Legal Strategies

PAIMI*



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PRESENTED BY

MindFreedom International

Law Project for Psychiatric Rights

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***Protection and Advocacy for Individuals with Mental Illness Act**

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MindFreedom International

Mission:

MindFreedom leads a nonviolent transformation, championing human rights and options in mental health care, uniting psychiatric survivors, consumers and allies with movements for justice everywhere.

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Psych Rights | Law Project for Psychiatric Rights

Mission:

Mount a Strategic Litigation Campaign Against Forced Psychiatric Drugging and Electroshock

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About Me

- Hospitalized for a month in 1982
- Lucky Not to Have Been Made Permanently Mentally Ill
- Video: Escape from Psychiatry: Jim Gottstein's Story
- Founded Law Project for Psychiatric Rights (PsychRights) in 2002
- Author of *The Zyprexa Papers*

PAIMI Act--Purposes

42 U.S.C. § 10801

(b) The purposes of this chapter are--

(1) to ensure that the rights of individuals with mental illness are protected; and

(2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will--

(A) protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution and Federal and State statutes; and

(B) investigate incidents of abuse and neglect of individuals with mental illness if the incidents are reported to the system or if there is probable cause to believe that the incidents occurred.

Involuntary Commitment Permissible Under US Constitution When:

1. Confinement takes place pursuant to proper procedures and evidentiary standards,
2. Finding of "dangerousness either to one's self or to others," and
3. Proof of dangerousness is "coupled ... with the proof of some additional factor, such as a 'mental illness' or 'mental abnormality.'

Kansas v. Crane, 534 U.S. 407, 409-10, 122 S.Ct. 867, 869 (2002).

Being unable to take care of oneself can constitute danger to self if "incapable of surviving safely in freedom." *Cooper v. Oklahoma*, 517 U.S. 348, 116 S.Ct. 1373, 1383 (1996).

Forced Drugging under US Constitution: Sell

Court Must Conclude:

1.Important governmental interests are at stake,

2.Will significantly further those state interests - substantially unlikely to have side effects that will interfere significantly (with achieving state interest),

3.Necessary to further those interests. The court must find that any alternative, less intrusive treatments are unlikely to achieve substantially the same results, and

4.Medically appropriate, i.e., in the patient's best medical interest in light of his medical condition, considered on drug-by-drug basis.

Sell v. United States, 539 U.S. 166, 177-8, 123 S.Ct. 2174, 2183 (2003) (Competence to Stand Trial Case).

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REPORT ON IMPROVING MENTAL HEALTH OUTCOMES

James B. (Jim) Gottstein, Esq.; Peter C. Gøtzsche, MD;
David Cohen, PhD; Chuck Ruby, PhD; Faith Myers

September 2023

Available at PsychRights.org

- Psychiatric Imprisonment Massively Associated with Suicide
- Psychiatric Drugs Increase Harm to Self & Others
- Psychiatric Drugs Shorten Life Spans by 20-25 Years
- Psychiatric Drugs Reduce Recovery Rate from Possible 80% to 5%
- Catastrophically diminish quality of life
- There are Proven Effective, Safe & Non-Coercive Approaches

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Rights Violations

- No More than 10% of Psychiatrically Imprisoned (involuntarily committed) Meet Commitment Criteria
- No One Can Ever Properly be Drugged Against Their Will under Sell Criteria
  - Best Interests
  - No Less Intrusive Alternatives

Report on Improving Mental Health Outcomes, p 17.
https://psychrights.org/ReportOnImprovingMentalHealthOutcomes.pdf

Obvious Highest PAIMI Priority

Protect people's rights to not be

1. psychiatrically confined, and/or
2. drugged or electroshocked against their will,

unless the constitutional, statutory, and judicial requirements for such massive deprivations of liberty exist, including the right to the least restrictive and least intrusive alternative, respectively.

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Appeals v. Lawsuits

Appeals

- Create Precedent
- Quicker
- Less Resource Intensive
- **Must Make Record**

Lawsuits

- Often not needed for relief
- Resource Intensive
- Take long time
- Americans with Disabilities Act
- Civil Rights Cases (42 USC 1983)
- Class Actions
  - Overhead

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Some Types of Cases

- Civil Commitment
- Forced Drugging
- Forced Electroshock
- Guardianships
- Restoration of Competence to Stand Trial

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Civil Commitments

42 CFR 51.7

[PAIMI funds may be used in accordance with the jointly established priorities]:

(b) To provide representation of clients in civil commitment proceedings if the P&A system is acting on behalf of an eligible individual to obtain judicial review of his or her commitment in order to appeal or otherwise challenge acts or omissions which have subjected the individual to abuse or neglect or otherwise violated his or her rights. This restriction does not prevent a P&A system from representing clients in commitment or recommitment proceedings using other resources so long as this representation does not conflict with responsibilities under the Act.

Note: Restriction to appeals does not apply to forced drugging proceedings.

Appeals

- Making the Record
  - Prefiled Testimony
    - PsychRights Forced Drugging Defense Package (somewhat dated affidavits)
      - Microsoft Word Version of pleadings
    - Report on Improving Mental Health Outcomes
      - Jim Gottstein willing to testify/be cross-examined
  - Seek Stays Pending Appeal for Forced Drugging Orders
    - *See*, PsychRights Forced Drugging Defense Package pp. 7-15

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Ineffective Assistance of Counsel

- Direct challenge subject to high bar (*Strickland*)
  - Huge deference to attorney's representation
  - Prejudice
- Work with Public Defenders and Other Appointed Lawyers
- Violation of Rules of Professional Conduct
  - Bar Complaints?
  - Requests for Ethics Opinions

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Psychiatric Advance Directives

- Encourage Psychiatric Advance Directives, **and**
- Substitute Decision-Maker
- Provide Representation to Enforce

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Legislation

- PAIMI Funds Cannot Be Used to Lobby (influence legislation)
- Enacting New Rights that Will be Ignored is Not Very Beneficial
- Beating Back Even More Oppressive Laws Very Beneficial

More Information

- PAIMI Advisory Council Empowerment Project (https://psychrights.org/PAIMI/PAIMI.htm)
- Video: Deep Dive into PAIMI and Its Advisory Councils
- Email PAIMI@PsychRights.org