

## **FAQ on Senate Bill 43 & House Bill 104**

### **What are these bills?**

S.B. 43 and H.B. 104 are companion legislative measures (one introduced in the Ohio Senate and the other in the Ohio House of Representatives) that propose to expand the current standard in Ohio law for determining whether a person with mental illness requires court-imposed involuntary commitment, and expressly include the option for courts to order assisted outpatient treatment.

### **What is the current law?**

A court can order involuntary hospitalization or assisted outpatient treatment, for an individual with mental illness if the individual meets any one of the following criteria: (1) is a danger to self; (2) is a danger to others; (3) is unable to provide for their own basic physical needs; or (4) would benefit from treatment for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of himself or others. To meet the fourth standard, Ohio courts have adopted a test that weighs the totality of the circumstances.

### **What do S.B. 43 & H.B. 104 propose to change?**

These bills would essentially expand the legal standard to determine whether a person requires involuntary commitment by striking the established requirement that a court find "evidence of behavior that creates a grave and imminent risk to others or the person" and replaces it with a focus on treatment compliance and future risk of harm.

Specifically the bills amend the fourth criteria of section 5122.01(B)(4) to instead require a finding of all of the following: (a) substantial likelihood that, if the person is not treated, the person's current condition will further deteriorate and become a danger to self, others, or be unable to provide for their own basic needs; (b) demonstrated difficulty in adhering to reasonable and appropriate prescribed treatment; and (c) likelihood that the person will not voluntarily participate in treatment despite a risk of serious impairment or injury to self or others. The bill also includes an express statutory option for courts to order assisted outpatient treatment.

## What are our concerns with S.B. 43 & H.B. 104?

- The legislation would expand the definition of individuals who could be subject to court intervention and involuntary commitment.
- Courts can already order hospitalization and/or outpatient treatment under Ohio's current involuntary commitment law.
- The legislation lacks clarity for when the individual can be released from the court's control, which could alter the constitutional balance of the public's health and welfare interests over the individual's liberty and privacy interests.
- The community mental health system is in crisis and already lacks the necessary resources to match the growing demand for services. It would increase demand for these limited resources without providing any additional funding. See, Harvard Medical School Health Newsletter, <http://harvardpartnersinternational.staywellsolutionsonline.com/HealthNewsLetters/69,M0808b>.
- Studies indicate that without an investment of additional resources to support community mental health services, there is little to no benefit from court-ordered involuntary outpatient treatment alone. *RAND Study: "The Effectiveness of Involuntary Outpatient Treatment."* See, [http://www.rand.org/content/dam/rand/pubs/monograph\\_reports/2007/MR1340.pdf](http://www.rand.org/content/dam/rand/pubs/monograph_reports/2007/MR1340.pdf).
- A recent study of this issue was released lending additional weight to the view that involuntary outpatient commitment or treatment is, in addition to a deprivation of civil liberties, ineffective. *The Lancet, Community treatment orders for patients with psychosis (OCTET): a randomised controlled trial* <http://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2813%2960107-5/fulltext>.

- Involuntary commitment and forced treatment are inconsistent with the goals and principles of recovery. The Substance Abuse and Mental Health Services Administration’s (SAMHSA) working definition of recovery is: “a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.” See, <http://blog.samhsa.gov/2012/03/23/defintion-of-recovery-updated/>.
- The legislation’s proposal to expand the legal standard for determining when involuntary commitment is required, could conflict with the current “totality of the circumstances” test, which gives courts discretion in weighing all relevant factors, including consideration as to whether the individual’s mental illness is in remission.