

CONNECTICUT LEGAL RIGHTS PROJECT

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Testimony of Susan Aranoff, J.D. Staff Attorney Connecticut Legal Rights Project, Inc. Before the Public Health Committee

Good afternoon distinguished members of the Public Health Committee.

I am Susan Aranoff, Staff Attorney at Connecticut Legal Rights Project and I am here today to speak in opposition to **S.B. 1068, An Act Concerning Patients' Rights at Whiting Forensic Division.**

Connecticut Legal Rights Project, Inc. is a non-profit legal services agency that provides individual and systemic legal services to indigent adults who have, or are perceived as having, psychiatric disabilities and who receive, or are eligible to receive, services from the Department of Mental Health and Addiction Services.

Connecticut Legal Rights Project maintains offices at all DMHAS operated in-patient and out-patient facilities in the state. Our offices are staffed by attorneys and paralegal advocates. I provide legal services to individual clients and I supervise four paralegals. My testimony today is informed by my expertise in the area of patients' rights, in general, and my direct experiences in Connecticut.

While Connecticut Legal Rights Project, Inc. fully supports DMHAS' efforts to protect the safety of patients, staff and visitors at Whiting, we **OPPOSE S.B. 1068, An Act Concerning Patients' Rights at Whiting Forensic Division** because it would rob certain patients of their constitutional and statutory rights to be secure in their own

possessions and would deprive them of their possessions without of due process of law. Furthermore, S.B. 1068 is unnecessary, overly broad and impermissibly vague.

A. Deprivation of Personal Property Rights

CGS 17a-540 et.seq. constitutes Connecticut's Patients' Bill of Rights. The Bill of Rights was enacted in response to reports of deplorable conditions at Fairfield Hills and other hospitals and has been amended in response to tragic events such as the death at Elmcrest caused by the misuse of mechanical restraints.

In the case of *Mahoney v. Lensink*, the Connecticut Supreme Court held the following: "Several provisions of the patients' bill of rights illuminate the breadth of the legislative concern for the fair treatment of mental patients. Because the patients' bill of rights is remedial in nature, its provisions should be liberally construed in favor of the class sought to be benefited." *Mahoney v. Lensink*, 213 Conn. 548 at 556:

There are at least two provisions of the Bill of Rights that guarantee all patients the right to possess personal property and provide that their right to property can be denied only on an individual basis when there is a sound clinical reason to do. It is clear from the plain language of the Patients' Bill of Rights that the legislature recognized the individual nature of property rights and therefore codified these rights as individual rights that can be denied only on an individual basis and only for good cause.

Section 17a-541 is titled "Deprivation of Rights Prohibited" and provides as follows:

No patient hospitalized or treated in any public or private facility for the treatment of persons with psychiatric disabilities shall be deprived of any personal, property or civil rights, including the right to vote, hold or convey property, and enter into contracts, except in accordance with due process of law, and unless such patient has been declared incapable pursuant to sections 45a-644 to 45a-662, inclusive. Any finding of incapability shall specifically state which civil or personal rights the patient is incapable of exercising.

Likewise, Section 17a-548 provides that:

- (a) Any patient shall be permitted to wear his or her own clothes; to keep and use personal possessions including toilet articles; except for patients hospitalized in Whiting Forensic Division; to be present during any search of his personal possessions; to have access to individual storage space for such possessions; and in such manner as determined by the facility to spend a reasonable sum of his or her own money for canteen expenses and small purchases. These rights shall be denied only if the superintendent, director, or his authorized representative determines that it is medically harmful to the patient to exercise such rights. An explanation of such denial shall be placed in the patient's permanent clinical record.

S.B. 1068 provides blanket, unfettered permission for DMHAS to deny by policy rights secured by law. Existing policies and recent practices at Whiting demonstrate a lack of respect for basic patients' rights.

In November, we represented a Muslim client at Whiting who was not allowed to wear his skull cap in the dining room because Whiting has a policy that prohibits hats in the dining room, ostensibly to control contraband. Our client did not eat for two days. He was told he had a choice- remove his skull cap or eat. After two days, he was allowed to eat in his room. We challenged the policy and asked that at a minimum it be modified to include a religious

exemption. In the interim, I asked that he be allowed to wear his skull cap and remove it when he left the dining room, so as to demonstrate that he had not stashed any contraband under it. My request was ignored. It is my understanding that a religious exemption will be added to the policy shortly. Notwithstanding the fact that the policy will likely be modified, the following comments were made to me and evidence a disturbing lack of respect for patient's rights. One official complained that the guards and other staff were now going to have to distinguish between fashion statements and religious garments. Another stated that he was reluctant to allow a religious exemption, because he would never allow a patient to wear a turban.

Furthermore, in recent years, we have represented patients who have been deprived of critical medical equipment due to safety concerns. In one case, a visually impaired patient was not allowed use of his cane. Instead, he was offered a foam "pool noodle". The noodle was both useless and degrading. Another client has sleep apnea, a potentially fatal condition and was denied use of a c-pap machine because the cord raised safety concerns. It took the director of Whiting months of persistent effort to obtain a c-pap machine. First he waited months for the woodshop to modify the machine so as to shelter the cord- and then he waited a few more months for the fire marshal to approve the modification.

These are but a few examples of safety policies that have been applied so as to violate patients' rights. But they are serious examples. And they were susceptible to challenge because there is nothing in the statutes that allows

Whiting to abrogate patients' basic rights in the name of safety. Passage of 1068 will give DMHAS the green light to enact policies that abrogate patients' basic rights with near impunity.

B. S.B. 1068 Is Not Necessary

S.B. 1068 is not necessary because all hospitals, including Whiting, have both regulatory authority and obligations to maintain patient safety and privacy. Accordingly, the hospital already has the authority to ban inherently dangerous items, such as guns and alcohol and to ban cameras and other recording devices in order to ensure privacy. Whiting and all other DMHAS facilities must comply with existing safety standards, including those promulgated by CMS, JAHCO and the Department of Health, to name but a few.

In sum, existing rules and regulations give Whiting the authority it needs to control contraband and ensure the safety and privacy of patients, staff and visitors. It would be wrong to amend the patients' bill of rights so as to give DMHAS unfettered authority to deny the patients, who already live with the greatest - and frankly unimaginable - deprivations, the right to possess personal property when that property does not pose an articulable clinical risk.

Thank you for your time and attention. I am happy to answer any questions you might have at this time.