

**Testimony of Phillip Kassel for the Mental Health Legal Advisors Committee
to the Joint Committee on Mental Health and Substance Abuse
Informational Hearing – 5/28/15**

I am MHLAC's Executive Director. We are an agency under the Supreme Judicial Court established by the legislature more than 40 years ago. MHLAC provides legal and policy advocacy on a statewide basis for persons with mental health concerns. Thank you for this opportunity to describe for the Committee those issues that MHLAC believes are the highest priority for our clients.

Bridgewater State Hospital

Last year, residents of the Commonwealth were shocked by reports detailing abuses at the long-troubled state forensic hospital. In addition to exposing the circumstances of several patient deaths, reports detailed an extraordinary incidence of the use of restraints (the fastening of patients to tables by their wrists and ankles for hours, days, and even weeks) and prolonged seclusion. After conducting its own extensive investigation of these reports and confirming them, MHLAC joined as co-counsel on litigation to curb such abuses. We are currently monitoring a court-approved Settlement Agreement that provides for relief from these practices.

In the course of negotiating this Agreement, both sides acknowledged that the fruits of their efforts constituted little more than a stop gap. While there has been a marked reduction in restraint and seclusion at BSH, patients still suffer from these practices to an extent significantly in excess of patients in other states. Structural changes are necessary to prevent backsliding and future headlines. Specifically:

- Jurisdiction over BSH must be transferred to the Department of Mental Health. Bridgewater is an aberration. Massachusetts is one of only two states that allow a forensic hospital to be run by a correctional and not a mental health agency. Persons confined at BSH, most of whom are not convicted of crimes, are severely mentally ill and need treatment. But the culture of a correctional agency is to ensure that persons that commit crimes are punished, not to ensure adequate treatment. BSH is neither licensed nor accredited as a psychiatric hospital and does not provide hospital-level care or "treatment" as the term is commonly understood.
- In the short term at least, BSH needs a significant infusion of funding with which to hire clinicians. The number of clinical staff employed at BSH to serve a highly acute population is only one fifth to one third of DMH facility staffing levels.

Essentially, if we want to prevent future atrocities we need to invest jurisdiction over BSH in an agency with a mission consistent with that of a *hospital*, as opposed to a prison, and stop trying to cope with a highly sick population on the cheap. H.1817, which is sponsored by Representative Scaccia and is before this Committee, would go far in this direction by forbidding new confinements of civil committees to BSH. But severely ill persons that are criminally committed should also receive adequate treatment, and that will require funding. We are disappointed that the legislature declined to fund staff enhancements at BSH (an amendment to the Senate budget failed) and hope that this Committee will take up encompassing reforms of BSH.

Commitment for Substance Abuse Under Section 35

Currently, both women and men may be committed to *prison* for substance abuse treatment under section 35 of M.G.L Chapter 123, even if they have had no prior criminal involvement and raise no security concerns. Due to the common phenomenon of dual mental health/substance abuse diagnoses, many of these persons are MHLAC clients. The situation is particularly egregious for women confined to MCI-Framingham. Not only are they treated like any other prisoner, they don't receive treatment. Confining persons in a manner that is inconsistent with its underlying purpose violates constitutional principles of fundamental fairness limiting the power of the state to take away a person's liberty.

H. 1797, which is sponsored by Representative Khan, would effectively forbid incarceration of women at MCI Framingham for substance abuse. This is a positive step that we support. Similar protections should be extended to men currently confined to the DOC's Massachusetts Alcohol and Substance Abuse Center. While persons there receive treatment they are subject to the same set of potentially traumatizing experiences as convicted felons, including the imposition of harsh discipline such as solitary confinement, with little or no protection from arbitrariness.

Fundamental Rights Enforcement

The General Court has afforded certain rights to persons confined in mental hospitals under G.L. c. 123, § 23. These include the right to stay in touch with the outside world, to legal representation, to be treated humanely, and the qualified right to daily fresh air. But a right without a means of enforcing it is not a right at all. It is something merely wished for.

We therefore support H 1814, sponsored by Representative Provost, which will create an internal grievance process allowing confined persons to challenge the claimed denial of a fundamental right. Protecting these basic entitlements furthers the goal of treatment in a facility and will promote recovery.

Disability Insurance Parity

People with mental illness that become disabled and cannot work need disability insurance benefits on the same basis as workers struck by medical impairments. Wage replacement insurance can be critical in avoiding the stresses created by poverty that impede recovery. Unfortunately, however, insurers that rely on uncritical acceptance of outdated and inaccurate assumptions that psychiatric disorders are more costly to insure and more likely fraudulent, often discriminate against persons with psychiatric disabilities and deny them disability benefits. MHLAC therefore supports H. 786, An Act Requiring Mental Health Parity for Disability Policies, which is sponsored by Representative Balser and co-sponsored by a number of the members of this Committee. H 786 would extend parity protection that currently exists in medical care coverage to disability insurance. While this bill is currently before the Joint Committee on Financial Services, we hope that, in light of the importance of this legislation to workers with mental health concerns, Committee members will actively support it.

Continuity of Care

MHLAC clients' ability to retain current relationships with mental health professionals is often a crucial element of their potential for recovery. In fact, research shows that a therapeutic alliance is the single most accurate predictor of positive outcomes. But these relationships are often threatened by changes in health care coverage when current providers become "out-of-network." H. 785, also sponsored by Rep. Balser and co-sponsored members of this Committee, will address this problem by permitting patients in these circumstances to continue to receive treatment from current providers willing to accept in-network rates and comply with reasonable administrative requirements -- provisos that assure no additional costs to insurers. Again, this bill is before the Financial Services Committee, but we urge members of this Committee to support it.

Student Arrest

MHLAC student clients are disproportionately affected by a well-documented trend to arrest and prosecute public school students for non-violent conduct that in the past might have resulted in a talking-to from the school principal and an hour in detention. Arrest is clearly connected in the research to dropping out of school, which has devastating consequences both for individuals and society at large. Our clients are the ones that are most likely to be denied an effective program allowing them to access the general curriculum. They are therefore the most likely to "act out" and make themselves vulnerable to arrest, often for the vague "crime" of "disturbing a school assembly." H.1623/ S.842, An Act Decriminalizing Non-Violent and Verbal Student Misconduct, which is before the Judiciary Committee and sponsored by Representative Swan and Senator Jehlen, will abolish this dubious basis for arresting students.

S. 297, An Act Further Defining the Role of School Resource Officers, which is assigned to the Education Committee and is also sponsored by Senator Jehlen, will also address this issue. The legislature, in last year's Gun Violence bill, required school and police departments to enter into Memoranda of Understanding, but did not specify terms. Senator Jehlen's bill will set MOU standards consistent with the intent expressed elsewhere in the Act that students not be unduly arrested. We urge Committee members to support these bills.

Parent Discrimination

Stereotypical thinking about what persons with mental illness are capable of doing can exact a terrible cost on parents with psychiatric histories involved in disputes over custody and visitation of their children. Removal rates of children from parents with emotional or intellectual disabilities are as high as 70—80%, despite case law instructing that actual parenting capacity, as evidenced by history, should control these determinations, and not negative mental illness labeling. H. 1370, An Act Prohibiting Discrimination Against Adults With Disabilities in Family and Juvenile Court Proceedings, which is in the Judiciary Committee and sponsored by Representative Heroux, will require courts that rely on a parent's disability as a negative factor in a custody or visitation determinations to issue written findings on actual parenting deficits. Again, we urge Committee members to support this legislation as it is of great importance to persons with psychiatric histories.

Thanks once more to the Committee for this opportunity to voice what we at MHLAC believe are priority concerns for our clients.