final minutes

Michigan Law Revision Commission Meeting
Tuesday, April 19, 2011 ▪ 12:00 noon
Legislative Council Conference Room ▪ 3 Boji Tower
124 W. Allegan ▪ Lansing, Michigan

Members Present:
Richard McLellan, Chair
Tony Derezinski, Vice-Chair
Senator Vincent Gregory
Representative Kurt Heise
Representative Mark Meadows
John Strand
George Ward
Judge William Whitbeck

Members Absent & Excused:
Senator Tonya Schuitmaker

Others Present:
Sean Bennett
Susan Cavanagh, Office of the Legislative Council Administrator
Bob Ciaffone
Cliff Flood, State Bar of Michigan
Fred Hall, Senate Majority Counsel
Jerry Ruskowski, Dykema Gossett
Bruce Timmons, House Republican Policy Office
Jane Wilensky, MLRC Executive Secretary

I. Convening of Meeting & Roll Call
Chairperson McLellan called the meeting to order at 11:30 a.m. and welcomed the new legislative members to the Commission. The clerk took the roll as the Chair introduced the members present. A quorum was present and Senator Schuitmaker was excused from the meeting.

II. Introduction of New Executive Secretary
The Chair introduced Jane Wilensky as the new Executive Secretary of the Commission. He highlighted her background and welcomed her to the Commission.

III. Approval of March 31, 2010 Meeting Minutes
The Chair asked for a motion to approve the minutes of the last meeting. No corrections or amendments were offered. **Representative Meadows moved, supported by Mr. Ward, to adopt the minutes of the March 31, 2010 Michigan Law Revision Commission meeting. The minutes were unanimously approved.**

IV. Michigan Law Revision Commission Annual Report
The Chair called on Ms. Wilensky to present the report of the 2010 recent court cases to be included in the 2010 Michigan Law Revision Commission Annual Report. Ms. Wilensky briefly highlighted each case and the Commission discussed each issue.

- In **Howell Education Association v. Howell Board of Education**, which deals with whether personal e-mails on a public school system server are subject to disclosure under the Freedom of Information Act, the Commission recommends legislative review of this issue as part of a broader update of access to government information laws, but makes no recommendation of specific legislative action.
- In **People v. Dowdy**, which deals with the failure of a homeless man to comply with the reporting requirements of SORA, the Commission recommends the enactment of legislation, such as Senate Bills Nos. 1206, 1207, 1208, and 1241 of the 2009-2010 Legislature, clarifying the responsibilities of sex offenders who are homeless while continuing to provide mechanisms to monitor the whereabouts of such persons. Mr. Timmons noted that this issue has been addressed by legislation that was recently passed in 2011 (Public Acts 17 and 18 of 2011).
- In **People v. Kern**, which deals with mandatory lifetime electronic monitoring with lesser sentences, the Commission recommends legislative review of this issue, but makes no recommendation of specific legislative action.
- In **O'Neal v. St. John Hospital & Medical Center**, which deals with the burden of proof in medical malpractice actions, the Commission makes no recommendation on this issue, but notes that the issues raised by this case and

discussed previously are part of a larger issue involving ambiguities or conflicts in the Michigan statutes regarding medical malpractice actions.

- In **Robinson v. City of Lansing**, which deals with the highway exception to governmental immunity, the Commission recommends legislative review of this very important issue, but makes no recommendation of specific legislative action.
- In **O'Brien v. Public School Employees' Retirement Board**, which deals with public employee compensation, the Commission makes no recommendation on this issue.
- In **McCarthy v. Scofield**, which deals with public records of arrests and charges for sexual offenses, the Commission recommends legislative review of this issue and urges consideration of whether an admittedly false charge should be expunged, but makes no recommendation of specific legislative action.
- In **People v. Bennett**, which deals with sentencing discretion, the Commission recommends legislative review of this issue, but makes no recommendation on this issue.

V. Update on Pending Projects

- **Anachronisms in State Law References to Certain Municipal Court**
  Ms. Wilensky shared that the Chair had asked Gary Gulliver to work with Bruce Timmons to identify outdated references to nonexistent courts. She reported that an initial rough draft that lists the abolished courts and court offices, including statutory references, has been prepared, but needs further review and editing.
- **Report on Governor's Power to Remove Public Officials from Office**
  Ms. Wilensky explained that this report is taken from the 2003 Michigan Law Revision Commission Annual Report. The Chair suggests the report be updated, revised, and re-recommended to the legislature.
- **Status Report of the Michigan Economic Development Codification Project**
  The Chair called on Representative Meadows to provide an update on the progress of this project. Representative Meadows reported that work has begun with the Legislative Service Bureau to draft bills, but LSB does not have the personnel to undertake this size of a project all at one time. LSB has prepared bill drafts for the first three articles and has proposed a timeline for working on the remaining articles. He suggests the new majority members on the Commission work with leadership to push this project forward. The Chair then provided some background of the project and pointed out that the goal is to consolidate not to revise.
- **Report on the Federal Government's Modernization of Freedom of Information Law and How It Serves as a Model for Updates to Michigan's Law**
  Ms. Wilensky noted that this report was included in the 2009 Michigan Law Revision Commission Annual Report. The Chair explained that the report may not fully address the evolution of the access to information issue and another review of this area of the law may be warranted. He continued that the Commission might be able to find a law professor who would be willing to take on this project. Representative Heise offered that municipal attorneys and other FOIA coordinators may also be a resource to tap into to determine what needs to be changed. A discussion of the issue followed. Given the current lack of state resources, the Chair and the Executive Secretary will continue to look for a strategy that can be used to continue the Commission's work on this issue.
- **Emergency Preparedness Laws**
  Ms. Wilensky reported that she had a discussion with the Chair about how Michigan handles manmade and natural emergency disasters. The goal of this project would be to identify existing laws and recommend reforms that are needed to provide state and local government the tools they need to address emergency disasters. She added that Gary Gulliver had performed some preliminary work on this project and provided a rough first draft and outline of a report.

VI. Potential New Projects

- **Request from Senate Majority Leader Randy Richardville**
  The Chair reported that the Senate Majority Leader has submitted a request for the Commission to conduct an analysis of Michigan's current sentencing guidelines system. A copy of his request is attached to these minutes. Representative Meadows and Senator Gregory had earlier expressed support of this request. After discussion, the Chair noted that the Commission is an agency of the legislature and is obliged to consider requests from legislators if given the appropriate resources. He will keep the members informed of any further developments.
- **International Law Licensure**
  Ms. Wilensky noted that this topic involves the removal of barriers for international participation in Michigan's legal system. The Chair provided additional background on the issue and reported that Mr. Troy Cummings from Warner Norcross is assisting him on this project. A report to the Commission is expected by the fall.

VII. Other Business

- **Michigan's Participation in National Conference of Commissioners on Uniform State Laws (NCCUSL)**
  Michigan's limited participation in National Conference of Commissioners on Uniform State Laws meetings was discussed.
- **MLRC Fellows Program**
  Ideas to generate more assistance and involvement in Law Revision Commission issues and coming up with a new structure to access resources to increase the Commission's output were discussed. The Chair noted that offering pro bono credit to law firms is being considered. Mr. Derezinski added that he will check into the possibility of a loan forgiveness program at the University of Michigan for students who perform work for the Commission. He is meeting with university officials in the next few weeks and will provide an update at the next meeting.
- **MLRC Future Meeting Schedule**
  The Chair proposed having a more formal meeting schedule and asked the clerk to check with the members to find dates that will allow the Commission to meet four times per year.
- **Tribute Resolutions**
  Tribute Resolutions to honor former Commissioners—former Senator Raymond Basham, Gary Gulliver, and former Senator Bruce Patterson—for their service to the Commission were presented. **Mr. Ward moved, supported by Mr. Derezinski, to adopt the resolutions in honor of former Senator Raymond Basham, Gary Gulliver, and former Senator Bruce Patterson. There were no objections and the motion was unanimously adopted.**

VIII. Comments from Commissioners

Mr. Derezinski asked that consideration be given to the idea of the Commission conducting a systematic review of laws that deal with reforming local governments to comport with the new concept of reinventing Michigan. The role of the Commission in conducting this type of review was then discussed.

IX. Public Participation

The Chair asked if there were any public comments. Mr. Sean Bennett presented some issues on the mental health code that he hopes the Commission will consider for review. His statement is attached to these minutes.

X. Adjournment

Having no further business, Mr. McLellan moved, supported by Mr. Derezinski, to adjourn the meeting. Without objection, the motion was unanimously approved. The meeting was adjourned at 2:06 p.m.

(Approved at the December 7, 2011 Michigan Law Revision Commission meeting.)

17TH DISTRICT
S-106 CAPITOL BUILDING
P.O. BOX 30036
LANSING, MI 48909-7536
PHONE: (517) 373-3543
TOLL FREE: (866) 556-7917
FAX: (517) 373-0927
E-MAIL: senrichardville
@senate.michigan.gov

RANDY RICHARDVILLE
SENATE MAJORITY LEADER
THE MICHIGAN SENATE

March 18, 2011

The Hononorable Richard D. McLellan, Chair
Michigan Law Revision Commission
Capitol View Building
201 Townsend Street, Suite 900
Lansing, MI 48933

RE: Request for Analysis of Chapter XVII of the Code of Criminal Procedure

Dear Mr. McLellan:

I am writing to request that the Michigan Law Revision Commission conduct an analysis of Michigan's current sentencing guidelines system as contained in Chapter XVII of the Code of Criminal Procedure, Public Act 175 of 1927.

On behalf of the Senate, I respectfully request that the Michigan Law Revision Commission examine Chapter XVII of the Code of Criminal Procedure to determine how the sentencing guidelines in use by Michigan compare with the sentencing standards used by other states and that the Commission recommend to the Legislature appropriate revisions to our guidelines based on these findings. Governor Snyder has pledged the cooperation of the public safety agencies of the Executive Branch.

Thank you for your attention in this matter.

Sincerely,

Randy Richardville
Senate Majority Leader
17th District

To The Michigan Law Revision Commission: Recommended Law Revisions and Legal Report on Defects, Anachronisms, and Insufficient Protection of Rights In The Michigan Mental Health Code

Sean Bennett
734-239-3541
Aug. 20, 2010
9 pages

The Michigan Mental Health Code should be reformed to comply with the Constitution and to protect citizens from assault and abuse. The Michigan Legislature should enact a statutory right to refuse non-consensual psychiatric drugging for persons committed under the Michigan Mental Health code, and should repeal commitment statute 330.1401(c). Psychotropic drugs can cause severe harms and irreversible mental and physical damage. Courts throughout the United States have recognized a vast array of harms and Constitutional rights violated by state laws that sanction assaultive, non-consensual psychiatric drugging, including the rights of: Bodily and mental safety and privacy, Freedom of speech, thought and belief, Access to justice, Cruel punishment, Substantive due process, Procedural due process and Equal protection of the laws. Michigan's assaultive drugging policies also violate common law, statutory law and disability discrimination law. Forced antipsychotic drugging "represents a particularly severe and substantial interference with a person's liberty". Riggens v Nevada 504 US 127. "Antipsychotic drugs can cause side effects as varied and serious as any pharmaceuticals approved for clinical use in the US". Davis v. Hubbard 506 Fsupp.915. "Antipsychotic drugs have the capacity to severely and even permanently affect an individual's ability to think and communicate. Side effects may be severe and irreversible." Bee v. Greaves 744 F 2nd 1387. The rights, privileges and personal interests are too great and psychotropic drugs too hazardous, intrusive and medically dubious to permit non-consensual drugging. Most states have established and protect a right to refuse drugs . Michigan is one of the few who fail to do so.

It should be made a felony crime to subject a person to these drugs without their consent. Assaultive drugging violates the most precious of human and Constitutional values–the mind and body. The drugs will cause only harm to many, are counter-therapeutic for many, and are not curative. Antipsychotic drugs often impact a patient with a result that is exactly contrary to, and detrimental to, the fundamental principles of psychological therapy, thus harming mental health. Psychotropic drugging can severely and permanently damage the person's ability to think, speak, communicate and interact with others politically, socially, and even impede a person's engagement in legal matters. Mental illnesses and mental problems are as broad and varied as human personalities. The idea that drugs are always the solution may feel good for doctors and drug companies, but leaves the health, safety, well-being and rights of the citizen and accused Person Requiring Treatment (PRT) greatly imperiled. The quality of mental health services is greatly disserved by an assaultive, fraudulent, one size fits all approach to mental health problem solving. Michigan policies and practices also violate equal protection and discrimination laws, treating all civil committees as incompetent to consent when only few are so afflicted. It should be made clear by statute that a civil commitment does not abrogate the law of informed consent or the right to refuse psychiatric "medications". Additionally, the word "treatment" in the phrase Person Requiring Treatment 330.1401 should be changed to hospitalization, protective custody, intervention, or something else that does not suggest the propriety or legality of forcing medical treatments on people against their consent.

Non-consensual drugging becomes an even greater threat to liberty when persons are committed from "sham" court proceedings absent meaningful due process, as is often the case. The assaultive drugging policy becomes still more pernicious when the commitment statute itself is unconstitutional, as is 1401 (c). Persons accused as PRT by psychiatrists in Michigan have little chance of prevailing, appealing or preventing a battery with these drugs. "Expert" psychiatric predictions of dangerousness – a requirement for commitment – are so typically unreliable, conclusory, biased, fraudulent, speculative and unfairly prejudicial, that they should be excluded from court altogether under the rules of evidence and due process. Psychiatrists have a financial bias to commit since this provides them with consumers of their services. The laws mandating a Least Restrictive/Intrusive/Harmful alternative resolution of the case are routinely ignored. Drugs are a most intrusive, not least intrusive therapy. Involuntary civil commitments are notorious for being "sham" proceedings. 1401 (c) compounds these abuses and constitutional violations, committing persons

without overt acts of dangerousness, but instead with subjective, untrustworthy, inadmissible psychiatric opinion alone.

I urge immediate enactment of the right to refuse psychiatric drugging to protect all recipients of mental health services under MCL330.1400. With exceptions only for emergencies when drug therapy is necessary to prevent physical harm to self or others within the hospital. Whereby the drug therapy "shall be as short as possible, at the lowest possible dosage that is therapeutically effective, and not to be extended beyond 48 hours unless there is consent." Adm. Rule 330.7158. The only other exception being for those patients who have previously indicated that should they become incompetent then they consent to being drugged. The case law from the other states on non-consensual psychiatric drugging has established that:

"While dangerousness may legitimately justify the state's authority to involuntarily commit an individual it does not justify the abrogation of the individual's right of informed consent with respect to psychotropic drugs." The right can be overridden only if it is necessary to prevent serious physical harm to the patient or others **within** the **hospital setting.** State Ex Rel Jones v. Gerhardstein, 416 NW 2nd 883 (Wisc. 87).

"The effect of these drugs can be far more debilitating to that patient than physical restraint incident to the involuntary commitment process." To forcibly drug a person, the state must establish that the patient will cause serious harm to self or others **in the institution** if not appropriately treated" with drugs. People v. Medina, 705 P2nd. 961 (Col. 85).

"Where the patient presents a danger to himself or others or engages in dangerous or potentially destructive conduct **within** the **institution,** the state may be warranted in administering antipsychotic medication over the patient's objections." But only for as long as the emergency persists. It is the individual who must have the final say in respect to a decision regarding his treatment. Rivers v. Katz, 495 NE 2nd, 337 (N.Y. 86).

"The requirement that medical personnel determine that there is an imminent danger of harm cannot be overemphasized. The police power may not be asserted broadly to justify keeping patients on antipsychotic drugs to keep them docile and thereby avoid potential violence. Moreover, this governmental interest justifies forced medication only as long as the emergency persists. Furthermore, the medication must be medically appropriate for the individual and it must be the least intrusive means of accomplishing preventing harm." A court's determination that a person is mentally ill and subject to hospitalization is not equivalent to finding that the person is incompetent to consent. Steele v. Comm. Mental Health Bd. 736 NE 2nd. 10 (Ohio 2000).

"Anti-psychotic drugs are a high risk treatment." "The risks of iatrogenically produced neurologic disability are alarming. Adverse effects can be devastating and often irreversible. If the drugs were mistakenly administered to a non-psychotic individual then that individual might develop a toxic psychosis causing him to suffer symptoms of psychosis". The commitment itself "extinguishes the potential harmfulness." Guardianship of Roe, 421 NE 2nd. 40 (Mass. 80).

Only the **patient** can **know** the **discomfort** of the drugs. Voluntary treatment is much more effective than involuntary treatment. Many fundamental rights "pale in comparison to the intimate decision as to accept or refuse antipsychotic medicine." Individual dignity and autonomy demand that "the person subjected to the harsh side effects of psychotropic drugs have control over their administration." in Re K.K.B. 609 P2nd 747 (Okl. 80).

A court's finding of dangerousness for involuntary emergency hospitalization is not equivalent to a finding of an emergency which would justify administering a compulsory treatment to a mental patient. In many situations, the hospitalization itself will curtail or eliminate the likelihood of harm. Opinion of the justices 465 A 2nd 484 (N.H. 83).

"Even after a civil commitment proceeding, a trial court cannot override treatment decision of a mentally ill adult unless he or she has been adjudicated presently incompetent." In Re Boyd, 403 A 2nd. 744 (D.C. 79).

"Treatment with antipsychotic drugs not only affects the patient's bodily integrity but the patient's mind, the quintessential zone of human privacy." An involuntarily committed patient retains the right to refuse treatment unless there is a separate finding of incompetency to consent. It is a cardinal principle that patients may not be presumed incompetent solely because of their hospitalization. The common law right to refuse treatment (informed consent) is not abrogated by a commitment. Reise v. St. Mary's Hosp. 271 Cal Rptr 199 (Cal.87)

"Statutes which unilaterally allow a state to medicate a person against his/her will are unconstitutional." A "patient objecting to medication for mental illness is entitled to have independent determination by probate court of ability to give informed consent." Doe v. Hunter 667 A2nd, 90 (Conn. 95).

"The likelihood of some potentially devastating side effects is both sufficiently significant and well established to support finding of the intrusiveness." So that commitment to institution does not eliminate constitutional rights to refuse psychotropic drugging. Jarvis v. Levine, 419 NW2nd. 139 (Minn. 88.)

"A patient's common-law right to decline medical treatment is not abrogated by short–term commitment." Goedecke v. State Dept. of Institutions, 603 P2nd. 123 (Col. 79).

These principles apply both to the newer and older drugs. "Zyprexa was, despite being widely prescribed, a very dangerous drug of dubious efficacy." These psychotropic medications are "highly intrusive", and "can have profound and lasting negative effects on a patient's mind and body." Meyers v. Alaska Psych. Institute, 138 P3rd. 238 (Alaska 06). NIMH landmark study concludes newer drugs are "no more effective and no safer" than the older drugs. "The study paints a sobering picture of the state of treatment." Washington Post, New Antipsychotic Drugs Criticized, Sept. 20 '05. 90% of patients "do not experience improvement with drug treatment." U.S. v. Ghane, 392 F3rd. 317 (04). "A court ordered assisted outpatient treatment plan simply does not authorize forcible medical treatment – nor, of course, could it, absent incapacity." In Re K.L. 806 NE 2nd. 480 (N.Y. 04). Psychiatric practices and MH Code administration in Michigan violate these fundamental and well established Constitutional and legal standards. Additionally, it is the older drugs that are typically used when patients are forcibly injected with the drugs against their consent.

Only when a patient is immediately dangerous within the hospital and "only if there is no less intrusive alternative" to antipsychotic drugs may patient be forcibly drugged. And "the statutory and regulatory conditions for the use of chemical restraints must be followed." Otherwise "a distinct adjudication of incompetence must precede any determination to override a patient's rights to make their own treatment decisions." Moreover, "the value of human dignity and the right to refuse treatment extends to both competent and incompetent persons." "At least six factors must be considered by the judge in arriving at a substituted judgment decision. In this search, procedural niceties must yield to the need to know the actual values and preferences of the ward." Rogers v. Comm. Of Dept. of Mental Health, 458 NE 2nd 308 (Mass. 83), Rogers v. Okin 478 Fs 1342 (79), Rogers v. Okin 634 F2nd 650 (80).

A patient dangerous in society "may give state power to confine, but standing alone does no give power to treat involuntarily." "Only the patient can really know the discomfort of the effects of the drugs." To go from a state of confinement, to confinement plus forced medication" requires a separate additional due process hearing. "Mental illness is not the equivalent of incompetency." "Individual autonomy demands that the person subjected to the harsh side effects of psychotropic

drugs have control over their administration." Psychiatric diagnosis and therapy is uncertain , with great divergence of opinion in any given case." Rennie v. Klein, 462 Fs 1145 (78).

" A person involuntarily committed to a mental institution generally cannot be given medical treatment without consent, and has right to refuse treatment such as drugs or medication. Even a patient who is mentally incompetent has a right to refuse treatment." "A person or entity making a substituted judgment on the patient's behalf should make the decision the patient would have made had he or she been competent." "The 'best interests of the patient' standard applies in the absence of any record evidence regarding the patient's views while he or she was competent on the use of such medications." Corpus Juris Secundum, Mental Health (07) # 109,110.

Michigan's M.H. Code policies of non-consensual drugging also constitute illegal disability discrimination violating the ADA, 42 USC 12132, 28CFR35.130, the Federal Rehabilitation Act, state discrimination law and Equal Protection law. The vast majority of involuntarily committed persons do not lack capacity to consent, and the commitment does not determine incompetency, thus the Mich. practice of summary override of a patient's very important right of informed consent along with numerous other Constitutional rights and personal interests of the highest importance, is discrimination and a denial of equal protection of the laws. And because the commitment itself mitigates, if not eliminates, dangerousness, a "direct threat" defense is inapplicable. Hargrave v. Vermont, 340 F 3rd. 27 (03). Psychiatric patients have the right to be protected against unequal, unjustified, and excessive burdens on their liberties under the ADA. Olmstead v. L.C. 527 U.S. 581 (99.)

Reforms of Mich. M.H. Code and Practices are essential. "Antipsychotic drugs cause brain damage." The drugs do not correct brain dysfunction, they worsen it. The drugs will impair human and intellectual functioning. The drugs cause a "chemical lobotomy" effect. Peter Breggin, Toxic Psychiatry (91). "Nothing could be a greater threat to first amendment values" than involuntary treatment. Bruce Winik, The Right to Refuse Mental Health Treatment: A First Amendment Perspective, Univ. of Miami L.R. (89). Psychotropic medications may do more harm than good for many of the individuals" the state is presumptively trying to help. Durham, Lafond, A Search for the Missing Premise of Involuntary Therapeutic Commitment: Effective Treatment of the Mentally Ill, Rutgers Law Review (88). "Denial of the right to consent makes patients into second-class citizens and leaves them more vulnerable to harm, not less." Lee Coleman, The Reign of Error (84). "Whenever psychiatry is given state power, no one is well served." Id. The use of these "dangerous, intrusive, painful and unpredictable drugs" without consent "constitutes cruel punishment" and is "degrading to human dignity in the truest sense." The drugs are so bad they may transform healthy human beings into disabled persons. Elizabeth Symonds, Hastings Constitutional Law Quarterly (80) p 738.

Additional medical and social realities are that "most acute psychotic episodes abate with or without drugs, however, "few appreciate the magnitude and incidence of harms" of drug treatment. Sheldon Gelman, Mental Illness and Drugs, Georgetown Law Journal (84) p. 1725. Antipsychotic drugs can cause severe depression, severe anxiety, and can even cause psychosis. They have been described by patients as the "most painful, distressing ordeal they have ever experienced", "torture" and "punishment". Id. Neuroleptic drug effects can be painful, debilitating, lethal, cause EKG abnormalities, and there is great uncertainty as to how someone will respond to them. Wisconsin Law Review (80) p.537. "After seven years of painstaking research we came to the conclusion we can not predict the outcome of drug treatment for an individual patient," and "all anti-psychotic drugs produce systematic EEG alterations." May, UCLA Neuropsychiatric Institute (81). The sad truth is that psychotropic drugs do not cure, they damage the brain and impair mental functioning. Neuroleptic means to imitate neurological *disease*. The drugs are even considered too dangerous for animal

consumption. Breggin, Id. "The history of psychiatry is a succession of therapies each deemed far better than its predecessor, and all destined to be regarded as deplorable." Gelman Id.

The extraordinary list of terrible adverse effects of these drugs include: causing mental illnesses, liver dysfunction, heart damage, sudden death, Neuroleptic Malignant Syndrome, kidney failure, Tardive Dyskinesia, blurred vision, Akinesia – socially debilitating, agranulocytoses, dystonic reactions, body-temperature regulation damage, endocrine and hormonal disorders, blood pressure problems, fatigue, and stupor among many others. Dennis Cichon, The Right to Just Say No: A History and Analysis of the Right to Refuse Antipsychotic Drugs, Louslana Law Review (92)p. 297-310. Many persons have even died from antipsychotic drugs. The drugs can harm or kill developing fetuses in pregnant women. The drugs are also the leading cause of adverse drug reactions in nursing homes in the United States. Sydney Wolfe, Worst Pills Best Pills, Consumer's Guide, Public Citizen Health Research Group (05). Some of the older and newer antipsychotic drugs now receive the FDA's most serious "Black Box" warning. Antipsychotic drugs can also significantly impair the ability to think, talk, read, communicate, function normally, and can permanently impair memory and learning ability. Cichon p. 322. "Reading, talking and social interactions may become difficult or impossible." Smith and Meyer, Law, Behavior and Mental Health Policy. (87). "Given the historical and deep seated value attributed to the First Amendment interest, the First Amendment should stand as the most significant barrier protecting involuntary mental patients against state imposition of mind-altering drugs." Cichon p. 336.

The fact is that drugs, as a means of therapy, can be very harmful and not beneficial. Adverse drug reactions cause "150,000 deaths each year in hospitalized patients alone." Virginia Sharpe, Medical Harms, (98). Psychotropic drugs are especially medically dubious and non-therapeutic. Compounding this is that much of the information used by doctors in choosing drug treatment is "suspect" and "most derives from drug company ads or company reps." Sharpe, Id. Moreover, errors by medical professionals is a massive problem and substantial threat to all who could be labeled mentally ill. Bad medical judgment, incompetence, and carelessness cause 180,000 deaths each year. W. Curran, Health Care Law and Ethics (98). Studies corroborate that only about 50% of patients will obtain any benefit from antipsychotic drugs. The other 50% will be far better off without them. People v. McDuffie, 50 Cal. Retr. 3rd. (06), Cichon, p. 296. "The primary lesson of psychiatry's past is that mental patients are better qualified to decide to accept or reject a treatment than are psychiatrists." Coleman, Id. p 126.

The U.S. Constitution 14th Amendment mandates that: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Michigan's constitution has like guarantees. Michigan's Mental Health Code and practices violate the Constitution(s) and violate the rights of all persons subjected to civil commitment. The policies violate not just a clearly established constitutional prohibition mandating reform, but many such constitutional rules. In addition to the legal rights previously referred to, substantive due process prohibits Michigan's policy as unconstitutionally: 1. Harmful, 2. Intrusive, 3. Oppressive, 4. Excessive, 5. Abusive, 6. Degrading,7. Punitive 8. Experimental 9. Medically dubious, 10. Shocking to the conscience. The violation of any one of these invalidates the policy and prohibits the practices under substantive due process. Michigan's assaultive drugging policies violates them all. Those who take seriously their oath to uphold the constitutions U.S. Constitution Article 6, Michigan Constitution Article 11, Section 1. Should not allow these psychiatric practices to continue.

Michigan Administrative Rule 330.7158 Medication would appear to have remedied the non-consensual drugging issue. However, it has been interpreted by the Department of Community Health and M.H. practitioners as being applicable only before and not after a commitment determination. This interpretation is a pretext for and results in non-compliance with constitutional, common, statutory, administrative and discrimination law. It is clear that: 1. The language does not say that it applies only before and not after a commitment. 2. R. 7158 is listed with other rights that apply after commitment. 3. MCL 1702, 1489, R.7009, and other provisions in the M.H. Code confirm that a commitment is not a determination of incompetency to consent. 4. MCL 1704, 1722, R.7001, R.7009, and other provisions in the M.H. Code, including the rights to dignity and person-centered planning, confirm that a commitment should not abrogate a person's right to refuse drugs. 5. Because psychotropic drugs are almost always a most intrusive/restrictive/harmful alternative therapy, standard drugging policy is contrary to the L.R.A. rule. 6. The standards of good mental health practice, quality of care, and rules of law throughout the U.S. affirm the right to refuse drugs even after a commitment. 7. The other states recognize that a commitment does not abrogate informed consent and the right to refuse, and the right cannot be overridden without substantive and procedural due process protections. Thus Michigan Dept. of Community Health has interpreted R. 7158 to contradict and to ignore what virtually all states and all courts have agreed upon, except Michigan, that a commitment does not authorize forced medication. Michigan stands alone in sanctioning unbridled psychiatric abuses and assaults on human dignity and personal rights.

It is time for Michigan lawmakers to respond to the overwhelming facts and to this country's core principles and values of liberty and justice for all, and change bad legislation so that Michigan citizens are not subjected to, violated, intimidated or victimized by a historically disgraceful corruption of the law-making and legal process. The forced use of these drugs against a person's consent should be made a felony crime in Michigan. "I have sworn on the altar of God eternal hostility against every form of tyranny over the mind of man." President Jefferson. Those who deny liberty to others deserve it not for themselves. President Lincoln. "Corruption is the arch-enemy of this republic." President T. Roosevelt. "Justice is the end of government, it [justice] is the end of civil society." Madison, (Federalist Paper #51).

Other Constitutionally essential reforms of the Mich. M.H. Code include repealing 330.1401 (c).The commitment criteria predicated on a person's objection or disinclination to consume psychotropic drugs, the standard treatment, as proof of the person's mental illness and impaired judgment and insight, and also predicated on a supposition of "competent medical opinion" is most improper and unconstitutional. The truth is that only severely mentally ill persons **would not** object to consuming anti-psychotic drugs. Irrespective of the innumerable horrendous "side effects" of the drugs, the primary effect of the drugs is to cause mental impairment. Riggens v. Nevada pointed out that drug impact was so severe it could prevent or obstruct a person from assisting in his defense in the preparation of a trial. What person in their right mind would not object to drugs that cause severe and permanent injury or drastically impair mental functioning? These drugs can and do cause brain damage. Toxic Psychiatry, Peter Breggin (91). Psychiatrists routinely allege that a person's objection to harmful, mind impairing drugs proves their illness and proves that they should be drugged against their consent. 1401(c) supports such obscene and circular reasoning and should be repealed. Objection to psychiatric "treatments" should not be a basis for commitment, or used as evidence that the person is so mentally ill that they are unable to understand their need for treatment. The statute, in essence, turns denial of guilt into confession of guilt.

Moreover, "competent clinical opinion" in the realm of psychiatry is a misnomer and a misrepresentation in and of itself. Psychiatry is **very subjective.** Diagnosis, like treatment, is imprecise

and speculative. Psychiatry is notoriously unreliable. There is general acceptance within the Scientific/Scholarly community that psychiatric opinions for civil commitments are not reliable. Psychiatric evidence is easily falsified and has high error rates. Psychiatric predictions of dangerousness should be excluded from court altogether under Daubert 509 US 579 (93) standards. "Psychiatrists do not really possess the expertise they claim." Reign of Error, Lee Coleman (84). There will be more discussion below on the issue of psychiatric opinion credibility.

330.1401 (c) is also vague and overbroad violating due process and the 1st. Amendment. There must be fair and clear notice as to what is prohibited. Instead the statute forces people to guess and speculate as to what is or is not legal. It is also unconstitutional because psychiatrists, prosecutors, and others may subject persons to prosecution because they dislike what they have to say or other improper motive. Without a clear rule of law, selective, discriminatory, arbitrary prosecutions are inevitable. **"Competent Clinical Opinion" is insufficient to warn citizens or to proscribe administrative action.** A statute threatening fundamental liberties based not on rules, facts and overt acts, but instead upon subjective (and likely biased and wrong) opinions is insulting to the Constitution. The commitment statute is void for vagueness because it fails to provide fair warning as to what is prohibited and because of a lack of standards restricting the discretion of those implementing the statute. Chicago v. Morales 527 US 41, Kolendar v. Lawson 461 US 352, Papachristou v. Jacksonville 405 US 156, Coates v. City of Cincinnati 402 US 611. The statute is open to arbitrary applications infringing on 1st. Amendment rights, lends itself to arbitrary and capricious decisions, will allow a great deal of abuse, and the choice not to accept treatment becomes a basis in and of itself for commitment. Goldy v. Beal 429Fs 640, (76). 1401 (c) deprives liberty based not on overt acts of dangerousness, but instead upon psychiatric opinion of another's character and integrity. "Although the crime is not specified, the defendant must prove he is innocent of it." Thomas Szaz, Law Liberty and Psychiatry, (63).

Due process and equal protection require that the standards for commitment require a determination of dangerousness based on a recent overt act, attempt or threat to do substantial harm to self or others. Lessard v. Schmidt, 349 Fs1078, Doremus v. Farrell, 407 Fs, 500, Suzuki v. Yuen, 617 F2nd 173,Suzuki v. Alba 438 Fs 1106,1110. Due process requires evidence of overt acts of dangerousness sufficient to justify "massive curtailment of liberty." Additionally, there should be evidence of immediate dangerousness, not eventual dangerousness. 1401 (c) is predicated on an expert ability from psychiatrists that they do not have. It is well established that "psychiatrists have absolutely no expertise in predicting dangerous behavior" and that persons with mental illness are not more dangerous to others than those not so labeled. M. Perlin, Mental Disability Law, Vol. (98). Moreover, if a person's behavior has not evidenced an overt act, attempt or threat of harm, to assert that the person is a great danger to self or others is most defamatory. Physicians should be in the business of benefiting people's health, not in the business of libel/slander, prosecuting and imprisoning others, assault, intimidation, and forcible mind-control.

Substantive due process prohibits arbitrary government actions and state laws that sanction arbitrary action. Arbitrary means depending on individual discretion instead of fixed rules or founded on prejudice or preference instead of facts. MCL 330.1401 (c). subjects persons to arbitrary deprivations of liberty. Evidence to support a commitment "must come in the form of a recent overt act, attempt or threat." "Stringent proof is necessary because predicting dangerousness is difficult and at best speculative." Matter of Foster, 426 NW 374 (Iowa 88). Matter of Stokes, 546 A2nd 356 (D.C. 88.) The evidence as well as the consensus of scientific opinion is now unequivocal that psychiatrists do not have the ability to reliably predict future dangerousness. In N.Y. study "on psychiatric predictions of violence...seven correct predictions out of almost a thousand is not a very impressive

record." People v. Murtishaw, 631 P 2nd 446, 466 (Cal.81). An involuntary commitment must be based on facts of recent or immediate dangerousness, not clinical opinions and predictions.

Thomas Jefferson, in his famous Virginia Statute on Religious Freedom (1786), enunciated these principles:

1. God has created the mind free and all attempts to control it by burdens, punishments, or incapacitations only beget habits of hypocrisy and meanness.
2. Civil government may interfere only on the basis of overt acts of harm, not on the opinions of others' opinions.
3. Truth, through its bulwarks, free argument and debate, speech and communication, are the proper and sufficient antagonists to error.
4. Any act of legislature contrary to these principles shall be an infringement of the natural rights of man.

It is time to finally face and to admit that, under the constitution and laws, psychiatric opinions, instead of being the practical embodiment of Due Process, are too unreliable, biased, conclusory, based on hearsay and ultimate-issue based to be allowed in court as evidence to begin with. Repeating, "expert" psychiatric medical certificates/commitment opinions should not even be allowed in court to begin with, much less virtually always controlling the legal proceedings and the lives and liberties of those alleged to be a "P.R.T." "Psychiatry should be stripped of its state given powers". Coleman, id. Psychiatric testimony does "not even come close to meeting the current criteria for admissibility as expert testimony demanded by our courts." Margaret Hagen, Whores of the Court: The Fraud of Physiciatric Testimony and the Rape of American Justice. (97) "The only conclusion that can be supported with regard to the accuracy of psychiatric evaluations is that it is extremely clear they are more likely to be wrong than to be right"...it is time to "finally recognize this reality and refuse to allow waste of the court's time and taxpayer's money and the muddling of the trial process with evidence that is demonstrably of such poor quallty." Ziskin and Faust, Coping with Psychiatric and Psychological Testimony. (88).

Psychiatrists have no expert competence in predicting dangerousness and "should not be permitted to testify to the conclusion that someone is or is not dangerous." Smith and Meyer, Law, Behavior and Mental Health Policy and Practice, p. 611 (87). "We should expect the rules of evidence, and specifically the reliability standards of Daubert v. Merrill Dow Pharmaceuticals, 509 U.S. 579 (93) to require that exclusion of predictive expertise from the civil commitment process." Perry and Drogin, Mental Disability Law, ABA Commission (07). "It is difficult to reconcile statistical probabilities related to predictions of human behavior with legal burdens of proof that have thresholds normally requiring at least 50% accuracy, and significantly more than that if involuntary commitment is at issue." Parry and Drogin, Civil Law Handbook on Psychiatric and Psychological Evidence and Testimony, (01). " If judges elect to take their gatekeeping functions seriously, they may choose to make inadmissible much of what, in the past, has gone to the trier of fact with minimal review." Id. The Medical Certificates/Psychiatric Opinions required by the Michigan Mental Health code are prohibited by the rules of evidence and the Constitution. MCL330.1401 (c) should be repealed immediately. The atrocious history of psychiatrists depriving citizens of their liberties should be ended.

Expert witness's opinions generally have long been considered "suspect, of the lowest order, and the most unsatisfactory part of judicial administration", with bias and corruption omnipresent. Expert Witness Testimony, Illinois L.R. p. 46 (86). The problems with expert testimony are far worse in psychiatry – a very inexact science. Psychiatry and the Presumption of Expertise, Calif. L.R. (74). It

has also long been recognized that mental health clinicians disagree more than half the time on psychiatric diagnoses, "even on major diagnostic categories". Pepperdine Law Review, The Impact of Daubert (03). Moreover, unlike in other civil court cases, a person's liberty is at stake. "A financial interest is insubstantial compared to that of avoiding loss of individual's liberty. Psychiatric Expert Witnesses, Am. Journal of Law and Medicine (80) p. 429. Additionally, "there is near-unanimity among scholarly commentators that mental health professionals should ordinarily refrain from giving opinions on ultimate legal issues"... such as whether a person should be committed. Melton, Petrila, Peythress, Slobogin, Psychiatric Evaluations for the Courts (97) p. 17. Even a past president of the American Psychiatric Association, A. Stone, (84) has said that "Psychiatrists are immediately over the [Ethical] boundary when they go into court." Psychiatrists cannot predict future dangerousness and courts "make a mockery of justice when they ignore the rules of evidence and allow such testimony." Cardoza Law Review (03). "Giving the imprimatur of science to chicanery undermines our justice system". Id.

The legislature is responsible for this shameful corruption of the legal process, and it is the legislature's responsibility to bring it to an end. And on top of all this is the incapacity or unwillingness of Probate Court Judges to respond to these issues. The essence of procedural due process is a fair trial. In a survey of state court judges, judges had great difficulty in demonstrating clear understanding of error rates and falsifiability. Survey of Judges on Judging Expert Evidence in a Post-Daubert World, Law and Human Behavior (01). W Grove, Protecting the Integrity of the Legal System, Psych. Public Policy and Law (99) concludes that a significant proportion of all mental health testimony would be inadmissible under properly conducted Daubert evaluation. "Psychiatric testimony is far less reliable than polygraph evidence which is almost never allowed into evidence", and is misleading and prejudicial since juries are likely to overvalue its reliability. Thomas Almy, Psychiatric Testimony, ABA, The Forum (84). The abuses, corruption, discrimination and illegal misconduct long rampant in the Mental Health legal process cannot be expected to be ended by judges who have been part of the problem. "Courts accept testimonial dishonesty and engage similarly in dishonest decision-making, specifically where witnesses, especially expert witnesses, show a high propensity to purposely distort their testimony...This conduct is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants, and reinforces shoddy lawyering, judging and ...perjurious, corrupt testifying." Perlin, Law and Mental Disability (94). Persons in Michigan are being illegally assaulted in mind and body after having been illegally committed to begin with. Lawmakers here in Michigan have been content to trust psychiatrists instead of the Constitution. This trust in psychiatry is misplaced, this lack of trust in the Constitution is misguided.

Additionally, MCL 330.1401(d), 330.1716, 1717 should also be revised or repealed for the reasons set forth here. A person should never be subjected to Electroshock, Surgery or psych. drugging against their wishes/consent regardless of any Competency, guardian or Court decision. The only exception for dangerousness emergencies within the hospital, whereby drugging limited to 48 hours.

Drug Co. Immunity should be repealed.

Mich should join those states Suing the Newer Antipsychotic Drug Co.s for Medicaid Fraud. Risperdal-J+J, Seroquel-AstraZeneca, Zyprexa-Eli Lilly.

And note also Code of Fed Reg. Title 42, 438.100. Mich. must protect the right to refuse treatments and the right of informed Consent.

Disability should be included in Mich. Bias Crime law.

Thank you for your assistance. Sincerely,

Sean Bennett

734-239-3544

Sean Bennett