App #5

CHAPTER 251

5641

1971-1972 Regular Sessions

IN SENATE

March 2, 1971

Introduced by Mr. NILES—(at request of the Joint Legislative Committee on Mental and Physical Handicap)—read twice and ordered printed, and when printed to be committed to the Committee on Mental Hygiene

AN ACT

To repeal the mental hygiene law, and to enact a recodified mental hygiene law

Compared by

APPROVED

MAY 9 1972

Approved

S-5641

JBa

STATE OF NEW YORK
LAW REVISION COMMISSION
488 BROADWAY
ALBANY, NEW YORK 12207
(518) 474-1181

May 1, 1972

MAY 6 1972

Honorable Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Whiteman:

Pursuant to your request, we enclose memorandum on the following bills:

1972 Senate Bill No. 5641 - AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law

1972 Senate Bill No. 9713 - AN ACT to amend the mental hygiene law, in relation to the application of certain laws enacted at the nineteen hundred seventy-two legislative session.

Sincerely yours,

Jay Cox O'Brien
Assistant Executive Director

Enclosure

C1

MEMORANDUM

By the Assistant Executive Director of the
Law Revision Commission

(Not submitted to or passed upon by the Commission)

relating to

(1)
Senate No. 5641

AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law

(2)
Senate No. 9713

AN ACT to amend the mental hygiene law, in relation to the application of certain laws enacted at the nineteen hundred seventy-two legislative session

Subject bill (1) above (S. 5641) repeals the existing Mental Hygiene Law and enacts a recodified Mental Hygiene Law. It was originally introduced in the 1971 Session as a two-year bill, passed the Senate on April 21, 1971, was referred to the Assembly Health Committee the next day and then was referred to Assembly Rules Committee, presumably for further study, and did not come before the Assembly last year. This year the identical bill passed the Senate again, was eventually substituted for its Assembly companion and passed the Assembly. This history indicates that ample time elapsed between original introduction and final passage to give everyone interested a full opportunity for substantive and/or technical criticism.

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Particular note is made of Article 77, entitled "Conservators". For many years the Law Revision Commission has recommended legislation in this area (See Leg. Doc. (1966) No. 65(G); Leg. Doc. (1967) No. 65(G); Leg. Doc. (1968) No. 65(G) and Leg. Doc. (1971) No. 65(G). The present bill incorporates the substance of these previous recommendations by the Commission.

Subject bill (2) above (S. 9713) is a precisely drafted "chapter amendment" to the recodification of the Mental Hygiene Law. It expressly and carefully provides that any act of the Legislature passed in 1972 which actually or purportedly amends or repeals or adds to the existing law shall, notwithstanding the repeal of said existing law, be deemed and construed to amend, repeal, modify, change or add to the corresponding provision or provisions of the recodified act.

Although S. 5641 is effective by its provisions on July 1, 1972 and S. 9713 is effective by its provisions on January 1, 1973, we note that S. 9711, which has passed both Houses and will go to the Governor in due course, is another "chapter amendment" to the recodification act and will change the effective date of S. 5641 from July 1, 1972 to January 1, 1973. (We also note that S.10366

and A.12247 have been introduced to further delay the effective date of the new act to May 1, 1973; neither of these bills has been reported.)

Both S. 5641 and S. 9713 are adequately drafted to effect their respective purposes.

S-5641

STATE OF NEW YORK
JOINT LEGISLATIVE COMMITTEE
ON
MENTAL AND PHYSICAL HANDICAP
SENATE CHAMBERS — STATE CAPITOL
ALBANY, NEW YORK 12224

MAY 2 1972

April 28, 1972

Hon. Michael Whiteman
Executive Chamber
The Capitol
Albany, New York 12224

Dear Mike:

Enclosed you will find copies of the memoranda in support of Senate 5641, 9710, 9711, 9712 and 9713. I am assuming that since Senate 5641 was a voluminous bill it was not forwarded with its four amendments as a "TEN DAY BILL".

The five bills represent the culmination of five years of work on the recodification of the Mental Hygiene Law. I respectfully request that it be enacted into law.

Sincerely,

Dalwin J. Niles

DJN:DGS
Encs.

MEMORANDUM
on the
RECODIFICATION OF THE
MENTAL HYGIENE LAW

The purpose of this memorandum is to outline generally the basic provisions of the bill for the recodification of the Mental Hygiene Law (Senate 5641, Assembly 6943) and to point out significant changes from existing law. References to provisions of the old Mental Hygiene Law will be preceded by the initials MHL. Attention is called to the Distribution and Derivation Tables at the end of the printed bill for specific section references, relating to the old law and the proposed new law.

NOTE: References and comparisons are to the Mental Hygiene Law as it existed prior to any enactments of the 1971 Legislature.

ARTICLE 1

SHORT TITLE, POLICY, AND DEFINITIONS

Policy Statement (§1.03)

States, in general language, the public concern with the mental health of the people of the State and puts responsibility on both State and local government to develop plans, programs, and services for the mentally disabled. Urges full use of community resources, including voluntary organizations. Recognizes the important therapeutic role of all disciplines involved with the care or treatment of the mentally disabled, such as psychology, social work, psychiatric nursing, special education, and other disciplines, as well as psychiatry.

Definitions (§1.05)

Some of the definitions in §1.05 are changed from MHL in order to conform them with the language and purposes of the recodification. The term "mentally disabled" is the general legal term used to cover the conditions of mental illness, mental retardation, alcoholism, narcotic addiction, or drug abuse. "Mental retardation" is substituted for "mental defect". New terms, "services for the mentally disabled", "provider of services" and "facility", among others, have been provided.

A "facility" is a place where services for the mentally disabled are provided but does not include nonresidential services which are exempt from the Department's licensing jurisdiction under Article 13.

"Examining physician" does not include the requirement in present law of three years of practice. All that is required is a license to practice medicine in New York State.

The definitions of "mental illness" and "mental retardation" have been changed to conform to current professionally accepted usage of those terms.

ARTICLE 7

ORGANIZATION OF THE DEPARTMENT AND ITS FACILITIES

This article sets forth the scope of the Department's responsibilities and its general organization.

Department of Mental Hygiene (§7.01)

The Department is continued. The autonomy of the Narcotic Addiction Control Commission is recognized.

Qualifications of the Commissioner (§7.03)

This section makes some changes in the qualifications required of the Commissioner as specified in MHL, §3. It deletes the requirement of five years of experience as head of a public institution and inserts a requirement that the Commissioner be a psychiatrist with ten years of experience.

Department's Responsibilities (§7.05)

This section sets forth in general terms the Department's responsibilities for developing comprehensive plans, programs, and services for the mentally disabled. Such development shall be in cooperation with local governments and with community organizations and shall give full recognition to each of the afflictions of mental illness, mental retardation, alcoholism, narcotic addiction and drug abuse. Persons suffering from those conditions are to be provided with quality care and treatment. The personal and civil rights of such persons are to be protected.

Mental Hygiene Council and Advisory Committees (§7.07)

The Mental Hygiene Council is continued. In addition, there are established Advisory Committees on Mental Health, Mental Retardation and Alcoholism. The Advisory Committee on Alcoholism replaces the present Advisory Council on Alcoholism.

The term of members of the Council and of the Committees is three years and at least two of the appointive members of each Committee shall also be appointive members of the Council. Members of the Advisory Committees shall be selected from among persons having a demonstrated interest in the specified fields.

Among other responsibilities, the Mental Hygiene Council shall review proposed regulations of the Department and advise the Commissioner thereon.

Personnel of the Department (§§7.11 and 7.17)

The Commissioner is the appointing authority for the Department and for the directors of Department facilities. The directors of Department hospitals, schools, and institutes appoint the personnel of their facilities in accordance with applicable law and regulations.

Organization and Administration of the Department (§7.13)

The Commissioner is given the authority to administer the Department and its facilities. Special recognition in the organizational structure of the Department is to be given to mental illness, mental retardation, and alcoholism.

Department Facilities (§7.15)

The statutory listing of Department hospitals, schools, and institutes is set forth in §7.15.

Directors (§7.17)

The director of each Department hospital, school or institute is designated as the chief executive officer of such facility. He appoints the employees of the facility and manages the facility subject to applicable law and the regulations of the Commissioner. The director is charged with the responsibility of seeing that there is humane treatment of the patients at his facility. He must investigate every case

of alleged patient abuse or mistreatment and give notice thereof to the Board of Visitors.

Boards of Visitors (§7.19)

Boards of Visitors are continued at the Department's hospitals and schools. The term of office is reduced from seven years to four years. The mandatory requirement that two members of each board shall be women is deleted but there is inserted a mandate that the Governor shall endeavor to insure that the membership of each board reflect the composition of the community and the interests of patients. At least one member of each board of a State school shall be the parent of a retarded person.

The power of the Board of Visitors to investigate charges against the director is continued and in addition it is given the power to investigate all cases of alleged patient abuse or mistreatment.

ARTICLE 9

OPERATION OF THE DEPARTMENT
AND ITS FACILITIES

Regulations (§9.01)

The Commissioner is given the authority to adopt necessary regulations. Proposed regulations must be submitted to the Mental Hygiene Council for its advice before enactment.

Department Operation (§§9.03 through 9.31)

This article contains the provisions covering the operation of the Department and its facilities. The Commissioner is given necessary authority with respect to the programs, services, and operations of the Department and its facilities. The provisions of this article reflect existing law with the exceptions listed below.

In lieu of many detailed provisions in the present law, the bill sets forth in general terms the Department's responsibility to develop programs and services for the benefit of the mentally ill, the mentally retarded and those suffering from alcoholism, narcotic addiction, and drug abuse. In

addition to in-patient care, such programs shall include out-patient, partial hospitalization, day care, emergency, rehabilitative and other appropriate treatments and services.

§9.13. The detailed provisions of Article 8, MHL, which deal with the State Hospital Retirement System which has only two or three employed members left, have been deleted. This section substitutes for that article.

§9.21. This section expands the language of MHL §12 (3) to reflect the actual manner in which community stores are operated. The MHL provision is too narrow since it refers only to leasing of space for a community store.

§9.31 This section is based on MHL §38 but places the specific powers in the Department rather than the Treasurer, who is no longer a statutory officer. Such powers may be administratively delegated to the Treasurer or other appropriate officer.

The following MHL provisions dealing with administration, have been deleted as unnecessary parts of the recodified law:

(a) Provisions for a consultant on the aged (MHL §3-a).

(b) Department have its office in Albany (MHL §5, subdivision 1).

(c) Department seal (MHL §6). This is taken care of by Public Officers Law §60.

(d) Services to the Correction Department (MHL §7, subdivision 15 and MHL §11-a). In its place, the bill, in §9.03 (b), authorizes inter-departmental cooperation.

(e) Various administrative details which are covered by the general authority given to the Commissioner--e.g. providing for a "medical center" (MHL §10-b), transferring equipment (MHL §12, subdivision 1), requiring uniform books of record (MHL §12, subdivision 5), establishing "colonies" (MHL §34, subdivision 10 and MHL §127) mandating quarterly conferences of directors (MHL §35), provisions regarding "resident officers" (MHL §36), making the business officer of an institution a statutory officer (MHL §41), details as to purchases and contracts (MHL §42), requirement for

an oath (MHL §43--covered by Public Officers Law §10 and Civil Service Law §62), state charities aid visitors (MHL §45), streets and railroads through institution grounds (MHL §49).

ARTICLE 11

COMMUNITY SERVICES

This article makes no substantial change in the basic provisions of the present Community Mental Health Services Act (MHL, Article 8-A). The article has been rewritten, however, to incorporate in coherent fashion the many amendments which have been enacted since the original act was adopted in 1954. Following are some of the changes made by the recodification.

Terminology (§11.03)

"Local government" means a county, except a county within the city of New York, and the city of New York.

The term "community services" is defined to include services for the mentally ill, the mentally retarded, the developmentally disabled whose conditions, including but not limited to cerebral palsy and epilepsy, are associated with mental disabilities, and those suffering from alcoholism, narcotic addiction, and drug abuse.

"Local governmental unit" is defined as the unit of local government responsible for community services.

The "board" is the "Community Mental Health, Mental Retardation and Alcoholism Services Board".

Local Governmental Unit (§§11.05 through 11.09)

The recodification recognizes existing practice which permits local governments which have adopted a charter form of government to have a Department of Mental Health with an advisory board. The bill requires a board in every local governmental unit but in charter forms of government the local government has the option of making such a board advisory rather than executive. In such case, the Director of Community Services may be appointed in the manner authorized by such governments. In local governments which have not adopted a charter form of government, the board appoints the director.

Director (§11.09)

The director need not be a psychiatrist but may be a professional person meeting standards set by the Commissioner. If he is not a psychiatrist, he shall not have the power to conduct examinations authorized under the Mental Hygiene Law or the Criminal Procedure Law but he must designate a qualified psychiatrist who shall be empowered to conduct such examinations on his behalf.

The director must be a full-time employee except in cases where the Commissioner expressly waives the requirement.

Boards (§11.11)

The requirement in present law for certain ex officio members is deleted. In charter governments, boards may have additional members not to exceed a total of fifteen.

Powers and Duties of Local Governmental Units (§11.13)

The powers and duties of the local governmental unit are set forth, with an emphasis on its important role in developing long range goals, intermediate range plans and community programs of community services for the mentally disabled.

The right of voluntary agencies to appeal from a denial of a contract by the local governmental unit is carried over from existing law.

State Aid (§§11.5 through 11.23)

State aid formulas are not changed from present law. State aid for operating costs incurred by voluntary agencies which have contracts with local governmental units must flow through local government. State aid for capital costs, however, is payable directly to voluntary agencies.

The bill incorporates an improvement in State aid procedures for operating costs by authorizing State aid to local government for costs incurred (1) by the local government and (2) by voluntary agencies having contracts with the local government. This avoids some of the technical problems of the present law which speaks in terms of "reimbursement for expenditures."

Hostels (§11.29)

The provision authorizing the Commissioner to operate hostels and to provide direct State aid for construction and operation of hostels is carried over from existing law and incorporated in this article.

ARTICLE 13

REGULATIONS AND QUALITY CONTROL OF SERVICES FOR THE MENTALLY DISABLED

This article provides for the regulation and control of certain providers of services for the mentally disabled by a system of operating certificates to be issued by the Department. The Department is given broad administrative powers and the right to seek court injunctions in appropriate cases. New construction of facilities for the mentally disabled must receive the prior approval of the Department.

Operating Certificates (§13.01)

The present Mental Hygiene Law provides for several different types of regulatory control. Private hospitals for the mentally ill and schools for the retarded require a license under MHL §8. Psychiatric units of general hospitals require "approval" under MHL §424 (5).

The recodification uses the term "operating certificates" instead of "license" or "approval" contained in MHL. The requirement for an operating certificate substantially follows the requirement for license or approval in the present law. Operating certificates are required for the following operations:

1. Operation of residential facilities for the mentally disabled. Domestic care and comfort to a person in the home does not constitute such an operation.

2. Operation of residential or nonresidential services for the mentally disabled at a general hospital.

3. Operation of out-patient facilities by a public agency, board or commission or by a corporation.

Out-patient services or nonresidential services by individual practitioners do not fall within the requirement for an operating certificate. nonresidential services which are licensed, supervised or operated by another agency of the State are also exempt from the requirement for an operating certificate.

Regulatory Powers of the Commissioner (§13.03)

The Department is given the power to adopt regulations covering the services rendered by holders of operating certificates. Before adopting regulations, the Commissioner must give advance notice to the public of the proposed regulations with an opportunity for interested members of the public to comment. The provisions with respect to notice and an opportunity to present views, as well as a right to judicial review of validity or applicability of rules, follows the proposed State Administrative Procedure Act.

Issuance of an Operating Certificate (§13.05)

An applicant who is denied an operating certificate is given the right ot be heard and the hearing must be public, if so requested by the applicant. Such a right to a hearing does not appear in existing law.

Quality Control by the Department (§§13.07 through 13.21)

The Department has the power to conduct investigations into the operations of holders of operating certificates to determine compliance with the law and the Department's regulations. The Department may revoke, suspend or limit an operating certificate where the holder of the certificate has failed to comply with the terms of its certificate or of applicable law or regulation. The holder of the certificate is entitled to a hearing. At such hearing, the confidentiality of any evidence relating to the identity, condition or clinical record of a patient must be kept confidential.

No mentally disabled individual may be confined without lawful authority or inadequately, unskillfully, cruelly, or unsafely cared for. The Department has the duty of investigation in suspected cases and may order the violator to cease and desist. If there is no compliance, a court order may be obtained. The Department is given a remedy which it does not

have under the existing MHL. It will have the right to obtain an injunction or temporary restraining order. That provision is modeled after similar provisions in the Social Services Law (§35-a (6) and §391).

Prior Approval of Construction (§13.23)

Prior approval must be obtained from the Department for construction of a facility in which services are offered for which an operating certificate is required. This provision is carried over in substance from MHL §424 (1). However, the provision in existing law that the Commissioner must be satisfied that there is a public need for the construction at the time and place and under the circumstances proposed is deleted.

Qualified Psychiatrists (§13.25)

The provisions of present law regarding qualified psychiatrists are carried over with the amendment giving a physician who is refused a certificate the right to request a hearing. The board of psychiatric examiners has been eliminated.

Hallucinogenic Drugs (§13.27)

The provisions with respect to hallucinogenic drugs is carried over from MHL §229 wince the provisions of the Penal Law with respect to dangerous drugs is dependent upon a continuation of the definition of hallucinogenic drugs set forth in the Mental Hygiene Law.

ARTICLE 15

RIGHTS OF PATIENTS

This article sets forth the rights of patients. It brings together in one article scattered provisions of MHL on that subject and broadens patients' rights in many respects. The rights of in-patients are treated further in the articles covering in-patient facilities (Article 29) and admission procedures (Articles 31, 33, and 35).

Patients' Rights Generally (§15.01)

The bill provides that no person shall be deprived of any civil right solely by reason of his having received services

for a mental disability. This expands the provision with respect to the civil rights of voluntary patients now contained in MHL §70 (5).

Quality of Care and Treatment (§15.03)

The bill states that each patient in a facility and each person receiving services for mental disability shall receive care and treatment that is suited to his needs and skillfully, safely and humanely administered. Directors of facilities are required to give careful and periodic examinations, to obtain consent for surgery, shock treatment, or use of experimental drugs or procedures, and to make appropriate notations in the patients's clinical record.

Communications and Visits (§15.05)

Patients in facilities shall have the right to communicate freely and privately with persons outside the facility as frequently as they wish subject to regulations designed to insure safety and welfare and to avoid serious harrassment to others. Correspondence addressed to public officials, attorneys, clergymen, and to the Mental Health Information Service shall be unrestricted and must be sent along promptly without being opened. The Commissioner shall establish guidelines to insure that patients have full opportunity for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.

Care and Custody of Patients' Personal Property (§15.07)

The bill follows existing law giving the directors certain powers to protect the personal property of patients. It modifies present MHL §51 which permits directors of Department facilities to use the interest accumulated on patients' funds for general institution purposes. The bill requires that any interest on money received and held for a patient in multiples of $100.00 shall be the property of the individual patient.

Employment of Patients (§15.09)

The bill encourages the training of patients for gainful employment. Patients who are employed by a facility must receive compensation in accordance with applicable State and

Federal labor laws. Sheltered workshops operated at Department facilities shall be subject to the laws and regulations applicable to sheltered workshops operated by voluntary agencies.

Education for Mentally Disabled Children (§15.11)

The bill carries over from present law the requirement that patients in Department hospitals and schools who are between the ages of five and twenty-one must receive training and education adapted to their mental attainments comparable to what they would otherwise be entitled in their local school districts pursuant to the Education Law. In addition, the Department is required to provide suitable hearing tests and hearing aids for residents in the State schools.

Confidentiality of Clinical Records (§15.13)

Clinical records for patients must be maintained at every facility. The Commissioner may require that statistical information about patients be reported to the Department. Names of patients treated at out-patient or non-residential facilities and at general hospitals shall not be required as part of any such reports.

The bill makes a substantial change in the protection given to information in Department records. Information about patients reported to the Department, including the identification of patients, are not public records and may be released only (1) pursuant to an order of a court of record, (2) to the Mental Health Information Service, (3) to attorneys in proceedings dealing with involuntary hospitalization, and (4) to persons who have the consent of the patient and the Commissioner. Information may also be released with consent of the Commissioner (1) to agencies requiring information necessary to make payments on behalf of the patient, and (2) to persons and agencies needing information to locate missing persons or to governmental agencies in connection with criminal investigations, such information to be limited to identifying data concerning hospitalization.

Habeas Corpus (§15.15)

The provisions of existing law relating to the right of a patient to a writ of habeas corpus are carried over.

Transportation of Female Patients (§15.17)

Female patients being transported to or from a facility must be accompanied by another female, unless accompanied by a close relative.

ARTICLE 29

GENERAL PROVISIONS RELATING TO IN-PATIENT FACILITIES

This article brings together various general provisions relating to in-patient facilities and is largely based on existing provisions scattered through the Mental Hygiene Law.

Regulations and Forms (§29.01)

The Commissioner has the power to make regulations governing in-patient admissions and the identification and processing of patients. This provision is designed to replace the present mandatory fingerprinting requirements of §34 (9-a) by a more flexible procedure established by regulation which would be designed to require fingerprinting when necessary for identification.

The Commissioner shall prescribe and furnish forms for use in procedures for admission and admission shall be had only upon such forms.

Effect of Court Order Authorizing Retention (§29.03)

The bill contains a section stating that a court order that a person needs involuntary care and treatment is not to be deemed a finding or determination that such person is incompetent. This reflects long-standing case law but is now explicitly set forth in the statute.

Community Agreements Regarding Admission Procedures (§29.05)

The Commissioner is given the authority to enter into agreements with Directors of Community Services to establish procedures governing the screening of applications for admission to a facility.

Commissioner's Power Over Admissions to Department Facilities (§29.07)

The Commissioner may defer admissions to Department facilities when they are overcrowded. He may authorize care and treatment, within amounts appropriated therefor, of mentally retarded persons awaiting admission to Department schools. This extends the power of the Commissioner with respect to such special placement, which is now limited by MHL §22 (2) to those under the age of five.

Mental Health Information Service (§29.09)

The provisions of present law regarding the Mental Health Information Service are repeated with the Service's power extended to include the study and review of the admission and retention of all patients. Under present law, the Mental Health Information Service is limited to review of involuntary patients and patients under twenty-one at State hospitals.

Transfer, Release and Discharge of Patients (§§29.11, 29.15, 29.17 and 29.19)

The bill carries over in substance the provisions of present law with respect to the Commissioner's power to transfer and discharge patients, the provisions for release of patients to the community, including conditional release and family care arrangements, and furnishing clothing and money to patients upon release.

Commitment of Dangerous Patients to Institutions in the Department of Correction (§29.13)

The provisions of the present law authorizing the court ordered commitment of dangerously mentally ill or dangerously mentally defective patients to institutions in the Department

of Correction (MHL §85 and §135) are carried over into the recodification with the protective features which were added to §85 in 1965 extend to the mentally defectives and with additional protection of the rights of such allegedly dangerous patients. The bill makes it clear that notice of the application for such commitment must be given to the patient and the Mental Health Information Service. It also mandates a hearing on the question of the patient's dangerousness.

Care of Children Born to Patients (§29.21)

The provisions of present MHL §428 with respect to children born in Mental Hygiene institutions are substantially modified. The director must determine whether the mother is able to care for the child. If the mother is unable to do so, he must make provision for such child in accordance with Article 3 of the Family Court Act relating to "neglected children."

Powers with Respect to the Property of Patients (§29.23)

The provisions of MHL §34 (14) deal with the right of the director of a Department facility to receive certain funds on the patient's behalf. The bill carries over the substance of that provision with the modifications that the amount of such funds shall not exceed $5,000.00 and that such funds shall be used in the first instance for luxuries, comforts and necessities for the patient, including burial expenses, and, if funds are thereafter available, for the support of such patient.

Alcoholic Beverages (§29.25)

The provisions of MHL §430 prohibiting sale or delivery of alcoholic beverages to patients at Department facilities is carried over.

The following provisions of MHL have not been carried over into the bill:

1. Provisions for mentally ill Indians (MHL §83) and mentally ill deaf (MHL §82) have been deleted as an unnecessary part of the statutory framework.

2. Provisions with respect to "costs" of examination (MHL §52, §77, and §126) have been deleted as unnecessary in the present context of admissions based on medical certification rather than court certification.

3. MHL §64 and §64-a relating to Manhattan State Hospital lands leased from the City of New York should not appear in the recodified law. MHL §65, relating to acquisition of docks, etc., at Ward's Island is unnecessary.

4. Specific provisions regarding Psychiatric Institute (MHL §420), Syracuse Psychiatric (MHL §421) and Research Institute for Mental Retardation (MHL §422). Their status as institutes is recognized in §7.15.

5. MHL §423, regarding admission of inebriates, is covered by Article 35.

ARTICLE 31

HOSPITALIZATION OF THE MENTALLY ILL

This article sets forth the procedures for the hospitalization of the mentally ill. It follows generally the pattern of the new admission procedures for the mentally ill, adopted in 1965, but adds numerous features further protecting the rights of patients. The changes from existing law are set forth below.

Admission of Patients (§31.03)

A mentally ill person may be admitted to a hospital as an in-patient only pursuant to the provisions of this article. The section of the Mental Hygiene Law under which a patient is admitted or under which he is retained must be stated in the patient's record.

Notice to All Patients (§31.07)

Every patient regardless of method of admission must be informed immediately upon admission or conversion to a different

status of his legal status, including the section of law under which he is hospitalized, and of his rights under this article, including the availability of the Mental Health Information Service. The patient must be permitted to communicate with the Mental Health Information Service and avail himself of the facilities of such service.

The director of every hospital must post copies in conspicuous places of a notice stating generally the availability of the Mental Health Information Service, the rights of patients admitted under the various provisions of this article and the right of patients to communicate with the director, the Board of Visitors, the Commissioner of Mental Hygiene and the Mental Health Information Service.

Minor Patients (§31.09)

The Mental Health Information Service must be given notice of the admission or conversion from one status to another of all persons under the age of twenty-one. No minor may be transferred until the Mental Health Information Service has had an opportunity to see him unless the transfer is made with the consent of the minor and his parent or legal guardian. The Service must be informed of the release of transfer of every minor.

Voluntary and Informal Admissions (§§31.13 through 31.25)

1. A person may be received as a voluntary if he is sixteen years of age or over. He must be suitable for admission as a voluntary or informal patient. The standards for suitability and understanding needed to be admitted in such status are set forth in §31.17. If a person requests admission on a voluntary or informal status and is suitable, he must be admitted on such status.

2. The law encourages the conversion of patients from an involuntary to a voluntary status. This bill incorporates certain requirements for such conversion to comply with the case of In Re Buttonow, 23 New York 2d 385. The patient converted from involuntary status to a voluntary status is given the right to a judicial hearing on the question of his suitability for such conversion and on his willingness to be so converted. Furthermore, no voluntary or informal patient

whether admitted on such status or converted thereto shall be continued in such status for more than twelve months unless his suitability and willingness to so remain have been reviewed by the Mental Health Information Service. If the Service finds any ground to doubt the suitability of such patient to remain in a voluntary or informal status or the willingness of the patient to so remain, it shall make an application for a court order to determine those questions. Such review shall be made annually.

3. If an informal patient desires to be released, he is free to leave at any time. If a voluntary patient seeks to leave, the director must promptly release the patient unless he has reasonable ground for belief that the patient may be in need of involuntary care and treatment. In such case, the director may retain the patient for no more than seventy-two hours. Before the expiration of the seventy-two hour period, the director must either release the patient or apply to the court for an order authorizing the involuntary retention of such patient. If the court finds that the patient does need involuntary care and treatment, it can order the patient's retention for a period not exceeding sixty days. Thereafter, the patient may be retained in the same manner as involuntary patients admitted on medical certification.

Involuntary Admissions on Medical Certification
(§§31.27 through 31.35)

1. The criterion for involuntary admission on medical certification is set forth in the definition of "in need of involuntary care and treatment" appearing in §31.01. "In need of involuntary care and treatment" means that a person has a mental illness for which care and treatment as a patient in a hospital is essential to such person's welfare and whose judgment is so impaired that he is unable to understand the need for such care and treatment. This differs from the criterion in the present law which permits involuntary hospitalization of a mentally ill person, that is, a person afflicted with mental disease to such an extent that, for his own welfare or the welfare of others or of the community, he requires care and treatment.

2. The bill contains a directive that before an examining physician completes the certificate of examination of a person for involuntary care and treatment he must consider alternative forms of care and treatment that might be adequate to provide for the person's needs. Wherever possible, the examining physician shall consult with the physician or psychologist who may have been furnishing treatment to the person under examination (§31.27 (d)).

3. No patient may be sent to another hospital by any form of involuntary admission unless the Mental Health Information Service has been given notice thereof (§31.27 (f)).

4. If upon initial involuntary admission a patient requests a hearing and the court finds that there is need for involuntary treatment, the court merely denies the application for release. This differs from present law which permits a six month order of retention at the time of a hearing on the patient's initial application. If the court denies the application for release, the patient may be retained only for the balance of the sixty day period or thirty days from the date of the order, whichever is later, unless the hospital makes application for an order permitting further retention. If the patient or anyone on his behalf or the Mental Health Information Service requests that the patient be brought personally before the court, an order for one year or longer cannot be made unless the patient appears personally.

Admission on Certificate of Director of Community Services or His Designee (§31.37)

Under present law, a patient may be admitted on a "Health Officer's Certificate" made by either the health officer or Director of Community Mental Health Services, after an examination made by such officer finding the person to be "dangerous". That type of admission is carried into the recodification but the officer given the primary power to effect this type of admission is the Director of Community Services. Furthermore, the criterion of "dangerousness" is replaced by a criterion that the patient has a mental illness for which immediate inpatient care and treatment in a hospital is appropriate and which is "likely to result in serious harm to himself or others". Such "likelihood of serious harm" means either (1) substantial risk of physical harm to himself as manifested by threats of

or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself, or (2) a substantial risk of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. Another change from present law is that the patient must be converted to a two physician certificate admission within seventy-two hours rather than fifteen days.

Emergency Admissions for Immediate Observation, Care and Treatment (§§31.39 through 31.43)

The provisions for emergency admissions are based on the MHL §78 with the following changes.

1. A specific criterion for admission is set forth in that the person brought to the approved hospital for emergency admission must be alleged to have a mental illness which is likely to result in serious harm to him or others as defined above.

2. The patient may not be retained beyond forty-eight hours unless his need for retention on an emergency basis is confirmed by a staff psychiatrist.

3. The patient may not be retained on an emergency basis beyond fifteen days. The present period is thirty days.

4. The patient is entitled to a prompt hearing on the question of whether he may be properly retained on an emergency basis. Any court order authorizing his retention on such basis can only authorize retention for the remainder of the fifteen day period.

5. Within fifteen days, the patient must either be discharged or, if he does not agree to remain as a voluntary or informal patient, he may be retained only by the regular admission on medical certification.

6. The power of peace officers to take into custody persons who appear to be mentally ill and bring them to an approved hospital is continued except that the criterion is not "disorderly conduct" but the fact that the person appears

to be mentally ill and is conducting himself in a manner "likely to result in serious harm to himself or others" as defined above.

7. The power of the courts as set forth in MHL §78 (4) to issue an order directing the removal of a person to an approved hospital is carried forward with the criterion that the person is apparently mentally ill and conducting himself in a manner which in a person who is not mentally ill would be deemed disorderly conduct or which is "likely to result in serious harm to himself or others." The so-called "criminal order" which permitted the magistrate to send a defendant to an approved hospital for thirty days for a report on the mental illness of the person has been deleted in view of the coverage of this area in the Criminal Procedure Law.

Duties of Local Officers (§31.47)

The recodification sets forth in general terms the responsibility of the directors of community services, health officers and social services officials to see that all mentally ill persons within their communities who are in need of care and treatment in a hospital are admitted to a hospital pursuant to this article.

ARTICLE 33

ADMISSION OF THE MENTALLY RETARDED TO SCHOOLS

This article applies generally the admission procedures applicable to the mentally ill to the admission of the mentally retarded to schools for the retarded and gives the retarded person the same rights as are afforded to the mentally ill patient. It supercedes the court certification procedure for the admission of "mental defectives" (MHL Article 6) which had been left untouched at the time of the 1965 changes in the admission procedures for the mentally ill. Major differences in procedure from that prescribed for the mentally ill are as follows:

1. References are to "resident" rather than "patient" when referring to a mentally retarded person residing in a State school.

2. There are only three forms of admission for the mentally retarded -- (a) voluntary admission, (b) admission of non-objecting patient, and (c) admission on certificate of two physicians (or one physician and one psychologist).

3. Applications and medical certificates must be made within six months of admission.

4. Court ordered period of involuntary retention after the first sixty days is one year initially; then, two year periods.

5. The admission of a non-objecting mentally retarded person on the certificate of one physician or one psychologist is carried forward from MHL §123 with the addition of several protective features.

   (a) The non-objecting person must be so profoundly or severely mentally retarded that he does not have sufficient understanding to make him suitable for admission as a voluntary resident.

   (b) If there is a demand for release of the resident, the same procedure applies as in the case of voluntary residents whose release is demanded, i.e., release within seventy-two hours unless application is made for a court order.

   (c) The Mental Health Information Service must be given notice of such admissions. The Service must make at least an annual review of the resident's retention pursuant to this section.

ARTICLE 35

ADMISSION OF ALCOHOLICS TO ALCOHOLISM FACILITIES

This article applies generally the admission procedures applicable to the mentally ill to the admission of alcoholics to alcoholism facilities. Major differences in procedure from that prescribed for the mentally ill are as follows:

1. There are only three forms of admission -- (a) voluntary, (b) admission on certificate of two physicians and (c) emergency admission.

2. Voluntary patients may not remain for care and treatment beyond a twelve month period.

3. The criterion for involuntary treatment is that the person suffering from alcoholism is in need of in-patient care and treatment and he is likely to cause serious harm to himself. Such likelihood of serious harm shall mean that there is a very substantial risk of physical impairment or injury to the person himself in that such a person's judgment is so affected that he is unable to protect himself in the community and reasonable provision for his protection is not available in the community.

4. The court order period of involuntary retention is limited to one period of six months.

5. The section on emergency admission of alcoholics authorizes an alcoholism facility to treat emergency cases only where the alcoholic does not object thereto.

ARTICLE 43

FEES FOR SERVICES

This article contains the provisions for reimbursement and collection of fees for services rendered to patients at Department facilities. It is substantially similar to

existing provisions of MHL except that the specific reference of MHL §24 (5) to a family court proceeding to compel support is deleted.

ARTICLE 61

FEDERAL AID

This article contains the provisions for utilization of Federal aid and for intergovernmental cooperation. Section 61.01 brings up to date the comparable provisions of MHL §§28 through 28 (c).

ARTICLE 67

INTERSTATE RELATIONS

This article sets forth the procedure with respect to aliens and nonresidents and contains the provisions of the Interstate Compact on Mental Health. It follows generally existing law except that it no longer mandates that a nonresident be returned to his place of residence and it deletes the provisions of MHL §427 which makes it a misdemeanor to bring persons into the State unlawfully for care or treatment in a State institution.

ARTICLE 71

ACQUISITION OF REAL PROPERTY

This article contains the provisions for the acquisition of real property by the Department. It makes no substantial change from the present provisions on that subject contained in §46.

ARTICLE 75

COMMUNITY MENTAL HEALTH SERVICES AND MENTAL RETARDATION SERVICES COMPANIES

This article contains the provisions for mortgage loans by Community Mental Health Services and Mental Retardation Services Companies. It makes no change, except to conform terminology, in the provisions of MHL Article 8-B, added by Chapter 1034 of the Laws of 1969.

ARTICLE 77

CONSERVATORS

This article incorporates the provisions of the bill proposed by the Law Revision Commission for the appointment of conservators. The provisions of the conservator bill were drafted after very extended study by the Law Revision Commission and after their review of the provisions of conservatorship laws which have been enacted in over twenty states.

The need for a procedure to preserve the property of persons who are unable to manage their own affairs either because of debilitating factors which create a condition falling short of incompetency or, if actual incompetency exists, where there is a disinclination to initiate a proceeding to delcare such incompetency because of the stigma attached thereto has been repeatedly emphasized by persons who have studied the problem. The special committee to study commitment procedures established by the Association of the Bar of the City of New York commented favorably on the need for such a conservator procedure (Mental Illness and Due Process, Cornell University Press, 1962).

The conservatorship procedure provides a flexible means for protecting the property of persons with serious debility and gives the court the power to set limits upon the authority of the conservator and to insure that the conservatee has an adequate allowance for his personal needs. The civil rights of the conservatee are not affected. The title to the conservatee's property remains in him and the conservatee has

the power to dispose of his property by will if he possesses the requisite testament capacity. Adequate procedures are incorporated to protect the constitutional rights of the person who is the subject of the proceeding.

ARTICLE 78

COMMITTEE OF INCOMPETENT OR PATIENT

This article incorporates the present provisions of the MHL with respect to committees of incompetents or patients. The only substantial changes are as follows:

(1) Section 78.03 - This section deals with the procedure for declaration of incompetency and appointment of a committee. The bill makes a technical correction in subdivision (b) to delete references to the judge or justice (correct reference is to the court); requires a hearing or trial in accordance with the Civil Practice Law and Rules, with right to trial by jury of the issue of competency, and deletes trial by jury before commissioners.

(2) Section 78.07 - This section deals with the appointment of a committee of a patient in a State facility. The bill requires that the petition be verified and state facts showing that patient is unable adequately to conduct his personal or business affairs; it provides the right to a trial on issues of fact and the right to a jury trial on the issue of ability to conduct personal or business affairs, and involves the Mental Health Information Service in the proceeding. It also provides that notice of release of a patient must be given to the clerk of the court which appointed the committee and requires the committee, where directed to submit his final accounting, to do so forthwith.

(3) Section 78.25 - Makes technical change required by Chapter 212 of the Laws of 1969 - changing term "official referee" to "special referee".

(4) Section 78.29 - Conforms procedure on accounting to the Surrogate's Court Procedure Act.

ARTICLE 79

PROCEEDINGS RELATIVE TO INCOMPETENT VETERANS AND INFANT WARDS OF THE UNITED STATES VETERANS' ADMINISTRATION

This article incorporates the present provisions of the MHL with respect to committees of incompetent veterans.

ARTICLE 81

NARCOTIC ADDICTION

This article repeats the substance of the Narcotic Addiction Control Act now contained in MHL Article 9. MHL §202 has been deleted as unnecessary.

ARTICLE 91

LAWS REPEALED: SAVING CLAUSE
TIME OF TAKING EFFECT

The effective date of the recodified Mental Hygiene Law is July 1, 1972.

NOTE:

This memorandum has been preapred at the request of the Joint Legislative Committee on Mental and Physical Handicap, Senator Dalwin J. Niles, Chairman.

3/19/71
MF:LL
(Retyped 3/22/71)

ALAN D. MILLER, M.D.
COMMISSIONER

MAY 2 1972

S. 5641

WILLIAM D. VOORHEES, JR., M.D.
FIRST DEPUTY COMMISSIONER

HYMAN M. FORSTENZER
SECOND DEPUTY COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF MENTAL HYGIENE
44 HOLLAND AVENUE
ALBANY, N. Y. 12208

April 28, 1972

Re: Senate 5641 by Mr. Niles

AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law

Senate 8173, Senate 9710, Senate 9711 and Senate 9713 - Companion amendments to the Recodification

Hon. Michael Whiteman
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York

Dear Mr. Whiteman:

The enclosed memorandum is submitted herewith on behalf of Alan D. Miller, M. D., in response to your request for comments and recommendations on the above ten-day bills which are before the Governor for executive action.

In view of the importance of the Recodification of the Mental Hygiene Law, the Department of Mental Hygiene recommends an appropriate ceremony upon the Governor's approval.

Sincerely yours,

E. David Wiley

E. DAVID WILEY
Counsel

MF:js

Enclosure

DEPARTMENT OF MENTAL HYGIENE DATE: April 28, 1972

Re: Senate 5641 by Mr. Niles
AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law

Senate 8173 by Mr. Barclay
AN ACT to establish new state schools and to amend a chapter of the laws of nineteen hundred seventy-two, entitled "An Act to repeal the mental hygiene law, and to enact a recodified mental hygiene law", in relation thereto

Senate 9710 by Mr. Niles
AN ACT to amend the mental hygiene law, in relation to narcotic addiction and repealing section 81.11 of such law relating to special hospital facilities for drug addicts

Senate 9711 by Mr. Niles
AN ACT to amend the mental hygiene law, in relation to the effective date of such law

Senate 9713 by Mr. Niles
AN ACT to amend the mental hygiene law, in relation to the application of certain laws enacted at the nineteen hundred seventy-two legislative session

Recommendation: The Department of Mental Hygiene strongly recommends approval. In view of the importance of S. 5641, the Recodification of the Mental Hygiene Law, it is recommended that an appropriate ceremony accompany the Governor's approval.

Statutes involved: Mental Hygiene Law.

Effective Date: S. 5641 is amended by S. 9711 so that the Recodification of the Mental Hygiene Law would become effective January 1, 1973.

Discussion:

1. Purpose: To recodify the Mental Hygiene Law.

2. Summary: S. 5641 recodifies the Mental Hygiene Law.

S. 8173 corrects Section 7.15 of the Recodification to make the listing of State schools reflect the existing fact.

S. 9710 amends Section 1.05 of the Recodification to modify the definition of "mental disability" as it affects narcotic addiction or drug abuse so that Federal aid will not be jeopardized. Also transfers the provisions of Section 81.11 of the Recodification dealing with special hospitals for drug addicts from Article 81 to Article 9 of the Recodification and amends Section 31.27 to make the director of a Narcotic Addiction Control Commission facility an appropriate person to sign an application for involuntary hospitalization of a mentally ill person. Adds a new Section 81.11 to make clear that NACC facilities fall within the definition of Mental Hygiene facilities for the purpose of the Health and Mental Hygiene Facilities Improvement Act. Renumbers Section 81.37 of the Recodification to 91.04 and makes the separability clause applicable to the entire chapter.

S. 9711 amends Section 91.05 to make the effective date of the Recodification January 1, following the date on which it shall become law.

S. 9713 adds a new Section 91.02 to the Recodification to provide that any amendment to the Mental Hygiene Law enacted at the 1972 Session shall be deemed to amend the Recodified law.

3. Prior Legislative history: A study bill was introduced at the 1969 Legislative Session (S. 5227, A. 7212). A revised study bill was introduced at the 1970 Session (S. 9486, A. 5999). The present bill was introduced at the 1971 Session and passed in the Senate at that Session. It was repassed in the Senate at this Session and passed the Assembly.

4. Statements in support of the bill: The Mental Hygiene Law was enacted in 1927 and has not been generally revised since that date. Although the law has been continually amended since that date, the developments of the last fifteen years require a more complete overhaul of the entire statutory framework. The establishment of community services for the mentally disabled, the development of new techniques and approaches in the treatment of the mentally ill, the mentally retarded, and those suffering from alcoholism, narcotic addiction, and drug abuse, and the evolution of expanded judicial protection for the rights of the mentally disabled are some of the factors which require a recodified Mental Hygiene Law.

Public hearings were held throughout the state on the study bills, at which individuals and organizations submitted comment

and criticism. In addition, a detailed report was received from the special advisory committee on the recodification, appointed by the Joint Legislative Committee on Mental and Physical Handicap. The advisory committee consisted of a broad representation of persons, professions and agencies concerned with the operation of the Mental Hygiene Law and as a result of the hearings, written comment received from various sources and the report of the advisory committee, the study bill was rewritten in many respects to accommodate the criticism, to adopt many of the recommendations and to correct errors. This revised bill (S. 5641) was introduced at the 1971 Session of the Legislature and is the bill now before the Governor for executive action.

The companion bills referred to above represent desirable technical changes in the Recodification with which the Department of Mental Hygiene is in agreement. The effective date of the Recodification, on the basis of the chapter amendment, will be January 1, 1973.

This bill would provide a flexible, statutory framework for carrying forward modern programs of prevention, research, care and treatment in the fields of mental illness, mental retardation, alcoholism and narcotic addiction and drug abuse.

The Department of Mental Hygiene strongly recommends approval.

5. Possible objections: The final draft of the Recodification together with the chapter amendments have disposed of all known objections.

6. Other State agencies interested: Mental Health Information Service, Narcotic Addiction Control Commission, Attorney General's office, Division of the Budget and Office of General Services.

7. Known position of others: The Recodification has been approved by almost all the organizations operating in the mental health and related fields. Among such organizations are the Community Service Society, the New York State Mental Health Association, the New York State Association for Retarded Children, the New York Chapters of the American Psychiatric Association, the Epilepsy Foundation, the New York State Committee Against Mental Illness, the New York State Psychological Association, the Committee on Mental Hygiene of the New York State Bar Association, the Special Committee to Study Commitment Procedures of the Association of the Bar of the City of New York and many others.

8. Budget implications: The Recodification mandates no further fiscal obligation. State aid formulas have been retained exactly as they appear in present law.

MF:js

Chap 251 S- 5641

MONROE COUNTY BAR ASSOCIATION
516 TERMINAL BUILDING
ROCHESTER, NEW YORK 14614

(716) 546-1817

Hon. Nelson D. Rockefeller
Governor of the State of New York
Albany, New York

Re: Senate No. 5641, Assembly No. 6943
creating a conservator procedure

Dear Governor Rockefeller:

The above bills have been passed and are now waiting for your approval or rejection, according to information received by the Monroe County Bar Association. We have been advised that the text of the bill before you is identical with the text that was recommended by the Law Revision Commission in Legislative Document No. 65(G), a study issued in 1966.

The Monroe County Bar Association has considered this legislation and wishes to express support for it. The majority of our Trustees feel that there are many situations in which a Committee would be appointed, except for the stigma associated with a judicial finding of incompetency. In many such cases property is now handled under a power of attorney procedure which does not provide proper safeguards for the incompetent and requires an unwarranted risk on the part of the agent because his authority may, in fact, be non-existent because of incompetency.

The problem has become more important in recent years because of the large number of senile persons who have assets. In such cases the family is almost always reluctant to have a formal determination of incompetency and in many such cases doctors are not willing to testify that incompetency exists.

For these reasons the Trustees of the Monroe County Bar Association by a majority vote at a meeting held May 15, resolved to express their support of the proposed conservator legislation.

Respectfully yours,

MONROE COUNTY BAR ASSOCIATION

By _____
Sydney R. Rubin, President

/fg

S-5641

MAY 3 1972

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COMMUNITY SERVICE SOCIETY

105 East 22 Street • New York, N.Y. 10010 • (212) 254-8900

May 1, 1972

Honorable Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Re.S.5641 - to repeal the mental hygiene law, and to enact a recodified mental hygiene law

Dear Mr. Whiteman:

The Committees on Health and on Aging are in full support of this bill. We have followed closely all of the recodification proposals that have been submitted, beginning with the draft released by the Institute of Public Administration in 1968, and have prepared statements concerned with each of them.

We urge enactment of this bill, though we see, and others see, modifications that they believe would make it a better proposal. Nonetheless it represents a mammoth effort that eliminates the prior law with its amendments upon amendments. This bill has a constant and consistent theme in keeping with current knowledge and understanding of mental disability and is a far superior proposal to any of those that have preceded it. The Committees on Health and on Aging believe, without question, that S.5641 should become law.

Sincerely yours,

Franklin E. Parker
Chairman - Committee on Health

Arthur Garson
Chairman - Committee on Aging

FP:ss
AG

Enclosure: Copy of Legislative Memorandum, dated 3/29/72

10

LEGISLATIVE MEMORANDUM

a nonprofit, nonsectarian social agency devoted to the improvement of family and community life in New York since 1848

Department of Public Affairs
COMMUNITY SERVICE SOCIETY OF NEW YORK
105 East 22 Street, New York, N.Y. 10010 • (212) 254-8900

COMMITTEE ON HEALTH, NO. 50
COMMITTEE ON AGING, NO. 5

3/29/72

*PASSED SENATE

S. 5641-A* Mr. Niles Mental Hygiene
A. 6943 Mr. Ginsberg Health

Mental Hygiene Law, repeals the present law and replaces it with a recodified law

This bill revises and updates the entire mental hygiene law which has been subject to frequent and extensive amendments over the years, but has not been completely revised since 1927.

HISTORY OF THE RECODIFIED EFFORT In the past four years, four proposed revisions have been set forth. The first in 1968 appeared as a report and draft legislation; a second appeared as a revised version and study near the end of the 1969 legislative session; a third and revised bill prepared by the Joint Legislative Committee on Mental and Physical Handicap, was filed in April of the 1970 session; finally, this fourth bill was introduced in April of 1971 and seems to respond to many of the criticisms levelled at earlier versions.

This is a carry-over bill which passed in the Senate last year.

SUPPORT The Committees on Health and on Aging strongly urge adoption of this version of the recodification of the Mental Hygiene Law. It seems a much-improved proposal over previous drafts and a great improvement over the existing law.

Its provisions with respect to the rights of patients, more carefully drawn admission procedures, broadening of the responsibilities of the Mental Health Information Service and shortening the periods patients may be held involuntarily before clear-cut decisions about retention or discharge must be made -- all are positive and desirable steps.

The conservatorship provisions embodied in Article 77 represent a great step toward a more humane and less expensive means of meeting the needs of persons who are temporarily or sporadically incapable of managing their daily affairs. This article incorporates the provisions of the bill proposed by the Law Revision Commission, which has had the support of the Community Service Society Committees on Health and on Aging during the several sessions of the Legislature to which it was presented in the past.

The Committees strongly urge enactment of this bill in view of the four years of study and the consideration already given to the principles embodied in this legislation.

DPA 2560
1 10 11

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COMMENTS

on

1971 Senate Bill 5641, And Its Companion Assembly Bill 6943

Recodification of the Mental Hygiene Law

COMMUNITY SERVICE SOCIETY OF NEW YORK
Department of Public Affairs
Committee on Health

February 1972

COMMUNITY SERVICE SOCIETY OF NEW YORK

COMMENTS ON 1971 SENATE BILL 5641, AND ITS COMPANION ASSEMBLY BILL 6943
(RECODIFICATION OF THE NEW YORK STATE MENTAL HYGIENE LAW)

NEED FOR RECODIFICATION

The existing Mental Hygiene Law of New York State is based on the Laws of 1927 which revised the Insanity Law of 1901. Since 1927 vast changes have taken place in the methods of treatment of the mentally ill and the mentally retarded and during this period the Law has been amended on numerous occasions in order to deal with some of these changes, for the most part on a piecemeal basis. The Law as it now stands is inadequate and obsolete, in the opinion of the Community Service Society's Committee on Health. We hold that a new uncluttered statute - based on current knowledge and in keeping with modern practice - is urgently needed.

BACKGROUND

Action, beyond mere consideration, in regard to a revised Mental Hygiene Law began in 1965 when the State Department of Mental Hygiene contracted with the Institute of Public Administration in New York City to prepare a draft of a recodified law. A proposal was released by the Institute in 1968. After wide public exposure (the Committee on Health (COH), among many other groups responded to the draft proposal) a revision was drawn by the staff of the State Department of Mental Hygiene and was filed in the 1969 session of the State Legislature as Senate Bill 5227 for study purposes during 1969 and 1970. S.5227 was the subject of public hearings held throughout the state by the Joint Legislative Committee on Physical and Mental Handicap. There was also opportunity to file written comments. (The COH again submitted a statement of opinion.)

On the basis of reactions to S.5227, a revised bill, S.9486 was prepared by the Joint Legislative Committee on Physical and Mental Handicap and introduced in April 1970. More public hearings followed, and major revisions were undertaken by the Joint Legislative Committee's staff, incorporating suggestions made in hearings; special consideration was given to funding arrangements that had come under criticism. This revision was filed as S.5641 on March 2, 1971; had this bill been passed, its effective date was indicated as July 1, 1972. The bill was passed unanimously by the Senate during the 1971 session. Its companion, A.6943 never reached the floor of the Assembly because it was intentionally held in Committee, despite urgent and repeated requests from concerned organizations (the COH was among these) that it be dislodged before the long and bitter 1971 legislative session adjourned. Undoubtedly, there were flaws in S.5641-A6943 but there would have been time after its passage until July 1972, its effective date, to legislate any needed change. It was the opinion of the Committee on Health that this version of a proposed recodified Mental Hygiene Law went a long way toward curing the inadequacies of the existing law and, therefore, deserved enactment.

RECODIFICATION IN 1972(?)

S.5641-A.6943 will be automatically carried over to the 1972 session of the Legislature. Inasmuch as the 1971 proposal was not passed, it could be questioned whether there should be continued effort in this session to encourage its acceptance or whether S.5641-A.6943 like earlier versions, should be scrapped in favor of still another revision. Many suggestions for changes in mental hygiene practices and their administration have arisen in the past year and there are other activities underway which may yield new directions. For example, legislation was proposed in the last session to change the entire mechanism of state-local funding of mental health services - placing more responsibility at the local level for the direct provision of services. It would eliminate the existing financial incentives to local governments to place patients in state hospitals rather than to provide services in the community in which patients live. Other significant bills proposed extension and improvement of services to alcoholics and the creation of intermediate grades of medical manpower with appropriate training requirements. The latter, while not specific to the mental hygiene field, might be expected to yield benefits to it, if opportunities were exploited to train new members of health teams prepared to provide services that would upgrade patient care in programs for the mentally ill and mentally retarded.

Among the new promising activities referred to above, a source of new ideas and proposed legislation may be the New York State Committee for Children, appointed by the Governor in 1971. It can be anticipated that the Committee will provide recommendations for improved care for children in New York State, especially for those who, for whatever reason, fall into official hands.

All of these stirrings can be expected to bring proposals for change in policy and practice related to mental health programs and services. If this is so, should recodification wait upon these developments? The COH thinks it should not. The shared funding proposal, for example, comes as a new concept in New York State. It will require opportunity for those who are skeptical to observe the California experience, where a similar arrangement is now in operation. The implications of the measure are so far-reaching and important that they deserve study on their own and, in our view, should not be one piece of a gigantic package of legislation. The same could be said of other facets of mental health care that are now under public scrutiny and criticism. The ferment and emerging ideas for improvement in mental health practice serve to underscore for us the clear need and purpose for immediate enactment of a simplified and consolidated mental hygiene law to provide a solid foundation for change that is certain to come.

DEPARTMENTAL AUTHORITY

Throughout this period during which recodification has been under consideration, there have been fears expressed that the suggested legislation would change the State Commissioner of Mental Hygiene Services into a Commissar. The COH believes that view is without foundation. Recognizing that for historical reasons, the state mental hospitals have often managed to

circumvent or thwart the express policy of the State Department of Mental Hygiene, we believe that the Commissioner needs and should be granted appropriate authority as S.5641 provides. To quote from our previous statement on this question, "sound administrative policy requires a responsible head of the state system; the Commissioner is the individual ultimately accountable for state services and should have authority commensurate with his responsibilities."1/

STATEMENT ON POLICY

The Committee approves the inclusion of more general terminology in the declaration of state purpose with respect to mental health. The inclusion of developmental disabilities makes possible the planning and delivery of service to those whose conditions do not allow for a clear-cut diagnosis of mental illness or mental retardation but who clearly need services of the same general type as those provided the groups under the general term "mental disabled." This terminology clears the way for acceptance and use of federal funds for persons with developmental disorders as such funds become available. In view of the federal requirement that there be a designated statewide agency for providing care and receiving funds, this more general terminology becomes an important provision in S.5641.

ORGANIZATION OF THE DEPARTMENT

In studying the proposed recodification, the Committee has been alert to omissions as well as additions. One section of the current law, more honored in the breach than the observation, seems to us an important statement of concern for a particular vulnerable group and we regret its omission from all the drafts for a revised law. It is the present section 3-a which spells out in considerable detail the powers and responsibilities of a consultant on services for the aged. Although the post is filled, the financial means to carry out the projects spelled out in this section of the Law have not been made available. It seems most short-sighted to drop a statement of special concern for the aged at a point when increased longevity and increased population are combining to produce an inevitable population explosion of the old. It is evident that within the next decade our already inadequate facilities for care of older persons will be swamped and totally inadequate.

Besides older persons, there are two other specially needful groups who we believe have not been sufficiently represented in planning for services; they are children and adolescents. Because the provision of services for these two groups - young children and teenagers - should be carefully related, we believe they should be dealt with in one section of the Department and by a single advisory committee, on which some members should be expert in the needs of young children and some expert concerning adolescents.

1/ See page 1 of the Comments on 1969-70 Senate Bill 5227 - Recodification of the Mental Hygiene Law published by the Community Service Society of New York, Department of Public Affairs, Committee on Health - January 1970.

The Committee believes there should be in the Department of Mental Hygiene a consultant on services for the aged and a consultant on services for children and adolescents. It follows that there should be also a Committee on Services to Children and Adolescents to advise the Department of Mental Hygiene vis-a-vis the child-adolescent program and a Committee on Geriatric Services to advise the Department concerning services for the elderly. These would be committees similar to the committees concerned with mental health, mental retardation and alcoholism.

We applaud the strengthened statement in section 7.17(b) of a director's responsibility to protect the patients in his facility and his duty to deal with problems of humane care jointly with the Board of Visitors. The usefulness of the Board of Visitors should be markedly enhanced by expanded provisions of section 7.19.

COMMUNITY SERVICES

The Committee continues to support strongly the principle behind the provision in section 11.05(c) whereby charter governments may vest policy making authority in the director of mental health services and may designate a board, advisory to the director. We are of the opinion that a city the size of New York, for instance, should have a larger board than the nine permitted by current law; accordingly, we approve of the possibility of a 15 member board for a charter government as set forth in section 11.11(a).

We hold to our previously stated opinion, which varies with both present law and the proposed recodification: (1) that all members of the advisory board should live or work within the jurisdiction of the board and (2) that no member of the board should be an employee, officer, trustee or director of any provider of services receiving funds from the board, or from the department to which a board is advisory.

We believe the widened discretion with respect to the selection of a Director of Community Services is wise. It provides leeway to those communities unable to attract first-rate administrative skill from within the profession of psychiatry, or where psychiatrists are unwilling to undertake an administrative role, to separate administration from psychiatric practice. In view of the provision for designation of a qualified psychiatrist to fulfill the examining duties ascribed to directors, there seems no occasion for fear that the designation of "an other professional person" as director will jeopardize the care of patients.

THE BASIS FOR COMMITMENT

The Committee continues to be concerned about the undefined conditions which can lead to the involuntary restriction of liberty under mental health laws. All other areas of law set forth clearly defined acts or behavior which can result in involuntary restriction of liberty. The proposed recodification authorizes retention "of any person alleged to be mentally ill and in need of involuntary care and treatment upon the certificates of two examining physicians, accompanied by an application for the admission of such person." The hospital must apply for court authorization to retain an involuntary patient longer than

60 days, and if the patient or someone on his behalf applies for a hearing on the question of need for involuntary care and treatment, such hearing shall be held. The court, in this instance, shall "hear testimony and examine the person alleged to be mentally ill, if it be deemed advisable in or out of court." On subsequent court actions to permit involuntary retention of the patient for up to six months longer, then for as much as one year more, and following that, for each additional two year period, the patient will be seen in court only if he (or someone on his behalf) requests that the patient be brought personally before the court.

Recent misuse of mental institutions in Russia for the incarceration of political dissenters, and as well for scientists and artists whose work is displeasing to the Politburo, have served to dramatize the possibilities for abuse that lie in a system of certification without stated objective criteria for mental illness and need for hospitalization. The Committee does not urge the complete abolition of involuntary admissions as the New York Civil Liberties Union does, because of our concern about "dangerousness to self and others" which realistically seems to exist in more severe cases of mental disorder. We, nevertheless, share their concern on this subject and believe there should be continuing study.

The Committee after considerable deliberation and consultation, and with advice of counsel, offered in its January 1970 document 2/ a scheme for involuntary commitment based on the prediction of behavior likely to endanger self and others. This and other proposals for balancing an individual's basic right to freedom against possible harm to himself or to the community, should, we believe be thoroughly studied in an effort to find a legal definition of mental illness requiring involuntary hospitalization less susceptible to the abuse of individual civil liberties.

THE NEED FOR COUNSEL

The Committee reiterates its stand that "a reliable system be developed to assure that competent legal counsel be made available to all persons subjected to involuntary hospitalization procedures from the very beginning of their involvement."3/ Especially should counsel be provided those hospitalized by emergency admission, if the decision is made to retain such persons longer than forty-eight hours.

Since the word "voluntary" in the phrase "voluntary admission of minors" as used in section 31.13 refers to a voluntary act on the part of the parent of the minor, the child being admitted to a state hospital needs special protection. While it can usually be presumed that parents act in the child's best interest, obviously that is not always the case. Since a child's admission is often long-term, and cannot be considered an informed act of volition on the part of the child, legal counsel for the child should be immediately available.

2/ See pages 1 and 2 of the Comments on 1969-70 Senate Bill 5227 - Recodification of the Mental Hygiene Law published by the Community Service Society of New York, Department of Public Affairs, Committee on Health - January 1970.

3/ This point of view was spelled out in Comment (ibid) page 5.

It should be counsel's duty to assure that neither personal problems of parents nor institutional convenience are the real cause for hospitalization. He should also be able to require that all alternate forms of care are thoroughly explored before hospitalization in a state mental institution is authorized.

MENTAL HEALTH INFORMATION SERVICE

The Mental Health Information Service continued by section 29.09 of S.5641, and referred to throughout that section, might be thought of as fulfilling the role of legal counsel. In some parts of the state, particularly in the First Judicial Department, the Mental Health Information Service is now performing this function.

We believe that carrying out this responsibility by the Mental Health Information Service (MHIS) (although in specific instances, thoroughly commendable) is a distortion of the statutory purposes of MHIS and may be inherently a denial of effective legal representation. The present law and the proposed revision contemplate a dual function for MHIS: (1) to inform patients of their rights and (2) to provide information to the courts to assist them in making required decisions. It seems to the Committee fundamental that a lawyer who is called upon by a court to investigate facts and report them to the court cannot in the same case represent one of the parties. Legal counsel must have undivided loyalty to his client's cause, and to require him to serve as the court's agent or arm, requires him to divide his loyalty. Neither a court's law clerks nor its probation staff are called upon to represent parties before the court. To do so - would raise serious questions. We think to ask that MHIS perform this dual role would be extremely ill-advised.

We recognize that MHIS, to the extent it is doing so, is providing good legal representation under the permission given to it by the presiding justice, out of a demonstrated need for such services. It is precisely that need which leads us to propose that a system for providing trained and competent counsel be established - but separate from MHIS. We suggest that the need for legal counsel can be assured by a requirement in law that MHIS have a panel of lawyers available to it to serve those patients unable to provide legal counsel for themselves.

COMPOSITION OF BOARDS

The Committee objects to the provision in section 11.11(a) that mental health boards, "shall include representatives from community agencies for the mentally ill, the mentally retarded and alcoholics." While we are receptive to the notion that among the members of the board in a charter government there should be at least one with a primary concern for each of these fields, it is our opinion that the terminology "representatives from community agencies," narrows the selection of appointees to the board. It is not in the best interests of the public for a board to have divided loyalties with several members, perhaps, committed to a "hidden agenda" with respect to a particular agency; nor it is desirable, for fear of parochialism, that some one agency in each of the fields specified have a member of the board or staff on the board of the local governmental mental health agency. It is highly preferable in our view to seek out those whose dedication is to improve the

lot of the mentally ill generally, with respect to all aspects of the needs of all mentally disabled persons. We suggest wording such as "shall include at least one person well informed about the problems of the mentally ill, of the mentally retarded, and of alcoholism, as the case may be."

AGENCY RIGHT TO APPEAL

Since the whole trend and direction of sound current mental health practice is integration and coordination of service at the community level, we believe no direct contract between the state and the voluntary community agency should be permitted. Therefore, we suggest that the second sentence of paragraph (e) of subdivision 12 of section 11.13 be changed to read "if, after a review which includes a presentation of the local governmental unit's reason for refusal as well as the contract proposal of the voluntary agency, the Commissioner upholds the appeal, the Commissioner shall refer the matter back to the local unit for processing of the contract within the next thirty days."

STATE AID FOR OPERATING AND CAPITAL COSTS

The Committee is pleased to see that the objectionable phrase in an earlier draft which would have opened the possibility for direct reimbursement of operating costs from the state to the local voluntary agency, bypassing the local governmental unit, has been eliminated from this version of the recodificat[illegible].

It would be our preference that a true shared funding program for mental health services be inaugurated in New York, patterned after the California Short-Doyle Act. This type of formula for sharing the costs of all services whether institutional or community, whether traditionally provided by state or local government or by voluntary agency, eliminates weighing of service use by dollar factors and contributes both to greater use of community-based services and to the selection of the service on an individualized patient-need factor.*

The Committee continues to be concerned about subsection c of section 11.17 which limits amounts for state aid to the sums appropriated annually by the Legislature, in that sound planning for the inauguration of new or expanded community services can be entirely thwarted by this provision. Since plans

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* Realizing that such a complete departure from current practice should be undertaken in a form which provides for thorough consideration and debate, we believe, as we have earlier stated, that the recodification is not the proper legislative setting for its introduction. However, we do urge its eventual enactment in a 90%-10% formula. Placing of responsibility for planning, development and delivery of service on the local governmental unit, with the state in the ultimate monitoring, evaluating and coordinating role, should be an integral part of such shared funding legislation.

for local services must be reviewed by the local governmental mental health unit, the local government itself, the local services unit of the regional office of the State Department of Mental Hygiene, and the office of the State Commissioner of Mental Hygiene, there is ample opportunity for the proposed service, the need for it and the suitability of its planned operations to be assessed. If a project passes through all these levels of scrutiny and wins approval, we hold that matching funds should be assured and the state's share of the total operating cost of local approved projects should appear as a fixed or mandated item in the annual budget of the State Department of Mental Hygiene, respected as such by the Legislature. We, therefore, recommend the elimination of subsection c.

HOSTELS FOR THE MENTALLY DISABLED

In section 11.29 we approve the addition of the last sentence, not currently in the law, requiring that hostels have the prior approval of the local governmental mental health unit. This strengthens the role of the local government agency and keeps the planning and arrangements for community-based services close to home.

REGULATING POWERS OF THE COMMISSIONER

The additional requirements outlined in subdivision b, paragraphs (1) through (6) of section 13.03 in connection with adoption, change, suspension or repeal of any regulation seem to the Committee to offer assurance that arbitrary unilateral decisions will not suddenly descend upon providers of service. In view of the powers granted to the Commissioner for certifying and regulating the operation of services, these requirements for such advance notice of regulatory decisions and opportunity to argue against them seems equitable.

ISSUANCE OF AN OPERATING CERTIFICATE

The Committee suggests - as it has suggested through several previous versions - that the words "or renewed" be added in section 13.05 after the word "issued" in the sentence "no operating certificate shall be issued by the Commissioner unless the etc." The conditions which are required for the initial issuance of a certificate should be met at each subsequent renewal and determination should be made prior to each such renewal.

APPROVAL OF NEW CONSTRUCTION

With regard to section 13.23, we prefer some of the wording of existing law, specifically subdivision b of section 424 which spells out more fully than S.5641 requirements for the Commissioner's approval for construction, especially "the Commissioner shall not act upon an application for construction unless ..... (he) is satisfied as to the public need for the construction at the time and place and under the circumstance proposed."

We heartily approve the addition of the requirement that the Department solicits comments of the local governmental mental health unit. This is in

keeping with our general point of view that planning for the delivery of all forms of mental health services should occur as close as possible to the operating level.

MANAGEMENT OF AFFAIRS

The Committee congratulates the drafters of S.5641 for including provisions permitting the judicial appointment of a conservator for an individual unable to manage his responsibilities but not so mentally deteriorated as to justify a finding of incompetence. Article 77, Conservators, fills the long apparent need for a protective proceeding short of a declaration of incompetency. To two Committees of the Community Service Society - the Committee on Aging and the Committee on Health - which, in session and out of session, have been advocating a statutory conservatorship, this article is a cause for rejoicing. However, we regret that the duties of the conservator are limited to protection of the property, not the person, of the conservatee and that such protection would be ended by depletion of his estate.

Proceedings under this article should be monitored over a period of time to see whether the problems which have led to the advocacy, by social agencies, of conservatorship are being solved by this widening of the options for protective management of the assets of the mentally impaired. They should also be closely examined to assure protection of the civil liberties of the conservatee.

We regret to see in section 78.01 the carry over of the same objectionable language of the present law, namely, "by reason of age, drunkenness, mental illness or other cause." It seems to the two aforementioned Committees (Aging and Health) important not to lend the slightest support to the already too prevalent notion that age necessarily means incompetence and mental impairment. We also think that modern statutes should recognize that alcoholism is a psychosomatic condition and should eschew the implied moral judgment of the term "drunkenness." For these reasons we would prefer such wording as "impairment associated with age, alcoholism, mental illness or other cause."

DEFINITIONS

With reference to the definition of (an) alcoholic, see Article 1, section 1.05(14), we believe the definition should be stated - "means any person who chronically and habitually uses alcoholic beverages to the extent that said person has lost power of self control with respect to the use of such beverages (or) and who, by reason of alcoholism, endangers the health, safety, or welfare of himself or others." In our opinion the state has no right to intervene unless there is a substantial risk of a person endangering himself or others.

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A more detailed section by section commentary will be released by the Committee on Health when it has been established that the 1971 Senate Bill 5641 and its companion, Assembly Bill 6943 represent the version of the Recodification of the Mental Hygiene Law to be moved to the floor of the 1972 Legislature.

S-5641

An organization of parents and friends to help all the mentally retarded, wherever they are, regardless of race, color, creed or age

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INCORPORATED

175 FIFTH AVENUE • NEW YORK, N.Y. 10010 • 674-1520

MAY 3 1972

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JOSEPH T. WEINGOLD, Executive Director

May 1, 1972

Honorable Michael Whiteman
Executive Chamber
State Capitol
Albany, N.Y. 12224

RE: S. 5641 - Recodification of the Mental Hygiene Law

Dear Mr. Whiteman:

This Association cannot recommend the signing of this law at this time.

Although the purposes of this recodification are laudable and much good is written into it, this is especially true of the civil rights of the mentally ill.

Speaking for the mentally retarded, we see no real progress in this direction and, indeed, some of this is extremely regressive.

Unless, therefore, there is some assurance of amendments to this law that will be backed by the administration along the lines we have indicated, we feel constrained, although reluctant, to recommend the bill be vetoed.

Specifically, our objections are:

1. Article 13 - Regulation and Quality Control of Services for the Mentally Disabled.

This article gives the Commissioner of Mental Hygiene so much power as to create him as a virtual czar over all services for the mentally disabled in the state.

Although the Department, in our opinion, has had the power under the present statute to enforce quality control this has not generally been done, especially in the case of private residential schools for the mentally retarded. Parenthetically, no less severe standards should be required by the Department itself or its own institutions, but this is another matter.

There are, however, grave objections to this article because of its unlimited scope and questionable sections on a constitutional basis.

Another example of this is the sectionthat deals with construction of facilities. No facility may be constructed without such a licence and prior permission of the Commissioner. In fact, therefore, a person wishing to construct a day school could be prevented by the Commissioner whether or not there is any State money involved; a person wishing to construct a sheltered workshop without any State money involved can be prevented from doing so. The language in §13.23 "the construction of a facility, whether public or private, incorporated or not incorporated shall require the prior approval of the Commissioner" must be modified in many respects before this section would be operable or even acceptable in light of our present free economy.

We find a frightening concept in this section under 13.07 Investigation and Inspection by which the Commissioner shall have the power to conduct investigation and to make inspection of facilities, without prior notice, have the right to invade private property without a warrant, conduct examinations of any individual receiving services for the mentally disabled without a court order,etc., etc.

We shall go further and state that in our opinion it is unconstitutional in its present proposed form because it goes beyond the term of the ordinance which was sustained by a 5-4 decision in the U.S. Supreme Court in Frank vs. Maryland (359 U.S. 360). The majority opinion in that case stressed that the health inspector could only request, not force, entry although the proprietor could be fined

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for refusing. More recently the Supreme Court of New York State has held that a Social Service investigator may not enter the home of the recipient of welfare without the permission of such recipient. We suggest, therefore, that this whole section be re-thought.

In its present form it reflects a laudable wish of the Department of Mental Hygiene to control quality, but it has not been thought out in sufficient depth to make it possible without the invasion of private rights protected by the Constitution and a delimitation of the services that should be under the control of the Department of Mental Hygiene.

2. Article 43 - Fees for Services

It goes without saying that we feel the Department of Mental Hygiene has completely missed a golden opportunity in the revision of this section. Rather than taking the course of enlightened social action, it has become more reactionary than ever in its insistance on fees from the parents of the minors inthe institutions of the Department of Mental Hygiene.

The initial statement of the §43.01 "the Department shall charge fees for its services to patients, ---" is a statement of philosophy which in our present day society must be looked at with some question.

We are well aware that the Department is dominated by the psychiatric approach that payment of fees is part of therapy, but we wonder how much this means to the parents of a mentally retarded child who have to pay 10, 15 or more years or the patient himself who is mentally retarded.

The position of this Association is well known with regard to liability for fees and we have succeeded in eliminating liability of parents for those over 21. The fact is that there are some grave constitutional questions under equal protection of the laws with regard to the reimbursement feature and it seems to us this was a golden opportunity for the Department of Mental Hygiene at least to have modified the fee structure if not to have eliminated it.

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It is noteworthy that under § 43.03 C "patients receiving services who are being held pursuant to order of a criminal court... shall not be liable to the Department for such fees." In fact the fees due the Department for such services shall be paid by the county in which such court is located.

If this is so for those who are there by order of a criminal court why should'nt the same procedure hold for those who are there voluntarily or through admission by a physician's certificate?

The change in the method of setting fees, leaving this to the Commissioner only and not social service and the budget does not alter our objections.

3. Article 67 Interstate Relations

We assume that this section really means that a person must be a resident of the Stateof New York for one year before being eligible for a service in an institution of the Department of Mental Hygiene.

We raise the question why a one year residency rule is required for this service when it is not required for the social services.

4. Article 11 Community Services

Our objection to Article 73 can be based on the first sentence of the explanation of this recodification put out by the Department of Mental Hygiene "this article is based on Mental Hygiene Law Article 8-A but substantially simplified. The general scope of the article remains the same."

It is to this that we object, that the general scope remain the same and nothing is changed except a little nomenclature.

The position of this Association is well known with regard to the changes in the Community Mental Health Services Act. We recommended to the Joint Legislative Committee substitution of the 1969 Senate bill 2730 Senator Niles, instead of the present recodification.

We believe that two examples from this recodification clearly

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demonstrate that the recodifiers have missed the whole dynamics of the Mental Health Services Act, its failures, its shortcomings, and what has to be done in order to make services for the mentally retarded available in the communities in that depth necessary to reverse the institutionalization process.

The bill in §11.11 Composition of Boards states that the "Mental Health and Mental Retardation Board shall have nine members appointed by the local government... At leasttwo members shall be licensed physicians who have demonstrated an interest..." This of course is absolutely meaningless. The fact is that without specification as to who the physicians can be, we can very well have a dermatologist and a proctologist.

Of course, this Association has always insisted that the Board should represent the Community dealing with the problems, the consumers of the services, and that one member of the Board should be a representative of the New York State Association for Retarded Children and the other a member delegated by the New York State Mental Health Association.

But we do not have to remain with the recommendations of this organization which may have an ax to grind. Let us present here the suggestions from Dr. W. S. Gold, Medical Director of the Wyoming County Mental Health Clinic to Dr. Miller, April 1, 1969 and transmitted to Senator Niles.

"A Community Mental Health and Mental Retardation Board shall have seven members. The first Board member, and his alternate, shall be from and nominated by the local legislative committee concerned with provision of mental health and mental retardation services. The second Board member, and his alternate, shall be from and nominated by the local organization (or committee) which represents local mental health interests. The third Board member, and his alternate, shall be from and nominated by the local organization (or committee) which represents local mental retardation interests. The fourth Board member, and his alternate, shall be from and nominated by the local medical association. The fifth Board member, and his alternate, shall be from and nominated by the local organization (or committee) which represents local

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educational interests. The sixth Board member, and his alternate, shall be from and nominated by the regional office of the State Department of Mental Hygiene. The seventh Board member, shall be the medical director of local mental health and mental retardation services who shall appoint a staff member as his alternate." He further states that neither the medical director nor the State representative may serve as Board chairman.

This is from someone who does not have an ax to grind. He is deeply concerned with the problem of the mentally retarded and the composition of the Board who sometimes have state that "the biggest problem with retarded children is that they don't die soon enough." And, "the best way to deal with our out-patient overload is to get rid of 70% of them."

We do not think that this is such a unique point of view. It can only be overcome if we have a Board that is sensitive to the needs of the mentally retarded and this will not happen under the proposed recodification.

With regard to § 11.13 Functions and Duties of Agencies, we can only say that in an effort to simplify, a great deal has been lost from the Act as it now stands, With the addition of one or two services we feel that the Act as it is now written is better than the vagueness of the proposed section in the recodification.

S. 11.15 Approved Plans in State Reimbursement We suggest that long-range, immediate, and intermediate plans and annual proposals shall meet requirements, etc. is not enough to get services for the mentally retarded. The fact is that these long-range, immediate and intermediate plans and annual porposals should be required to have a certain amount of money spent on the mentally retarded in proportion to other disabilities and the reimbursement for the total program should depend on whether or not these services are being rendered by the mental health board, or by contract with others. Without such a proviso and strict enforcement, we are again at the mercy of local government which has demonstrated too often in the past not enough sensibility to the needs of the mentally retarded.

Under 11.03, definitions, subdivision 9. the bill fails to treat with the problem of rental paid by an operating agency to a mental health or mental retardation service company. This has been disallowed as an operating expense and a bill to remedy this was introduced by the Joint Legislative Committee on Mental

and Physical Handicap. It was drafted with the help of the Department of Mental Hygiene and should have been included in the recodification.

§ 11.17 Reimbursement of Operating and Capital Costs

This section fails completely to deal with one of the most important needs for reform in reimbursement procedure as affecting voluntary agencies. (1) payment directly to the agency after the project has received approval of the Community Mental Health Board and (2) a direct relationship between the State and the voluntary agency that is doing the construction where there are no local funds involved.

The fact of the matter is that the way reimbursement is made today to the local government and then to the operating agency, frequently contracts are denied on the basis that the county budget is too large when in fact no county money is involved.

We must insist that there be a direct relationship between the State from whom the money flows and the operating agency putting up the matching money when there is no local tax money involved.

Finally, under § 11.19 Definitions are listed what revenue shall be deducted from operating costs for the purpose of State aid. Under subdivision 2. is included a new concept "other income realized in the operation of a special program". Under this, it is quite possible that all vocational rehabilitation programs for the mentally disabled, if they remain under contract with a mental health board, may well go broke. At the alternative they must withdraw from such contracts and defeat the very purpose of this Act.

One example will suffice. Under this provision, a community agency operating a sheltered workshop may have income from contracts with outside business for $100,000. According to this section, this $100,000 must be deducted from gross operating costs. But, in most instances the agency pays almost all and sometimes more than this $100,000 in wages to the workers. Thus, they are being penalized to the extent of about $100,000 and either must

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withdraw from the contract or go broke. This certainly has not been thought out. It is not income from other governmental sources and should not be a deductible item.

In conclusion, the objections we have raised are not insurmountable if there is some assurance from the administration that legislation will be introduced and supported before the effective date of the Act to remedy this situation.

In the present form, however, and without these assurances, we must urge the Governor to veto this Act.

Sincerely,

Augustus M. Jacobs

Augustus M. Jacobs
Chairman, Legal and
Legislative Committee

AMJ:md

S-5641

NATIONAL ASSOCIATION OF SOCIAL WORKERS INC.

NEW YORK STATE COUNCIL OF CHAPTERS

MRS. MARY HICKOK
Chairman
107 James Street
Syracuse, N. Y. 13202
(315) GR1-6126

MRS. NORMA [illegible]
Legislative Consultant
R. D. 1 Box 139
Valatie, N. Y. 12184
(518) 686-9431

1972

To: Michael Whiteman
In reference to: S 5641 - Boarding Homes Hygiene Law

Although you did not send this bill for review I do want to urge the governor to sign this bill.

We have worked with Senator Wiles and his staff on this bill. We have reviewed it last year and again this year. It is a much needed step in the right direction.

There may be parts of the bill that may need changing in the future but we believe all these small changes can be made once the law is in operation.

New York Citizens Against Mental Illness

866 UNITED NATIONS PLAZA · NEW YORK, N.Y. 10017 · TEL. 421-9010

May 3, 1972

Chap. 251
S. 5641

Mr. Michael Whiteman
Counsel to the Governor
State Capitol
Albany, New York

Dear Mike,

At long last Senator Niles' bill, Recodifying the Mental Hygiene Law, is now before the Governor, hopefully for his approval.

May I suggest that the Governor schedule a public signing ceremony, inviting in addition to legislators and Departmental representatives, the leaders of the major state wide organizations who have actively supported this measure in the past few years.

Among these would be the New York State Mental Health Association, the New York Citizens Against Mental Illness, the New York State Association for Retarded Children.

I would appreciate your advising me or Mrs. Alice Fordyce if this can be arranged.

Sincerely,

Irving Blumberg
Executive Director

62

S 5641

The NEW YORK STATE ASSOCIATION For MENTAL HEALTH, INC.

90 STATE STREET
ALBANY, N. Y. 12207

PHONE: (518) 463-2215

April 28, 1972

MAY 1 1972

Hon. Michael Whiteman
Executive Chamber
State Capitol
Albany, N.Y. 12224

Dear Mr. Whiteman:

The New York State Association for Mental Health greatly appreciates the opportunity to express our views regarding Senate 5641-Recodification of the Mental Hygiene Law.

Our organization has been in favor of this action from the initial planning stages. We have worked closely with both the Department of Mental Hygiene and the Legislature to insure that the final product of the legislation would be in the best interest of the mentally ill, mentally retarded and developmentally disabled individuals served by it. Like any new law, this recodification will require certain changes, and will need continuous amending and updating in the years to come. However, our Association is satisfied with the Bill as it is currently written and we sincerely hope Governor Rockefeller will soon sign it into law.

The New York State Association for Mental Health would appreciate the opportunity to be in attendance at any ceremony that might accompany the signing of this Bill.

We look forward with keen anticipation to the Governor's favorable action in this matter.

Sincerely,

Elizabeth Craig

Elizabeth Craig
Chairman, NYSAMH
Legislative Committee

Richard W. Vendettuoli

Richard W. Vendettuoli
Executive Director
NYSAMH

RG:DM:jar

S-5641

MAY 3 1972

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF PLANNING SERVICES
STATE CAPITOL
ALBANY, N.Y. 12224

RICHARD A. WIEBE
DIRECTOR

April 28, 1972

Honorable Michael Whiteman
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York

Re: Senate Bill No. 5641 (Niles)

Dear Mr. Whiteman:

You requested our comments and recommendations concerning the above-numbered bill.

It is our understanding that it is the practice of your office to send bills directly to our Division of Health Planning for comments in cases where the subject matter falls within the scope of their interests. We believe that the Division would be able to comment knowledgeably on this measure, since it appears to concern their functions.

Sincerely,

S-5641

May 9, 1972

Hon. Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Whiteman:

Senate Bill 5641 recodifying the Mental Hygiene law merits the support of the New York State Public Health Association.

Very truly yours,

Erwin B. Montgomery

cc: Dr. Hopf
Dr. Coates

S-5641

New York State Nurses Association

EXECUTIVE PARK EAST, STUYVESANT PLAZA
ALBANY, NEW YORK 12203
PHONE (518) 489-2569

VERONICA M. DRISCOLL, R. N.
EXECUTIVE DIRECTOR

April 28, 1972

MAY 1 1972

Honorable Michael Whiteman
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S-5641 Niles, Mental Hygiene Recodification Bill

Dear Mr. Whiteman:

The New York State Nurses Association supports the concept of recodification. Initially, the Association had specific concerns over certain provisions of S-5641 which infringes upon the rights of patients as citizens.

However, in light of the significance of S-9712 Niles, the Association supports enactment of S-5641 as amended by S-9712.

Thank you for the opportunity to respond.

Sincerely,

Janet T. Swanson

Janet T. Swanson
Director
Legislative Program

JTS:ldf

S-5641

J. VANDERBILT STRAUB
WERNER H. PIGORS
ALBERT A. MANNING
JOSEPH BOOCHEVER
DONALD D. DeANGELIS
JOHN J. LYNCH

JOHN J. CLYNE
HAROLD C. HANSON
STEPHEN H. CLEARY
GERALD A. HARLEY

HINMAN, STRAUB, PIGORS & MANNING
ATTORNEYS AT LAW
90 STATE STREET
ALBANY, NEW YORK 12207

TEL. 518-436-0751

HAROLD J. HINMAN
1877-1955

May 1, 1972

MAY 2 1972

Hon. Michael Whiteman
Executive Chamber
State Capitol
Albany, New York 12224

Re: Senate 5641 (Mr. Niles)

Dear Mr. Whiteman:

The Blue Cross and Blue Shield Plans of New York State took no position on this bill in the Legislature.

As far as we are concerned, the bill is unobjectionable.

Respectfully submitted,

J. Vanderbilt Straub

Hinman, Straub, Pigors & Manning

JVS/jr

S-5641

NEW YORK STATE BAR ASSOCIATION

COMMITTEE ON MENTAL HYGIENE

MAY 2 1972

May 1,1972

Hon. Michael Whiteman
Counsel to the Governor
Executive Chamber
State Capitol
Albany,N.Y. 12224

Re: Codification of the Mental Hygiene Law S.5641

Dear Mr. Whiteman:

Our Committee has paid close attention to the various bills introduced during the past several years in the Senate and Assembly, with respect to the proposed amendment and recodification of the Mental Hygiene Law. From the outset, we regarded these bills as very desirable legislation. We have followed and considered the various amendments during this period, and have found that they effected additional improvements in the bills.

Our Committee is very pleased that these amended bills have now been favorably acted upon in both the Senate and the Assembly, and we strongly urge that they also receive the approval of the Governor.

Very truly yours,

Alfred Berman
Chairman

Chap 251 S-5641

LEONARD FELDMAN
ATTORNEY AT LAW
TWO PENNSYLVANIA PLAZA
NEW YORK, N.Y. 10001

7 LINDEN BOULEVARD
GREAT NECK, N.Y. 11021

(212) BR 9-6950
(516) HU 7-2333

May 2, 1972

Hon. Michael Whiteman
Executive Chamber
State Capitol
Albany, N. Y. 12224

RE: Assembly 6862-A
" 9613
Senate 5641

My dear Mr. Whiteman:

Since none of the committees of the New York County Lawyers' Association reported on the above bills, it would be inappropriate for me to comment with regard thereto.

Sincerely,

Leonard Feldman

LF:e

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MEMORANDUM filed with Senate Bill Number 5641, entitled:

"AN ACT to repeal the mental hygiene law, and to enact a recodified mental hygiene law"

A P P R O V E D

This bill enacts the first major revision of the Mental Hygiene Law since 1927 and reflects the vast changes that have taken place in the methods of treatment of the mentally ill, the mentally retarded and the alcoholic during the past fifty years.

Of particular significance are the provisions with respect to the rights of patients, more carefully drawn hospital admission procedures, broadening of the responsibilities of the Mental Health Information Service and shortening the periods patients may be held involuntarily before clear-cut decisions about retention or discharge must be made. These are all positive and desirable steps.

Many individuals and organizations have written to me urging the approval of this bill including the Department of Mental Hygiene, the Community Service Society, the New York State Association for Mental Health, the New York State Nurses Association and the Committee on Mental Health of the New York State Bar Association.

Much remains to be done to improve the quality of life for those individuals with mental health problems. The State has made much progress in the last few years, however, and the progressive thinking reflected in this bill gives sure promise of even greater improvements in the future.

The Joint Legislative Committee on Mental and Physical Handicap and the Department of Mental Hygiene deserve special commendation for the effort that they have expended over the past several years to develop this legislation. I note with regret that the Chairman of the Joint Legislative Committee, Senator Dalwin J. Niles, has announced his retirement from the Legislature, but I can think of no more fitting culmination to a distinguished legislative career than the approval of this bill.

The bill is approved.