LEGISLATION

Model Legislation

MODEL LEGISLATION 1:

RESTRAINTS: REGULATION TO BE ENACTED AS LAW PREVENTING THE USE OF PHYSICAL OR MECHANICAL RESTRAINT PROCEDURES IN PSYCHIATRIC FACILITIES

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ELECTROSHOCK TREATMENT: MODEL REGULATIONS TO BE IMPLEMENTED BY LAW TO PROVIDE WRITTEN INFORMED CONSENT FOR THE TREATMENT OF ELECTRO-CONVULSIVE (ELECTROSHOCK) THERAPY

Model Legislation #1

Note: The following proposed bills/regulations are models upon which governments can develop their own laws to safeguard citizens against psychiatric abuse.

FOR THE STATE OF _____ LEGISLATIVE SESSION

REGULATION TO BE ENACTED AS LAW PREVENTING THE USE OF PHYSICAL OR MECHANICAL RESTRAINT PROCEDURES IN PSYCHIATRIC FACILITIES

A BILL ENTITLED

PROHIBITION OF COERCIVE PHYSICAL AND MECHANICAL RESTRAINT OF A PERSON ADMITTED TO A PSYCHIATRIC INSTITUTION, HOSPITAL OR FACILITY

PREAMBLE: There are serious concerns about physical and mechanical restraint use on individuals admitted to psychiatric institutions, hospitals or other mental health facilities. Often a registered nurse or other licensed staff may initiate the use of restraints as long as he/she obtains a verbal order from a psychiatrist or physician to do so. The psychiatrist need not be present at the time the restraints are initiated. Further, staff have goaded patients taking psychotropic drugs known to cause violent behavior into aggressive acts, and restraint procedures have subsequently been used as a means of punishment or for staff convenience.

According to a 1999 U.S. General Accounting Office investigation and report entitled, "Improper Restraint or Seclusion Use Places People at Risk," clinicians have determined that potentially fatal cardiac arrhythmia can result from the combination of certain drugs and the adrenaline produced by an individual's agitation and physical struggle while being restrained.

During the restraint procedure, patients are often poorly treated, abused or injured and there is serious risk of death. Often, restraint-related deaths are simply ruled natural and the details never investigated by the police or coroner.

With children being particularly vulnerable to physical restraint, the practice should be prohibited in any child or teenager 18 years of age and under.

PURPOSE: Legislation to outlaw restraints that obstruct a person's airway, impair breathing or interfere with someone's ability to communicate, or to be administered for punishment, discipline or for staff convenience. Any use of restraint procedures leading to patient death is to be immediately forwarded to the proper law enforcement agencies for criminal investigation.

DEFINITION:

RESTRAINT: The use of physical devices or techniques for restricting movement, e.g. leather belts, straps, cloth ties, mittens, bodily holding or physically restricting a person by holding them prone on the floor. Mechanical restraint is defined as any apparatus that interferes with the free movement of a patient.

SEC. 1: REGULATIONS

a) All persons admitted to a psychiatric or mental health facility have a right to be free from harm, including unnecessary or excessive physical restraint, isolation, abuse or neglect. Restraint shall never be imposed as a means of coercion, discipline, staff convenience, or retaliation.

b) The restraining of a patient shall only be used as a last resort in an emergency for the protection of the patient and shall never involve any procedure that obstructs the patient's airway, impairs breathing or interferes with someone's ability to communicate. Any person placed in seclusion or under restraint shall be kept in a humane environment with regular supervision by appropriate medical staff and the duration of restraint/seclusion should be videotaped to ensure that there is no abuse, mistreatment or complications.

c) No restraint procedure can be determined to be a part of the patient's "therapy" or treatment plan and shall not be billed to health insurance benefits for reimbursement.

d) The use of physical or mechanical restraint is prohibited on anyone aged 18 or under.

e) The hospital must report to the health authorities and police any death or injury that occurs while a patient is restrained or in seclusion.

SEC. 2: CRIMINAL PENALTIES

a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to physically restrain an adult in a mental health facility in violation of the standards as outlined in Section 1: a) – c).

b) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause a minor (18 or under) to be physically restrained in a mental health facility.

c) Where a hospital fails to report to the health authorities and police any death or injury that occurs while a patient is restrained or in seclusion, or as a result of a restraint procedure, the director of the facility and psychiatrist or physician who ordered the restraint procedure shall be subject to the same criminal penalties.

d) An individual who commits an offense under this section is subject on conviction to:

(1) Confinement in jail of not less than two years.

Where the restraint of the adult (or illegal restraint of a child) results in harm, damage or death, those responsible for causing the physical restraint, including the supervising psychiatrist or doctor, shall be held culpable and charged and tried in accordance with domestic law.

Model Legislation #2

Note: The following proposed bills/regulations are models upon which governments can develop their own laws to safeguard citizens against psychiatric abuse.

FOR THE STATE OF _____ LEGISLATIVE SESSION

LAW TO BE ENACTED TO PREVENT ANY SEXUAL CONTACT, WITH OR WITHOUT CONSENT, BETWEEN A PSYCHIATRIST, PSYCHOLOGIST OR PSYCHOTHERAPIST WITH THEIR PATIENT(S).

A BILL ENTITLED

MODEL SEXUAL EXPLOITATION BY THERAPIST LAW — DEFINITIONS AND PENALTY.

Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact with a patient or client during any treatment, consultation, interview or examination is guilty of a felony; any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact with a former patient or former client, regardless of the duration of time elapsed since the termination of treatment, is guilty of a felony.

Consent by the complainant is not defense under this section. As used in this section, unless the context or subject matter otherwise requires:

DEFINITIONS:

"Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction or so-called learning disabilities.

"Therapist" means a physician, psychologist, psychiatrist, social worker, chemical dependency counselor, whether licensed or not by the state, who performs or purports to perform psychotherapy, psychiatric or psychological practice or treatment.

a) "Sexual contact" means any of the following: sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for that purpose, or any intrusion, however slight, in the genital or anal openings of the psychotherapist's body by any part of the patient's body or by any object used by the patient or former patient for that purpose, if agreed to by the psychotherapist.

b) kissing or intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttocks or breast or the clothing covering any of these body parts.

c) kissing or intentional touching by the patient of the psychotherapist's or former psychotherapist's genital area, groin, inner thigh, buttocks or breast or the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes a request by the psychotherapist for conduct described in paragraphs 3a through 3c.

PENALTY:

A person convicted of an offense under this law may be sentenced to a penalty of 10 years imprisonment or as required by local law for a conviction of rape.

Model Legislation #3

Note: The following proposed bills/regulations are models upon which governments can develop their own laws to safeguard citizens against psychiatric abuse.

FOR THE STATE OF _____ LEGISLATIVE SESSION

REGULATION TO BE IMPLEMENTED BY LAW TO PREVENT SCHOOL SETTINGS TO BE USED FOR MENTAL HEALTH SCREENING OR PSYCHOLOGICAL TESTING OF CHILDREN WITHOUT WRITTEN, PARENTAL INFORMED CONSENT.

A BILL ENTITLED: "MENTAL HEALTH SCREENING, CHILD PROTECTION AND INFORMED CONSENT ACT."

FINDINGS:

The use of educational settings to screen children and adolescents for "mental disorders" has led to parents not being given sufficient information about the purpose of such screenings, the ramifications if they consent—such as mandatory psychological or psychiatric treatment for their child and family—thereby violating the recognized requirements and standards regarding "full informed consent."

Frequently a system of "passive consent" is used whereby "consent" is considered provided when the parent DOES NOT return the consent form. The onus is, therefore, on the child/adolescent to transmit the consent form to the parent and on the parent ensuring that if consent is not given, the form is signed and returned. However, the onus should rest on both the school and the mental health professional or agency seeking to conduct the screening, with criminal penalties if consent is not obtained in writing and the child is subjected to non-consensual screening.

"PASSIVE CONSENT" OR OTHER CONSENT FORMS OFTEN:

i. Mislead parents into thinking that what is taking place at the school is just a health evaluation for their child, not a psychiatric evaluation,

ii. Do not include information about the personal and invasive questions their child will be asked,

iii. Do not contain information on the difference between "emotional health concerns," mental disorders or physical diseases—the latter which can be physically tested for and the former which cannot, and

iv. Leave the parent with so little information that he or she cannot make a proper informed decision to give valid informed consent.

Parents are also not informed that mental health screenings for "mental disorders" are based on those defined in the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*. However, in the introduction of the *DSM-IV* it states, "Moreover, although this manual provides a classification of mental disorders, it must be admitted that no definition adequately specifies precise boundaries for the concept of 'mental disorder.'" Further, "...the term 'mental' disorders...persists in the title of *DSM-IV* because we have not found an appropriate substitute."

Unlike scientific methods to determine physical diseases like cancer, diabetes or tuberculosis, a diagnosis of "mental disorder" or "syndrome" is not based on any medical test, such as a brain scan, a "chemical imbalance" test, X-ray, or blood test. The former U.S. Surgeon General, in his 1999 Report on Mental Health—which became a reference for many countries—stated, "The diagnosis of mental disorders is often believed to be more difficult than diagnosis of medical disorders since there is no definitive lesion, laboratory test or abnormality in brain tissue that can identify the illness."

Harvard Medical School's Dr. Joseph Glenmullen warns that the checklist rating scales used to screen people for conditions such as "depression," are "designed to fit hand-in-glove with the effects of drugs, emphasizing the physical symptoms of depression that most respond to antidepressant medication... While assigning a number to a patient's depression may look scientific, when one examines the questions asked and the scales used, they are utterly subjective measures." He says, "[T]he symptoms are subjective emotional states, making the diagnosis extremely vague."

Based on the subjective nature of the mental health diagnostic system and mental health screenings, millions of children are prescribed antidepressants or stimulants recognized by leading drug regulatory agencies as causing suicidal behavior, suicide, violence, hostility and in the case of stimulants, the potential for strokes and heart attacks. In October 2004, the U.S. Food and Drug Administration (FDA) required a "black box" warning of suicide risks for all antidepressants prescribed to under 18-year-olds. In August 2005, The Commission of the European Communities that represents 25 countries issued the strongest warning yet against child antidepressant use, warning of the drugs potential to cause suicide attempts and suicidal ideation, aggression, hostility (predominantly aggression, oppositional behavior and anger) and/or related behavior. According to the U.S. Drug Enforcement Administration, the stimulant drugs being prescribed to children are scheduled as abusive as opium, morphine and cocaine. In February 2006, an FDA Advisory Committee recommended a "black box" warning for stimulants stating that they can cause heart attacks, strokes and even death.

As such, [INSERT STATE] parents, without explicit protection, will be unable to give informed consent about whether they want their child to participate in such screening.

THEREFORE, the [STATE EDUCATION AGENCY] shall:

a) Prohibit the use of schools for any mental health or psychological screening or testing of any student, whether a non-emancipated minor or emancipated minor, without the express written consent of the parent or guardian.

b) The consent form must be in a clear and legible form and in compliance with any state or federal regulation, in the primary language of the parent, not less than forty-five (45) days in advance of any such screening; and

c) The consent form must be signed by the parent or legally appointed guardian of each non-emancipated minor or emancipated minor.

d) The consent form must include the following information:

TO: (parent or guardian) _____

FROM: (school or organization) _____

[Particulars regarding name of screening program, where and when it will take place]

FULL INFORMED CONSENT FOR MENTAL HEALTH OR PSYCHOLOGICAL SCREENING:

Mental health or psychological screening methods for children and adolescents vary from state to state, but may involve a self-administered computer interview or survey to determine how a student feels emotionally (anxious or worried, sad or depressed) or to judge his or her behavior at the present time or in the past. These questions can cover thoughts or feelings your child has had or thoughts and feelings your child thinks you may have had or currently have about him or her.

An outcome could be you are asked to take your child for a follow-up interview or evaluation to determine if he or she has a mental disorder or syndrome. Based on an evaluation of your child's answers, he or she may be diagnosed with a "mental" or "psychiatric disorder." These diagnoses have to be made by a psychologist, psychiatrist or medical doctor, but the subjectivity of this diagnostic process makes it a risk.

Questionnaires or tests are frequently based on symptoms outlined in the *Diagnostic and Statistical Manual for Mental Disorders* (*DSM*) or the mental disorders section of the *International Classification of Diseases* (*ICD*). The psychologist, psychiatrist and medical doctor often depend upon these diagnoses in order to bill private or government insurance.

The attitudes, beliefs, actions, inactions, or behaviors of a child or adolescent and whether or not these constitute a mental disorder are based on the opinion only of the person making the diagnosis. Unlike methods to determine physical diseases like cancer, diabetes or tuberculosis, a diagnosis of "mental disorder" or "syndrome" cannot be determined by any physical, medical test, such as a brain scan, a "chemical imbalance" test, X-ray, or blood test.

Mental health screening could be presented to you as a means of preventing suicide. However, there is no scientific evidence to substantiate this at this time. The U.S. Preventive Services Task Force (USPSTF) studied this and recommended against screening for suicide in 2004, saying that it "found no evidence that screening for suicide risk reduces suicide attempts or mortality."

Commonly psychiatric drugs prescribed to treat mental disorders can have very serious effects on some children. In 2005 the European Committee for Medicinal Products for Human Use (CHMP), which includes members from 25 European Member States determined that antidepressants should not be prescribed to under 18-year-olds because they can produce suicidal behavior, including suicide attempts and thinking about suicide and/or related behavior like self-harm, hostility or mood changes.

The U.S. Food and Drug Administration ordered that a "black box"—its highest level of drug warning—be placed on antidepressant packaging advising the drugs can induce suicide in children and teens. The FDA also has issued concerns that stimulant drugs prescribed children may cause "psychiatric events," described as "visual hallucinations, suicidal ideation, psychotic behavior, as well as aggression or violent behavior."

Before consenting to any such screening or survey, the educational facility must provide a manual and other published information which fully describes:

(i) The nature and purpose of the screening/test or questionnaire.

(ii) The development of the screening/test or questionnaire, its scientific validity as replicated in scientific studies, the rationale for the screening/test/questionnaire and reliability.

(iii) Scientific journal citations demonstrating that the proposed screening/test or questionnaire has been proven to be reliable and valid by replicated scientific studies.

(iv) A guarantee that no screening/test or questionnaire is based or related to any "mental disorder" as covered in the *Diagnostic and Statistical Manual for Mental Disorders*.

(v) The intended use of the results or outcomes of the child or adolescent completing such screening/test or questionnaire.

(vi) The right to rescind consent at any time before, during or after the screening/test or questionnaire being proposed.

INFORMED CONSENT FOR MENTAL HEALTH SCREENING

I acknowledge that I have read and understood the above information to the best of my ability and read [NAME OF MANUAL], and based on my understanding, I am choosing one of the following:

a) **I give my consent** for my child to undergo an evaluation for emotional, behavior, mental, specific learning disabilities, or other health impairments (mental health screening), and require that I be provided in writing any findings determined.

b) Consent means that I do/do not (strike which is inappropriate) give permission for the information obtained from such survey or testing to become part of my child's school or other record or to be transmitted to any other agency outside of the [name of school].

_____ _____

(Signature of Parent) **Date**

b) I <u>do not</u> give my consent for my child to undergo an evaluation for emotional, behavior, mental, specific learning disabilities, or other health impairments (mental health screening).

_____ _____

(Signature of Parent) **Date**

THIS FORM MUST BE RECEIVED BY THE PARENT AT LEAST 45 DAYS BEFORE THE PLANNED SCREENING. PLEASE ENSURE THIS FORM IS RETURNED BEFORE THE SCREENING DATE. YOU HAVE THE RIGHT TO REVOKE YOUR CONSENT AT ANY TIME.

Model Legislation #4

Note: The following proposed bills/regulations are models upon which governments can develop their own laws to safeguard citizens against psychiatric abuse.

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 is counterproductive because it deprives subjects of dignity and liberty, when they have broken no law or it excuses them from responsibility for their behavior. 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 rest on the person being a danger to themselves or others, a condition that psychiatrists admit 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, the right to produce witnesses and the right of appeal. 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 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 by possible benefits.

SEC. 2. FUNDING

(a) 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 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 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 a copy of the video.

SECT 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 or 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.

(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.

(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 an offense under this section is subject to conviction of violating the Act and is subject to:

(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 jail of not less than 2 years, or both (or as determined by state law)

Model Legislation #5

Note: The following proposed bills/regulations are models upon which governments can develop their own laws to safeguard citizens against psychiatric abuse.

FOR THE STATE OF _____ LEGISLATIVE SESSION

MODEL REGULATIONS TO BE IMPLEMENTED BY LAW TO PROVIDE WRITTEN INFORMED CONSENT FOR THE TREATMENT OF ELECTRO-CONVULSIVE (ELECTROSHOCK) THERAPY

A BILL ENTITLED: "PROHIBITION OF ELECTROSHOCK USE ON SPECIFIED GROUPS AND PROTECTION AGAINST ELECTROSHOCK USAGE IN OTHERS."

PREAMBLE:

Electroshock treatment—also known as Electroconvulsive Therapy (ECT) is a dangerous procedure that creates disorientation, memory loss and brain damage. A 2001 Columbia University study found ECT so ineffective at ridding patients of their "depression" that nearly all who receive it relapse within six months.

The U.S. Mental Health Foundation ECT Fact Sheet of 2003 lists the known side effects as: "brain damage, memory loss, disorientation that creates an illusion that problems are gone." Neurologists confirm the procedure causes amnesia. The death rate in the elderly who are major recipients of this procedure is around 1 in 200.

Dr. Colin Ross, psychiatrist, reports that existing ECT literature shows "there is a lot of brain damage, there is memory loss, the death rate does go up, the suicide rate doesn't go down. [I]f those are the facts from a very well-designed, big study, then you'd have to conclude we shouldn't do ECT."

There is no scientific, valid evidence that "mental illness" is caused by the brain. The U.S. Surgeon General's 1999 Report on Mental Health stated, "The diagnosis of mental disorders is often believed to be more difficult than diagnosis of medical disorders since there is no definitive lesion, laboratory test or abnormality in brain tissue that can identify the illness."

The procedure is so risky and potentially damaging that it should be prohibited. Where it continues to be used, the most stringent protections are required which this bill addresses, including that it shall never be used without full, informed consent.

SECTION 1: PROHIBITION OF ELECTROCONVULSIVE/ELECTROSHOCK THERAPY

1. Electro-Convulsive Therapy (ECT, Electroshock Treatment) is forbidden in the use of children and adolescents 18 years of age and under.

2. Electroshock is forbidden in the use of the elderly 60 years of age and over.

3. Electroshock treatment is forbidden on pregnant women.

4. Electroshock treatment is forbidden for use on any non-consenting patient, whether involuntarily or voluntarily detained in a psychiatric institution or facility.

SECTION 2: CONSENT AND REPORTING PROCEDURE

The practices and procedures for ECT's delivery shall include the following protective regulations, in addition to those outlined in Section 1.

(a) There shall be a standard written consent form to be used when electroconvulsive therapy is considered. The written consent form must clearly and explicitly state:

i) The nature and purpose of the procedure.

ii) The nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss (including long-term memory loss), brain damage, and the possibility of death.

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.

(b) Before a patient receives each electroconvulsive treatment, the hospital, facility, or the psychiatrist administering the therapy shall ensure that:

(i) The patient or the patient's guardian, if any, receives a written copy of the consent form that is in the person's primary language.

(ii) The contents of the consent form are explained to the patient and the patient's guardian, if any, orally, in simple, nontechnical terms in the person's primary language, or through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person if applicable.

(iii) The patient or the patient's guardian, as appropriate, signs a copy of the consent form stating that the person has read the consent form and understands the information included in the documents.

(v) The patient is aware that he or she has the right to have the informed consent procedure videotaped and the videotape made part of the person's medical records.

VIDEOTAPING CONSENT PROCEDURE

1. (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 their 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 a copy of the video.

(e) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion, deceit, or undue influence, including unwanted psychotropic medication.

(f) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time. Revocation of consent is effective immediately.

2. A mental hospital or facility administering electroconvulsive therapy, other brain-intervention treatment, or convulsive or coma-producing therapy or a psychiatrist administering the therapy on an outpatient basis shall submit to the Department of Mental Health quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(a) A report must state for each quarter:

- The number of patients who received the therapy
- The number of persons voluntarily receiving mental health services who consented to the therapy
- The number of involuntary patients who consented to the therapy
- The number of involuntary patients for whom a guardian consented to the therapy
- The age, sex, and race of the persons receiving the therapy
- The source of the treatment payment
- The average number of electroconvulsive treatments administered for each complete series of treatments
- The average number of maintenance electroconvulsive treatments administered per month
- The number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death
- Autopsy findings if death followed within 14 days after the date of the administration of the therapy
- Any other information required by the Department of Mental Health for that state

(b) The state Department of Mental Health shall use the information received in the above points to analyze, audit, and monitor the use of electroconvulsive therapy, other brain-intervention treatment, or convulsive or coma-producing therapy administered to treat "mental disorders."

(c) The department shall file annually with the governor and the presiding officer of each house of the legislature a written report summarizing by facility the information received under the reporting line. If the therapy is administered by a private psychiatrist on an outpatient basis, the report must include that information. The department may not directly or indirectly identify in a report issued under this section the patient who received the therapy.

SECTION 3, SAFEGUARDS:

1. Each person presenting themselves, or being presented for admission to a mental health hospital or facility, whether through voluntary or involuntary means, must be informed that underlying physical diseases or illnesses may cause behavior problems or mental illness or disorder, and that in their own interests, and to avoid unnecessary suffering, they should undergo a medical screening examination.

2. (a) The medical screening required includes but are not limited to:

- a complete blood count
- 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)
- a serum fluorescent treponal antibody test
- thyroid tests (a triiodothyronine resin uptake, total serum thyroxine, and a free-thyroxine index)
- serum folate and vitamin B12 levels
- a dipstick urinalysis
- allergy tests
- hormone testing
- determination that no other psychiatric drug or medication the person may be taking is causing the manifestation of the psychiatric symptom.

(b) Each test must be in documented form with the results attested to by the practitioner/pathologist performing the tests.

(c) The patient has the right to have a second, independent medical screening done by a doctor/pathologist of their choice and to have the initial tests verified.

SECTION 4, CRIMINAL PENALTIES:

1. A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause a person to be given treatment against their will through failing to obtain full informed-consent and full understanding and duplication of the patient of their legal and patient rights.

2. An individual who commits an offense under this section is subject on conviction of attempted assault, assault and/or illegal detainment to:

(a) 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.

(b) Confinement in jail of not less than 2 years, or both or as determined by state law.