



1-1-2001

# Criminal Procedure / Catch-22: An Inquiry into the Competency of Metnally Disordered Offenders to Waive Their Right to Recommitment Hearings

Alexandra B. McLeod

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Legislation Commons](#)

## Recommended Citation

Alexandra B. McLeod, *Criminal Procedure / Catch-22: An Inquiry into the Competency of Metnally Disordered Offenders to Waive Their Right to Recommitment Hearings*, 32 MCGEORGE L. REV. 593 (2001).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol32/iss2/19>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

# Catch-22: An Inquiry Into the Competency of Mentally Disordered Offenders to Waive Their Right to Recommittal Hearings

Alexandra B. McLeod

## Code Sections Affected

Penal Code § 2972.1 (new);  
§§ 1600.5, 1607, 2972 (amended).  
AB 1881 (Gallegos); 2000 STAT. Ch. 324

*“Nothing defines the quality of life in a community more clearly than people who regard themselves, or whom the consensus chooses to regard, as mentally unwell.”<sup>1</sup>*

## I. INTRODUCTION

In response to concerns about the adequacy of in-prison psychiatric treatment, the California Legislature enacted the Mentally Disordered Offenders (MDO) Law in 1985.<sup>2</sup> The law was necessary because “increasing numbers of mentally ill, yet not legally insane, inmates were being admitted to prison.”<sup>3</sup> Therefore, the original MDO Law enabled some qualifying patients to receive treatment as outpatients beyond their prison sentence if their MDO status were redetermined annually.<sup>4</sup> However, some district attorneys charged with litigating MDO cases have seen a 700% increase in the last three years.<sup>5</sup> As the demands on district attorneys inflate, the Legislature has reacted by restructuring the litigation provisions of the California MDO Law through Chapter 324. The crux of Chapter 324 is the provision that enables MDO patients, with the aid of their attorneys, to waive a jury trial for their recommittal determination.<sup>6</sup> This change in commitment proceedings is likely to affect at least 300 MDOs currently residing in mental hospitals and prisons throughout California.<sup>7</sup>

---

1. Renata Adler, *The Thursday Group*, THE NEW YORKER (1967) reprinted in TOWARD A RADICAL MIDDLE, available at [http://www.cyber-nation.com/victory/quotations/authors/quotes\\_adler\\_renata.htm](http://www.cyber-nation.com/victory/quotations/authors/quotes_adler_renata.htm) (last visited Jan. 22, 2001).

2. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 7 (June 6, 2000).

3. *Id.*

4. CAL. PENAL CODE § 2970 (West 2000).

5. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 2 (Mar. 14, 2000).

6. CAL. PENAL CODE § 2972.1(c) (enacted by Chapter 324).

7. Richard Brooks, *Mentally Ill or Bad Behavior?*, PRESS-ENTERPRISE, Aug. 19, 2000, at B1, available in 2000 WL 25661074.

## II. EXISTING LAW

### A. Statutory Scaffolding

Under current law, a prisoner who is committed to a mental health facility may be placed on outpatient status; however, time spent on outpatient status does not count toward the prisoner's maximum term of imprisonment.<sup>8</sup> Although the MDOs are not housed in a mental health facility, these year-long periods of outpatient treatment are nonetheless termed as civil commitment.<sup>9</sup> Existing law also requires the community program director to prepare progress reports on MDOs every ninety days and, where appropriate, to submit an opinion to a court stating that a committed person has regained competence.<sup>10</sup> These provisions lay the foundation for the MDO Law.

### B. Mentally Disordered Offenders Law

The Mentally Disordered Offenders Law, first enacted in 1985,<sup>11</sup> authorizes the State Department of Mental Health to involuntarily commit and treat MDOs who are released on parole.<sup>12</sup> Any alleged MDO that the State seeks to commit must meet several criteria: (1) she must have a severe mental disorder, not in remission, which cannot be kept in remission without treatment;<sup>13</sup> (2) the disorder must have been a cause of the crime for which the alleged MDO was imprisoned and must cause the offender to present a substantial danger of physical harm to others;<sup>14</sup> (3) she must have been convicted of a violent or sexual crime;<sup>15</sup> and (4) the prisoner must have been in psychiatric treatment for at least ninety days while in prison.<sup>16</sup>

If the prisoner meets these qualifications, continued treatment of her severe mental disorder may become a condition of the offender's parole.<sup>17</sup> Any such commitment will be for a period of one year.<sup>18</sup> However, the MDO can be held

---

8. CAL. PENAL CODE § 1600.5 (West 2000).

9. *Id.* (incorporating the definition of commitment from the Welfare and Institutions Code. Hereinafter, use of the term "commitment" refers to the classification as a "mentally disordered offender" who is in the custody of the state, whether for inpatient or outpatient treatment).

10. *Id.* § 1607 (West 2000).

11. *Id.* §§ 2960-2981 (West 2000).

12. 3 B.E. WITKIN & NORMAN L. EPSTEIN, CALIFORNIA CRIMINAL LAW, *Punishment for Crimes*, § 1747A(1) (2d ed. Supp. 1999).

13. CAL. PENAL CODE § 2960 (West 2000); *Id.* § 2972(c) (West 2000).

14. *Id.*; *see also id.* § 2962(e)(2)(P) (West 2000) (applying the statute to crimes "not enumerated . . . in which the prisoner used force or violence, or caused serious bodily injury"); *People v. Anzalone*, 19 Cal. 4th 1074, 1083, 969 P.2d 160, 162, 81 Cal. Rptr. 2d 315, 317 (1999) (holding that the defendant was not subject to the Mentally Disordered Prisoners' Act because he did not use a dangerous or deadly weapon in a bank robbery).

15. CAL. PENAL CODE § 2960 (West 2000).

16. *Id.*

17. *Id.* §§ 2962-2981 (West 2000).

18. *Id.*

indefinitely if the district attorney is annually able to prove MDO status in a jury trial.<sup>19</sup> The primary change brought about by Chapter 324 pertains to this annual review of the MDO's mental condition.<sup>20</sup>

The MDO Law specifically dictates that all commitment hearing be civil in nature.<sup>21</sup> This ensures a non-punitive scheme.<sup>22</sup> Yet, this classification brings with it certain implications for the procedures of commitment or recommitment hearings.<sup>23</sup> A civil classification of the law has repercussions that affect the MDO's right to a jury trial,<sup>24</sup> right against self-incrimination,<sup>25</sup> and the *ex post facto* effect of the law.<sup>26</sup> These facts are indicative of MDOs' limited rights in civil proceedings.<sup>27</sup> However, existing law imposes the highest standard of proof in proceedings under this section, requiring the district attorney to prove MDO status beyond a reasonable doubt.<sup>28</sup> In addition, existing law encourages that MDOs be placed on outpatient status, unless there is reasonable cause to believe that the committed "person cannot be safely and effectively treated" as an outpatient.<sup>29</sup>

### III. CHAPTER 324

Chapter 324 relates to MDOs who are not confined, but who are civilly committed.<sup>30</sup> The definitions, basic requirements, and limitations imposed by Penal Code sections 1600.5 and 1607 remain in effect under Chapter 324.<sup>31</sup> Nonetheless, one change made by the new law is that persons committed pursuant to the MDO Law are incorporated into provisions dealing with outpatient status.<sup>32</sup> Additionally, Chapter 324 clarifies Penal Code section 2972<sup>33</sup> so that any time a MDO spends in

19. *Id.* § 2970 (West 2000).

20. CAL. PENAL CODE § 2972.1(c)(1)-(2) (enacted by Chapter 324).

21. CAL. PENAL CODE § 2972(a) (West 2000).

22. *Id.*

23. WITKIN & EPSTEIN, *supra* note 12 at § 1747A; *Infra* notes 24-26 and accompanying text.

24. CAL. PEN. CODE § 2972(a) (West 2000). Before the enactment of Chapter 324, this section provided that a jury trial must be waived by both the MDO and the district attorney. *Id.* Without the additional guarantees to a jury trial that a criminal proceeding brings, the MDO's right is subject to statutory revision. *Id.*

25. *See* *People v. Merfeld*, 57 Cal. App. 4th 1440, 1446, 67 Cal. Rptr. 2d 759, 763 (1997) (holding MDO defendants are "not entitled to a criminal defendant's absolute right to refuse to testify").

26. *See* *People v. Robinson*, 63 Cal. App. 4th 348, 352, 74 Cal. Rptr. 2d 52, 54 (1998) (emphasizing the statute's language that the law is not punitive, and applying the law to MDOs whose crimes were committed before the effective date of the statute. The court also held that retroactive application of the MDO Law under those circumstances does not violate the *ex post facto* clause); *People v. Superior Court*, 50 Cal. App. 4th 826, 840, 58 Cal. Rptr. 2d 32, 41 (1996) (same).

27. *See generally* U.S. CONST. amend. VI (guaranteeing minimum rights of the accused in criminal prosecutions).

28. CAL. PENAL CODE § 2972(a)2 (West 2000).

29. *Id.* § 2972(d) (West 2000).

30. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 3-4 (Mar. 14, 2000).

31. CAL. PENAL CODE § 1600.5 (amended by Chapter 324); *Id.* § 1607 (amended by Chapter 324).

32. CAL. PENAL CODE § 1600.5 (amended by Chapter 324); *Id.* § 1607 (amended by Chapter 324).

33. *See* CAL. PENAL CODE § 2972 (amended by Chapter 324) (providing the only section of the Mentally Disordered Offenders Law that is amended by Chapter 324).

outpatient treatment for her mental disorder will not count as actual custody and "shall not be credited toward the person's maximum term of commitment."<sup>34</sup>

Chapter 324 adds an entirely new section to the Penal Code<sup>35</sup> which radically changes proceedings under the Mentally Disordered Offenders Law by converting the annual recommitment hearings from an automatic proceeding to a hearing waivable by the MDO.<sup>36</sup> Notably, Chapter 324 is so narrowly tailored that its application is limited to only those MDOs on outpatient status.<sup>37</sup> The automatic recommitment hearing still applies to those MDOs treated in mental hospitals on inpatient status, by reason of its conspicuous absence from the new law.<sup>38</sup> Therefore, inpatient MDOs (reasonably the most ill, the most dangerous, and, consequently, the most likely to require recommitment) will continue to relitigate their status annually.<sup>39</sup> Thus, Chapter 324 will "retain the automatic annual hearing requirement for all persons confined to an inpatient treatment program. However, rehearing will be set for the persons in outpatient programs only upon request of the patient or outpatient treatment program."<sup>40</sup> This discrepancy will be the focus for many of the law's critics.<sup>41</sup>

The amended law also sets a clear time limit for duration of MDO outpatient and non-outpatient status.<sup>42</sup> The period of outpatient status is not to exceed one year<sup>43</sup> without a reconsideration of the offender's mental condition<sup>44</sup> and a recommendation as to whether the MDO should be released outright, be confined to a hospital for inpatient care, or continue for another year on outpatient status.<sup>45</sup> The recommendation should be issued by the director of the outpatient program currently treating the offender.<sup>46</sup> A copy of the recommendation must be sent to the court, the district attorney, the defense counsel, the patient and the medical facility treating the MDO.<sup>47</sup>

Under Chapter 324, a hearing to determine the patient's mental status is no longer automatic.<sup>48</sup> Instead, defense counsel must confer with the MDO and explain

---

34. CAL. PENAL CODE § 2972(c) (amended by Chapter 324).

35. *Id.* § 2972.1 (enacted by Chapter 324).

36. *Id.* § 2972.1(c), (d); *see* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 1 (Mar. 14, 2000) (noting the abandonment of automatic annual hearings).

37. *See* CAL. PENAL CODE § 2972.1(a) (enacted by Chapter 324) (limiting application of the statute to "[o]utpatient status for persons committed pursuant to Section 2972").

38. *See id.* (excluding inpatient MDOs from the language of the new section); *infra*, note 39.

39. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1881, at 2 (Apr. 26, 2000) (quoting statement of position by Los Angeles District Attorney's Office).

40. *Id.*

41. *Infra* Part IV.

42. CAL. PENAL CODE § 2972(c) (amended by Chapter 324).

43. *Id.* § 2972.1(a) (enacted by Chapter 324).

44. *Id.*

45. *Id.* § 2972.1(b) (enacted by Chapter 324).

46. *Id.*

47. *Id.*

48. *See supra* notes 36-40 and accompanying text.

the recommendation of inpatient confinement or continued outpatient treatment.<sup>49</sup> Even assuming that the patient has the advice of counsel, the previously diagnosed mentally disordered offender must fill out the following form:

Check one:

\_\_\_\_\_ I do not believe that I need further treatment and I demand a jury trial to decide this question.

\_\_\_\_\_ I accept the recommendation that I continue treatment.<sup>50</sup>

If the MDO refuses to waive a recommitment hearing, she may apply to the superior court for a review.<sup>51</sup> Perhaps in realization of the competency issues presented by this scenario, the statute provides that defense counsel may sign the form if the patient is unable to do so herself.<sup>52</sup> In such a circumstance, the attorney must certify that both the form and the recommendation were explained to the MDO.<sup>53</sup> The law also provides that if the patient “requests a jury trial or fails to waive her right to a jury trial, a jury trial will be set within sixty days.”<sup>54</sup> On the other hand, if the trial is waived, the court must determine whether the above procedures were followed correctly before making a determination of the patient’s status for the forthcoming year.<sup>55</sup>

In summary, according to its author, Chapter 324 effectuates an:

amend[ment to] California’s MDO law so that district attorneys . . . only have to relitigate MDO cases where the defendant is confined in an inpatient mental health treatment facility, unless the defendant or his/her physician believes that the defendant no longer poses a danger to society. [This amendment limits] the automatic relitigation of MDO cases to those where the defendant is housed in an in-patient status on an annual basis. Upon request, a hearing [will] be mandatory.<sup>56</sup>

Nonetheless, whether Chapter 324 presents an effective solution to the problems associated with the treatment of MDOs and accomplishes the goals enumerated by its author is yet to be determined.

---

49. CAL. PENAL CODE § 2972.1(c)(1) (enacted by Chapter 324).

50. *Id.*

51. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 3 (Mar. 14, 2000) (discussing whether changes in Chapter 324 place an undue burden on civilly committed individuals).

52. CAL. PENAL CODE § 2972.1(c)(2) (enacted by Chapter 324).

53. *Id.*

54. *Id.* § 2972.1(d) (enacted by Chapter 324).

55. *Id.* § 2972.1(e) (enacted by Chapter 324).

56. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 2 (Mar. 14, 2000) (quoting the author, Assemblyman Martin Gallegos, representative from the 57th Assembly District of California).

## IV. ANALYSIS OF CHAPTER 324

The proceedings established by Chapter 324 have repercussions on numerous levels. The integral function of the MDO Law is to ensure that MDOs' due process rights are protected in civil commitment proceedings.<sup>57</sup> Therefore, patients are entitled to a jury trial<sup>58</sup> in order to determine whether the person "can be safely and effectively treated on an outpatient basis."<sup>59</sup> Reconciling that function with the intent of Chapter 324—to "save valuable resources for prosecution, defense attorneys, courts, and mental health professionals"<sup>60</sup> is difficult at best.

Primarily, preservation of MDO's due process rights is a crucial concern. Chapter 324 may not afford adequate protection of those rights, as it allows patients diagnosed as mentally disordered to waive their fundamental right to a trial.<sup>61</sup> As highlighted previously, Chapter 324 allows defense counsel to sign the waiver form on a patient's behalf.<sup>62</sup> Conceivably, this provision operates as an admission of the MDO's incapacity to waive this right herself. The Legislature appears unconcerned with defense counsel qualifications (or lack thereof) to make a determination as to the competency of MDOs. In light of this, there are measures, perhaps inadequate, to prevent defense counsels from abusing this power.<sup>63</sup> The new law obliges the trier of fact (either a judge, upon waiver of a jury trial, or a jury)<sup>64</sup> to examine whether the proceedings have consistently enforced the one year limit on outpatient status,<sup>65</sup> and upheld the accompanying standard of proof<sup>66</sup> in determining that the person cannot be safely and effectively treated as an outpatient.<sup>67</sup> This examination does not focus on possible abuses by MDOs' attorneys and can only be done in hindsight, rather than providing more proactive safeguards.<sup>68</sup> However, one glaring omission from Chapter 324 remains: the competency of mentally disordered patients to sign a waiver of rights.<sup>69</sup>

---

57. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 4 (June 6, 2000).

58. CAL. PENAL CODE § 2972.1(d) (enacted by Chapter 324).

59. *Id.* § 2972(d) (amended by Chapter 324).

60. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1881 at 2 (Apr. 26, 2000) (quoting the Los Angeles District Attorney's Office).

61. CAL. PENAL CODE § 2972.1(c)(2) (enacted by Chapter 324).

62. *Id.*

63. *Id.* § 2972.1(e) (empowering the trier of fact to review the procedures for commitment and recommitment hearings under the MDO law).

64. *Id.*

65. *Id.* § 2972(c) (amended by Chapter 324) (mandating that outpatient status only last for one year, with eligibility for recommitment in subsequent periods of one year).

66. See *supra* note 28 (noting that the standard of proof is beyond a reasonable doubt).

67. CAL. PENAL CODE § 2972(a) (amended by Chapter 324); *Id.* § 2972(d) (amended by Chapter 324).

68. CAL. PENAL CODE § 2972.1(d) (amended by Chapter 324) (limiting the trier of fact's discretion to review waiver procured under Chapter 324).

69. *Id.* § 2972.1 (enacted by Chapter 324) (omitting any discussion of MDO's competency to waive essential rights and empowering attorneys to make a determination of competency).

Additionally, another concern is that outpatient MDOs are less likely to respond to a notice that requires them to take legal action.<sup>70</sup> A MDO may affirmatively request a review of her commitment, or simply refuse to sign a waiver and wait for a hearing to be scheduled within sixty days.<sup>71</sup> The procedural changes brought about by Chapter 324 “[shift] the burden of conducting the hearings currently placed upon the district attorney and the courts to a MDO”<sup>72</sup> and her attorney. Requiring civilly committed MDOs to take the initiative to begin recommitment hearings and to file the proper paperwork may very well be an expectation too high for these MDOs to meet, even with the advice of counsel.<sup>73</sup> Some have proposed “an automatic bi-annual hearing and notice [be] provided to the MDO during the alternate year.”<sup>74</sup> Proponents of this alternative believe it will set a more realistic expectation by providing “sufficient oversight of this population.”<sup>75</sup> However, this option would necessarily lengthen commitment periods<sup>76</sup> in order to reduce the number of MDO trials statewide.<sup>77</sup>

Furthermore, Chapter 324’s purpose to save resources<sup>78</sup> seems to create a disproportionate benefit. While a waiver of a recommitment hearing with a jury may favor prosecutorial and judicial efficiency, a greater burden is placed on public defenders.<sup>79</sup> Not only are public defenders<sup>80</sup> charged with locating the MDO wherever she is while on outpatient status and explaining the recommendation for further treatment,<sup>81</sup> the defense attorney must also carry the burden and responsibility of waiving the patient’s fundamental rights.<sup>82</sup> It is unproven whether these additional burdens placed on public defenders will be offset by the time and effort saved by eliminating annual recommitment hearings. Only the passage of time will settle whether, in the case of additional requirements on public defenders, resources are indeed conserved.

---

70. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 3 (Mar. 14, 2000).

71. *Id.* at 3-4 (discussing burdens placed on MDOs to request a review of their civil commitment); *see* CAL. PENAL CODE § 2972.1(d) (enacted by Chapter 324) (setting time limit on calendaring a recommitment hearing).

72. *Id.* at 3.

73. *Id.*

74. *Id.* at 3-4.

75. *Id.*

76. CAL. PENAL CODE § 2972(c) (amended by Chapter 324); *see supra* text accompanying note 65.

77. Changing the requirement for recommitment hearings to automatic bi-annual procedures would, presumably, cut the amount of MDO litigation by half. *See also* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 1881, at 3 (Mar. 14, 2000). But, at those hearings a determination would necessarily be made as to the patient’s status for the next two years. *Id.*

78. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 1881, at 2 (Apr. 26, 2000).

79. *See* CAL. PENAL CODE § 2972.1(c)(1) (enacted by Chapter 324) (outlining procedures to be followed by public defenders or other defense counsel upon receipt of recommendation for recommitment).

80. *See id.* § 2972(b) (amended by Chapter 324) (dictating that “[t]he people shall be represented by the district attorney” and granting the defendant the right to the advice of the public defender).

81. *Id.* § 2972.1(c)(1) (enacted by Chapter 324).

82. *Id.* § 2972.1(c)(2) (enacted by Chapter 324).



Finally, critics have asserted that efforts to treat offenders' mental disorders only begin once release from the criminal justice system or civil commitment facility is imminent.<sup>83</sup> Provisions such as the MDO law, including Chapter 324, are viewed as an excuse to keep control over offenders through commitment "with little regard for whether they are mentally ill."<sup>84</sup> However, because Chapter 324 pertains to releasing MDOs on outpatient status,<sup>85</sup> it should satisfy critics by offering an alternative to indefinite confinement for mentally disordered patients and other offenders so classified.

Chapter 324 attempts to facilitate the release of MDOs by simplifying the process needed to establish the outpatient status of offenders. Weighing the seriousness of civil rights violations with the excessive incarceration of MDOs is a difficult task. Whether Chapter 324 has struck an acceptable balance between the foregoing concerns will be proven as the law goes into effect and is applied.

#### IV. CONCLUSION

Ultimately, the enactment of Chapter 324 will directly affect the commitment proceedings for hundreds<sup>86</sup> of MDOs throughout California. While the intent to restructure treatment options for MDOs is a noble cause, the construction of Chapter 324 presents a catch-22:<sup>87</sup> the mentally disordered patients who will be competent enough to demand a jury trial on their own are likely the patients whose complete understanding of these proceedings and their rights under them implies that no further treatment is necessary. That treatment of these offenders only becomes a concern upon their imminent release is disconcerting.<sup>88</sup> Chapter 324 perpetuates a MDO law which may be easily abused<sup>89</sup> and may potentially keep offenders civilly committed indefinitely.<sup>90</sup> Hopefully, the risk of potential abuse will be worth the benefits brought about by Chapter 324 of convenience and judicial efficiency which will ultimately allow more MDOs to be released on outpatient status instead of remaining imprisoned forever.

---

83. Brooks, *supra* note 7, at B1.

84. *See id.* (quoting Dr. Paul Appelbaum, president of the American Psychiatric Association).

85. *See* CAL. PENAL CODE § 2972.1(a) (enacted by Chapter 324) (limiting the new law's application to proceedings at the end of a period of outpatient status).

86. *See* Brooks, *supra* note 7, at B1 (noting the number of MDOs confined in mental hospitals. Although a count is not given for outpatients alone, the total MDOs statewide number several hundred).

87. *See* JOSEPH HELLER, CATCH-22 (1961) (referring to an inescapable double bind).

88. *Supra* note 84 and accompanying text.

89. *Supra* Part II, B, ¶ 2.

90. *See* CAL. PENAL CODE § 2972(c) (amended by Chapter 324) (suggesting that civil commitment may continue indefinitely because there is no limit to the number of times a MDO can be recommitted under this law).