

Appeals court ruling

Patterson fights mental code

By ROBERT KIPPER

OAKLAND COUNTY—Prosecutor L. Brooks Patterson, who said the new state mental health code provides for "the wholesale release of some of the most dangerous people in Michigan," is preparing to fight the new code in Circuit Court.

Patterson has directed his chief appellate counsel to appeal a recent Probate Court ruling that might release 33-year-old Robert Ray Reno, who was charged with killing a Ferndale man in 1973.

Reno is one of many persons institutionalized for their alleged involvement with violent crimes who Patterson fears may now be released due to the provisions of the new code.

Reno was institutionalized after being acquitted of murder charges by reason of insanity.

THE MENTAL health code, designed by the state legislature to safeguard the civil rights of persons in institutions, has prompted considerable confusion and opposition among the judges, prosecutors, attorneys and psy-



L. BROOKS PATTERSON

chiatrists who have grappled with it since it took effect last November.

The code gives all mental patients the right to a probate court hearing every six months to determine whether they still require commitment.

In order to keep a person in an institution it must now be demonstrated in court that the person is mentally ill or that he constitutes a danger to himself or society.

This means that persons like Reno, who were acquitted of criminal charges but placed in institutions, can now be freed if the prosecutor can't prove reasons still exist for institutionalization.

LAST WEEK Patterson's office failed in its effort in probate court to extend state supervision of Reno.

Three psychiatrists refused to term Reno mentally ill so commitment petitions were thrown out. One of the psychiatrists called Reno dangerous and another said he had homicidal tendencies.

Patterson now plans to appeal before Circuit Court Judge Robert Webster, who presided over Reno's 1973 murder trial.

Patterson will ask that the state code be declared unconstitutional because it fails to provide an adequate definition of "mental illness."

Without a precise definition, Patterson claims, psychiatrists can't determine when to testify that a person is mentally ill.

Although Webster's ruling on the code would apparently only apply to his court, it could establish a precedent for other circuit court judges to follow.

SINCE JUDGE Webster's ruling could be appealed by either side to the State Court of Appeals, and subsequently the State Supreme Court, it

could set in motion a statewide test of the constitutionality of the new statute.

A State Supreme Court ruling that the code was either unconstitutional or lacking in some way would require that the state legislature overhaul its mental health code.

Robert C. Williams, Patterson's chief appellate counsel, said if a state court test on the statute doesn't come from the Reno case it is only a matter of time before a different case tests the issue.

Williams said there is too much uncertainty and opposition about the code, and too many potential test cases, for some prosecutor somewhere in Michigan to fight the code in higher court.

PATTERSON SAID his office will oppose the release of as many as 27 persons, now confined, who once committed crimes in Oakland County.

Currently, between four and eight such cases are in various legal stages. Although Patterson said the challenge will be made on a case by case basis in probate court, he implied he would be willing to make anyone a test case should he have to fight release in higher court.

Besides Reno, other current cases involved with the mental health code:

DR. DANIEL BOUCHER, a former West Bloomfield dentist charged—and once found guilty—of murdering his ex-wife in 1971. Although scheduled for a retrial due to a legal technicality, Boucher was declared incompetent to stand trial and institutionalized. He may still be considered incompetent to stand trial yet not dangerous enough to be held in an institution.

ARTHUR DUFRANE, a Troy youth, found innocent of attempted murder after two psychiatrists testified he was insane. DuFrane was allegedly involved in shooting a policeman and two others with a rifle from a second story window in 1972. DuFrane was made a ward of the State Mental Health Department and the prosecutor's office has petitioned that he remain under the state's supervision.

CHARLES PORTUS, a 19-year-old judged innocent by reason of insanity in the July 1973 slaying of a seven-year-old Farmington Hills child. Portus' attorneys have petitioned for his release and the prosecutor's office is opposing it. One psychiatrist who ironically helped Portus get an innocent verdict by reason of insanity, has now turned prosecution witness to testify that, due to a psychotic illness, Portus should remain institutionalized.

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