

DISABILITY RIGHTS OHIO

Ohio Disability Rights Law and Policy Center, Inc.

Michael Kirkman, Esq.
Executive Director
mkirkman@disabilityrightsohio.org

March 20, 2013

Senator Dave Burke
Ohio Senate Building
1 Capitol Square, Ground Floor
Columbus, OH 43215

Re: Senate Bill 43

Dear Senator Burke:

The Ohio Disability Rights Law and Policy Center, Inc. (Disability Rights Ohio) writes to share information and concerns with you with respect to Senate Bill 43. As you may know, as the successor to Ohio Legal Rights Service since October 1, 2012, Disability Rights Ohio is designated as the system under federal and state law to protect and advocate for the rights of people with disabilities in Ohio. Our mission is to advocate for the human, civil, and legal rights of people with disabilities throughout Ohio, including the right to have a voice in their recovery, and to be free from coercive treatment.

We and the clients we serve, people with psychiatric disabilities, are concerned that SB 43 would unfairly modify the standard for determining when a court can issue an order for involuntary commitment or assisted outpatient treatment for people with a mental illness. While most agree that Ohio's mental health system has been underfunded and stressed to a point of crisis, SB 43 simply will not address these concerns – indeed, if implemented, SB 43 could actually increase the stress on the system.

While courts have held that involuntary commitment is constitutional in limited and narrow instances to protect individuals from harming themselves or others, SB 43 unjustifiably tips the balance of interest too far in favor of the state and away from the individual. The current language strikes the correct balance as found by thorough review in state and federal courts, particularly the Ohio Supreme Court. Moreover, current law already provides for outpatient treatment as an option in every case, even as very few judges utilize this option.

Of necessity, proponents describe SB 43 as merely a clarification of the existing law. This is disingenuous. Indeed, Probate Judge Randy T. Rogers of Butler County stated in a presentation before the Attorney General's Task Force on Criminal Justice and Mental Illness that: "I personally do not oppose SB 350, [now SB 43] although I recognize that it is an expansion of existing law and will likely increase the number of 5122 commitment cases filed in Ohio courts." The revised standard at section 5122.01(B)(4) to determine when an individual is mentally ill and subject to court order is more than a clarification. Instead, it widens or expands the current standard for an involuntary commitment order. In doing so it utilizes vague, legally meaningless terms such as a "substantial likelihood that ... the condition will further deteriorate..." or whether someone has "demonstrated difficulty in adhering to ... treatment."

Disability Rights Ohio is a 501(c)(3) not for profit corporation. Please consider supporting our work. Financial contributions are deductible to the fullest extent of the law.

50 W. Broad Street, Suite 1400 • Columbus, Ohio 43215-5923 • www.disabilityrightsohio.org
Telephone 614.466.7264 • Toll Free 1.800.282.9181 • TTY Toll Free 1.800.858.3542 • Fax 614.644.1888

Disability Rights Ohio is also concerned that in practice once an individual is under a court order per the legislation the order will be continued indefinitely. There appears to be no specific time-table for release and little guidance for the court or the individual subject to the order for an individual to ever escape the jurisdiction of the court, other than to comply with treatment. Court ordered, assisted outpatient treatment without the full range of due process rights, including a reasonable process to terminate the order, may become a serious barrier to an individual's efforts in ultimately moving beyond the court system and seeking other services and stability. SB 43 also contemplates expanded duties, responsibilities, and ultimately increased costs for the probate courts in Ohio. The bill would require probate judges to perform in a role more suited to the professional skills of a case manager or probation officer – closely monitoring and counseling each individual's compliance with a treatment plan.

There is no conclusive evidence that assisted outpatient treatment (AOT) actually accomplishes the outcomes that the proponents seek. Studies into the effectiveness of court ordered, assisted outpatient treatment for people with serious mental illness present conflicting and inconclusive results. Studies conducted by the Rand Corporation, Duke University Medical Center, and by researchers in the state of New York, have concluded that positive outcomes for people under court order do not occur solely because of the order. Proponents may talk about the power of the robe, but the research indicates that the power is more of a myth. Indeed, a recent study about AOT concludes:

Although our analysis found no differences when we controlled for the presence of an intensive case manager, assisted outpatient treatment clients also received other enhanced services, such as priority for housing and vocational services. We cannot conclude which of these elements of the package deal contributed most to the generally positive outcomes for participants. We therefore caution against using our results to justify an expansion of coercion in psychiatric treatment.

Phelan, Sinkewicz, Castille, Huz, Link: *Effectiveness and Outcomes of Assisted Outpatient Treatment in New York State*, Psychiatric Services, February 2010 Vol. 61 No. 2, p. 137-143 (emphasis supplied), online at <http://ps.psychiatryonline.org/data/Journals/PSS/3901/10ps137.pdf>.

The research points to the conclusion that positive outcomes are a result of the availability of resources and more robust support services, including housing and vocational training, because of court ordered access to a rich mix of community mental health and other services. See, generally, Harvard Medical School Health Newsletter, online at <http://harvardpartnersinternational.staywellsolutionsonline.com/HealthNewsLetters/69,M0808b>.

This conclusion is consistent with research from as early as 1987 by Hiday and Scheid-Cook: *The North Carolina Experience with Outpatient Commitment: A Critical Appraisal*, International Journal of Law and Psychiatry 10:215–232, 1987, and the 2001 Rand Study of AOT, Ridgely Borum, Patrilla: *The Effectiveness of Involuntary Outpatient Treatment - Empirical Evidence and the Experience of Eight States*, Rand Monogram Series, 2001. It is also consistent with anecdotal evidence from communities in Ohio that use aggressive community based clinical case management (ACT), which suggests that a robust case management system, including outreach to individuals being served, prevents treatment lapses, reduces inpatient recidivism, and provides for buy in and positive outcomes for the person in the system.

Thus, the expansion of court ordered, assisted outpatient treatment without additional resources to support enhanced access to services does not appear to be sound mental health policy. To the contrary, the implementation of SB 43 would diminish the availability of mental health services for others in Ohio by siphoning precious resources away from individuals who are voluntarily seeking services. When the state of New York established a court ordered, assisted outpatient treatment program, it simultaneously appropriated a large increase, approximately \$16 million in new resources to support the implementation and provide additional community mental health resources. SB 43 does not include any appropriations to support the increased demands on Ohio's mental health system.

Finally, best practices in the field of mental health services do not include coercive or involuntary treatment. The values underlying the bill are inconsistent with the goals and principles of recovery set out by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA). SAMHSA has provided a working definition of recovery: "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/definition-of-recovery-updated/> (emphasis supplied). The effectiveness of court ordered, involuntary treatment for people with serious mental health illness is uncertain at best; some advocates argue that it actually delays recovery and burdens overall health outcomes.

Thank you for your time and consideration. Disability Rights Ohio and the many clients we represent appreciate the opportunity to express our concerns with SB 43. Indeed, on behalf of our clients who oppose the implementation of this bill we respectfully request that interested party meetings be held to thoroughly examine its impact on the rights of people with disabilities, and Ohio's mental health system in general. If you have any questions or would like to discuss this matter further, please contact Geoffrey Collver at (614) 466-7264 extension 102, or gcollver@disabilityrightsohio.org.

Sincerely,



Michael Kirkman
Executive Director