# Mental Health Law

**Law 6930 Class 27402**

**3 credits**

# Course Policies & Tentative Syllabus: Fall 2021

Professor Lea Johnston

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Office Hours: Zoom: Th, 8:30-9:15 a.m.

1. Course Coverage.This course explores the law’s treatment of individuals with mental disorder. The course will cover governmental efforts to deprive those with mental disorders of liberty and property through the criminal and civil systems, as well as certain entitlements and protection against discrimination.

2. Student Learning Outcomes**.** After completing this course, students should be able to:

* Elucidate the difference between mental disorder and “mental disability” for legal purposes.
* Articulate when and how mental health professionals may participate in the legal process, how to utilize these experts, and how effectively to respond to them.
* Demonstrate insight into how effectively to counsel and advocate for individuals with serious mental illness.
* Apply statutes concerning insanity, diminished capacity, and capital sentencing in state courts.
* Apply state statutes and procedural rules concerning civil commitment and guardianship in state courts.
* Apply case law concerning competency and the right to refuse and consent to psychiatric treatment in state and federal courts.
* Apply relevant portions of the Americans with Disabilities Act (ADA) in state and federal courts.
* Identify and establish, from a given fact pattern, possible violations of procedural rules, statutes, and due process principles concerning the legal regulation of individuals with mental disabilities.
* Identify and defend the values underlying competence, incompetence, autonomy, paternalism, the best interests test, and substituted judgment.
* Explain a defense attorney’s ethical and legal obligations to his or her client with mental disorder in criminal and civil commitment proceedings.

3. Assessment of Student Learning and Grade. I will assess your attainment of competency in these learning outcomes through a final examination. Your grade in the course will reflect the following:

* 85% of grade: cumulative final exam
* 15% of grade: participation in class, which reflects your “good faith completion” of assigned reading, assigned videos, assigned problems and discussion questions, and any assigned quizzes.

4. Required Instructional Materials.The textbook will be Christopher Slobogin, et al., Law and the Mental Health System: Civil and Criminal Aspects (**6th ed.** 2014). This is **not** the latest edition of the case book (this will save you some money!). Supplemental materials are posted on Canvas.

5. My Contact Information & Office Hours. I will hold two sets office hours each week. I will hold in-person office hours in my office (Holland 305) each Wednesday from 3:00 – 4:15 p.m. You are welcome to drop by or schedule a meeting during these hours. If you choose to meet with me in my office, you must wear a mask. If you are unwilling to wear a mask, we can meet at another location.

In addition, I’ll hold office hours by Zoom from 8:30 – 9:15 a.m. on Thursday mornings. \*\*Please sign up for a 15-minute slot on Zoom by Wednesday at 5pm so that I will expect you. If you don’t sign up for a meeting time the evening before, I won’t know to go to the meeting!

6. Class structure**.** Our time will focus on case explications and discussion of problems, big-picture questions, and hypotheticals. The tentative syllabus sets forth the topics we will cover in each class, as well as assigned reading, videos, problems, discussion questions, and occasional (ungraded) quizzes. I expect you to prepare the problems and discussion questions prior to class for class discussion.

**Canvas.** I will use Canvas to (1) post assignments; (2) distribute reading materials, practice problems, and quizzes; (3) post links for videos; and (4) make announcements. You will use Canvas to sign up for virtual office hours, view daily assignments, complete occasional quizzes, and occasionally submit your answers to assignments.

**Zoom.** We will be utilizing Zoom in this course for virtual office hours and possibly participation by guest speakers. In addition, UF policy (and ABA rules) permit up to 1/3 of each in-person course to take place online. I reserve the right to conduct some portion of this course (up to that limit) in that manner, although I do not intend to do so at this time. This Zoom Guide for students may become useful to you: <https://www.law.ufl.edu/e-learning>; it is also available from UF Law’s Homepage. If some classes take place by Zoom, please use the following rules of video conferencing etiquette:

* Use your own name (preferred first name, last name) and do not change it;
* Choose a stationary location (meaning you must Zoom in from a computer, not from your phone);
* Choose a location where there are minimal disruptions (e.g. roommates talking and pets jumping on you);
* Do not change your background;
* Dress appropriately for video conferencing;
* You must “show video” and yourself for the active portions of the class when we are not on breaks;
* Please turn off any cell phones and other electronic devices;
* Close any other computer programs, websites, and email so you can give your classmates and speakers your full attention; and
* Do not Zoom in the same room as someone else in the class. Unfortunately, Zoom “parties” create horrible feedback noises.

**Faculty and Student Zoom Support.** Students can contact UF’s e-Learning Support Staff with specific questions at 352-392-4357 (press 3). Students may also call our IT Department for online teaching support at 352-273-0760.

**Kahoot!** Occasionally, I may assess your learning by asking you to complete an online quiz during or before class using Kahoot!. To access these quizzes, go tohttps://kahoot.it and then enter the game pin that I provide.

7. Class Preparation, Participation, and Experience**.** Consistent with the American Bar Association Standard 310, you should expect to spend at least **six hours** per week preparing for this three-hour course.

I have high expectations for the learning environment we create together. I rely heavily on classroom discussion to explicate cases and concepts and apply those frameworks to new problems. **I expect each of you to attend class prepared**. Preparation includes completing the assigned reading, working through the posted problems and/or discussion questions, reviewing notes and/or reading material from the prior class, and watching any assigned videos. A portion **(15%) of your grade is for class participation**, which will reflect your **good faith completion of all assigned work, including all problems and discussion questions**.

To ensure meaningful participation from all class members and to help you build lawyering skills, I may cold-call students using the Socratic method.

At the end of this document is a tentative syllabus with topics to be covered in the course, as well as potential assignments. Actual assignments for the first two weeks of class are included in a separate syllabus on Canvas. I will update the syllabus weekly.

**8. Preferred Name and Pronouns.** It is important to the learning environment that you feel welcome and safe in this class and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible. I would like to acknowledge your preferred name and pronouns that reflect your identity; please let me know how you would like to be addressed.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.uﬂ.edu, click on the dropdown at the top right, and select "Directory Proﬁle." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for ofﬁcial UF records

**9. Mask Wearing. Out of respect for your classmates and myself, masks are expected in my classroom.** **Please wear a mask at all times in the classroom.** To be clear, masks are strongly encouraged but not mandated. Choosing not to wear a mask will not affect a student’s grade in any way.

**10. Discourse, Inclusion, and the Classroom Ethos.** As a law student and future lawyer, it is important that you are able to engage in rigorous discourse and critical evaluation while also demonstrating civility and respect for others. This is even more important in the case of controversial issues and other topics that may elicit strong emotions.

As a group, we are likely diverse across racial, ethnic, sexual orientation, gender identity, economic, religious, and political lines. As we enter one of the great learning spaces in the world—the law school classroom—and develop our unique personality as a class section, I encourage each of us to:

* commit to self-examination of our values and assumptions
* speak honestly, thoughtfully, and respectfully
* listen carefully and respectfully
* reserve the right to change our mind and allow for others to do the same
* allow ourselves and each other to verbalize ideas and to push the boundaries of logic and reasoning both as a means of exploring our beliefs as well as a method of sharpening our skills as lawyers

As part of my commitment to teaching and serving the diverse UF Law community, I have signed the UF Law Anti-Racism Resolution.

**11.** **Class Recordings.** Students are allowed to record video or audio of class lectures for personal use. However, students may not publish recorded lectures without the written consent of the instructor. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

12. Attendance Policy. Attendance is required. On the first day of class, I will circulate a seating chart. Your seat that day will be your seat for the semester. At the beginning of each class meeting, students must sign an attendance roster. Missing more than **four classes** is grounds for dismissal from the course.[[1]](#footnote-1) Please plan accordingly. To be “present,” you must arrive to class on time.

13. Exams**.** There will be a final exam in this course, which will account for 85% of your total grade. The remainder (15%) will be awarded for class participation reflecting good faith completion of all assigned problems, discussion questions, and quizzes.

The final examination will be an open book, limited-space examination. It will likely contain multiple choice, short answer, and traditional law school essay questions. The exam will focus on material discussed in class, but all material and concepts covered in the course may be tested to some degree. Exams will be graded anonymously by exam number. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Review of Final Exam.** How to receive a copy of your exam: **After February 1, 2021**, students who wish to review their exams can do so by requesting a copy of their exams from my assistant, Sherrice Smith, ssmith@law.ufl.edu. I will post the exam questions, along with a model answer and best student answers, in the “past exams” folder in Canvas files.

How to ask questions about your exam: I expect that the model answer and best student answer will address most students’ questions. I am happy to address any remaining questions by email. Before contacting me, please review your exam and compare it to the model answer. I will not re-grade exams.

**Grading Policy:** This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies).  Grades carry the following point equivalents:

|  |  |
| --- | --- |
| **Letter Grade** | **Point Equivalent** |
| A (Excellent) | 4.0 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.0 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.0 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.0 |
| D- | 0.67 |
| E (Failure) | 0.0 |

14. Accommodations for Students with Disabilities**.** Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester**.**

15. The Honor Pledge**.** UF students are bound by The Honor Pledge, which states: “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honesty and integrity. On all work submitted for credit by students at the university, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’”

The Honor Code (https://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel (i.e., Dean Rachel Inman). If you have any questions or concerns, please ask me or Dean Inman.

16. Course Evaluation**.** Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

**17.** **Health and Wellness Resources:**

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

**18. Basic Needs Assistance.** Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs.  If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

**MENTAL HEALTH LAW: TENTATIVE SYLLABUS**

FALL 2021

The tentative syllabus below gives you a sense of what we aim to cover this semester. Actual assignments for the first two weeks of class are included in a separate syllabus on Canvas. I will update the syllabus weekly.

CB = Christopher Slobogin, et al., Law and the Mental Health System: Civil and Criminal Aspects (6th ed. 2014).

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| --- | --- | --- | --- |
| **Approx. Dates** | **Subject** | **Topics** | **Assignment** |
| MODULE 1:Introduction – Mental Disorder & Mental Health Treatment | | | |
| Aug.24 | **Mental Disorder** | Introduction  “Mental disorder”   * Medicine * Law   DSM 5  Structural racism in psychiatry  Lived reality of mental disorder | **CB: 4 – top of 14, 15 (start at note 3) – 18 (to end of n.6), 20-27**  **Judith Warner, Psychiatry Confronts Its Racist Past, and Tries to Make Amends** (file on Canvas)  **Unzicker, “To Be a Mental Patient”** (file on Canvas)  **2019 documentary: Bedlam,** [**https://video.alexanderstreet.com/watch/bedlam**](https://video.alexanderstreet.com/watch/bedlam) **(1:25:31)**  **Bring 5 observations about the movie to Tuesday’s class** |
| Aug.25 | **Treatment** | Guest Speaker: Dr. Tonia Werner, Vice President, Medical Services/Chief Medical Officer of Meridian; former Director of Forensic Psychiatry Division of University of Florida | **CB: 28 – top of 39, 41 (notes 3-4)**  **Prepare five questions to ask Dr. Werner** |
| MODULE 2:Expertise | | | |
| Aug.31 | **Normality** | Frameworks for course:   * Substance * Evidentiary predicate   Expert opinion on normality: whether person has mental disorder   * Importance of diagnosis   Ex: Hinkley trial | **CB: 493 – 515 (to end of n.1), top of 517-20 (to end of n.1)** |
| Aug 31/Sept.1 | **Responsibility** | Expert opinion on responsibility: connection between mental disorder and legal test  Ex: pathological gambling  Lewellyn  Evidentiary hurdles:   * Frye * Fed. R. Evid. 702 * Daubert (in FL!)   Mental health evidence under Daubert | **CB: 522- top of 531**  **Perez v. Bell South Telecommunications, Inc., 138 So.3d 492 (2014)**  **Andrews v. State, 181 So. 3d 526 (Fla. 5th DCA 2015)**  **Prepare problem on Canvas for discussion** |
| Sept.1 | **Propensity** | Expert opinion on propensity: whether person is likely to commit future harm  Barefoot  Exercise: subject propensity testimony to:   * Fed. R. Evid. 403 * Frye * Daubert * Fed. R. Evid. 702 – assist factfinder   Modern propensity evidence: risk assessment instruments   * Barnette * Instruments: actuarial vs. structural professional judgment | **CB: 542-64 (to end of n.4)**  **Kalaichandran, “We Must Rethink the Role of Medical Expert Witnesses”** (file on Canvas)  **The Appeal, “Risk Assessment Tools Are Flawed”** (file on Canvas) |
|  | **Constitutional Issues** | Right to expert assistance: Ake (DP)  Basis of clinical opinion   * Statement of D: Estelle (5th Am)   Right to assistance of counsel before pretrial evaluation: Estelle (6th Am) | **CB: 580 – 607**  **Prepare Ake problem on Canvas for class discussion.** |
|  |  | Discuss the assigned problems in break-out groups | **Prepare all parts of problem 5 on pp. 606-07; be ready to debate parts A, D, G, & H in class** |
|  | **Evidentiary Issues** | Admissibility of opinion based on hearsay   * Goldstein, FRE 703 * (Confrontation Clause problem??)   Admissibility of hearsay (on which opinion is based)   * Goldstein, 703 (like Fla. Stat. 90.703) * Confrontation Clause   Opinions on ultimate issues   * Ultimate vs. penultimate issues * NO: Edwards, FRE 704 * YES: Fla. Stat. 90.703 | **CB: 607-24**  **Fla. Stat. §90.703-704**  **Fed. R. Evid. 703, 704** |
| MODULE 3:Criminal Law | | | |
|  | **Mental Disorder & Incarceration** | \*watch video on your own and write 1-page response paper.  Abstract of *The New Asylums*: There are nearly half a million mentally ill people serving time in America’s prisons and jails. As sheriffs and prison wardens become the unexpected and ill-equipped gatekeepers of this burgeoning population, they raise a troubling new concern: are jails and prisons America’s new asylums? With exclusive and unprecedented access to prison therapy sessions, mental health treatment meetings, crisis wards, and prison disciplinary tribunals, Frontline goes deep inside Ohio’s state prison system to present a searing exploration of the complex and growing topic of mental health behind bars and a moving portrait of the individuals at the center of this issue. | **Video: The New Asylums (54:32)**  **Canvas assignment: write (and submit through Canvas) a one-page response to *The New Asylums*.** |
|  | **Insanity Defense: Cognitive** | Rationale for insanity defense  Various iterations:   * Cogntive test: M’Naghten * Volitional: ALI test   Application of cognitive test: Heads | **CB: 625-48 (to end of n.1), 652 – top of 655**  **Fla. Stat §775. 027**  **Prepare insanity problems on Canvas for class discussion** |
|  | **Insanity Defense: Volitional** | Application of volitional test:   * Pollard * Problems A and B in n.5   3 ways states limit volitional test  Automatism   * Vs. insanity defense * Application: Heads? Pollard? | **CB: 656-73**  **Prepare problems A and B in note 5 on pages 669-70 for class discussion** |
|  | **Mens Rea Testimony** | Diminished capacity doctrine   * Examples   + Vs. insanity * Clark   Current law re: permit diminished capacity evidence   * 3 limitations * Florida law - NO – Chestnut   Current law re: abolish insanity and offer only diminished capacity   * Kahler: constitutional | **CB: 673-92 (to end of n.2)**  **Chestnut v. State, 538 So.2d 820 (Fla. 1989)**  **Prepare problem on Canvass (outline oral argument) for class** |
| Sept.22 | **Mock Examination of Expert on Sanity** | Guests: Prof. Jennifer Zedalis, Dr. Matthew Nguyen, Prof. Sarah Wolking  Watch direct- and cross-examination  Discussion regarding strategies employed by prosecutor and defense attorney | **Psychiatric Evaluation & CV** (files on Canvas)  **Prepare problem on Canvass (outline direct or cross examination) for class** |
|  | **Other Defenses** | Traditional defenses:   * Self-defense * Provocation * Duress   Trend in law: subjectivization   * MPC   Full subjectivization vs. insanity  Florida law: self-defense | **CB: 701-03, n.3 (pp. 712-14)**  **Mizell, 773 So.2d 618 (Fla. 1st DCA 2000)**  **Prepare the problems posted on Canvas for class discussion** |
|  | **Capital Sentencing** | Relationship between MD and mitigating and aggravating factors  Atkins – should extend to psychosis?   * State of law   Intellectual disability | **CB: bottom of 735 – top of 767**  **Prepare problem on Canvas (outline oral argument) for class discussion** |
| Oct.5 | **Panel: Mental Health & the Criminal Justice System in Florida.**  **Guests: Brian Kramer (State Attorney, Eighth Judicial Circuit) and Stacy Scott (Public Defender, Eighth Judicial Circuit)**  **Prepare five questions to ask Ms. Scott and Mr. Kramer.** | | |
| MODULE 4:Civil Commitment | | | |
|  | **Police Power Commitment: Theory** | Definition  Rights implicated  Legitimate purposes served?  Procedural protections (vs. criminal law)  Why treat MD specially? | **CB: 804 – 19** |
|  | **Police Power Commitment: Practice** | Brooks’ 4 elements of dangerousness   * **Today: magnitude of harm**   Probability of harm  Frequency of harm  Imminence of harm  FL’s Baker Act   * Police power provision * Definition of mental illness   Problem   * Gregorovich * Nyflot | **CB: 831-42, bottom of 845 – top 849**  **Baker Act: Fla. Stat. §394.467(1), 394.455(29)**  **Prepare problem posted on Canvas for discussion in class** |
|  | **Parens Patriae Commitment: Theory** | “Parens patriae” rationale  Why confined to mental disorder?  Types of harms  Proper scope  Any limits set by U.S. Constitution?   * Donaldson | **CB: 854-72** |
|  | **Parens Patriae Commitment: Practice** | Mayock (harm to self)  Boggs (provocation, self-neglect)  Fla. Stat. § 394.467(1)   * In practice   Least restrictive alternatives | **CB: 872-88**  **Fla. Stat. § 394.467(1) (Baker Act)**  **Prepare problem posted on Canvas for discussion in class** |
|  | **Right to Counsel** | Does due process require provision of counsel?  What role should counsel serve?  Ethical rules  In practice  1999 FL Supreme Court report | **CB: 940-51**  **Prepare question on Canvas for discussion in class** |
|  | **Release and Voluntary Admissions** | Overview of involuntary civil commitment process  Release procedure  Voluntary admissions   * Prevalence, why favored * “Voluntary?”   Informed consent  Reform  FL’s approach   * Discharge   Discharge in practice | **CB: 959 – top of 978**  Baker Act flow charts: involuntary examination; involuntary treatment (on Canvas)  **Fla. Stat. § 394.467(6)(b), (7); § 394.4625** |
|  | **Children** | Involuntary Examination of Minors   * Highlights of report   Voluntary admission  Constitutional constraints on admission and release: Parham   * By parents * By state   Parham’s process and holding   * Focus: admission by parents   Florida procedure | **CB: 1018-35**  **Fla. Stat. §§ 394.4785, 394.4625**  **Report on Involuntary Examination of Minors by Department of Children and Families (11/1/2019) (\*read parts I, III, VI)** (file on Canvas)  **Watch this video:** Children in Crisis, Florida’s Baker Acted Kids I-Team Investigates, <https://www.youtube.com/watch?v=ODInKaumjIM> (3:43) |
| MODULE 5:Competency Determinations | | | |
|  | **Competency Generally** | Definition  Justification  Appelbaum & Roth’s hierarchy of competency concepts  Additional proposed tests:   * Understanding & belief test * Volitional test * Different person test | **CB: 1037-53**  **Prepare: apply various tests for competency in the context of the Katz case in n.4 on p. 1051** |
| Oct. 26 | **Judicial Experience: General Civil Commitment & Commitment of Substance Abusers** | Guests: General Magistrates Katherine Floyd & Bridget Baker   * Judicial perspective re Baker Act, Marchman Act, and guardianship proceedings | **CB: 1001-05**  **USA Today, Families Seek Involuntary Commitment laws as key tool in saving opioid addicts**(on Canvas)  **NYT, Britney Spears’s Case Calls Attention to Wider Questions on Guardianship (July 10, 2021)** (on Canvas)  **Prepare five questions to ask Magistrates Floyd and Baker**  **Marchman Act: Fl. Stat. §§ 397.675, 397.6811-6822 and 397.693-397.6977**  **Watch these videos:**  What to know about Marchman Act if you have a loved one with substance abuse disorder, <https://www.youtube.com/watch?v=G44EZgIYblY> (2:24)  Florida Attorney Alan Levine Discusses the Marchman Act and Families – Part 3**,** <https://www.youtube.com/watch?v=C9u6F2raHaY> (7:40 but can start at 2:11) |
|  | **Guardianship** | Definition  Criteria for guardianship   * 3 approaches   Fla. Stat. § 744.102(12): incapacitated person  Galvin  Less restrictive options  Renz  Procedure: Fla. Stat. § 744.331  Restoration of competency: § 744.464  Standard of decision-making  Advanced directive | **CB: 1053-70 (stop at Hayes), 1076 (start at n.3) – 1079**  **Fla. Stat. §§ 744.102(9), (12); 744.331; 744.2005; 744.3215, 744.464**  **Watch these videos:**  Temporary guardianship, <https://www.youtube.com/watch?v=Xom4upx_paY> (1:33)  Inside the Court Room Making a Plea for Guardianship, <https://www.youtube.com/watch?v=kqQM9eNMtOo> (7:21 start at 2:40)  **Prepare problem posted on Canvas for discussion in class**  FYI (will not discuss):   * ABA Toolkit for Health Care Advance Planning: https://www.americanbar.org/groups/law\_aging/resources/health\_care\_decision\_making/consumer\_s\_toolkit\_for\_health\_care\_advance\_planning.html |
|  | **Right to Refuse Psychiatric Treatment** | Constitutional rights implicated by involuntary treatment  When can these individuals refuse psychiatric treatment:   * Persons without MD * Persons with MD with a guardian * Persons with MD who have been civilly committed * Prisoners with MD   Costs & benefits of right to refuse litigation | **CB: 1081 – top of 1101 (to end of n.2), notes 6-7 (1104-09)**  **Test your knowledge! Take quiz on Canvas.** |
|  | **Competency to Proceed** | Problems! | **Read: CB: 1127-45 (to end of n.1), note 3 (1146-48)**  **Fla. Stat. §§ 916.12** (mental illness), **916.3012** (intellectual disability or autism); **Fla. R. Crim. P. 3.210-3.211**  **Watch video:** Competency Assessment, <https://www.youtube.com/watch?v=HOKGS-XuFqk&t=566s> (15:18)  **Prepare: three competency problems at pp.1134-41 for class discussion** |
|  | **Competency Restoration** | What happens when a D is found incompetent to stand trial?   * Procedure in Florida * DP constraints: Jackson | **CB: 1151-57 (to end of n.3), 1158-59**  **Fla. Stat. §§ 916.13** (mental illness), **916.302** (intellectual disability or autism); **Fla. R. Crim. P. 3.212-3.213**  **Prepare the problem on Canvas for class discussion** |
|  |  | The reality of competency restoration  When can a state can forcibly medicate restore competence?   * Sell * Problem: Constitutionality of 2020 FL amendment   What happens when competence can’t be restored? | **CB: 1159-77 (to end of n.3), note 6 (1179)**  **Tampa Bay Times, “Definition of Insanity”** (on Canvas)  **Prepare the problem on Canvas (applying Sell) for class discussion**  **Tampa Bay Times, Mentally Handicapped Are Held for Years Without Trial** (on Canvas) |
| MODULE 6:Effective Representation | | | |
| Nov.10 | **Representation of Clients with Mental Illness** | **Guest speaker: Alisa Guthrie, licensed clinical social worker and trauma specialist, Eighth Judicial Circuit Public Defender’s Office** | **McNeal, Slow Lawyering: Representing Seniors in Light of Cognitive Changes Accompanying Aging** (on Canvas)  **Representing Clients with Mental Illness: A Resource for Louisiana Defenders - \*\*only pp.1-12** (on Canvas)  **ARC, When Individuals with Developmental Disabilities Become Involved in the Criminal Justice System: A Guide for Attorneys - \*\*the whole document is useful, but for class I’ll expect you to read pages 11-14, 18, & 25-26** (on Canvas)  **Prepare five questions to ask Ms. Guthrie** |
| MODULE 7:Entitlements and Protection Against Discrimination | | | |
|  | **Right to Treatment** | Do the following groups have a right to mental health treatment?   * Individuals in society * Currently institutionalized individuals * Previously institutionalized individuals | **CB: 1252-62, 1264 (only Harvard Law Review quote), 1265-66 (only note 3), 1312-17 (to end of n.2), 1318 (Olmstead) – 1331**  **Test your knowledge! Take quiz on Canvas.** |
|  | **Americans with Disabilities Act** | Cleburne: disability is not a suspect classification   * Rational basis with bite?   ADA employment discrimination claims: disparate impact   * Assigned problem   ADA: Discrimination  Prima facie case (Murray)   * + Disability   + Qualified individual     - Essential function     - (direct threat - Hoback)   + Adverse E’ment action, causation   Legit business reason  Pretext   * 2 ways to demonstrate (Murray)   ADA: Reasonable Accommodation  Prima facie case   * + Disability   + Qualified individual   + No reasonable accommodation   + Undue hardship   ADA: Retaliation  Prima facie case   * + Protected conduct   + Adverse E’ment action   + Causal connection   + Temporal proximity   Legit business reason  Pretext  Practice: how to bring ADA discrimination claim | **CB: 1401-05, 1416-30, 1432 (start at n.6) – 46 (stop at n.5)**  **Nuts & bolts of ADA video:** <https://www.youtube.com/watch?v=O5DderZcsGE> (10:35)  **Prepare the problem on Canvas for class discussion** |

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1. University recognized religious holidays are exempt. Please provide me with advance notification of such absences. [↑](#footnote-ref-1)