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## RIGHTS OF MENTAL PATIENTS

THANK YOU FOR LETTING ME BE HERE WITH YOU TODAY TO DISCUSS SOMETHING IN WHICH I HAVE BECOME KEENLY INTERESTED DURING THE LAST FEW YEARS, THAT IS, THE RIGHTS OF OUR MENTAL PATIENTS. AS A LAWYER AND AS ATTORNEY GENERAL, MY INTEREST IN THE LAW IS PRIMARY. WHEN WE THINK OF THE LAW, WHAT WE GENERALLY THINK OF IS THE CRIMINAL LAW. THIS IS BECAUSE WE THINK OF THE CRIMINAL LAW AS PROTECTING US FROM HARM TO OUR PERSON AND OUR PROPERTY. WHEN A PERSON VIOLATES A CRIMINAL LAW, HE IS GIVEN A TRIAL AND IF HE IS FOUND GUILTY HE IS PUNISHED BY THE STATE. IN MOST CASES, THIS PUNISHMENT IS IMPRISONMENT.

NOW OBVIOUSLY I HAVE OVERSIMPLIFIED OUR CRIMINAL PROCESS. THESE DAYS YOU ARE ALL AWARE OF THE FACT THAT ALL OF US, INCLUDING THOSE ACCUSED OF A CRIME, HAVE WHAT WE CALL "CIVIL RIGHTS." WHAT THIS MEANS IN THE CRIMINAL PROCESS IS THAT THE STATE NORMALLY CANNOT IMPRISON A PERSON UNTIL IT HAS SHOWN BEYOND A REASONABLE DOUBT THAT THIS PERSON HAS COMMITTED A SPECIFIC ILLEGAL ACT. BEYOND THIS, THE CIVIL RIGHTS OF AN INDIVIDUAL ACCUSED OF A CRIME ARE FURTHER PROTECTED BY STRICT PROCEDURAL LIMITATIONS ON LAW ENFORCEMENT OFFICIALS AND COURT OFFICIALS.

YET HOW MANY OF YOU ARE AWARE THAT EVEN TODAY THOUSANDS OF PEOPLE ARE RESTRAINED UNDER A VARIETY OF STATUTES FOR REASONS OTHER THAN CONVICTION OF A CRIME. UNTIL RECENTLY THIS FORM OF INCARCERATION FOR REASONS OTHER THAN CONVICTION HAS NOT BEEN SUBJECTED TO OUR STRICT SUBSTANTIVE AND PROCEDURAL LIMITATIONS. IN FACT, THIS PROCESS, BECAUSE IT WAS CALLED A "CIVIL" PROCESS, HAS BEEN SUBJECTED TO VERY LITTLE OF THE SCRUTINY WE INSIST THAT OUR CRIMINAL PROCESS MUST HAVE. THE PROCESS I REFER TO IS OUR COMMITMENT PROCESS.

GENERALLY, WE HAVE TWO GROUNDS ON WHICH WE JUSTIFY THE CONFINEMENT OF THE MENTALLY ILL. THE GROUND WE GENERALLY THINK OF FIRST IS OUR RIGHT AND OUR DUTY TO COMMIT PEOPLE FOR TREATMENT WHO ARE SO DERANGED THAT THEY CANNOT DECIDE FOR THEMSELVES THAT THEY NEED TREATMENT. THE SECOND GROUND IS MORE RELATED TO OUR CRIMINAL PROCESS. THAT IS, SOME PEOPLE ARE SO DANGEROUS THAT THEY MUST BE RESTRAINED TO PROTECT SOCIETY OR THEMSELVES, EVEN THOUGH THEY HAVE NOT COMMITTED ANY CRIME. THIS IS WHAT WE CALL "PREVENTIVE DETENTION", AND THIS SOUNDS BAD TO OUR CIVIL RIGHTS ORIENTED MINDS. YET FOR MANY YEARS PREVENTIVE DETENTION WAS TAKEN FOR GRANTED AS BEING NECESSARY, ALONG WITH OUR CRIMINAL LAWS, TO PROTECT SOCIETY.

IN RECENT YEARS, HOWEVER, TOGETHER WITH OUR GROWING AWARENESS OF OUR RIGHTS AS INDIVIDUALS, THERE HAS COME AN INCREASED AWARENESS OF THE PROBLEM OF MENTAL ILLNESS. A PART OF THIS INCREASED

AWARENESS OF THE REALIZATION THAT DEVIANT BEHAVIOR IS NOT NECESSARILY AN INDICATION OF MENTAL ILLNESS AND IS NOT NECESSARILY A DANGER TO SOCIETY. THUS, WE HAVE BEGUN TO REALIZE THAT IF WE ARE TO RESTRAIN MENTAL PATIENTS, WE MUST RESTRAIN THEM WITHIN SPECIFICALLY DEFINED GUIDELINES, SUCH AS THE GUIDELINES WHICH WE MAKE A PART OF OUR CRIMINAL LAWS. THE PROCEDURES BY WHICH WE COMMIT MENTALLY ILL PERSONS MUST ALSO BE PROCEDURES WHICH ASSURE CAREFUL PROTECTION OF THE RIGHTS OF THE PERSON AFFECTED.

THE TREATMENT ASPECT OF CONFINEMENT FOR MENTAL ILLNESS IS ALSO NOT WITHOUT PROBLEMS. MUCH OF THE CARE RECEIVED TODAY IN OUR STATE MENTAL INSTITUTIONS IS MERELY CUSTODIAL. MOST OF THESE INSTITUTIONS ARE OVER-CROWDED AND INCLUDE WITHIN THEIR WALLS MANY SENILE PATIENTS AND OTHERS WHO COULD BE MORE EFFECTIVELY CARED FOR ELSEWHERE IF SOCIETY WANTED TO PROVIDE FOR THEM. COMPLICATING THE PROBLEMS STILL FURTHER IS A SEVERE AND CONTINUING MANPOWER SHORTAGE WHICH INCLUDES BOTH PSYCHIATRISTS AND OTHER PERSONNEL SUCH AS PSYCHOLOGISTS, NURSES, SOCIAL WORKERS AND ATTENDANTS. OUR STATE MENTAL HOSPITALS SIMPLY HAVE NOT ATTRACTED A SUFFICIENT NUMBER OF TRAINED PSYCHIATRISTS, WHO OFTEN FEEL GREATER PROFESSIONAL SATISFACTION AND EARN HIGHER INCOMES IN PRIVATE PRACTICE. A COMMUNITY ATTITUDE OF FEAR AND REJECTION OF THE MENTALLY ILL COMPLICATES THIS RECRUITMENT PROBLEM.

THUS YOU CAN SEE THAT WE HAVE NOT ALWAYS LIVED UP TO THE LOFTY GROUNDS ON WHICH WE HAVE COMMITTED OUR MENTALLY ILL. RECENT COURT DECISIONS HAVE REFLECTED THIS PROBLEM. PROBABLY THE MOST FAMOUS OF THESE RECENT COURT DECISIONS IS THE ALABAMA CASE OF

WYATT V. STICKNEY. IN THIS CASE, THE FEDERAL DISTRICT COURT DETERMINED THAT THE UNAVAILABILITY OF FUNDS, STAFF AND FACILITIES WOULD NOT JUSTIFY FAILURE BY THE STATE TO PROVIDE SUITABLE TREATMENT FOR THE MENTALLY ILL. FOLLOWING THIS DECISION, SIMILAR CASES WERE BROUGHT IN SEVERAL OTHER STATES INCLUDING NORTH AND SOUTH CAROLINA. IT WAS AT ABOUT THIS SAME TIME THAT OUR NORTH CAROLINA GENERAL ASSEMBLY CONVENED FOR THE 1973 SESSION. THREE MAJOR BILLS WERE ADOPTED BY THE 1973 GENERAL ASSEMBLY CHANGING SEVERAL ASPECTS OF OUR LAW DEALING WITH THE RIGHTS OF THE MENTALLY ILL AND THE RIGHTS OF MENTAL PATIENTS.

THE FIRST TWO OF THESE BILLS CHANGED OUR LAWS RELATING TO COMMITMENT OF THE MENTALLY ILL. BASICALLY THERE ARE TWO METHODS BY WHICH A PERSON CAN BECOME COMMITTED TO ONE OF OUR STATE MENTAL INSTITUTIONS. HE MAY EITHER COMMIT HIMSELF, OR HE MAY BE JUDICIALLY COMMITTED. UNDER OUR NEW LAW, WHERE A PERSON VOLUNTARILY ADMITS HIMSELF INTO A TREATMENT FACILITY, HE WILL HAVE SEVERAL RIGHTS GUARANTEED TO HIM. FIRST OF ALL HE MUST BE PERSONALLY EXAMINED AND EVALUATED BY A QUALIFYING PHYSICIAN OF A TREATMENT FACILITY WITHIN TWENTY-FOUR HOURS OF THE TIME HE PRESENTS HIMSELF FOR ADMISSION. FOLLOWING THIS EVALUATION, IF THE PERSON IS ADMITTED TO A TREATMENT FACILITY, HE MUST BE NOTIFIED WITHIN TWENTY-FOUR HOURS THAT HE HAS THE RIGHT TO BE DISCHARGED UPON HIS REQUEST.

JUDICIALLY COMMITTED INDIVIDUALS ARE ALSO GUARANTEED THEIR RIGHTS. ACCORDING TO OUR NEW LAW ON JUDICIAL COMMITMENTS, WHICH WILL BECOME EFFECTIVE SEPTEMBER 1 OF THIS YEAR, A PERSON WHO IS

TO BE COMMITTED WITHOUT HIS CONSENT IS ASSURED ALL OF THE DUE PROCESS RIGHTS WHICH WOULD BE AFFORDED THE ACCUSED IN A CRIMINAL PROCEEDING. THUS, INSTEAD OF AN INFORMAL PROCEEDING BEFORE A CLERK OF COURT WHICH OFTEN WAS INITIATED BY A RELATIVE, OUR NEW COMMITMENT PROCEDURES REQUIRE A HEARING BEFORE A MAGISTRATE BASED ON THE PETITION OF A LAW ENFORCEMENT OFFICER, AND WITHIN FIVE DAYS, A HEARING IN THE DISTRICT COURT AT WHICH EVIDENCE IS PRESENTED AND AT WHICH THE INDIVIDUAL ALLEGED TO BE MENTALLY ILL IS REPRESENTED BY AN ATTORNEY. THE DISTRICT COURT JUDGE HAS THE AUTHORITY TO COMMIT THE INDIVIDUAL TO A TREATMENT FACILITY FOR A PERIOD NOT TO EXCEED THIRTY DAYS OR TO DETERMINE THAT THE INDIVIDUAL SHOULD UNDERGO OUTPATIENT CARE AT A STATE OR PRIVATE FACILITY. AN APPEAL FROM THIS DECISION IS BY A NEW TRIAL WITH A JURY IN THE SUPERIOR COURT. IN THE CASE OF AN INDIVIDUAL WHO IS LIKELY TO ENDANGER LIFE OR PROPERTY, A MAGISTRATE CAN ORDER THAT THIS INDIVIDUAL BE TAKEN TO A TREATMENT FACILITY FOR THE PURPOSE OF OBTAINING A MEDICAL EXAMINATION. THIS ORDER, HOWEVER, MUST SHOW SPECIFIC OVERT ACTS COMMITTED BY THE PERSON WHICH INDICATES THAT DELAY WOULD RESULT IN DANGER TO LIFE OR PROPERTY.

THESE FIRST TWO BILLS CONCERN THE RIGHTS OF THE MENTALLY ILL WITHIN OUR JUDICIAL PROCESS. THE THIRD BILL HOWEVER, CONCERNS THE RIGHTS OF PATIENTS AT OUR TREATMENT FACILITIES FOR BOTH THE MENTALLY ILL AND THE MENTALLY RETARDED. LET ME READ TO YOU THE FIRST PARAGRAPH OF THAT LAW: "IT IS THE POLICY OF NORTH CAROLINA TO INSURE TO EACH PATIENT OF A TREATMENT FACILITY BASIC HUMAN RIGHTS. THESE RIGHTS INCLUDE THE RIGHT TO DIGNITY, PRIVACY, AND

HUMANE CARE. IT IS FURTHER THE POLICY OF THE STATE THAT EACH TREATMENT FACILITY SHOULD INSURE TO EACH PATIENT THE RIGHT TO LIVE AS NORMALLY AS POSSIBLE WHILE RECEIVING CARE AND TREATMENT."

WITHIN THIS POLICY THE LAW ENUMERATES SPECIFIC RIGHTS TO PATIENTS IN A TREATMENT FACILITY. THESE RIGHTS INCLUDE THE RIGHT OF EACH PATIENT TO SEND AND RECEIVE SEALED MAIL TOGETHER WITH ACCESS TO WRITING MATERIALS, POSTAGE, ETC.; THE RIGHT TO CONTACT AND CONSULT WITH LEGAL COUNSEL AND PRIVATE PHYSICIANS AT HIS OWN EXPENSE; THE RIGHT TO MAKE AND RECEIVE CONFIDENTIAL TELEPHONE CALLS; THE RIGHT TO RECEIVE VISITORS DAILY; THE RIGHT TO MAKE VISITS OUTSIDE THE FACILITY (UNLESS, OF COURSE, THE PERSON HAS BEEN COMMITTED INVOLUNTARILY); THE RIGHT TO BE OUT OF DOORS DAILY AND HAVE ACCESS TO FACILITIES AND EQUIPMENT FOR PHYSICAL EXERCISE SEVERAL TIMES A WEEK; THE RIGHT TO KEEP AND USE HIS OWN CLOTHING AND PERSONAL POSSESSION; THE RIGHT TO COMMUNICATE AND MEET UNDER APPROPRIATE SUPERVISION WITH PERSONS OF HIS OWN CHOICE, WITH THE CONSENT OF THESE PERSONS; THE RIGHT TO PARTICIPATE IN RELIGIOUS WORSHIP; THE RIGHT TO KEEP AND SPEND A REASONABLE AMOUNT OF HIS OWN MONEY; THE RIGHT TO RETAIN A DRIVER'S LICENSE, UNLESS OTHERWISE PROHIBITED BY THE MOTOR VEHICLE STATUTES; THE RIGHT TO HAVE ACCESS TO INDIVIDUAL STORAGE SPACE FOR HIS OWN PRIVATE USE; THE RIGHT TO EXERCISE ALL OF HIS CIVIL RIGHTS UNLESS HE HAS BEEN FORMALLY DECLARED INCOMPETENT. THESE RIGHTS INCLUDE THE RIGHT TO DISPOSE OF PROPERTY, EXECUTE INSTRUMENTS, MAKE PURCHASES, ENTER INTO CONTRACTUAL RELATIONSHIPS, REGISTER AND VOTE, MARRY AND OBTAIN A DIVORCE.

IF IT BECOMES NECESSARY TO RESTRICT THE RIGHTS OF A PATIENT, AND THIS CANNOT BE DONE EXCEPT BY MENTAL HEALTH OR MENTAL RETARDATION PROFESSIONALS, THEN THE PATIENT'S NEXT OF KIN OR GUARDIAN AND THE SECRETARY OF HUMAN RESOURCES MUST BE GIVEN NOTICE OF THE RESTRICTIONS AND THE REASON FOR THE RESTRICTION. THE WRITTEN RESTRICTION ITSELF WILL NOT BE EFFECTIVE FOR MORE THAN THIRTY DAYS AND CAN BE RENEWED ONLY BY A PROCESS SIMILAR TO THE PROCESS BY WHICH IT WAS ORIGINALLY OBTAINED.

THE USE OF PHYSICAL RESTRAINT OR SECLUSION IS ALLOWED ONLY WHEN IT IS NECESSARY TO PREVENT DANGER OF ABUSE OR INJURY TO THE PATIENT HIMSELF OR TO OTHERS, OR WHEN IT IS A MEASURE OF THERAPEUTIC TREATMENT. WHEN SUCH RESTRAINTS OR SECLUSION ARE USED, THE REASON FOR THIS IS RECORDED IN THE PATIENT'S TREATMENT PLAN. CORPORAL PUNISHMENT IS NOT TO BE INFLICTED UPON ANY PATIENT IN TREATMENT FACILITIES.

PERHAPS THE MOST PROGRESSIVE AND INNOVATIVE SECTION OF THIS NEW LAW ON PATIENTS' RIGHTS IS THE PORTION DEALING WITH THE RIGHT TO TREATMENT. AS I DISCUSSED WITH YOU EARLIER, RECENT YEARS HAVE SEEN A NUMBER OF CASES BROUGHT ON BEHALF OF MENTAL PATIENTS IN WHICH IT IS ALLEGED THAT THERE IS A CONSTITUTIONAL "RIGHT TO TREATMENT."

THE UNITED STATES SUPREME COURT HAS NOT DETERMINED THAT THERE IS SUCH A RIGHT TO TREATMENT; HOWEVER, OUR NEW NORTH CAROLINA STATUTE DOES PROVIDE FOR SUCH A RIGHT TO TREATMENT. LET ME READ TO YOU OUR DECLARATION OF POLICY ON THE RIGHT TO TREATMENT: "EACH PATIENT SHALL HAVE THE RIGHT TO TREATMENT INCLUDING MEDICAL

CARE AND HABILITATION, REGARDLESS OF AGE, DEGREE OF RETARDATION OR MENTAL ILLNESS. EACH PATIENT HAS THE RIGHT TO AN INDIVIDUALIZED WRITTEN TREATMENT OR HABILITATION PLAN SETTING FORTH A PROGRAM WHICH WILL DEVELOP OR RESTORE HIS CAPABILITIES.

THE LAW GOES ON TO FURTHER DESCRIBE THE TREATMENT TO WHICH A PATIENT IS ENTITLED. THIS INCLUDES THE RIGHT OF EACH PATIENT TO HAVE AN INDIVIDUAL TREATMENT PLAN FORMULATED BY THE PROFESSIONALS OF THE FACILITY IN WHICH HE IS LOCATED. THIS PLAN MUST BE IMPLEMENTED NO LATER THAN FOURTEEN DAYS AFTER HIS ADMISSION OR, IN THE CASES OF OUTPATIENT CARE AND TREATMENT, NO LATER THAN FOURTEEN DAYS AFTER HE IS ACCEPTED FOR THIS KIND OF CARE AND TREATMENT. THE TREATMENT PLAN SHOULD INCLUDE THE PATIENT'S HISTORY, THE RESULTS OF THE EXAMINATION FOLLOWING HIS ADMISSION, DIAGNOSIS, PROGNOSIS AND THE ESTIMATED TIME LENGTH FOR THE TREATMENT.

THE PATIENT ALSO HAS THE RIGHT TO BE FREE FROM UNNECESSARY OR EXCESSIVE MEDICATION WITH DRUGS. DRUGS, BY THE WAY, CANNOT UNDER ANY CIRCUMSTANCES BE USED AS PUNISHMENT OR DISCIPLINE. MEDICATION IS NOT TO BE ADMINISTERED EXCEPT UPON THE WRITTEN ORDER OF A QUALIFIED PHYSICIAN.

TREATMENT INVOLVING ELECTROSHOCK THERAPY OR THE USE OF EXPERIMENTAL DRUGS OR PROCEDURAL SURGERY OTHER THAN EMERGENCY SURGERY IS NOT TO BE GIVEN WITHOUT THE EXPRESS AND INFORMED CONSENT OF THE PATIENT, IF THE PATIENT IS OBVIOUSLY COMPETENT, OR WITH THE CONSENT OF THE PATIENT AND GUARDIAN IF THE PATIENT IS NOT OBVIOUSLY COMPETENT OR WITH THE CONSENT OF THE GUARDIAN IF

THE PATIENT HAS BEEN JUDGED AN INCOMPETENT.

A PATIENT CANNOT BE TRANSFERRED TO ANOTHER TREATMENT FACILITY WITHOUT REASONABLE NOTICE, INCLUDING THE REASON FOR THE TRANSFER. UNLESS A PATIENT HAS BEEN ADJUDICATED INCOMPETENT AND NOT RESTORED TO LEGAL CAPACITY, HE RETAINS THE SAME RIGHTS AS YOU OR I TO BRING CIVIL ACTIONS IN THIS STATE.

THE U.S. COURT GUARANTEES TO EVERY AMERICAN, REGARDLESS OF STATUS OR STATURE, THAT HIS LIFE, LIBERTY OR PROPERTY CANNOT BE DEPRIVED WITHOUT THE DUE PROCESS OF THE LAW. THE GENERAL ASSEMBLY RECOGNIZED THROUGH THE LEGISLATION I HAVE MENTIONED THAT THE PRIVILEGES OF AMERICAN CITIZENS AND CITIZENS OF NORTH CAROLINA EXTEND TO ALL AMERICAN CITIZENS AND NORTH CAROLINIANS.