

Abuse & Neglect in Behavioral Health Facilities: A Legal Analysis

Presentation to CVH-Whiting Task Force

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Where are abuse and neglect defined in Connecticut General Statutes

- Licensed health care providers are mandated reporters of suspected abuse, neglect, or exploitation of certain classes of individuals. These are:
 - Children (CGS §17a-101)
 - Persons with disabilities (defined as intellectual disability) (CGS §46a-11b)
 - Residents of long-term-care facilities (CGS §17b-407)
 - Elderly (CGS §17b-451)
- **Who is notably excluded from that list?** Someone whose disability is a psychiatric condition (when they are also not a member of another protected class) – at least until last year

Abuse and neglect in CT law as it pertains to people with intellectual/developmental disabilities

- **Abuse** is defined as “the **willful** infliction by a **caregiver** of **physical** pain or injury, or the willful deprivation of services necessary to the **physical** safety of an individual.”
- **Neglect** is defined as:
 - The failure by a caregiver, through action or inaction, to provide an individual with the services necessary to maintain his or her **physical and mental health and safety**, including incidents of inappropriate or unwanted individual to individual sexual contact.
 - Neglect also includes the failure of a caregiver to respond to incidents of inappropriate or unwanted sexual contact between individuals who receive services from the department.
 - Neglect is also a situation in which an individual lives alone and is not able to provide for him/herself the services which are necessary to maintain his physical health, mental health or safety.
 - **Programmatic Neglect:** Failure to provide oversight in developing or implementing an individual’s program, and/or ensuring staff training which ensures an individual’s well-being and safety.

Abuse & Neglect in the Behavioral Health Context

- Section 2 of Public Act 18-86, AN ACT CONCERNING WHITING FORENSIC HOSPITAL AND CONNECTICUT VALLEY HOSPITAL (the same bill that created this task force), included a provision regarding mandatory reporting of **abuse** in behavioral health facilities. This provision was effective as of October 1, 2018 and can be found at **Connecticut General Statutes § 17a-488**.
- This bill defined behavioral health facility as “any facility **operated by the Department of Mental Health and Addiction Services** that provides mental health or substance use disorder services to persons eighteen years of age or older.”

Abuse & Neglect in the Behavioral Health Context, cont.

- The new law includes the following as **mandated reporters of abuse**
 - Any person in a behavioral health facility paid to provide direct care for a patient of such facility, and
 - Any employee, contractor or consultant of such facility who is a licensed healthcare provider.
- Abuse is defined as “the **willful** infliction of **physical pain, injury or mental anguish**, or the willful deprivation by a caregiver of services which are necessary to maintain the **physical and mental health** of a patient.”
- **Neglect is NOT defined within the behavioral health context** and is not required to be reported under Connecticut General Statutes 17a-488

Abuse & Neglect within the context of protected legal rights

- CGS §17a-541 prohibits the deprivation of any personal or civil rights
- CGS §17a-543 prohibits involuntary treatment except as outlined pursuant to the terms of the statute
- CGS §17a-544 prohibits involuntary placement in seclusion or mechanical restraint except as outlined pursuant to the terms of statute (imminent physical danger, physician order, written memo in permanent clinical record within 24 hours). It also provides that medication shall not be used as a substitute for an habilitation program.

Recommendations that we hope this Task Force will consider making

- Change the definition of “behavioral health facility” in CGS §17a-488 to match the definition of “facility” in CGS §17a-540 (The Patients Bill of Rights):
 - any inpatient or outpatient hospital, clinic or other facility for the diagnosis, observation or treatment of persons with psychiatric disabilities
- Define “neglect” within the behavioral health context to match the definition of neglect within the intellectual/developmental disability context
- Require reporting of suspected neglect as well as suspected abuse
- Remove the Whiting exception for right to be present during searches of belongings (CGS § 17a-548)

Legislative history of patients' right to be present during search of their belongings

- Patients at all state operated facilities did not have the right to be present while their belongings were searched, until such language was added to the Patients' Bill of Rights in 1993
- The original bill language, which was supported by DMHAS at the time, would permit all patients (regardless of facility) to be present during a search of their belongings unless it was determined to be medically harmful to the patient to exercise this right. There was no exception for searches at Whiting Forensic Hospital
- The then-commissioner testified that allowing patients to be present “allows a person to maintain personal dignity as well as ensuring that his or her constitutional rights are protected” and urged the Public Health Committee to act favorably on the bill.

Legislative history, continued

- Lynne Ott, Vice President of Consumer-Provider Professional Advocacy Agencies, also testified in favor of the bill, saying that she “heard horror stories of broken suitcases and clothing items missing and never returned. It is outrageous and should be stopped... It is important that the [consumer] be present upon searching of their belongings when medically advisable and I would appreciate it if you would please take this into consideration when voting on [the bill.]”
- Dr. Robert Brockway, president of the same organization, testified that “this is simply a basic human right to privacy and confidentiality that we all share. Too often too many professionals and the public forget that just because one has a temporary problem that they must in every case lose their rights to privacy. Too often, the person who loses this basic right never forgets the human, disrespectful and demoralizing experience.”

Legislative history, continued

- Representative Gyle stated that he was “appalled by the fact that professionals would hurt their patients by searching their belongings and making them feel dehumanized with this kind of activity.”
- The Connecticut Sexual Assault Crisis Services submitted testimony in favor of the bill, noting the impact of traumatic stress on victims of sexual assault, loss of trust, loss of control over one’s life and that the proposed bill would enable such a victim “to maintain control over her/his own possessions, while maintaining the balance necessary for safety in a mental health facility” and urged passage of the bill as a way of assisting in the healing of survivors.

Legislative History, cont.

- Representative Joe Courtney, in introducing the bill, noted that the issue was brought to the attention of the Public Health Committee by a number of individuals and legislators who had constituents that some “unfortunate incidents occurred where their personal belongings were searched and items were taken, while, again, they were in the hospital for the purposes of receiving mental health treatment.”
- Representative Chase of the 120th district proposed an amendment to include an exception for Whiting Forensic Hospital. He described it as “very simply [making] an exception to the rule that someone who has been put into one of our institutions for criminal behavior would not have to be present in order to search their belongings [or] their room. This would limit it strictly to those individuals who are incarcerated at Whiting or under the jurisdiction of the Whiting Forensic Institute.”

Legislative history, continued

- There was no further discussion of the amendment and it was passed on a voice vote.
- There was another amendment proposed by Representative Rell, that passed the house but was rejected by the Senate and not in the final bill. [For what it's worth, the comments by the legislators are rooted in bias against people with mental health conditions and I would like to believe that those individuals would be ashamed of their comments.]
- The bill as amended passed unanimously.

There is no legitimate justification for treating people in Whiting Forensic Hospital differently when it comes to searches of their belongings

- The “Whiting exception” for searches should be removed
- Having people present when their belongings are being searched enhances dignity, supports the respect for personal and civil rights, as opposed to creating additional conflict and mistrust
- The complaints that patients had with regard to missing/damaged belongings continue to happen in 2019; allowing people to be present during searches may reduce the number of complaints
- The right can be restricted if it would be medically harmful to the patient, as is the case with all other facilities [“Medically harmful” means capable of inflicting serious mental or physical injury on the patient, or producing in the patient a disturbed mental state or impaired judgment which may be grossly detrimental to his physical or mental well being.]