

F1967 and Response to Comments to Petition HP 00-4," March 2, 2001.

16. Memorandum from M. Kumagai, Directorate for Engineering Sciences, "Evaluation of Bath Seat Design," March 2, 2001.

17. Letter dated May 7, 2001 from Dr. Kimberly Thompson to Chairman Ann Brown re: Comments on Briefing Package Petition No. HP 00-4, Request to Ban Baby Bath Seats.

18. Memorandum dated May 21, 2001 to the Commission from Debra Sweet, Statistician, Division of Hazard Analysis, re: Comments from Kimberly M. Thompson, Sc.D., on Briefing Package for Petition HP 00-4, Request to Ban Baby Bath Seats.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

[BOP-1088-P]

RIN 1120-AB20

Administrative Safeguards for Psychiatric Treatment and Medication

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) amends its regulations on Psychiatric Treatment and Medication. We make several minor word changes to conform more closely with the language of 18 U.S.C. 4241-4247 on psychiatric hospitalization. We remove from the rule two elements of the standard for determining whether treatment or psychotropic medication is necessary because this element is inconsistent with community standards and case law. We also change the rules to conform with statutory authority regarding military prisoners and District of Columbia (DC) Code violators in Bureau custody. Previously, our procedures for involuntary psychiatric treatment and medication did not apply to military prisoners or DC Code violators. Under new statutory authority, military prisoners who are incompetent to stand trial, or who have been found not guilty by reason of lack of mental responsibility may now be committed to the Bureau's custody. Sentenced DC Code offenders may now be involuntarily committed to a Bureau psychiatric hospital. Such military prisoners and DC Code violators are subject to our regulations. We revise the applicability statement accordingly.

DATES: Please submit comments by February 27, 2004.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on providing psychiatric treatment and medication to inmates. We published a final rule on this subject in the **Federal Register** on September 25, 1995 (60 FR 49444).

The following is a section-by-section analysis of the changes we are making:

Section 549.40 Use of Psychotropic Medications. In this rule, we merely clarify that psychotropic medication is to be used only for a diagnosable psychiatric disorder or *symptoms* for which such medication is accepted treatment. Previously, the rule allowed medication for "symptomatic behavior." The word "symptoms" is more accurate medical terminology.

Section 549.41 Voluntary Admission And Psychotropic Medication. In this section, we revise subparagraph (a) to more closely conform with the language of 18 U.S.C. 4241-4247. We change the words "psychiatric treatment and medication" to "psychiatric hospitalization and treatment." We also clarify that inmates may be voluntarily admitted for psychiatric hospitalization and treatment when determined necessary by a clinician with hospital-admitting privileges, which is more accurate than the former term "qualified health personnel."

Section 549.42 Involuntary Admission. In this section, as in the previous section, we alter the first sentence by changing the words "psychiatric treatment" to "psychiatric hospitalization" to more closely conform with the language of 18 U.S.C. 4245.

Section 549.43 Involuntary Psychiatric Treatment and Medication. In this section, we revise the second sentence of the introductory paragraph by deleting", and no further judicial authorization is needed for the admission decision." and inserting "for the involuntary admission." The current rule explains that "[c]ourt commitment for the hospitalization provides the judicial due process hearing." The remaining phrase, which states that no further judicial authorization is needed, is redundant and unnecessary. We therefore make this change to streamline and clarify the language of this rule.

In subparagraph (a)(5), we clarify that the psychiatrist conducting a hearing to

determine whether treatment or psychotropic medication is necessary will no longer consider whether the inmate is unable to function in the open population of a mental health referral center or a regular prison as a separate basis to justify involuntary administration of medication. We make this change because we found this element to be inconsistent with community standards and applicable case law. *See Cochran v. Dysart*, 965 F.2d 649 (8th Cir. 1992).

Also in subparagraph (a)(5), we delete language that allowed the psychiatrist conducting an administration hearing to determine whether psychotropic medication is necessary to make an inmate competent to stand trial. This revision stems from the Supreme Court decision in *Sell v. U.S.*, 2003 WL 21372478, decided on June 16, 2003. Under the *Sell* decision, where involuntary treatment is considered solely for the purpose of rendering the defendant competent to stand trial, only the trial court may order involuntary medication after applying the standards set forth by the Court.

Finally, we change subparagraph (c) for the following reasons: Title 18 U.S.C. 4241-4247 and various Federal court decisions required certain due process procedures before involuntary hospitalization or involuntary psychiatric treatment. Under former 18 U.S.C. 4247(j), these due process procedures did not apply to military prisoners or DC Code violators.

However, new 10 U.S.C. 876b provides that military prisoners who are incompetent to stand trial or who have been found not guilty by reason of lack of mental responsibility may be committed to the custody of the Attorney General and that the procedures authorized under 18 U.S.C. 4241(d), 4246, and 4243 apply. Likewise, under new 18 U.S.C. 4247(j), DC Code violators are subject to commitment procedures specified at 18 U.S.C. 4245 and 4246.

Accordingly, we revise the list of exceptions in 28 CFR 549.43(c) to remove the reference to military prisoners and DC Code violators. We also clarified the last sentence of paragraph (c).

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been