

FOR THE STATE OF _____ LEGISLATIVE SESSION

**TO BE ENACTED AS LAW PROHIBITING INVOLUNTARY COMMITMENT WITHOUT
DUE PROCESS OF LAW AND WITH THE PROTECTION
OF A PERSON'S RIGHT TO LIBERTY**

Preamble: Involuntary commitment in a mental institution, psychiatric hospital or psychiatric ward deprives individuals of dignity and liberty when they have broken no law. The coercive practice should be abolished. Until such time, the following legal protections should be in place.

The criteria used to involuntarily detain someone usually rests on the person being a danger to themselves or others, a condition that psychiatrists admit that they cannot determine or predict. The dangerous person who is violent should be dealt with independent of psychiatrists. Criminal statutes exist to address this. Professor of Psychiatry Emeritus Thomas Szasz advises: "All criminal behavior should be controlled by means of the criminal law from the administration of which psychiatrists should be excluded."

The burden of proof must rest on the criminal criteria "beyond reasonable doubt" instead of the civil grounds of "probable cause," "reasonable grounds" or a "reason to believe." Due process of law must apply with the person's right to legal representation at the cost of the State and the right to produce witnesses and defend oneself. The onus of proving the need for an involuntary commitment rests on the psychiatrist recommending this.

The following regulations are proposed as a stopgap until involuntary commitment is abolished and requires that a full physical examination has first eliminated any prospect of there being an underlying and undiagnosed physical problem being experienced by the individual.

SEC. 1. DEFINITION

- (a) For the purpose of this law, a person is deemed to have a "mental disorder" where it can be determined by a physical, medical test, such as a brain scan, X-ray, or blood test and it is beyond reasonable doubt that involuntary hospitalization is required as a last resort.
- (b) Before any psychiatric or psychotherapeutic treatment may be administered, mental health professionals must demonstrate by objective scientific evidence that the treatments they are proposing are safe and effective.
- (c) "Informed consent": consent to mental health treatment based upon a full, fair and truthful disclosure of known and foreseeable risks, hazards of the proposed treatment and any scientifically proved benefits, as well as

information about alternative treatments. This process allows the patient, client or recipient of mental health treatments, or the legal guardian of such person, to exercise a free and independent judgment by reasonably balancing the probable risks against any possible benefits.

SEC. 2. FUNDING

- (d) No state or insurance funds should be expended on any psychiatric or psychotherapeutic treatment of an involuntarily detained patient, client or recipient of mental health treatments, unless it can be demonstrated scientifically that the treatments are safe and effective.

SEC. 3. PRE-COMMITTAL REGULATIONS

1. (a) Each person presenting themselves, or being presented for admission to a mental health hospital or facility voluntarily or involuntarily must be informed that underlying physical diseases or illnesses may cause behavioral or emotional problems and that in his or her interests, and to avoid unnecessary suffering, he or she should undergo a medical screening or examination by a competent medical, not psychiatric physician.
- (b) The person presented for admission to a mental health hospital or facility may be admitted temporarily to undergo the medical examination and shall not be medicated or otherwise treated against their will during such examination.
- (c) Any person being given a medical screening or examination must consent to this.
- (d) Any person who chooses or receives a medical screening/examination shall have the right to be thoroughly and competently medically examined by a medical, not psychiatric, physician skilled in physical assessment, medical history taking, neurological examination and laboratory testing.
- (e) The laboratory tests in (d) should include but are not limited to:
 - (1) a complete blood count
 - (2) a 23-item chemistry panel (including determinations for glucose, albumin, serum urea nitrogen, creatinine, calcium, phosphate, alkaline phosphatase, aspartate aminotransferase, alanine aminotransferase, gamma-glutamyltransferase, bilirium, iron and electrolytes)
 - (3) a serum fluorescent treponal antibody test.

- (4) thyroid tests (a triiodothyronine resin uptake, total serum thyroxine and a free-thyroxine index)
- (5) serum folate and vitamin B12 levels
- (6) a dipstick urinalysis
- (7) allergy tests
- (8) hormone testing
- (9) determination that no other psychiatric drug or medication the person may be taking is causing the manifestation of the psychiatric symptom
- (10) any other medical test deemed appropriate.
- (f)** Each test must be in documented form with the results attested to by the practitioner/pathologist performing the tests.
- (g)** The patient has the right to have a second, independent medical examination performed by a doctor/pathologist of his or her choice and to have the initial tests verified.
- (h)** If an underlying physical illness or disease is determined after the tests according to point **[e]** are performed, the person shall not be formally admitted to a mental health hospital or facility but be transferred to a general medical hospital or to a medical doctor of their choice.

SEC. 4. VIDEO AND WRITTEN CONSENT AND LIVING WILLS.

(a) A person shall not be admitted to a psychiatric facility against their will if the person has previously signed, while being of sound mind, a psychiatric "living will" or other declaration or legal document objecting to psychiatric intervention and treatment.

(b) The involuntarily detained person shall maintain the right to informed consent to treatment, which includes

- i) A description of the treatment
- ii) A list of the foreseeable risks, dangers and hazards of the treatment
- iii) A list of scientifically proven benefits
- iv) Scientific journal citations demonstrating that the proposed treatment has been proven safe and effective by reliable and valid

scientific replicated research studies including treatment outcome compared to alternative treatments and control subjects.

- v) A list of the alternative treatments and their foreseeable risks, dangers and hazards and benefits
- vi) The signatures of the treating psychiatrist or other mental health care provider and the patient signifying mutual agreement of the treatment plan.

(c) The person shall have the right to have the informed consent procedure videotaped and the videotape and the signed consent form are both made part of the person's medical records.

Sec. 4 (1) Videotaping Consent Procedure

(a) A patient entering a psychiatric facility, through either voluntary or involuntary admission, must be given a written copy of their rights, including the right to have any consent to treatment procedure videotaped. The patient may not be given psychotropics, neuroleptics or any other kind of psychiatric or other drug that would impair his or her thinking, hearing, sight and/or ability to speak prior to, or during the videotaping session.

(b) The patient has the right to have any person or representative of their choice present during the videotaping as a further witness to the proceedings.

(c) All videotaping must be carried out in the least restrictive environment, which is not intimidating to the patient.

(d) All videos must be kept as a matter of record for the same period that the law requires hospital facilities to maintain patient medical records. The video becomes part of the patient's record and the patient and/or his or her legal counsel/representative may have access to or copy of the video.

SEC. 5. LEGAL PROTECTIONS

(a) The patient has the right to be in an unmedicated state during any legal procedure determining involuntary commitment and during any discussion with his or her attorney or representative.

(b) The determination to involuntarily deprive a patient of his or her liberty in a psychiatric institution may only be made by a judge or magistrate, with the patient having the right to legal representation at the cost of the state;

- (c) During legal hearing, the normal rules of evidence apply concerning the taking and giving of evidence, admission of documents, the right to examine and cross examine witnesses, and that full access to all medical records or reports pertaining to the patient be given to the patient and his/her representative, and
- (d) The onus of proving the person requires involuntary hospitalization rests on the treating or recommending psychiatrist who must show that the person has a “mental disorder” as defined in Section 1 and can prove beyond reasonable doubt that the person requires such hospitalization as an emergency measure and as a last resort.
- (e) A transcript of the proceeding must be taken and provided to the patient and his/her representative. The patient must have the right to appeal any decision made by the judge or magistrate and to remain out of custody until the appeal is denied.
- (f) If the judicial hearing decides the person shall be admitted against their will to a mental health facility, this shall be for no more than 48 hours and the patient shall have the right to discuss and consent to his or her treatment, and has the right to refuse treatment.

SEC. 6. CRIMINAL PENALTIES

A person who commits a crime under this section is subject to conviction of violating the Act and is subject to (1) or (2) or both:

- (1) A fine of not less than \$20,000.00. This fine does not prevent anyone illegally detained in a psychiatric facility from pursuing civil restitution and damages.
- (2) Confinement in prison of not less than 2 years.