

## ***A Model Law***

Absent conflicting state law or statute, it is not necessary that there be a state law authorizing jails to use the *Washington v. Harper* type of administrative proceeding, because the U.S. Supreme Court decided in 1990 that the procedure and criteria (gravely disabled and likelihood of serious harm) are constitutional. The procedure is thus being used in prisons and some jails across the country without statutory authority. Nonetheless, a Model Law for medication over objection for jail inmates in need of treatment is provided below for advocates to use in their states.

### **SECTION I. DEFINITIONS**

As used in this act:

- A. “Mental illness” means a substantial impairment of a person's thought processes (e.g., delusions), sensory input (e.g., hallucinations), mood balance (e.g., mania or severe depression), memory (e.g., dementia), or ability to reason that substantially interferes with a person’s ability to meet the ordinary demands of living.
- B. “Gravely disabled” means in danger of serious physical harm resulting from the inmate’s failure to provide for his or her essential human needs of health or safety.
- C. “Severe deterioration” means a substantial decline in routine functioning evidenced by the inmate’s repeated and escalating loss of cognitive or volitional control over his or her actions, while not receiving such care as is essential for the inmate’s health or safety.
- D. “Likelihood of serious harm” means:
  - 1. a substantial risk that the inmate will inflict physical harm upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on self;
  - 2. a substantial risk that the inmate will inflict physical harm upon another, as evidenced by behavior which has caused such harm or which places any person in reasonable fear of sustaining such harm; or
  - 3. a substantial risk that the inmate will inflict physical harm upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.
- E. “Competent lay advisor” means a person appointed by the warden or administrator of a jail to advise inmates during medication review hearings. To be eligible for appointment as a competent lay advisor, a person shall:
  - 1. have completed a course of training in mental health;
  - 2. demonstrate knowledge of the psychiatric issues raised in medication review hearings; and
  - 3. have no current involvement in the inmate’s treatment.

## SECTION II. RIGHT TO REFUSE TREATMENT

- A. An inmate in a local jail has the right to refuse psychotropic medication unless, as a result of a mental illness, the inmate:
  - 1. is gravely disabled;
  - 2. manifests severe deterioration; or
  - 3. poses a likelihood of serious harm to self or others.
- B. Psychotropic medication may not be involuntarily administered to an inmate unless authorized by a medication review panel pursuant to this act or required in an emergency. Prior to the initiation of an involuntary medication hearing pursuant to this act, an inmate's treating psychiatrist shall make reasonable efforts to obtain the inmate's informed consent.

## SECTION III. 21-DAY INVOLUNTARY MEDICATION HEARING

- A. Upon failing to obtain an inmate's informed consent for the administration of psychotropic medication, the inmate's treating psychiatrist may request a 21-day involuntary medication hearing. Pending the decision of the medication review committee, the treating physician may continue to administer or supervise the administration of emergency involuntary psychotropic medication.
- B. The request shall be assigned to a medication review committee, which shall include:
  - 1. a chairperson,
  - 2. a non-treating medical professional, and
  - 3. a non-treating psychiatrist.
- C. The treating psychiatrist shall submit a report to the committee which shall include:
  - 1. the inmate's mental illness diagnosis, symptoms, and treatment status;
  - 2. the psychotropic medications recommended for the inmate;
  - 3. the inmate's voluntary and involuntary medication history, to the extent known;
  - 4. a description of the efforts made to obtain the inmate's informed consent to the recommended medications; and
  - 5. a description of any less intrusive appropriate treatment alternatives considered or attempted.

## SECTION IV. HEARING AND NOTICE

- A. The chairperson shall schedule a hearing as soon as possible but no later than seven calendar days following the request.
- B. The inmate shall receive written notice at least twenty-four hours prior to the hearing.

The notice shall include:

1. the date and time of the hearing;
2. the inmate's current mental illness diagnosis;
3. the recommended antipsychotic medications and the clinical basis for the each such recommendation; and
4. a statement of the patient's rights under Section V of this Act.

#### SECTION V. INMATE RIGHTS AT THE HEARING

- A. At the hearing, the inmate shall have the right to:
  1. attend, be heard, and present relevant evidence;
  2. refuse to attend or participate;
  3. cross-examine adverse witnesses; and
  4. receive the advice of a competent lay advisor.
- B. An inmate's rights under subsection A of this section shall be limited only upon a finding of good cause by a majority of the medication review committee. An inmate may only be excluded from the hearing for safety or security reasons, or if he or she is so disruptive that it is unreasonably difficult to conduct the hearing with the inmate present.
- C. The chairperson shall document in writing any refusal of the inmate to attend or participate in the hearing and any determination pursuant to subsection B of this section to limit the inmate's rights under subsection A of this section.

#### SECTION VI. DECISION OF THE MEDICATION REVIEW COMMITTEE

- A. The decision of the medication review committee to authorize or deny the involuntary administration of psychotropic medication for a period of twenty-one days shall be made by majority vote, provided that the non-treating psychiatrist must vote in favor of any involuntary administration of psychotropic medication.
- B. The medication review committee shall issue its decision in writing, stating the basis of the decision including the finding as to whether the inmate is gravely disabled, manifests severe deterioration or poses a likelihood of serious harm to self or others, and any recommended psychotropic medications. Copies of the written decision shall be provided to the inmate and the treating psychiatrist.
- C. Upon receipt of the medication review committee's written decision, the treating psychiatrist shall administer or supervise administration of the medication according to the accepted medical standard of care in the community.

## SECTION VII. 180 DAY INVOLUNTARY MEDICATION HEARING

- A. If the treating psychiatrist determines that an inmate currently subject to a 21-day involuntary medication order requires psychotropic medication for a longer period, and reasonable efforts to obtain the inmate's informed consent have failed, the treating psychiatrist may request a 180-day involuntary medication hearing. Such hearing shall occur prior to the termination of the 21-day involuntary medication order and shall follow all procedures provided in this chapter for the 21-day involuntary medication hearing.
- B. Prior to the expiration of a 180-day involuntary medication order, the treating psychiatrist may follow the procedures of subsection A of this section to seek an involuntary medication order for an additional period of 180 days.

## SECTION VII. APPEAL

- A. Within 24 hours of receipt of the written decision of the medication review committee, excluding holidays and weekends, the inmate may file an appeal to the warden or administrator of the jail, alleging that a procedure required by this act was not followed.
- B. Within 24 hours of receipt of an appeal, excluding holidays and weekends, the warden or administrator shall review, investigate and decide the appeal. If the warden or administrator finds merit in the inmate's allegation that a procedure required by this act was not followed, the warden or administrator shall re-convene the medication review committee, or, if appropriate, convene a new medication review committee, to conduct a new involuntary medication hearing pursuant to the requirements of this act.
- C. Nothing in this section shall be construed to prevent an inmate from seeking judicial review of an involuntary medication order after the remedy provided herein has been exhausted.