the presence of imminent danger. Although Wisconsin has civil commitment criteria much broader than the need for imminent danger, their broad criteria can only have limited effects on the civil commitment system if it is not used.

I argue that the increased bed availability in New Jersey could be a reason why New Jersey's law breeds a higher frequency of the use of involuntary civil commitment. Because New Jersey has more psychiatric beds available for patients in civil commitment programs, New Jersey is able to divert the dangerous mentally ill into treatment with greater frequency than Wisconsin.⁴⁷ Wisconsin commits fewer patients than you would theoretically expect because imminent danger is so hard to prove, while New Jersey may commit more patients than you would expect because they have the space for them in their facilities, allowing the state to use civil commitment even when imminent danger is not present.

To strengthen my argument, I incorporated Mississippi into my study to determine the role of bed availability in the use of civil commitment. Mississippi had the highest grade for the use of their law. Mississippi does have a broader law than New Jersey, but it would be wrong for me to assume that the broadness of their law is the sole cause of their grade for the use of the law. I say this because Wisconsin's law is also broader than New Jersey, however New Jersey scored 3 out of 5 points for the use of their inpatient involuntary civil commitment law, while Wisconsin received 0 out of 5 points.⁴⁸ Mississippi's bed availability per 100,000 of the population is significantly higher than is Wisconsin and New Jersey's. Bed availability and the use of law grade scored the most points for Mississippi. This allows me to infer that Mississippi's willingness to use involuntary civil commitment outside of the presence of imminent danger, their sufficient number of psychiatric beds, and their greater use of hospitalization rather than incarceration allows for a higher frequency of involuntary civil commitment.

Table 1. Points Awarded by State

	Homicide Rates	Incarceration v. Hospitalization	Bed Availability	TAC Grades
WI	2.8%	3.9:1	9.8/100,000	Use- inpatient portion 0/5 Quality- A
NJ	4.5%	1.6:1	21.9/100,000	Use- inpatient portion 3/5 Quality- F
MI	6.5%	1.8:1	49.7/100,000	Use- inpatient portion 5/5 Quality- A+
National Average	4.7%	3.2:1	17/100,000	Use- 1.8/5 inpatient portion Quality- F
Points: MI=7 NJ=5 WI=4	WI- 2 points NJ- 1 point MI- 0 points	NJ- 2 points MI- 1 point WI- 0 points	MI- 2 points NJ- 1 point WI- 0 points	Use: MI- 2 points, NJ- 1 point, WI- 0 points Quality: MI- 2 points, WI- 1 points, NJ- 0 points

Although I was unable to interview a psychiatrist in Mississippi and Wisconsin, I was able to interview two psychiatrists in New Jersey. By terms of the interview, I am unable to disclose any information about the interviewees, however I may share their opinion of the civil commitment system in New Jersey. During my interview, the psychiatrists named protecting the dangerous from themselves and others, as well as preventing a loss of life as the main goals of civil commitment. These psychiatrists felt very strongly that New Jersey's law yields a civil commitment system that is successful in achieving these goals. They admitted that the laws in their state are some of the strictest civil commitment laws in the state, but they felt that this was actually beneficial to the system. The psychiatrists said that twenty years ago a judge exercised the discretion to determine whether an individual should be civilly committed or not, which they believe hindered the system. When asked about the frequency of the law's use, a psychiatrist who works in a public facility that requires criminal activity for admittance said that about 50% of patients were committed involuntarily. Another psychiatrist who works in a private facility said that voluntary commitment is more common in private facilities, as their voluntary inpatient rates at times are 80%. The psychiatrists interviewed discussed the concerns of the use of imminent danger, namely the knowledge that a patient may be dangerous even without them acting in that manner. In September 2014, New Jersey began to incorporate the standard "in the foreseeable future" as grounds for civil commitment, which allows for more flexibility in civil commitment. In regards to bed availability, the psychiatrists felt that the number of available beds greatly impacts their civil commitment system, as the "sickest" individuals will typically receive the beds.⁴⁹

It is important to note that my findings **do not** produce a definitive causal relationship between the availability of beds and the frequency that involuntary civil commitment is used in a state. My research is limited in that it cannot determine that more beds directly causes a greater use of involuntary civil commitment, however my research does support a relationship between the two. My research is also limited in its' dependence on TAC studies.

From my variables, I am able to infer that Wisconsin's reliance on imminent danger, their lesser availability of psychiatric beds, and their higher rates of incarceration as opposed to hospitalization allows for a less frequent use of involuntary civil commitment. I am able to infer that New Jersey's greater availability of beds, greater use of hospitalization as opposed to incarceration, and their expansion to include danger that is in "the foreseeable future" allows for a more frequent use of involuntary civil commitment. This information indicates that the definition of danger alone does not determine how frequently involuntary civil commitment will be used in a state. Because Mississippi has sufficient room for the mentally ill population in hospitals, the definition of danger may have been able to play a larger role in the frequency that involuntary civil commitment is used. Mississippi's broad law gives more criteria for the use of civil commitment and allows it to be used in more situations than a narrow law would.

However, as shown with Wisconsin, the law's definition of danger cannot play much of a role in the frequency that involuntary civil commitment is used if there is not room in involuntary civil commitment programs for patients. Mississippi's sufficient bed availability may allow for a more liberal use of involuntary civil commitment because there is enough room to hospitalize mentally ill individuals when danger is present, even if that danger is not imminent.

7. Conclusion

After incorporating Mississippi into my research, I conclude that although the definition of danger alone does not impact civil commitment, bed availability does play a role. I conclude that the availability of beds in psychiatric facilities aids in the determination of who will be involuntarily civilly committed and how frequently involuntary civil commitment will be used. Based on my findings, Mississippi is able to use involuntary civil commitment most frequently of the three states. New Jersey makes use of involuntary civil commitment more frequently than does Wisconsin, but still less than Mississippi. Wisconsin appears to use involuntary civil commitment least frequently of the three states despite the broadness of their law.

One may argue that because Mississippi has more available beds, the state diverts people into treatment simply to make use of their beds and not because involuntary civil commitment is needed. I argue that this is not the case. Mississippi only meets the *minimum* number of beds sufficient for the mentally ill population, but still remains significantly below the number of available beds prior to deinstitutionalization.⁵⁰ This would indicate that although Mississippi does meet the minimum standard, they do not have a surplus of beds to fill and the severity of illness may still play a role in determining who will receive a bed in a facility. I would also argue that New Jersey provides evidence that involuntary civil commitment may be used in greater frequency without admitting individuals just for the sake of filling beds. New Jersey uses involuntary civil commitment more frequently than does Wisconsin, however New Jersey does not have an abundance of beds to fill, as noted by "A Shortage of Psychiatric Beds" and my interview.

The factor that demonstrated the biggest difference between the civil commitment systems of all three states was bed availability. The trend existed that states with greater bed availability were able to use involuntary civil commitment more frequently. Because of this, evidence would suggest that the greater availability of beds in states such as New Jersey and Mississippi has allowed these states to make a more liberal use of civil commitment when danger is present, even if that danger does not fit the category of "imminent". Although New Jersey's law appeared to be more narrow, this state was able to expand involuntary civil commitment to include danger "in the foreseeable future", possibly as a result of greater availability of beds. Similarly, Mississippi's involuntary civil commitment law is broad, allowing for the use of involuntary civil commitment outside of the presence of imminent danger. It is possible that when psychiatric beds are available in involuntary civil commitment facilities, states are able to look to the broad outlets of their civil commitment laws to divert individuals into treatment, thus allowing for a more frequent use of these programs.

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9. Endnotes

1. Outpatient treatment refers to treatment that an individual receives while still living in the community and regularly reporting to a psychiatric facility