

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

BRANDON E., by and through his :
next friend, Robert Listenbee, Esq.; :
JOY E., by and through her next friend, :
Robert Listenbee, Esq., on behalf of :
themselves and all others similarly :
situated, :

Plaintiffs, :

v. :

The Honorable ABRAM FRANK :
REYNOLDS, Philadelphia Court of :
Common Pleas, Family Court Division, :
on behalf of himself and all others :
similarly situated, :

Defendants. :

CLASS ACTION

Civil Action No.

98-cv-4236

COMPLAINT

I. INTRODUCTION

1. Plaintiffs bring this civil rights class action for declaratory relief on behalf of themselves and all other minors similarly situated who may be subject to court-ordered involuntary commitment for drug and alcohol treatment under 1997 Pa. Laws 53 ("Act 53" or "the Act"), amending the Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. §§ 1690.101 et seq. (1997). Act 53 is attached hereto as Exhibit "A." Plaintiffs seek a declaratory judgment finding Act 53 unconstitutional, on its face and as applied, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution

2. Act 53, which became effective on January 26, 1998, amends the Drug and Alcohol Abuse Control Act to provide for the involuntary civil commitment of minors (under the age of eighteen) who are found by the court to be (i) drug-dependent and (ii) incapable of accepting or unwilling to accept voluntary treatment. The court must also find that the minor will benefit from involuntary treatment. However, contrary to its purported purpose, Act 53, in fact, permits the involuntary commitment of children based upon assessment methods that are neither standardized nor validated and that may be administered by three different categories of assessors with varying educational and professional qualifications. In failing to ensure that minors will be properly diagnosed, Act 53 fails to ensure both that those minors truly in need of treatment will receive appropriate treatment, and that minors who are not drug or alcohol dependent will be free of wrongful and unnecessary commitment.

3. Moreover, as enacted, Act 53 subjects minors to a significant loss of liberty without providing constitutionally required procedural protections. Indeed, despite the significant deprivation of liberty threatened by the Act, it affords minors substantially reduced procedural protections in comparison to Pennsylvania's analogous civil commitment provisions, such as those contained in the Pennsylvania Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. §§ 7101 et seq. (1997).

4. As a result of its enforcement of Act 53, the defendant class has violated, and will continue to violate, plaintiffs' rights unless and until the Act is declared unconstitutional.

II. JURISDICTION

5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 to hear this matter in that claims are asserted under the Constitution and laws of the United States,

including federal laws providing for the protection of civil rights.

6. Plaintiffs' claims for declaratory relief are authorized by 28 U.S.C. § 2202 and 42 U.S.C. § 1983.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because claims arose in this district, the named plaintiffs reside in this district, and the named defendant is located in this district.

III. PARTIES

A. Plaintiffs

8. Plaintiff Brandon E. is a sixteen-year-old male who resides in Philadelphia, Pa.

9. His date of birth is May 14, 1982.

10. Brandon is currently the subject of an Act 53 proceeding in Philadelphia Family Court. He brings this action through his next friend, Robert Listenbee, Esq., Chief of the Juvenile Unit of the Defender Association of Philadelphia. Mr. Listenbee is Brandon's court-appointed counsel in the Act 53 proceeding currently pending against him.

11. Plaintiff Joy E. is a seventeen-year-old female who resides in Philadelphia, Pa.

12. Her date of birth is October 13, 1980.

13. Joy is currently the subject of an Act 53 proceeding in Philadelphia Family Court. She brings this action through her next friend, Robert Listenbee, Esq., Chief of the Juvenile Unit of the Defender Association of Philadelphia. Mr. Listenbee is Joy's court-appointed counsel in the Act 53 proceeding currently pending against her.

B. Defendants

14. Defendant Abram Frank Reynolds is a Judge with the Family Court Division of the Philadelphia Court of Common Pleas. Pursuant to Section 12.1(a) of Act 53, all proceedings under Act 53 shall be heard by the judge or the division of the Court of Common Pleas assigned to hear juvenile matters under the Pennsylvania Juvenile Act, 42 Pa. Stat. Ann. §§ 6301 et seq. (1997). In accordance with Act 53, defendant Reynolds, along with other judges assigned to the Juvenile Division of the Philadelphia Family Court, is responsible for enforcing the Act in Philadelphia. Defendant Reynolds is sued in his official capacity only, and as a class representative of all other Family Court Judges statewide who are now, or who will be in the future, presiding over Act 53 proceedings.

IV. CLASS ALLEGATIONS

15. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), the named plaintiffs bring this state-wide class action on their own behalf and on behalf of all other persons similarly situated. The plaintiff class consists of all minors under the age of 18 who reside in Pennsylvania and who are currently, or who will be in the future, subject to proceedings for involuntary drug and alcohol commitment and treatment under Act 53.

16. The plaintiff class is so numerous that joinder of all plaintiffs is impracticable. On information and belief, since the Act became effective on January 26, 1998, at least twenty Act 53 petitions have been filed in Philadelphia alone. On an annual basis, this would amount to 40 petitions just in Philadelphia, not including the additional petitions filed in the other 66 counties around the State.

17. There are questions of fact and law common to the class, and those questions

predominate over all other questions affecting individual class members. All of the affected minors have the same federal and state constitutional rights to due process and equal protection before being subjected to involuntary commitment and treatment under Act 53, and before suffering any loss of their liberty under the Act. Additionally, all plaintiffs aged 14 through 17 have the same constitutional right under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to be treated the same, with regard to involuntary commitment and treatment, as minors aged 14 through 17 who are subject to involuntary commitment and treatment under the Pennsylvania Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. §§ 7101 et seq. (1997).

18. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs' claims arise from the same conduct -- the enforcement of Act 53 and the initiation of Act 53 proceedings against them -- that gives rise to the absentee members' claims.

19. The named plaintiffs will fairly and adequately protect the interests of the class. They have no claims antagonistic to the claims of the class. The plaintiffs and class members seek to assure that minors in Pennsylvania will not be subject to the fundamentally unfair and procedurally flawed involuntary commitment procedures set forth in Act 53.

20. A class action is the appropriate method for the fair and efficient adjudication of this controversy. Because of the statewide applicability of Act 53 to a constantly changing population of minors, a complete remedy for all minors subject, now and in the future, to Act 53 can only be obtained through class relief.

21. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), the named

defendant is sued on behalf of himself and on behalf of all other Common Pleas Court Judges in Pennsylvania who are similarly situated. The defendant class consists of all Pennsylvania Common Pleas Court Judges who are assigned to hear juvenile matters and who are, or who will be in the future, responsible for administering and enforcing Act 53 in the Commonwealth of Pennsylvania. Act 53 specifies that all proceedings under the Act shall be heard by the judge or the division of the Court of Common Pleas assigned to hear juvenile matters under the Pennsylvania Juvenile Act, 42 Pa. Cons. Stat. Ann. §§ 6301 et seq. (1997). See Act 53, Sec. 12.1(a), § 1690.112. All defendant class members are sued in their official capacities only.

22. The defendant class is so numerous that joinder of all defendants is impracticable. On information and belief, there are approximately 130 Family Court Judges in Pennsylvania.

23. There are questions of fact and law common to the defendant class, and those questions predominate over all other questions affecting individual class members. All of the defendant class members have the same obligation to enforce and administer Act 53.

24. The claims and defenses of the named defendant will be typical of the claims and defenses of the class. The authority of the named defendant to enter orders under Act 53, which is of statewide application, is common to all absentee members. Moreover, all members of the defendant class are required to act pursuant to the challenged provisions of Act 53.

25. The named defendant will fairly and adequately protect the interests of the defendant class because of the commonality of claims and defenses.

26. Since (i) Act 53 is of general, statewide application, (ii) Act 53 is challenged on the basis of its unconstitutionality, and (iii) all members of the defendant class are required to administer Act 53, the issuance of final declaratory relief applicable to the defendant class is appropriate.

V. FACTS

27. Act 53 was signed into law on November 26, 1997, and became effective on January 26, 1998. It amends the Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. §§ 1690.101 et seq. (1997).

28. Act 53 provides for court-ordered, involuntary drug and alcohol commitment and treatment of minors. Prior to the passage of Act 53, there was no provision in the Act for the involuntary commitment of minors for drug and alcohol treatment; if minors needed involuntary commitment, the Act directed that such minors be committed pursuant to the standards and procedures for involuntary commitment set forth in the Mental Health and Mental Retardation Act of 1966, 50 Pa. Cons. Stat. Ann. §§ 4101 et seq. (1997). See 71 Pa. Cons. Stat. Ann. § 1690.105. Minors could also seek and consent to voluntary drug and alcohol treatment on their own behalf. Id. § 1690.112.

29. Under the Mental Health Procedures Act, an individual 14 years of age and older may only be involuntarily committed for mental health treatment if the individual is "severely mentally disabled," namely, if, as a result of mental illness, "he poses a clear and present danger of harm to others or to himself." 50 Pa. Cons. Stat. Ann. § 7301(a). A showing of clear and present danger requires proof that -- within the preceding 30 days -- the individual either (i) inflicted or attempted to inflict serious bodily harm on another and it is

likely that the conduct will be repeated, or (ii) attempted to commit suicide, substantially mutilated himself or attempted to do so, or acted in such a way so as to pose a serious physical threat to himself in the ensuing 30 days. Id. § 7301(b)(1)-(2).

30. In contrast to the Mental Health Procedures Act, Act 53 now provides in pertinent part as follows:

SECTION 12.1 Commitment of Minors.

(a) A parent or legal guardian who has legal or physical custody of a minor may petition the court of common pleas of the judicial district where the minor is domiciled for commitment of the minor to involuntary drug and alcohol treatment services, including inpatient services, if the minor is incapable of accepting or unwilling to accept voluntary treatment. The petition shall set forth sufficient facts and good reason for the commitment. Such matters shall be heard by the division or a judge of the court assigned to conduct proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters), involving children who have been alleged to be dependent or delinquent.

(b) Upon petition pursuant to subsection (a), the court:

(1) Shall appoint counsel for the minor.

(2) Shall order a minor who is alleged to have a dependency on drugs or alcohol to undergo a drug and alcohol assessment performed by a psychiatrist, a licensed psychologist with specific training in drug and alcohol assessment and treatment or a certified addiction counselor. Such assessment shall include a recommended level of care and length of treatment. Assessments completed by certified addiction counselors shall be based on the department of health approved drug and alcohol level of care criteria and shall be reviewed by a case management supervisor in a single county authority. The court shall hear the testimony of the persons performing the assessment under this subsection at the hearing on the petition for involuntary commitment

(c) Based on the assessment defined in subsection (b) the court

may order the minor committed to involuntary drug and alcohol treatment, including inpatient services, for up to forty-five days if all of the following apply:

(1) The court finds by clear and convincing evidence that:
(i) the minor is a drug-dependent person; and (ii) the minor is incapable of accepting or unwilling to accept voluntary treatment services.

(2) The court finds that the minor will benefit from involuntary treatment services.

(3) Where the court decision is inconsistent with the level of care and length of treatment recommended by the assessment, the court shall set forth in its order a statement of facts and reasons for its disposition.

(d) A minor ordered to undergo treatment due to a determination pursuant to subsection (c) shall remain under the treatment designated by the court for a period of forty-five days unless sooner discharged. Prior to the end of the forty-five-day period, the court shall conduct a review hearing in accordance with subsection (c) for the purpose of determining whether further treatment is necessary. If the court determines that further treatment is needed, the court may order the minor recommitted to services for an additional period of treatment not to exceed forty-five days unless sooner discharged. The court may continue the minor in treatment for successive forty five-day periods pursuant to determinations that the minor will benefit from services for an additional forty-five days.

31. On June 23, 1998, Brandon's father filed a Petition, pursuant to Act 53, with the Philadelphia Court of Common Pleas, Family Court Division, seeking to have Brandon committed to involuntary drug and alcohol treatment for his alleged alcohol and marijuana dependency. (See Petition 373-98-06, attached hereto as Exhibit "B")

32. On information and belief, Brandon is not physically dependent on either drugs or alcohol.

33. On information and belief, Brandon does not meet the Diagnostic and Statistical Manual of Mental Disorders IV ("DSM-IV") criteria for a diagnosis of drug or alcohol dependence.

34. On July 15, 1998, Brandon appeared before defendant Judge Abram Frank Reynolds of the Philadelphia Family Court. Based upon the conclusory and brief allegations set forth in the Petition, Judge Reynolds ordered that Brandon be immediately assessed for drug and/or alcohol dependency, and continued the matter until August 3, 1998.

35. Brandon was assessed by a certified addiction counselor ("CAC") at the Courthouse later that same day, on July 15, 1998. The CAC used the Adolescent Problem Severity Index ("APSI"), a non-diagnostic screening instrument, to perform the assessment.

36. On information and belief, the assessment took approximately one hour to complete, and included questions concerning, inter alia, Brandon's involvement with the juvenile justice system, his school history, family history, social and emotional history, history and pattern of drug and/or alcohol use, and his involvement in other high risk behaviors including questions regarding his sexual activity.

37. Brandon appeared before Judge Reynolds again on August 3, 1998. The CAC, who did not testify, presented a written report and recommendation to Judge Reynolds. The CAC recommended that Brandon be committed to an inpatient drug treatment program for a period of 60-90 days.

38. Although Brandon does not believe that he requires drug treatment, in order to avoid being committed involuntarily under Act 53, Brandon advised Judge Reynolds that he would agree voluntarily to attend an outpatient drug treatment program. Judge Reynolds

continued Brandon's case for a status listing on August 26, 1998.

39. On June 18, 1998, Joy's mother filed a Petition, pursuant to Act 53, with the Philadelphia Court of Common Pleas, Family Court Division, seeking to have Joy committed to involuntary drug and alcohol treatment for her alleged alcohol and marijuana dependency. (See Petition 368-98-06, attached hereto as Exhibit "C")

40. On information and belief, Joy is not physically dependent on either drugs or alcohol.

41. On information and belief, Joy does not meet the Diagnostic and Statistical Manual of Mental Disorders IV ("DSM-IV") criteria for a diagnosis of drug or alcohol dependence.

42. On July 15, 1998, a hearing was held before defendant Judge Abram Frank Reynolds of the Philadelphia Family Court on the Act 53 petition concerning plaintiff Joy E. On information and belief, a CAC began to perform an assessment of Joy, using the APSI, but did not actually prepare a report. Judge Reynolds ordered that Joy submit to a drug urine test and continued the matter until August 7, 1998.

43. The drug urine test was negative.

44. Joy appeared before Judge Reynolds again on August 7, 1998. Judge Reynolds continued the matter until September 16, 1998, and ordered Joy to submit to two drug urine tests per week until then.

45. On information and belief, in all of the Act 53 matters which have been filed in Philadelphia Juvenile Court and in which minors have been ordered to undergo assessments, those assessments have been performed by a CAC using the Adolescent Problem Severity

Index, a non-diagnostic screening tool. See ¶59.

46. On information and belief, the assessments have been ordered on the basis of bare and conclusory allegations alleging drug dependency, and without affording the minor the opportunity to challenge the sufficiency of the allegations prior to being ordered to undergo the assessment.

47. Act 53 provides that the assessment may be performed by any one of the following: (1) a psychiatrist; (2) a licensed psychologist with specific training in drug and alcohol assessment and treatment; or (3) a CAC. Act 53, Sec. 12.1(a)(2), § 1690.112(a).

48. On information and belief, the certification of CACs is a voluntary regulation by the Pennsylvania Chemical Abuse Certification Board ("PCACB"), a non-governmental organization that grants recognition to CACs who meet certain standards defined by PCACB.

49. On further information and belief, to become a CAC, individuals need only have a bachelor's degree in a human service related field which includes three hundred hours (approximately 8 college credits) relevant to the field of addiction, plus three years of experience providing drug and alcohol abuse counseling services. On information and belief, the standards for counselor certification do not require that CACs have training or qualifications in the diagnosis of drug or alcohol dependence.

50. On information and belief, CACs generally are not required to have any specific training regarding adolescent drug and alcohol dependence or abuse.

51. As set forth in Act 53, if the assessment is completed by a CAC, it must be reviewed by a "case management supervisor in the single county authority." Act 53, Sec. 12.1(a)(2), § 1690.112(a). On information and belief, the training qualifications, experience,

and education of case management supervisors varies throughout the State as there are no statewide standard requirements for such supervisors. On further information and belief, some single county authorities do not even have case management supervisors.

52. Moreover, on information and belief, case management supervisors are not generally required to be psychologists or psychiatrists and are generally not qualified or licensed to diagnose drug or alcohol dependence. On information and belief, case management supervisors, like CACs, typically have a bachelor's degree, but generally have more extensive experience in drug and alcohol counseling and treatment than CACs. Moreover, on information and belief, case management supervisors are not required to have particular expertise regarding drug or alcohol dependent minors.

53. If the assessment is done by a CAC, it must be performed in accordance with drug and alcohol level of care criteria approved by the Pennsylvania Department of Health. See Act 53, Sec. 12.1(c)(2), § 1690.112a. On information and belief, the only such approved criteria are the American Society of Addiction Medicine Patient Placement Criteria-2 ("ASAM").

54. On information and belief, however, the ASAM is not a diagnostic tool, but rather is a guide regarding the appropriate level of care for those individuals otherwise diagnosed with a drug and alcohol problem by professionals qualified and licensed to make such a diagnosis. Indeed, the ASAM itself states that "all adolescents accepted for treatment of addiction in the defined levels of care are expected to have met diagnostic criteria for a substance-related disorder in the current Diagnostic and Statistical Manual of Mental Disorders (DSM) or other standardized and widely accepted criteria." Moreover, as the current DSM-IV

states, "the diagnostic categories, criteria and textual descriptions are meant to be employed by individuals with appropriate clinical training and experience in diagnosis." American Psychiatric Association, **Diagnostic Criteria from DSM-IV**, xxiii (1994).

55. Thus, Act 53 authorizes the involuntary commitment of minors for drug and alcohol treatment based upon assessments by CACs, who are unqualified to make a diagnosis of drug or alcohol dependence in accordance with medically accepted criteria, and who are required to recommend levels of care in accordance with ASAM, an instrument that should only be applied after such a medical diagnosis has been made.

56. Moreover, on information and belief, the ASAM has not been subjected to validity testing with regard to its application to adolescents and there is no empirical evidence that the ASAM's recommended levels of care actually lead to appropriate placements for the treatment of drug or alcohol dependent adolescents so as to justify reliance on it as a basis for the minor's deprivation of liberty under Act 53.

57. While Act 53 requires that "assessments" performed by CACs be done in accordance with ASAM level of care criteria, the Act fails to ensure or require that an adolescent subject to the involuntary commitment provisions of Act 53 will be properly and professionally diagnosed as drug or alcohol dependent. As noted above, ASAM level of care criteria are not diagnostic measures, but recommendations for care after a proper diagnosis has been made by a duly trained, qualified, and licensed professional.

58. On information and belief, although the ASAM is the only Department of Health approved level of care criteria under Act 53, CACs are using various "screening" instruments, such as the Adolescent Problem Severity Index ("APSI"), the Problem Severity

Index ("PSI"), and the Comprehensive Adolescent Severity Index ("CASI") to assess minors prior to applying the ASAM.

59. On information and belief, the APSI, the PSI, and the CASI cannot and should not be used to diagnose drug or alcohol dependence among adolescents. As screening instruments only, they can, at best, (i) identify areas in the adolescent's life that may warrant some form of intervention and (ii) indicate the need for a more in-depth clinical assessment of the adolescent.

60. On information and belief, no assessment tool or instrument currently exists that has been broadly sanctioned or approved by professionals in the field for use in the diagnosis of drug or alcohol dependence among adolescents.

61. As set forth above, Act 53 thus authorizes the involuntary commitment of minors based upon the assessment and recommendation of unlicensed CACs, who use a variety of non-diagnostic screening instruments and who are unqualified to make a diagnosis of drug or alcohol dependence in accordance with accepted DSM IV criteria.

62. Also as set forth above, Act 53 authorizes defendant Family Court Judges to commit involuntarily minors for an unlimited number of successive 45-day periods of inpatient confinement and treatment, without requiring in every instance that the minor first be diagnosed by a trained and licensed professional as drug or alcohol dependent and in need of such treatment.

63. Act 53 also subjects minors to subjective and varying standards of drug and alcohol dependence by providing that assessments may also be done by (i) licensed psychologists with specific training in drug and alcohol assessment and treatment and (ii)

psychiatrists. Unlike CACs, both psychologists and psychiatrists, on information and belief, would endeavor to diagnose drug or alcohol dependence in accordance with DSM-IV criteria. Also in contrast to CACs, psychologists and psychiatrists are not bound, under the Act, to use the Pennsylvania Department of Health-approved level of care criteria. Consequently, on information and belief, Act 53 fails to ensure "inter-rater reliability" -- i.e., consistency of commitment recommendations for the same individual regardless of which of the three categories of professionals performs the assessment.

64. As enacted, Act 53 places no specific time limitation on past drug and alcohol use that may be considered relevant by the court in ordering an assessment or in making a commitment decision. Act 53's failure to impose such a time limit is in contrast to other civil commitment statutes in Pennsylvania. For example, the Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. § 7301(b), requires that court-ordered involuntary mental health commitment of minors be based upon specific conduct occurring within the preceding 30 days.

65. Indeed, the Petitions filed against Brandon and Joy make no specific allegations of substance dependence -- either in the preceding 30 days or at all; rather, they assert only generalized allegations of drug and alcohol use. (See Exhibits B, C)

66. According to the Act, after the assessment has been completed and the court has "heard" from the assessor, the court must then find by clear and convincing evidence that the minor is (i) drug dependent and (ii) incapable of accepting or unwilling to accept voluntary treatment, in order to commit the minor. The court must also find, based on no specified evidentiary burden, that the minor will benefit from involuntary treatment. See Act 53, Secs. 12.1(c)(1)-(2), § 1690.112a. The Act fails to specify as to all three criteria who must carry

the burden of proof. The Act also fails to specify what rights the minors has at the "hearing" at which the court hears from the assessor.

67. As defined by the Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. § 1690.102, a "drug dependent person" is:

a person who is using a drug, controlled substance or alcohol, and who is in a state of psychic or physical dependence, or both, arising from administration of that drug, controlled substance or alcohol on a continuing basis. Such dependence is characterized by behavioral and other responses which include a strong compulsion to take the drug, controlled substance or alcohol on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence. This definition shall include those persons commonly known as "drug addicts."

68. This definition fails to provide adequate guidance as to its meaning and thus requires people of ordinary intelligence to guess at its meaning. Moreover, this definition does not convey sufficiently definite warning as to the proscribed conduct when measured by common understanding or practice. The terms "psychic dependence" and "psychic effects" are particularly vague, as is the requirement that usage of drugs or alcohol be "on a continuing basis." The "continuing basis" requirement fails to specify either the level of frequency that must be shown or the time period within which usage must have occurred.

69. Act 53 does not define the term "incapable of accepting" voluntary treatment, again forcing people of ordinary intelligence to guess as its meaning and failing to give definite warning as to the covered conduct.

70. While Act 53 specifies the evidentiary burden applicable to the court's findings regarding drug dependence and willingness or ability to accept voluntary treatment, the Act is silent as to the evidentiary burden applicable to the third of the court's required findings,

namely, whether the minor will benefit from treatment. See Act 53, Sec. 12.1(c)(1)-(2), § 1690.112(a).

71. Act 53 also fails to specify who will carry the evidentiary burden for establishing the three required findings, namely that the minor is drug dependent, is incapable of accepting or unwilling to accept voluntary treatment, and is going to benefit from involuntary treatment.

72. Once the court has made the three required findings detailed above, the court may order the minor committed to involuntary treatment for up to 45 days. See Act 53, Secs. 12.1(c)(1)-(2), § 1690.112a.

73. Act 53 does not require the court to limit its commitment of minors for involuntary drug and alcohol treatment to the least restrictive alternative consistent with the treatment needs of the child.

74. Likewise, Act 53 does not require that minors be released prior to their court-ordered commitment period if their treating clinical professionals so recommend.

75. Prior to the end of the 45 day period, the court must conduct a review hearing. If, at that review hearing, the court determines, again pursuant to no particular evidentiary burden, that further treatment is necessary, the court may recommit the minor for an additional 45 day period. The court may commit the minor for an unlimited number of subsequent 45 day periods. Act 53, Sec. 12.1(d), § 1690.112a.

76. In contrast, pursuant to the Drug and Alcohol Abuse Control Act, individuals eighteen years of age or older may only be involuntarily committed for drug and alcohol treatment in accordance with the procedures for involuntary mental health commitment

established by the Mental Health Procedures Act, 50 Pa. Cons. Stat. Ann. §§ 7101 et seq.
See 71 Pa. Cons. Stat. Ann. 1690.105; Act 53, Sec. 5, § 1690.105. As set forth herein, Act
53 now creates separate procedures for the involuntary commitment of minors (under the age
of 18) for drug and alcohol treatment that do not incorporate the procedures for the
involuntary commitment of minors established by the Mental Health Procedures Act.

77. Under the Mental Health Procedures Act, an individual 14 years of age and
older may only be involuntarily committed for mental health treatment if the individual is
"severely mentally disabled," namely, if, as a result of mental illness, "he poses a clear and
present danger of harm to others or to himself." 50 Pa. Cons. Stat. Ann. § 7301(a).

78. The Mental Health Procedures Act allows for an initial emergency examination
upon (i) the issuance by the County Mental Health/Mental Retardation Administrator of a
warrant for examination or (ii) the written statement of a physician, peace officer, or other
person authorized by the County Administrator describing the individual's personal
observation of conduct indicating an immediate need for treatment. Id. § 7302(a).

79. If, upon the emergency examination, the person is determined to be severely
mentally disabled and in need of emergency treatment, such treatment may be provided for up
to 120 hours. Id. §§ 7302(b), (d).

80. If the treating facility determines that the individual requires further emergency
involuntary treatment, an application may be made to the Court of Common Pleas to extend
the commitment period to up to 20 days. Id. §§ 7303(a), (f), (h).

81. A hearing must be held on this application before certification of such an
extended emergency involuntary treatment. Id. §§ 7303(b), (c), (g).

82. An individual who is severely mentally disabled and in need of more extended treatment may be subjected to court-ordered involuntary treatment not to exceed 90 days if the court determines that he poses a clear and present danger to himself or others. The court must find that the preceding criteria have been established by clear and convincing evidence. *Id.* §§ 7304(a)-(c), (f).

83. At the hearing under this section, the person who is the subject of the application for involuntary treatment has the right, *inter alia*: (1) to counsel; (2) to the assistance of a mental health expert; (3) to refuse to testify; (4) to confront and cross-examine witnesses; (5) to present evidence; and (6) to request that the hearing be private. *Id.* §§ 7304(e).

84. Moreover, any person subject to court-ordered involuntary mental health treatment has the right to be committed to the least restrictive alternative necessary. *Id.* §§ 7102, 7304(f). Indeed, the Mental Health Procedures Act expressly states a preference for voluntary treatment over involuntary treatment. *Id.* § 7102.

85. Consequently, under the Mental Health Procedures Act, inpatient treatment is deemed appropriate only after consideration has been given to less restrictive alternatives. Any order for inpatient treatment must include findings on this issue. *Id.* § 7304(f).

86. Under the Mental Health Procedures Act, if the director of the treating facility determines, at any time, that the person no longer is severely mentally disabled or in need of being treated for an imminent threat of harm to self or others, the director must discharge the person or petition the court for discharge (for individuals committed as a result of criminal acts). *Id.* § 7304(g)(3); *see also* § 7108(b).

87. Under the Mental Health Procedures Act, at the expiration of a 90-day involuntary commitment period, the court may extend the period of involuntary treatment only if it finds that the person continues to meet the requirements for extended court-ordered commitment and needs continuing court-ordered commitment as demonstrated by conduct during the most recent commitment period. Id. § 7305.

88. Under the Mental Health Procedures Act, a person found to be dangerous to himself, as opposed to others, may only be subjected to an additional period of full-time inpatient commitment if he has first been released to a less restrictive alternative. However, this limitation does not apply where the County Mental Health/Mental Retardation Administrator or the director of the treating facility has applied for a waiver and the court has determined that such a release would not be in the person's best interest. Id.

89. Under the Mental Health Procedures Act, the County Mental Health/Mental Retardation Administrator is responsible for administering involuntary mental health commitments. Thus, on information and belief, the County Administrator, or his or her delegate, is responsible, in virtually all cases, for pursuing involuntary commitment orders. See, e.g., id. § 7110(b); 55 Pa. Code § 5100.30(f)(3) (1997).

90. All of the above standards and procedures for involuntary mental health commitment apply to minors 14 to 17 years old. These standards and procedures also apply to adults subject to involuntary drug and alcohol commitment. See 70 Pa. Cons. Stat. Ann. § 1690.105; Act 53, Sec. 5, § 1690.105.

91. On information and belief, children who have drug and alcohol problems usually also have a number of other problems, particularly mental health and family problems.

92. On information and belief, minors in need of drug and alcohol treatment thus usually also are in need of some sort of mental health treatment.

93. By virtue of the foregoing, plaintiffs have established that there is an actual controversy presented by the application of Act 53 to them and that they face an imminent threat of involuntary commitment and/or other violations of their constitutional rights as a result of Act 53 being enforced against them.

94. If plaintiffs are involuntarily committed or if their constitutional rights are otherwise violated under Act 53, no adequate remedy will exist at law to compensate them for the unconstitutional deprivation of their liberty. Plaintiffs would suffer, and would continue to suffer, irreparable harm from any such violations or commitment.

VI. CLAIMS

COUNT ONE: Act 53 Violates the Due Process Clause of the Fourteenth Amendment in That It Is Unconstitutionally Vague

95. Paragraphs 1-94 are realleged and incorporated herein.

96. Act 53 is unconstitutionally vague, in violation of the Due Process Clause of the Fourteenth Amendment, in the following respects:

- a. The definition of "drug dependent person" set forth in Act 53 fails to provide adequate guidance as to its meaning and thus requires people of ordinary intelligence to guess at its meaning. Consequently, the Act fails to convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding or practice and fails to provide sufficiently explicit standards to restrict the discretion of the

court charged with enforcement of the Act.

- b. Act 53 limits court-ordered commitments to minors who are either incapable of accepting or unwilling to accept voluntary treatment but fails to define "incapable of accepting" voluntary treatment. The Act thus fails to provide adequate guidance as to its meaning and requires people of ordinary intelligence to guess at its meaning. Consequently, the Act fails to convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding or practice and fails to provide sufficiently explicit standards to restrict the discretion of the court charged with enforcement of the Act.

COUNT TWO: Act 53 Deprives Minors of their Liberty Without Due Process in Violation of the Fourteenth Amendment

97. Paragraphs 1-96 are realleged and incorporated herein.

98. Act 53, on its face and as applied, deprives minors of their liberty in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution as follows:

- a. By failing to require notice, a preliminary hearing or probable cause determination, and an opportunity for the minor to be heard to test the sufficiency of the allegations in the petition before ordering that the minor undergo an assessment that will serve as the sole basis for court-ordered involuntary commitment;

- b. By failing to require that the evidence of prior drug and alcohol use that may be considered relevant by the court in making a commitment decision be reasonably related in time to the current asserted need for involuntary treatment;
- c. By failing to provide that the minor has a right not to divulge matters during the course of the assessment that could be used as a basis for involuntary commitment and treatment;
- d. By permitting the involuntary confinement of minors who are found by the court to be "drug dependent" in the absence of a standardized diagnostic instrument or methods that have been tested and validated for the purpose of identifying drug dependent adolescents;
- e. By failing to require that the assessment and diagnosis of allegedly drug or alcohol dependent minors meet current medically accepted criteria for such diagnosis, or that the diagnosis be performed by qualified, licensed, and trained professionals utilizing valid and standardized diagnostic instruments or methods;
- f. By failing to provide for heightened procedural protections with each successive 45 day commitment period;
- g. By failing to set forth any standard of proof applicable to the required showing that the minor will benefit from involuntary treatment; and
- h. By failing to specify who has the burden of proof in establishing the criteria for involuntary commitment and treatment under the Act.

COUNT THREE: Act 53 Violates the Due Process Clause of the Fourteenth Amendment in That It Fails to Require that the Court Impose the Minimum Confinement Necessary To Meet the Minor's Treatment Needs

99. Paragraphs 1-98 are realleged and incorporated herein.

100. Act 53 violates due process in that it fails to require that the court order the minimum confinement that is consistent with the minor's need for treatment. Indeed, the applicable level of care criteria required to be used under the Act specifically look to other factors, such as family dysfunction, that are unrelated to the severity of the minor's drug and alcohol use and/or dependence.

COUNT FOUR: Act 53 Violates the Equal Protection Clause of the Fourteenth Amendment

101. Paragraphs 1-100 are realleged and incorporated herein.

102. The Equal Protection Clause of the Fourteenth Amendment directs that all persons similarly situated shall be treated alike. In accordance with the Equal Protection Clause, Pennsylvania may not enact legislation that differentiates among minors, including plaintiffs, for purposes of depriving them of their liberty unless such differentiation is rationally or substantially related to a valid state interest.

103. While Pennsylvania law affords minors aged 14 to 17 the right to comprehensive substantive and procedural due process protections before they may be involuntarily civilly committed for mental health treatment, see 50 Pa. Cons. Stat. Ann. § 7201, Act 53 denies similarly situated minors the same comprehensive substantive and procedural due process protections before involuntarily committing them for drug and alcohol treatment.

104. In failing to afford minors between the ages of 14 and 17 the same substantive and procedural protections afforded minors aged 14-17 for purposes of involuntary mental health treatment, Act 53 violates the Equal Protection Clause of the Fourteenth Amendment in that its different treatment of these similarly situated minors is not rationally or substantially related to a valid state interest.

COUNT FIVE: Act 53 Violates the Due Process Clause of the Fourteenth Amendment in That It Compromises the Neutrality of the Presiding Judge

105. Paragraphs 1-104 are realleged and incorporated herein.

106. In accordance with Act 53's statutory scheme, the petitioner — the minor's parent or guardian — has no other role in the proceeding except to initiate the proceeding by the filing of a petition. The Act does not require the petitioner to put on a case in support of commitment (either at the initial hearing, at the hearing following the assessment, or at the subsequent review hearings). As enacted and as applied, the court is thus required to act as both factfinder and prosecutor-petitioner. Requiring the court to serve in these dual roles compromises both the court's ability to sit as the "neutral factfinder" as well as the court's appearance of neutrality.

107. By implicitly, if not explicitly, placing the court in the dual role of both factfinder and petitioner, Act 53 violates plaintiffs' rights to due process under the Fourteenth Amendment of the United States Constitution.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

108. That this Court assume jurisdiction of this action.

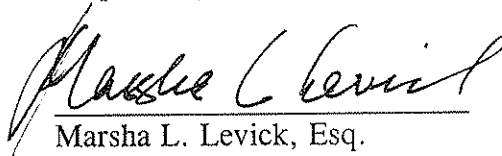
109. That this Court certify this as a plaintiff class action under Fed. R. Civ. P. 23(b)(2).

110. That this court certify this as a defendant class action under Fed. R. Civ. P. 23(b) (2).

111. That this Court issue a declaratory judgment that Act 53, 1997 Pa. Laws 53, amending the Pennsylvania Drug and Alcohol Abuse Control Act, 71 Pa. Cons. Stat. Ann. §§ 1690.101 et seq. (1997), is unconstitutional in that it violates plaintiffs' rights under the Due Process and Equal Protection Clauses of the United States Constitution.

112. That this Court award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

Respectfully submitted,



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