



CONNECTICUT
LEGAL
RIGHTS
PROJECT, INC.

TESTIMONY OF KATHLEEN FLAHERTY, ESQ.
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CVH-WHITING TASK FORCE VIRTUAL INFORMATIONAL FORUM
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Good afternoon. My name is Kathy Flaherty and I'm the Executive Director of Connecticut Legal Rights Project (CLRP), a statewide non-profit agency that provides legal services to low income adults with serious mental health conditions. CLRP was established in 1990 pursuant to a Consent Order which mandated that the state provide funding for CLRP to protect the civil rights of DMHAS clients who are hospitalized, as well as those clients who are living in the community. I also speak to you today as someone who has first-hand experience of being in psychiatric hospitals as a patient, and as someone who has survived forced psychiatric treatment.

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I appreciate the opportunity to testify to this Task Force again, having already done so twice in 2019. Thank you for taking the time to meet with the individuals who are residing at Connecticut Valley Hospital and Whiting Forensic Hospital, because they are the people who will bear the disproportionate impact of whatever recommendations you make to the legislature. I hope that you will take the approach that the members of the Sandy Hook Advisory Commission took when we wrote our final report: make the recommendations that you think are best, and represent the steps this state and DMHAS should be taking; do not be constrained by budget or political considerations.

This list begins with several specific recommendations I first shared with you more than a year ago; it also includes several recommendations for larger systemic change.

1. **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. Currently, the law as amended only applies to DMHAS-operated facilities. There is no reason to think that abuse, neglect and exploitation only happen in facilities staffed by state employees. The statute should also apply to all facilities covered by the Patients’ Bill of Rights.
2. **Define “neglect” within the behavioral health context** to include 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.
3. **Require reporting of suspected neglect** as well as suspected abuse
4. **Remove the Whiting exception for right to be present during searches of belongings.** (CGS § 17a-548) Allowing people to be present when their belongings are being searched enhances dignity and supports the respect for personal and civil rights, as opposed to creating additional conflict and mistrust. Patients continue to complain about missing/damaged belongings; 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. The legislative history of the establishment of the right to be present is outlined in my August 5, 2019 presentation, available at https://cga.ct.gov/ph/tfs/20190426_CVH%20Whiting%20Task%20For%2020190805_Meeting/Abuse%20&%20Neglect%20in%20Behavioral%20Health%20Facilities%20-%20Kathy%20Flaherty.pdf.
5. **Recommend that the state require reporting of racial, ethnic, and language data regarding the use of forced psychiatric treatment:**

civil commitment, forced medication, forced electroshock, restraint, and seclusion. The COVID-19 pandemic has exacerbated racial and ethnic disparities in health. We cannot change what we do not measure. We cannot measure if we do not have the data. Facilities should be required to report this data.

6. **Recommend that the state provide additional funding so that people can be discharged from state-operated institutions to housing in the community that is affordable and accessible with voluntary services and supports.**

We must continue to do what we can to ensure that people with disabilities who could live in the community with services and supports are not trapped and segregated in congregate settings and state facilities where they are at higher risk of exposure to COVID-19. People are safer from the virus when they are able to socially distance themselves from others. This is not always possible in congregate settings. Mathematica made this recommendation in their report about nursing homes and assisted living facilities (see section V.F. of the final report, available at <https://portal.ct.gov/-/media/Coronavirus/20201001-Mathematica-final-report.pdf>). This task force should make a similar recommendation in your report regarding CVH and Whiting. I also draw your attention to the recent state auditor's report regarding DMHAS (available at https://wp.cga.ct.gov/apa/wp-content/cgacustom/reports/Mental%20Health%20and%20Addiction%20Services,%20Department%20of_20200806_FY2017,2018.pdf); the annual per capita cost of inpatient care at Connecticut Valley Hospital is \$547,500. Consistent failure to provide adequate resources to the community-based system of care – including affordable and accessible housing, and voluntary services and supports – has resulted in a system that unnecessarily segregates people in institutions. Connecticut can and must do better.

7. **Recommend that the legislature re-introduce the language of Raised Bill 294 from 2018.** Two years ago, the Public Health Committee raised bill 294, An Act Concerning the Psychiatric Review Board (see

https://cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2018&bill_num=294.) Had that bill passed, it is quite possible that some of the people who remain stuck in Whiting Forensic Hospital under the jurisdiction of the Psychiatric Review Board might have been discharged and living in the community, safer from the virus. Statistics demonstrate that the PSRB system itself results in a disproportionate impact on people who are Black. (See http://clrp.org/website/cmsAdmin/uploads/PEOPLE_WHO_FALL_UNDER_THE_JURISDICTION_OF_THE_PSYCHIATRIC_SECURITY_REVIEW_BOARD_ARE_TRAPPED_IN_A_RACIST_SYSTEM.pdf.)

8. **Recommend that the legislature change the competency restoration statute** to prohibit placement in Whiting Maximum Security for people hospitalized for competency restoration when accused of misdemeanor offenses. Make “Track II” a right of every patient charged with an offense of C Felony and below. Recommend a requirement that competency restoration take place in the community as a matter of course, rather than in an inpatient facility.
9. **Make a finding that the Department ought to collaborate more effectively with other state agencies and private non-profit providers to provide person-centered, culturally competent services that address all of an individual’s health care needs** – whether that be a co-occurring substance use disorder, autism, an intellectual or developmental disability, and/or a physical disability.

Thank you for your time and dedication to the assignment that the legislature gave you in 2018: to “review and evaluate the operations, conditions, culture and finances of Connecticut Valley Hospital and Whiting Forensic Hospital.” I hope you will recognize the importance of respect for the civil legal rights of the patients residing in those facilities. If I can be of any additional assistance as you complete your task, please do not hesitate to reach out to me.