IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	)	**Crim. Case No. 00-0164D**
Plaintiff,	)	
v.	)	**ORDER DENYING DEFENDANT'S MOTION TO TRANSFER TO CHC**
DWAYNE M. SIBETANG,	)	
Defendant.	)	

This matter came before the court on April 26, 2000 in courtroom 217A on Defendant Dwayne Sibetang's Motion to Transfer to Commonwealth Health Center ("CHC") Psychiatric Ward for psychiatric treatment (the "Motion"). Robert T. Torres, Esq. appeared on behalf of the Defendant, and James J. Benedetto, Esq. appeared on behalf of the Government. Following the hearing in this matter, the court announced its ruling and notified the parties that it would be issuing written findings and conclusions. After careful review and consideration of the testimony of witnesses, the arguments at the hearing, and all papers submitted in support of and in opposition to the Motion, the court now issues the following Findings of Fact and Conclusions of Law. **[p. 2]**

I. BACKGROUND

1. On March 23, 2000, the Government filed an Information charging the Defendant with one count of first degree murder, one count of second degree murder, two counts of assault with a dangerous weapon, and one count of burglary in connection with a March 16, 2000 stabbing incident at COCO Garden in Capitol Hill. The Information alleges that the Defendant, while armed with a dangerous weapon, killed Dong Che Ma and wounded Xing Fan Li during the perpetration or attempted perpetration of a burglary and/or robbery. Since that time, the Defendant has been held without bail in the Central Male Detention Facility

pending a psychiatric evaluation to determine whether he is competent to stand trial. Pursuant to his request and this court's order of March 30, 2000, the Defendant has been receiving psychiatric care and treatment at the Central Male Detention Facility.[1]

2. On April 13, 2000, Defendant filed this Motion, asserting that under the Patient's Rights Act, 3 CMC § 2551 *et seq.* [the "PRA"] and the Involuntary Criminal Commitment Act of 1993, 6 CMC § 6001 *et seq.* [the "Criminal Commitment Act"], he is entitled to psychiatric treatment in a facility that comports with the requirements for treatment of individuals with mental illnesses. The Motion contends that since the detention facility and the conditions of his detention do not comply with either statute, he should be transferred to CHC for continued treatment for the duration of his pretrial detention.

3. In response, the Government argues that the protections of the PRA apply only to involuntary civil commitments and not to individuals accused of crimes who are being properly detained in correctional institutions. Alternatively, the Government maintained that even if the Defendant were entitled to the rights enumerated in the PRA, there is no forensic treatment and evaluation facility in the Commonwealth suitable for accommodating the Defendant, and thus the Defendant should remain where he is. **[p. 3]**

4. At the hearing on this matter, Defendant argued that the Central Male Detention Facility was not appropriate for either treatment or evaluation in that it was not separated from the rest of the institution by walls, doors, sight and sound.[2] Defendant then maintained, in an oral motion to transfer to a facility outside the Commonwealth, that if CHC could not accommodate the Defendant pending his competency evaluation and for the duration of pretrial detention, then an immediate transfer to a forensic unit outside the Commonwealth was the appropriate remedy until such time as the Defendant is deemed competent to stand trial. *See* 6 CMC § 6609.

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[1] *See CNMI v. Sibetang*, Crim. Case No. 00-0164D (March 30, 2000) (Order Granting, in part, Petition for Voluntary Psychiatric Treatment and Motion to Determine Competency).

[2] *See* 6 CMC § 6601(c).

5. In response, the Government admitted that the Defendant would benefit from treatment elsewhere. The Government contended, however, that at this point in time and until the Defendant's competency to stand trail has been determined, the Defendant has no legal entitlement to be anywhere other than at the Department of Corrections ("DOC").

6. At the hearing on this matter, Defendant put on substantial evidence establishing that neither the DOC nor CHC are suitable facilities for housing persons with his particular needs pending evaluation and treatment. The testimony of Captain Johannes Ngiraibuuch, officer in charge of daily operations for the Central Male Detention Facility and the CNMI jail, was unrefuted: no CNMI correctional institution houses persons with mental illnesses separately from other convicts or detainees. Captain Ngiraibuuch further testified that although DOC maintains a room for persons with mental disorders in both the detention facility and the jail, neither of these rooms is separated from the inmate population by both sight and sound. Nor is there a room in either the detention or correctional facility that meets these qualifications. Captain Ngiraibuuch admitted that while a nurse and staff psychiatrist are available at DOC, they are only present eight hours a day. Aside from the nurse and psychiatrist, he revealed that there are no officers trained to handle inmates or detainees who suffer from mental illness. **[p. 4]**

7. Joseph Villagomez, the Secretary of Public Health, confirmed that no DOC facility has been designated as a facility suitable to evaluate, house, or treat the mentally ill. Nor has there even been an evaluation of any DOC facility for these purposes. Secretary Villagomez also testified that the Defendant has previously assaulted CHC staff and patients, and left the hospital without permission several times. According to Secretary Villagomez, CHC does not have a forensic psychiatric unit, a forensic psychiatrist, nor the staff to deal with volatile, aggressive behavior in patients requiring a secure setting.[3] Nor does CHC have any plans

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[3] Secretary Villagomez testified that CHC does not employ any security guards, and the six chronic patients who are currently housed at CHC require only minimal security because they can be maintained on medication. The hospital maintains an isolation room, but in the one instance that Mr. Villagomez could recall where CHC used the isolation room on a short-term basis to service a violent inmate from DOC, it required DOC to furnish a security guard round the clock for the entire duration of the inmate's stay.

in the immediate future either to conduct staff training or build a forensic unit. Secretary Villagomez further stated that since CHC cannot accommodate violent, aggressive and volatile patients who have committed or have been accused of committing crimes, when faced with something more than a brief hospital stay, it refers such persons off-island for treatment.

8. Dr. Anthony A. Bottone, a psychiatrist employed by the Division of Mental Health, testified about the Defendant's history and condition and essentially confirmed that CHC could not accommodate the Defendant. Dr. Bottone testified that the Defendant suffers from an organic personality disorder due to a brain injury[4] for which he has been hospitalized numerous times. Dr. Bottone confirmed that CHC does not have the staff or the facilities to house or treat the Defendant, nor does it have a male forensic population necessary to provide the setting and means to work on behavior modification. Dr. Bottone **[p. 5]** opined that the Defendant would benefit from a facility housing a forensic population of younger males, experienced in the treatment of alcohol and substance abuse, and offering techniques of behavior modification, neuropsychiatric testing, and neurological services. Dr. Bottone testified that if the Defendant were referred to such a forensic unit, that the facility could perform a competency evaluation while rendering care and treatment, even though the Defendant has not been involuntarily committed or yet sentenced.

9. Dr. Bottone pointed out that in contrast to CHC, DOC is staffed with a forensic psychiatrist and a nurse with some special training, but that the rest of DOC staff has not been specifically trained to deal with mental illness. Dr. Bottone admitted that during his detention at DOC, the Defendant has reported experiencing auditory hallucinations and has made what could be characterized as a suicide attempt. According to Dr. Bottone, however,

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[4] Behavioral health care professionals call disorders, illnesses, or diseases that have prominent emotional, behavioral, and psychological symptoms "mental disorders." The American Psychiatric Association has classified specific mental disorders by category and assigned to them numeric designations. *See* American Psychiatric Association: DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed.1994) ("DSM-IV"). Dr. Bottone characterizes the Defendant's condition as an "organic personality disorder" stemming from a brain injury and corresponding to DSM-IV code 310.1. The DSM-IV Code lists disorder 310.1 as a "personality change due to [some specified medical condition]."

the Defendant appears to be improving: he "looks very good"; he is not as agitated as he has been in the past; and he is free of psychotic symptoms.

II. QUESTIONS PRESENTED

1. Whether the Patient's Rights Act, 3 CMC § 2501, et seq., applies to a Defendant with a mental illness who: (a) is being detained, pending trial, (b) has requested, and is receiving, psychiatric care and treatment for his mental illness, and (c) has not yet been determined incompetent to stand trial.
2. Assuming that there is no treatment or evaluation facility in the Commonwealth suitable for accommodating the Defendant during pretrial detention, whether the Defendant's statutory right to adequate psychiatric and medical care and treatment requires transfer to a hospital outside the Commonwealth.

III. ANALYSIS

This case is unusual in several respects: The parties agree that the Defendant suffers from a mental illness, has voluntarily requested psychiatric treatment, and should be housed in a facility more therapeutic than that which DOC currently provides. The parties further agree that there is no forensic treatment and evaluation facility in the Commonwealth suitable for accommodating **[p. 6]** the Defendant. Finally, there is no dispute that the Defendant has certain rights so long as he is receiving treatment and remains in custody, and, as set forth below, the terms and conditions of his detention at the Central Male Detention Facility violate these rights. The only issue on which the parties appear to disagree is what remedy is mandated by statute in light of the dual objectives of protecting the Defendant's constitutional and statutory rights and the safety of the public.

A. Application of the PRA

On January 7, 1994, the Legislature enacted three measures to safeguard and protect the rights of persons with mental illness. The first, the Involuntary Civil Commitment Act of 1993 [the "Civil Commitment Act"],[5] provides an involuntary civil commitment procedure for mentally ill

[5] P.L. 8-36, *codified at* 3 CMC § 2501 *et seq.*

persons. The second, the Criminal Commitment Act,[6] establishes procedures to be followed for involuntary commitment of persons not competent to stand trial or be sentenced on criminal charges. The third, the PRA,[7] was enacted to safeguard and protect the rights of every person receiving voluntary or involuntary assessment, evaluation, care, or treatment at an evaluation or treatment facility. Enacted along with the Civil and Commitment Acts, the PRA makes no distinction between persons criminally or civilly committed, or whether the care, assessment, evaluation, or treatment being received is voluntary or involuntary.

In addition to specifying certain procedures to be followed in involuntary commitments, the Civil and Criminal Commitment Acts assure basic rights to all patients while in the care, custody, or control of an evaluation or treatment facility.[8] Section 7(a) of the PRA further entitles **[p. 7]** every patient "to such medical, social, and rehabilitative services as their condition may require to bring about their improvement or release from psychiatric inpatient care, in a setting and under conditions that are most supportive and least restrictive of their personal liberty." 3 CMC § 2557(a). In addition to the right to receive services in a minimally restrictive but supportive setting, the PRA recognizes certain personal rights of persons being assessed, evaluated, or treated at an evaluation or treatment facility,[9] and imposes "minimum requirements" for the treatment of all patients including, but not limited to: (1) sufficient qualified mental health professional staff in the evaluation

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[6] P.L. 8-37, *codified at* 6 CMC § 6001 *et seq*.

[7] P.L. 8-38, *codified at* 3 CMC § 2551 *et seq*.

[8] *Compare* Civil Commitment Act, 3 CMC 2501(w) (these rights include, but are not necessarily limited to: (1) the right to prompt and adequate treatment by qualified mental health professionals, (2) medication rights, (3) right to informed consent for and to refuse treatment, (4) freedom from and informed consent to treatment procedures, and (5) access to confidentiality records) *with* Criminal Commitment Act, 6 CMC § 6001(g) (these rights include, but are not necessarily limited to: (1) the right to prompt and adequate treatment by qualified mental health professionals, (2) medication rights, (3) right to informed consent for and to refuse treatment unless the patient lacks capacity to consent, (4) freedom from restraints and isolation rights, (5) freedom from and informed consent to surgery and treatment procedures, and (6) access to confidentiality records).

[9] 3 CMC § 2556. These personal rights include the right to receive and send sealed correspondence, access to letter-writing materials, access to telephones and to make and receive calls in privacy, to frequent and convenient opportunities to meet with visitors and to see an attorney, clergyman, or physician at any time, to wear his own clothes, use personal possessions, and expend reasonable personal funds, not to be fingerprinted unless otherwise required by law, to remain silent, and to exercise all civil rights without reprisal.

facility, (2) written individualized treatment plans for each patient, (3) evidence in the record that the treatment plan is being followed, (4) periodic review of treatment, (5) evidence of actual treatment, including individual therapy, group therapy, occupational therapy, and (6) appropriate discharge planning where applicable. The PRA further guarantees persons the right to be free from chemical and physical restraint and isolation except in emergency situations when, for example, a mental health professional or attending physician documents that the patient presents an imminent threat of substantial harm to himself of others, and less restrictive means are not feasible. 3 CMC § 2558.

In summarily dismissing the PRA as a civil commitment statute (Opp. at 2), the Government mistakenly assumes that the PRA does not apply in situations where an individual is incompetent to stand trial or be sentenced on criminal charges. A careful reading of the PRA does not support the Government's position. First, the PRA expressly extends its reach to every "person" receiving voluntary or involuntary assessment, evaluation, care, or treatment at an evaluation or treatment facility. 3 CMC § 2551; see also 3 CMC § 2557(a) (the protections of the Act apply to every "patient," whether "inpatient or outpatient, voluntary or involuntary"). **[p. 8]** Second, aside from a single provision permitting the personal rights of those criminally committed on an involuntary basis to be restricted,[10] the PRA does not differentiate between the rights of persons civilly or criminally committed, and contains no exclusion for persons awaiting trial on criminal charges or for those adjudicated incompetent to stand trial or be sentenced on criminal charges.[11] Nor does the Criminal Commitment Act limit the rights of persons in custody to those enumerated in that statute.[12]

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[10] Section 6(c) of the PRA expressly provides that persons committed under the Criminal Commitment Act may have the personal rights enumerated in 3 CMC § 2556 limited for reasonable security considerations under rules promulgated and adopted by the Director of Public Health and Environmental Services.

[11] As a general principle of statutory construction, the enumeration of specific exclusions from a statute is an indication that the statute applies to all cases not specifically excluded. *Palmer v. United States*, 742 F.Supp. 1068 (D.Haw. 1990), *aff'd*, 945 F.2d 1159 (9th Cir. 1991). *See also* N. Singer, 2A SUTHERLAND STATUTORY CONSTRUCTION § 47.11 (5th ed. 1993). Accordingly, the limitation in section 6(c) of the PRA lends strong support to the conclusion that the remainder of the statute applies equally to those who have been criminally committed on an involuntary basis.

[12] *See* 6 CMC § 6001(g); *see also* Note 7, *supra*.

Instead, the PRA applies uniformly to assessments, evaluations, care, and treatment at every "evaluation or treatment facility." Since, pursuant to this court's March 30 Order, the Defendant is undergoing a psychiatric "evaluation" to determine competency and, according to Dr. Bottone, the Defendant is also receiving "treatment" as defined by statute,[13] so long as the Central Male Detention Facility qualifies as an "evaluation facility" or a "treatment facility" under the PRA, the court rules that the protections of the PRA extend to this Defendant.

The parties agree, as they must, that the definitions used in the Civil Commitment Act, 3 CMC § 2501, apply to the PRA.[14] Under the PRA, a correctional institution or facility or jail may serve as an "evaluation facility" or "treatment facility" when persons are properly detained **[p. 9]** therein. *See* 3 CMC § 2501(m). Since his arrest on March 17, 2000, the Defendant has been lawfully held, without bail, in the Central Male Detention Facility. In light of the clear and unambiguous mandate of the statute, affording a humane treatment environment and reasonable protections to every person seeking or receiving evaluation or treatment, the court therefore concludes that the protections and guarantees of the PRA apply to the Defendant.

B. The Criminal Commitment Act

The Criminal Commitment Act establishes procedures for determining competency at trial. When, as in this case, a party makes a motion to determine the defendant's competency to stand trial, the court suspends proceedings in the criminal prosecution and orders a psychiatric examination. 6 CMC § 6606. Should at least one psychiatrist conclude that a defendant may be incompetent to be proceeded against or sentenced, then the court sets the matter for hearing.[15] If the

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[13] The Civil Commitment Act defines "evaluation" as the process of studying a person's mental illness to formulate a diagnosis, determine its intensity and scope, and among other things, consider appropriate treatment. 3 CMC § 2501(l). "Treatment," on the other hand, means "any effort to accomplish any significant change in the physical mental or emotional condition or behavior of the patient...." 3 CMC § 2501(aa).

[14] See Commission Comment to 3 CMC § 2501, stating that the "legislative history indicates that the definitions in 3 CMC § 2501 were intended to apply in article 2 of this chapter (PL 8-38, the Patient's Rights Act, codified at 3 CMC § 2551 et seq.) as well as in this article [the Involuntary Civil Commitment Act]." Accordingly, the Commission inserted the phrase "[a]s used in this chapter:" at the beginning of this section."

[15] The burden of proving incompetency is on the party asserting it and requires proof by a preponderance of the evidence. 6 CMC § 6007(b).

court finds the defendant incompetent to stand trial but there is a substantial likelihood that he will regain competency within ninety days, the court must order him "committed to an evaluation facility or a treatment facility for custody, care and treatment up to 30 days consistent with the patient's rights." 6 CMC § 6607(d).[16] While the Act enables the court to extend the commitment period or order the defendant's conditional release if the defendant is not a danger to himself or others, the total period that a defendant who has not yet been found guilty on the pending charge can be held is the lesser of 180 days or one-third of the provided for as a maximum jail sentence. *Id.* If the court determines that a defendant is incompetent to stand trial and that there is no substantial likelihood that he will regain competency within the time provided by statute, then the court, upon its own motion or the motion of either party, must dismiss **[p. 10]** the pending indictment, information, or other criminal charges and release the defendant from custody. 6 CMC § 6607(g).[17]

Under the Criminal Commitment Act, any person incarcerated in a detention, jail, or correctional facility has the right to prompt and adequate medical care, including psychiatric care. 6 CMC § 6609. In addition to the protections afforded by the PRA, the Criminal Commitment Act also addresses the rights of persons in the care, custody or control of an "evaluation or treatment facility." As its civil counterpart, the Criminal Commitment Act also permits a correctional institution or facility or jail to be designated as an evaluation or treatment facility, so long as the person is properly detained therein and in an area "separated by walls, doors, sight and sound from the rest of the institution." pursuant to 6 CMC §§ 6601(c) and (h).

Whereas, under the Criminal Commitment Act, the Central Male Detention Facility may, at some point, be modified and configured to serve as an evaluation or treatment facility, the court finds that to date, it does not. The court finds the testimony of Captain Johannes Ngiraibuuch compelling: there is no correctional institution or facility or jail in the Commonwealth that houses persons with

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[16] While the Act enables the court to extend the commitment period or order the defendant's conditional release if the defendant is not a danger to himself or others, the total period that the defendant can be held is the lesser of 180 days or one-third of the time provided for under the maximum jail sentence, 6 CMC § 6007(d).

[17] An order of unconditional release issued pursuant to 6 CMC § 6607(g), however, will not bar commencement of any available civil commitment proceedings.

mental illnesses separately from other convicts or detainees. Nor is there a room in either the detention or correctional facility that is separated from the inmate population by walls, doors, sight and sound so as to satisfy the requirements of 6 CMC §§ 6601(c) and (h). Equally troubling to the court was the testimony of Captain Ngiraibuuch and Dr. Bottone establishing the absence of sufficient qualified mental health professional staff at the DOC and the testimony of Secretary Villagomez, that no DOC facility has been designated as a facility suitable to evaluate, house, or treat the mentally ill.

Secretary Villagomez and Dr. Bottone essentially admit that there is no treatment or evaluation facility in the Commonwealth suitable for accommodating persons with a mental illness and who have committed or been accused of committing violent crimes. It is significant that, rather than providing a facility to meet the needs of volatile aggressive patients requiring a secure **[p. 11]** setting, the Government has, in the past, elected to send this portion of its population off-island. In light of Dr. Bottone's testimony that the Defendant has been improving and the possibility that DOC could modify its facilities to construct a facility and treatment program that involves more than the segregation in close supervision of mentally ill inmates, the court is disinclined at this juncture to grant the Defendant's oral motion to transfer to a hospital off-island. Pending the competency evaluation, which shall take place forthwith, the court therefore issues the following rulings:

ORDER

The Court FINDS and ORDERS as follows:

3. The Defendant's Motion to Transfer to CHC is DENIED. CHC is not a facility suitable for accommodating this Defendant, with or without a guard.

4. The court finds that pursuant to the PRA, 3 CMC § 2557(a), and the Criminal Commitment Act, 6 CMC §§ 6601(g) and 6609, the Defendant, as a person lawfully detained pending trial in a detention, jail, or correctional facility, has the right to receive prompt and adequate psychiatric and medical care from qualified mental health professionals in a facility that comports with the requirements for treating and evaluating persons with mental illness. The court further finds that the Central Male Detention Facility is not such a facility. The Central Male Detention Facility appears to lack sufficient qualified mental health professional staff

to address the needs of mentally ill inmates and detainees, and has no area separated by walls, doors, sight and sound from the rest of the institution that is being used to treat or evaluate persons with mental illness.

5. Based on the state of the record, the court finds there is insufficient information to determine whether the Commonwealth is in compliance with the Defendant's right to treatment under the PRA and the Criminal Commitment Act. The court notes, however, that in its Order of March 30, 2000, it granted Defendant's request for voluntary treatment. It also directed the parties to proceed with the competency evaluation forthwith. The parties admit that a competency evaluation need not be a long, drawn-out **[p. 12]** process, and pursuant to 6 CMC § 6007(a), they should have been prepared to litigate this issue within ten (10) days of the court's March 30 Order.

6. The deadline for designating an expert to determine whether the Defendant is competent to stand trial under 6 CMC § 6603(a) is therefore extended to May 5, 2000. Should the parties fail to agree on an expert by then, then the parties are directed to file expert designations along with curricula vitae and other information that could be useful to the court and the court will appoint a psychiatrist or other expert to examine the Defendant. Pursuant to 6 CMC § 6604, the parties' expert shall be directed to advise the court, in writing, as to the status of the competency evaluation no later than Tuesday, May 30, 2000.

7. On or before May 30, 2000, the parties are directed to file a status report updating the court on the status of DOC's facilities. Specifically, the parties shall notify the court whether the Secretary of Public Health and Environmental Services has designated any DOC facility as a facility suitable to evaluate, house, or treat the mentally ill pursuant to 6 CMC § 6001(c) and (h).

8. Consistent with its earlier rulings on this matter, the court further directs the parties to file appropriate motions as necessary in order to address the Defendant's treatment needs.

9. This matter is continued to June 7, 2000 at 1:30 p.m. for hearing to determine whether the Defendant is competent to stand trial. Should the court determine that the defendant is incompetent to stand trial, at that time the court shall order the Defendant committed for care

and treatment to a hospital outside of the Commonwealth. The parties shall be prepared at this hearing to provide the court with sufficient information about and recommendations for a suitable facility in order to assist the court in making its determination.

So ORDERED this 04 day of May, 2000.

/s/ Timothy H. Bellas

TIMOTHY H. BELLAS, Associate Judge