



MENTAL HEALTH LEGAL ADVISORS COMMITTEE

The Commonwealth of Massachusetts Supreme Judicial Court

24 SCHOOL STREET - 8th FLOOR
BOSTON, MASSACHUSETTS 02108

TEL: (617) 338-2345

FAX: (617) 338-2347

www.mhlac.org

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Contact: Attorney Lauren Roy
MHLAC
24 School St., Suite 804
Boston, MA 02114
(617) 338-2345 x 126
lroy@mhlac.org

“Fresh Air Bill” Passed, Establishing Sixth Fundamental Right for DMH Patients

Patients in MA Psychiatric Hospitals Win Right to Fresh Air

Boston – After over a decade of compromises, delays, and defeats, Massachusetts psychiatric patients and their advocates have secured an important legislative victory in the fight for “Fresh Air,” and just in the nick of time. “An Act regarding rights of persons receiving services from programs or facilities of the Department of Mental Health” (Bill S.911 and H.3804, nicknamed “Fresh Air” for the right it champions), sponsored by Rep. Denise Provost and Sen. Pat Jehlen, adds the right “to daily access to fresh air and the outdoors” to the existing Five Fundamental Rights of persons confined in inpatient psychiatric facilities in the Commonwealth.

Two years after investigation into the recreational allowances of DMH facilities had begun, the first incarnation of the Fresh Air bill was filed in 2005 on behalf of members of a vibrant consumer movement. But after over ten years of fruitless struggle, everything seemed to come together in the blink of an eye. With the last day of the current legislative session at hand, it appeared as if the bill would languish in committee and have to be refiled yet again.

And then something happened that surprised even its most ardent supporters: Fresh Air was signed by outgoing Governor Deval Patrick on his last day in office. “I was pretty stunned,” said Jonathan Dosick, who started cold-calling psychiatric facilities to ask about their allowance of fresh air as a part-time worker at the Disability Law Center in 2003. “It was a real nail biter in those last few days.”

Although the right to daily time outdoors may seem trivial when compared with the extant Five Fundamental Rights (which protect access to telephones, mail, visitors, privacy and dignity, and legal counsel, respectively), to those who have experienced life inside a psychiatric unit of a hospital or other inpatient facility, the promise of even temporary reprieve from their confines

can have important implications for those persons' mental health and recovery prospects. As Dosick likes to point out, the ameliorative effects of experiencing the outdoors are enshrined in numerous age-old phrases that refer to calming activities as "taking a walk," or "getting some fresh air."

Beyond familiar adages, the link between a person's mental health and their ability to be in nature (or at least outdoors, for those in urban settings) has been postulated for some two hundred years - at least since English Quakers at the turn of the nineteenth century developed what they called the moral treatment of mental illness. More recently, scientific studies in disciplines ranging from psychology to neurogenetics have continued to affirm the importance of contact with nature to human well-being.

With the passage of Fresh Air, the legislature enshrined that knowledge as a legal protection. But, says Dosick, the work does not end there. On his view, the bill as passed lacks robust mechanisms to ensure its proper enforcement, much like the existing rights. "This has been and continues to be a critical problem," Dosick said. "It is part of the long struggle for dignity and rights for a population that is all too often marginalized and denied basic civil liberties." Rep. Provost and Sen. Jehlen are sponsoring a bill (HD 2980) to establish a meaningful enforcement mechanism.

"We are lucky to have legislators like Rep. Provost and Sen. Jehlen who are dedicated advocates for people with lived experience of mental illness." Said Susan Fendell, Senior Attorney for Mental Health Legal Advisors Committee. "They've been persistent champions of civil rights."

"I am delighted that Massachusetts law now recognizes access to fresh air as a human right of DMH clients," Rep. Denise Provost said. "Fresh air and the outdoors do not just symbolize freedom. They are physical connections to our humanity, and they promote healing and recovery."

"People deserve daily access to fresh air," said Senator Jehlen. "It's just that simple."

Mental Health Legal Advisors Committee attorneys Lauren Roy and Miriam Ruttenberg noted that another crucial factor in making fresh air a reality will be working with the Department of Mental Health to establish regulations describing the details of fresh air access.

Still, Dosick says, the new law provides advocates with a crucial jumping-off point for further action, which he thinks is likely in light of how much public awareness the most recent campaign generated. In the meantime, the newly passed law should come to at least some people in psychiatric units across the Commonwealth as a breath of fresh air.

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