

Drexel University Thomas R. Kline School of Law

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The Mentally Disordered Inmate and the Law

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Criminal offenders with serious mental health disorders are inundating the correctional system at an alarming rate, and the scope and complexity of legal issues that affect prison inmates with serious mental health disorders have increased considerably in recent years. As such, there is a palpable need for a comprehensive yet accessible explanation of the legal issues that are directly relevant to the sizeable portion of prison inmates with serious mental health disorders. The second edition of Fred Cohen's *The Mentally Disordered Inmate and the Law* (2008), published by Civic Research Institute, effectively fills this need. This two-volume set, which is a revised and expanded version of the first edition, published in 1998, provides comprehensive coverage of the rights of prison inmates with mental disorders and the legal issues that most directly affect these inmates. And it does so in a straightforward, accessible, and practical manner. In the 10 years between the publication of the first and second editions of this book, the laws affecting prison inmates with mental disorders have changed considerably, and it should be no surprise to anyone familiar with Cohen's substantial body of impressive scholarship that he does a masterful job in the second edition of keeping pace with the rapidly changing legal landscape.

The Mentally Disordered Inmate and the Law provides comprehensive coverage of a wide range of legal issues that affect inmates with mental disorders, including several issues that do not typically receive much attention in similar works. Volume 1 contains 15 chapters, with topics that include the right to treatment, intake screening and classification requirements, substance abuse programs and rehabilitation, record-keeping requirements, the effect of isolation on mental disability, use of bodily restraints, disciplinary proceedings and mental illness, suicide, and pretrial detainees. Volume 2 contains an additional 6 chapters that cover offenders with mental retardation, transfer of inmates for treatment, the Americans With Disabilities Act, alternatives to custodial treatment (diversion and after-care), juveniles, and laws regarding sexually violent predators. In addition, Volume 2 contains three appendixes: (a) "Significant Cases on Inmate Mental Health Care" (providing extensive excerpts from 10 important cases regarding mental health care for prison inmates), (b) "Residential Treatment Unit (RTU) for Ohio Department of Rehabilitation and Correction" (providing the definition of the RTU and delineating the admission and discharge criteria), and (c) "*Dunn v. Voinovich* Consent Decree" (*Dunn* is a leading case from Ohio regarding deliberate indifference and systemic failure).

The book begins with three introductory or overview chapters that provide a solid foundation for the remainder of the book. Chapter 1 defines the boundaries of the problem by identifying the substantive scope of the book. Among other roles, Chapter 1 sets the stage for the remainder of the book by addressing several key issues, including the definition of mental disorder, the distinction between a constitutional right and good

practice, and epidemiological data regarding the incidence of serious mental health disorders among prison inmate populations. Chapter 2 provides a brief overview of the legal issues that are covered in substantial detail throughout the remainder of the book. As stated by Cohen, if someone limits his or her reading to this one chapter, he or she should “have a reasonably complete overview of the law and the mentally disordered inmate” (p. 2.1). Chapter 3 provides a broad review of the law of prisoners’ rights and, importantly, the legal framework for the material included in the subsequent chapters. The remaining chapters of the book provide comprehensive and detailed information on the rights of inmates, the legal obligations of those who work with inmates with mental disorders, and best-practice standards.

In several chapters toward the end of Volume 2, Cohen provides valuable information on three special inmate populations: offenders with mental retardation, juveniles, and sexually violent predators. In the interim between the first and second editions of this book, the Supreme Court of the United States has issued important decisions relevant to both offenders with mental retardation (i.e., *Atkins v. Virginia*, 2002) and sexually violent predators (i.e., *Kansas v. Hendricks*, 1997; *Seling v. Young*, 2001), and the second edition of Cohen’s book gives these cases thorough coverage. Given the recent judicial and legislative developments in these areas, Cohen’s chapters on special inmate populations take on increased importance and are welcome additions from the first edition of this book.

The strengths of *The Mentally Disordered Inmate and the Law* include its (a) comprehensive scope of coverage; (b) clear, succinct, and accessible explanations of complex legal issues; and (c) inclusion of diverse resources. All of these strengths contribute to the practical value of the book. First, this book covers an impressively wide range of legal topic areas that are relevant to the rights, care, and management of prison inmates with serious mental health disorders. As previously noted, the 21 chapters contained in both volumes of the book provide coverage of diverse topic areas, ranging from fundamental topics, such as an inmate’s constitutional right to mental health treatment and intake screening and classification requirements, to topics that typically receive less attention in the correctional mental health literature, such as record-keeping requirements and the use of bodily restraints. This wide range of topic areas ensures that a variety of audiences, from treatment providers to correctional officers to correctional facility administrators, will glean valuable information that is directly relevant to their positions.

Second, *The Mentally Disordered Inmate and the Law* provides its audience with remarkably clear, succinct, and accessible explanations of oftentimes complex legal issues. This strength of the book is facilitated by its highly useful and reader-friendly layout, structure, and organization. In addition to a detailed table of contents, every chapter begins by delineating each topic area that is covered in the chapter. Moreover, the book uses a paragraph numbering system that facilitates finding information and cross-referencing it with other sections in the book. The detailed index also makes it easy to find information. Importantly, Cohen’s descriptions of legal issues, including his summary and discussion of guiding case law, statutes, and regulations, can be easily understood even by readers with no formal legal training or experience. Cohen strikes an effective balance by presenting detailed information but in a way that proves not to be distracting for non-legally trained readers. This is an impressive feat that should not go unnoticed.

Third, Cohen makes effective use of a wide range of resources to illustrate the key points contained in each chapter. Rather than relying exclusively on case law or statutes, which is

the myopic approach employed by some other works in this area, Cohen provides his audience with an array of citations to a variety of legal and clinical references. Specifically, the book includes numerous references to state and federal case law, statutes, federal regulations, consent decrees, and scholarly publications from the leading experts in correctional mental health law. It is not uncommon to see lengthy excerpts from the leading correctional mental health cases followed by references to scholarly publications that provide additional explication and discussion of the specific issue being examined. Cohen's reliance on such a diverse range of resources ensures that his audience is getting a book that provides comprehensive information from several different perspectives.

It is important to note two limitations of this book. First, this book will be much more useful to practitioners than students. The book has a practical focus (which is a clear strength), and it is clearly designed to be read by working professionals as opposed to students. With that said, students and scholars who are interested in correctional mental health law would certainly find this book to be an ample source of intellectual stimulation and an authoritative resource on the key issues that affect prison inmates with serious mental health disorders. Second, as with the first edition, this book is clearly legal in nature and, as such, will be of limited value for treating clinicians who work with prison inmates with mental disorders. Although this book will elucidate the myriad legal issues of which treating clinicians should be aware in the course of providing treatment to inmate populations, Cohen's book is not intended to be a treatment manual for clinicians.

The end result of Cohen's remarkable efforts is a well-written, comprehensive, and authoritative book that will be of great value to those who work with prison inmates with mental disorders in a variety of capacities. The practical value of this book can not be overstated. This book is an outstanding and indispensable resource for attorneys, criminal justice professionals, and institutional administrators who work with inmates with mental disorders on a daily basis. It will also be of value to students and scholars who are interested in various aspects of correctional mental health law. Given the comprehensive scope of coverage, clear and accessible explanations of complex legal issues, and well-researched chapters, this book should occupy a prominent position on the bookshelf of every correctional institution. As with the first edition of this book, the second edition of Cohen's *The Mentally Disordered Inmate and the Law* will no doubt be viewed as a classic, and for good reason.

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CASES CITED

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