Mental Health Law University of Florida Levin College of Law Fall 2025 Syllabus & Course Policies Law 6930 -- 3 credits

Professor Lea Johnston

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Class location: Holland Hall 285D

Class time: T, Th: 1:15 – 2:40 p.m.

Office Hours: Th, 2:40-4:40 p.m.

- 1. Course Description. This course explores the law's treatment of individuals with mental disorders. 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 and procedural rules concerning insanity, diminished capacity, 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.
- 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, 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 Grading Evaluation.** 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, <u>assigned problems and discussion questions</u>, 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.** 2013). This is **not** the latest edition of the case book (this will save you some money!). Supplemental materials are posted in Canvas.

Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments

- **5. Attendance Policy**. Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed <u>four</u> absences during the course of the semester. To be "present," a student must arrive to class on time. A student who fails to meet the attendance requirement may be dropped from the course. The law school's policy on attendance can be found <u>here</u>.
- **6. Class Preparation, Participation, and Experience.** Consistent with ABA Standard 310, you should expect to spend at least **six hours** per week preparing for this three-hour course.

Our time in class will focus on case explications and discussion of problems, big-picture questions, and hypotheticals. The tentative syllabus at the end of this document sets forth the topics we will cover in each class, as well as anticipated readings, videos, problems, and occasional (ungraded) quizzes. Much of this material can be found on Canvas.

I expect each of you to attend class prepared. A portion (15%) of your grade is for class participation, which will reflect your good faith completion of all assigned work, including all assigned 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.

7. 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

¹ University-recognized religious holidays are exempt. Please provide me with advance notification of such absences.

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.

8. 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
- **9. 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 <u>in-class</u>, <u>limited open book</u> examination. You will be permitted to access:

- electronic documents saved in your computer hard drive;
- the assigned case book;
- a paper copy of your notes and/or outline; and
- any handouts or PowerPoints that I provided over the course of the semester (so long as you have printed or downloaded them).

The exam will be between 3 and 4 hours in length and will likely contain multiple choice, short answer, and traditional law school essay questions. I will enable spell check and the cut, copy, and paste functions. 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.

Review of Final Exam. How to receive a copy of your exam: After Jan. 15, 2027, students who wish to review their exams can do so by requesting a copy of their exams from my assistant, Victoria Redd, reddva@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.

<u>How to ask questions about your exam:</u> 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. <u>Before contacting me, please review your exam and compare it to the model answer. I will not re-grade exams.</u>

10. UF Levin College of Law Standard Syllabus Policies. Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link.

11. Health and Wellness Resources:

- *U Matter, We Care*: If you or someone you know is in distress, please contact <u>umatter@ufl.edu</u>, 352-392-1575, or visit <u>U Matter, We Care website</u> to refer or report a concern and a team member will reach out to the student in distress.
- Counseling and Wellness Center: <u>Visit the Counseling and Wellness Center website</u> 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 <u>visit the Student Health Care Center website</u>.
- *University Police Department*: <u>Visit UF Police Department website</u> 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.
- **12. 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

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

Assignments for the first two weeks of class are included below. A weekly syllabus will be maintained on Canvas and updated each weekend.

CB = Christopher Slobogin, et al., Law and the Mental Health System: Civil and Criminal Aspects (6th ed. 2013).

Approx.	Subject	Topics	Assignment
Date			
		MODULE 1:	
	Introduction –	Mental Disorder & Mental He	ealth Treatment
Aug.19	Mental	Introduction	CB: 4 – 18 (to end of n.6),
	Disorder	"Mental disorder"	20-27
		- Medicine - Law DSM 5 Race and psychiatry Lived reality of mental disorder	Tough, Have We Been Thinking About ADHD All Wrong? (file on Canvas) Warner, Psychiatry Confronts Its Racist Past, and Tries to Make Amends (file on Canvas) Unzicker, "To Be a Mental Patient" (file on Canvas) Watch the first hour (to minute 1:02) of the 2019 documentary: Bedlam, https://video.alexanderstre et.com/watch/bedlam (1:25:31)

			Bring 5 observations about the movie to Tuesday's class	
Aug.21	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, 40-41 (notes 1-4) Swerlick, Florida's Lukewarm Commitment to Investing in Behavioral Health (on Canvas) Florida Policy Institute, Behavioral Health Services: Funding in Florida (on Canvas) Prepare five questions to ask Dr. Werner	
	MODULE 2: Expertise			
Aug.26	Abnormality: Mental Disorder	Frameworks for course: - Substance - Evidentiary predicate Expert opinion on normality: whether person has mental disorder - Importance of diagnosis Ex: Hinkley trial	CB: 493 – 520 (to end of n.1)	
Aug.26 (*may start), 28	Responsibility & Standards for Admissibility	Expert opinion on responsibility: connection between mental disorder and legal test Ex: pathological gambling	CB: bottom of 522 - top of 531 Perez v. Bell South Telecommunications, Inc., 138 So.3d 492 (2014)	

	Lewellyn Evidentiary hurdles: - Frye - Fed. R. Evid. 702 - Daubert (in FL!) Mental health evidence under Daubert	Andrews v. State, 181 So. 3d 526 (Fla. 5th DCA 2015) Prepare problem on Canvas for discussion
Propensity: Future Dangerousness	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 • Loomis - Instruments: actuarial vs. structural professional judgment	CB: 542-57 Excerpt from 7 th edition of case book (pp. 556-70) (file on Canvas) The Appeal, "Risk Assessment Tools Are Flawed" (file on Canvas) Optional additional reading
Constitutional Issues	Right to expert assistance: Ake (DP) Basis of clinical opinion - Statement of D: Estelle (5 th Am) Right to assistance of counsel before pretrial evaluation: Estelle (6 th 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 <i>The New Asylums</i> : 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 illequipped gatekeepers of this burgeoning population, they raise a troubling new concern:	Video: The New Asylums (54:32) Canvas assignment: write (and submit through Canvas) a one-page response to <i>The New Asylums</i> .

	Insanity Defense: Cognitive	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. 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 Optional additional reading
	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
Sept. 25	Demonstration: Mock Examination of Expert on Sanity	Guests: Kristofer Eisenmenger, Dr. Tonia Werner, Prof. Sarah Wolking Watch direct- and cross- examination	Psychiatric Evaluation (files on Canvas)

Mens Rea	Discussion regarding strategies employed by prosecutor and defense attorney Diminished capacity doctrine	Prepare problem on Canvas (outline direct or cross examination) for class CB: 673-92 (to end of n.2)
Testimony	 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 	Chestnut v. State, 538 So.2d 820 (Fla. 1989) Prepare problem on Canvas (outline oral argument) for class
Diminished Responsibility	Diminished responsibility vs. diminished capacity Current law: not accepted in U.S. Should it be? MODULE 4:	CB: 692-94 (note 3 only) Optional additional reading: Johnston et al., Diminished Criminal Responsibility: A Multinational Comparative Review (on Canvas)
	Civil Commitment	
Involuntary Civil Commitment: Theory	Definition Rights implicated Legitimate purposes served?	CB: 804–25

	Procedural protections (vs. criminal law) Why treat MD specially?	
Police Power Commitment: Theory & 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: 826-38; 841 (start at n.2) – bottom of 842; bottom of 845 – top 849 Baker Act: Fla. Stat. §394.467(1), (2)(b); 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? - <u>Donaldson</u>	CB: 854-72
Parens Patriae Commitment: Practice	Mayock (harm to self) Boggs (provocation, self-neglect)	CB: 872-88 Fla. Stat. § 394.467(2)(b); § 394.463 (1)-(2) (Baker Act)

	Fla. Stat. § 394.467(2)(b) Fla. Stat. § 394.463(1)-(2) - In practice Least restrictive alternatives	Prepare problem posted on Canvas for discussion in class
Assisted Outpatient Treatment	Latest trend: AOT Merits?	CB: 897 – 902 (only notes 4 & 5) Fla. Stat. § 394.467(2)(a) (Baker Act) Optional reading: Johnston & Klein, Assisted Outpatient Treatment: A State-by-state Comparative Review
Involuntary Commitment Procedures & Right to Counsel	Overview of involuntary commitment process Does due process require provision of counsel? What role should counsel serve? Ethical rules In practice 1999 FL Supreme Court report	Flowchart of Involuntary Examination Procedure Under Baker Act Flowchart of Involuntary Treatment Procedure Under Baker Act Prepare question on Canvas for discussion in class Optional: for more information on the use of the Baker Act, see this report: Baker Act Reporting Center, The Baker Act: Fiscal Year 2022/2023 Annual Report
Voluntary Admissions	Voluntary admissions - Prevalence, why favored	CB: 967 – top of 978 Fla. Stat. § 394.4625

	- "Voluntary?" Informed consent Reform FL's approach - Discharge Discharge in practice	
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	Fla. Stat. §§ 394.4785, 394.4625 Watch this video: Children in Crisis, Florida's Baker Acted Kids I-Team Investigates, https://www.youtube.com/w atch?v=ODInKaumjIM (3:43) WFSU, Committed: Schools, Kids And The Baker Act Pipeline (12/15/20) WFSU, Committed: Trauma, Mental Health And The Baker Act (12/16/20) WFSU, Committed: Kids With Disabilities Increasingly Swept Into Mental Health System Under Baker Act (12/14/20) Optional reading: Southern Poverty Law Center, Costly and Cruel: How Misuse of the Baker Act Harms 37,000 Florida

		Children Every Year (2021) (PDF)
	MODULE 5: Competency Determinations	
Competency Generally *do reading & watch video on your own!	Definition Justification Appelbaum & Roth's hierarchy of competency concepts	CB: 1037-49 (to end of n.2)
Oct. 28 Panel: 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	Prepare five questions to ask Magistrates Floyd and Baker on Baker Act, Marchman Act, and guardianship CB: bottom of p.1001-03 (to end of n.2), note 4 (p.1005) To prepare for discussion on the Marchman Act: What is the Marchman Act: What is the Marchman Act?, Lawyer Monthly (Oct.10, 2021) (on Canvas) Marchman Act: A Look Inside Florida's Law Forcing Some into Drug Treatment, CBS12 News (May 18, 2021) (on Canvas) Marchman Act: skim Fl. Stat. §§ 397.675, 397.68111-6818, 397.6957-6971 To prepare for discussion on guardianship:

		Amanda Morris, Britney Spears's Case Raises Questions on Guardianship, New York Times (July 12, 2021)
Guardianship	Definition Criteria for guardianship - 3 approaches Fla. Stat. § 744.102(12): incapacitated person Losh, Smith Less restrictive options Procedure: Fla. Stat. § 744.331	CB: 1053 - top of 1058, 1061-70 (stop at <u>Haves</u>), 1076 (start at n.3) – 1079, 1080-81 (note 7) <u>Losh</u> , 86 So.3d 1150 (Fla. 3d DCA 2012) <u>Smith</u> , 917 So.2d 400 (Fla. 5th DCA 2005) Fla. Stat. §§ 744.102(9), (12): 744 331; 744 334;
	Restoration of competency: § 744.464 Standard of decision-making Advanced directive	(12); 744.331; 744.334; 744.2005; 744.3215, 744.464 Buzzfeed, <i>Beyond Britney: Abuse, Exploitation, And Death Inside America's Guardianship Industry</i> (9/17/21) (on Canvas)
		Watch these videos: Temporary guardianship, https://www.youtube.com/watch?v=Xom4upx_paY (1:33) How to get a legal guardianship in Florida: https://www.youtube.com/watch?v=KNv-EqRVQ1Y (2:17)
		New Florida law aims at exposing professional guardians to more scrutiny

		(July 4, 2022): https://www.youtube.com/watch?v=Ar6nr3frNzY (2:52) (2:52) Prepare problem posted on Canvas for discussion in
		Class Optional: for detailed guidance on the role of appointed counsel in guardianship proceedings, see:
		Erlandsson v. Guardianship of Erlandsson, 4th DCA (May 6, 2020)
		Optional: For a deep dive into Britney Spear's conservatorship, see:
		Ronan Farrow & Jia Tolentino, Britney Spears's Conservatorship Nightmare (7/3/21)
		Optional: supplemental information for legal practice:
		ABA Toolkit for Health Care Advance Planning
Competency to Proceed	Problems!	Read: CB: 1127-48 (to end of n.3)
*do reading & watch video on		Fla. Stat. §§ 916.12, 916.3012
your own!		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. §§ 916.12 (mental illness), 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
Nov. 6	Panel: Specialty Courts in Florida's Eighth Judicial Circuit of Florida	Guests: Acting Circuit Judge Susan Miller-Jones (presides over the Felony Drug Court and the Misdemeanor Mental Health Court) and Circuit Judge Phillip A. Pena (presides over the Veterans Treatment Court) Circuit Judge David P. Kreider (presides over Felony Forensics (Division V)) may join us if he is available.	Miller et al., Benefits (Pros) and Drawbacks (Cons) of Problem-Solving Courts (14pp.) (on Canvas) Prepare three questions for each judge.
	Competency Restoration, cont'd	The reality of competency restoration When can a state can forcibly	CB: 1159-77 (to end of n.3), note 6 (p.1179) Tampa Bay Times,

	• Incompetent to make treatment decisions (w/ guardian) What happens when competence can't be restored? MODULE 6: Effective Representation	
Representation of Clients with Mental Illness	Guest speaker: Rachael O'Brien, Assistant Public Defender, Eighth Judicial Circuit Public Defender's Office	Doe v State, 287 S.3d 681 (1st DCA 2019) Miller v North Florida Evaluation and Treatment Center, 287 S.3d 681 (1st DCA 2019) Feinberg- ForcibleMedicationMentall y-2002 Representing Clients with Mental Illness: A Resource for Louisiana Defenders - **only pp.1-12 (on Canvas) Prepare five questions to ask Ms. O'Brien