REPORT OF FINDINGS AND RECOMMENDATIONS

HEALTH CARE OF INMATES IN STATE CORRECTIONAL INSTITUTIONS

REPRESENTATIVE LISA NAITO
CHAIRPERSON

HOUSE HEALTH SUB-COMMITTEE
RELATING TO HR 125, HD 1

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PREFACE

The following report is hereby submitted to the House Health Committee in response to H.R. 125, H.D. 1, relating to "Health Care of Inmates in State Correctional Institutions."

This sub-committee was mandated by the House Health Committee on May 16, 1975. The following members of the Health Committee were appointed to the sub-committee:

Representative Akira Sakima
Representative George Clarke
Representative Lisa Naito, Chairperson

The report of findings and recommendations was to be submitted to the full House Health Committee by July 1, 1975.

In response to this mandate, the sub-committee has convened four times in official sessions:

1. May 30, 1975 - Administrative hearing at the State Capitol with:

   Masaru Oshiro, Deputy Director, DSSH
   Michael Kakesako, Corrections Division, DSSH
   Kendrick Wong, Law Enforcement Assistance Assoc.
   Dr. Allen Root, Chief, Mental Health Div., DOH
   Dr. Joseph Blaylock, Mental Health Team for Courts and Corrections, Mental Health Div., DOH

2. June 10, 1975 - Fact-finding inspection of health facilities at Hawaii State Prison.

3. June 17, 1975 - Fact-finding inspection of security facilities at Hawaii State Hospital.

4. June 23, 1975 - Fact-finding inspection of health facilities at Halawa Correctional Facility.

In addition, the information gathered at these sessions has been supplemented by discussions and communications with numerous affected members of the State administration, the Judiciary, State Ombudsman, Prosecuting Attorneys' Offices, attorneys from the private sector and members of the public. Supplemental research into judicial reviews, legal anthologies and state and federal laws was also conducted.

Due to time restraints, certain areas of concern are not covered as extensively as are warranted. These include the health care planning in the State Correctional Master Plan, neighbor island correctional facilities, the mentally retarded with criminal tendencies and juveniles within the correctional system. It is the recommendation of the Committee that further study be pursued in these areas.

The research, compilation and writing of this report was done by Representative Lisa Naito and her staff members, Colin Goo, Research Assistant and Dorrie Marsh, Secretary.

June 27, 1975

I. HEALTH CARE AND FACILITIES IN STATE CORRECTIONAL INSTITUTIONS

A. Hawaii State Prison

1. Facilities

Dispensary: The 3-room dispensary at the prison is being renovated with only the dental office still to be remodeled. Otherwise, the facilities are said by the staff to be adequate.

Medical equipment includes a small x-ray machine and equipment for minor surgery. There is no dental x-ray machine and other dental equipment is very old, especially the chair, which is said to be about 60 years old. None of this equipment is expected to be replaced in the current remodeling.

Hospital: In the hospital section there is a 6-bed medical ward and a 10-bed psychiatric ward. The hospital has crank beds, new mattresses donated by a hotel, sheets, blankets, and bedspreads. Lighting in the wards seems inadequate to read by; one window is covered because of water leakage due to rain. There is enclosed outdoor space connected to the psychiatric ward.

2. Medical Staffing

The present staff consists of one part-time doctor, one half-time dentist, and five LPNs. The M.D. spends 1-1/2 hours per day, three days a week at the dispensary. He is also on call and visits prisoners in private hospitals. An eye, ear, nose, and throat specialist visits one day a week, and a dermatologist once a month. The dentist is available 3 hours a day, five days a week. One psychiatrist spends four days a week at the prison.

An additional position for a half-time doctor has been funded from July 1, 1975. Two more LPNs are also funded as of that date. This additional staffing will allow for a five-day clinic and 24-hour a day medical coverage at the prison.

3. Health Care, Physical

The dispensary is open until 9 p.m. five days a week, and a nurse is on call for night

emergencies. Immediate emergencies are moved to a private hospital. The dispensary serves 60-70 patients per day but only about ten need to see the doctor. X-rays and minor surgery are performed in the clinic. About 25 inmates are on medication which is dispensed three times a day by prescription and to walk-ins for headaches, colds, etc.

When inmates enter the prison, they are placed in the Diagnostic Center and receive health screening and physical examinations. They are interviewed by a psychiatrist, psychologist, and prison counselors. Every inmate has a physical and a dental examination on release from prison.

There is no round-the-clock nursing care in the medical ward. Very sick inmates are sent to Queens Medical Center or to Kuakini or St. Francis Hospitals. Only post-operative and minor cases are kept in the prison ward. Guards check the ward periodically and call a member of the staff, if necessary. Contagious patients are sent to private hospitals. At the time of the committee visit, there were no patients in the medical ward.

4. Health Care, Mental

General Population: Within the general population of the prison there are about 12 psychiatric patients on medication. The rationale is not to put them into the prison hospital because of its stigmatizing effect and harm to patients' self-images. If not in the hospital, patients can take advantage of recreational and vocational programs and can continue ordinary activity even though they are under medication. It is felt by the psychiatrist that they are in a more normal supportive atmosphere.

The psychiatrist is also on call to intervene in mental problems on request of the inmates. Aside from this intervention, only one inmate in the total population of the prison has been participating in psycho-therapeutic sessions with the prison psychiatrist on a regular basis.

Within the Psychiatric Ward: There are currently eight patients in the psychiatric ward. Five of these are on medication. For the three

patients not on medication there is no regularly formulated plan of treatment.

Most of the patients in the psychiatric ward have serious emotional disturbances. Some are in the ward for their own protection--either because of incompatible personalities or to protect them from themselves.

In the psychiatric ward there are two sleep-in hospital stewards each on a twelve-hour shift.

The psychiatrist sees the patients in the ward on an average of once a week and talks with each informally for 3 minutes to 15 minutes.

AREAS OF CONCERN AND RECOMMENDATION

HAWAII STATE PRISON

FACILITIES -

Dental equipment is antiquated. There is no x-ray machine. Although the prison dentist has said that he can give dental treatment to inmates, he has stated that in some cases he needs to send patients out because of the inadequate equipment. No new equipment has been requested in the budget. The prison officials have stated that a decision was made to hold up this request until the Correctional Master Plan is implemented. This decision can be considered questionable since a modern dental chair, drill, x-ray machine, and other necessary equipment can be moved to the new unit in the Master Plan when it is completed.

Although the facilities of the hospital wards seem adequate, necessary repairs should be undertaken.

STAFFING -

Though inadequacies in terms of round-the-clock medical care exist, with the additional staff these problems should be eliminated. A follow-up should be made to see that these positions are filled.

HEALTH CARE, PHYSICAL -

Protective custody inmate complaints relating to health care included delay in time of request for appointment with the doctor and compliance with the request. In addition, prescribed medication for protective custody inmates is not delivered to their cell-block as may be warranted under their protective custody status.

HEALTH CARE, MENTAL -

There is no apparent individualized regularly formulated treatment plan for psychiatric patients within the unit. There are also no activities for the patients who are not on medication. They are vegetating.

Little psychiatric counseling and no alternate methods of treatment aside from medication have been formulated for the mentally disturbed inmates in the general population of the prison.

An overall plan must be adopted for the care and treatment of mentally disturbed patients within our correctional institutions.

B. Halawa Correctional Facility

1. Facilities.

The present medical unit at Halawa Correctional Facility consists of two small rooms, a dispensary and an infirmary. $35,000 has been allocated for renovation and expansion of the present facilities. Renovation was to begin July 1, 1975. However, other emergency priorities in the DSSH have resulted in a six-month delay. The current date of completion is February, 1976. A large room which was the library will be divided into a two-bed ward, an examination room and doctors', nurses and psychiatrists' offices. The present facility will be used as a dental office.

At present, there is no dental equipment; the dentist brings his own portable equipment and, consequently, it is inadequate for any but cursory care. The dental equipment has been ordered and is expected to be delivered in September. Equipment for the renovated clinic has also been ordered but will not be installed until the renovation is completed.

2. Medical Staffing.

The doctor, a City and County employee on contract to the State for half-time, arrives at 4:15 p.m. daily, Monday through Friday, and remains until he has seen all of the patients. He is also on call. The half-time dentist is at the facility every afternoon, five days a week. There is a full-time nurse, a full-time psychiatrist and two full-time social workers. Funds for an on-call position for an obstetrician-gynecologist will be released July 1, 1975. Two paramedics have been requested.

3. Health care, physical.

Each inmate receives a health examination on arrival at the correctional facility. Since the state takeover of the facility on June 1, 1975, the caseload has increased from about

10 to 36--a reflection of greater confidence in the new doctor, according to the staff. Most of the caseload is of minor problems. Emergencies are taken directly to Queen's Medical Center.

Medicine is prescribed by the doctor and dispensed by the nurse to the guard station. Medicine is purchased directly from the distributor by the correctional services administrator and, therefore, it is not necessary to keep large supplies and unusual medicines on hand.

Comments by women inmates indicated that they felt emergency care (direct transfer to Queens) is adequate. One woman mentioned that, in the past, medicine and tranquilizers were given to the patients by the doctor at their own request, but that the situation has been tightened since the arrival of the new doctor.

4. Health Care, Mental.

Halawa Correctional Facility is a short-term, holding facility and has no long-term psycho-therapy. The duties of the psychiatrist consist mainly of screening, keeping records, and directing inmates to the proper institutions for continuing care on their release. Counseling is said to be appropriate here for identification of current situations and for short-term, single-problem cases. The social workers refer inmates to the psychiatrist as they deem necessary.

Thirty-six inmates are presently on medication. About three-fourths of them are on mild tranquilizers such as valium, about 15 on thorzine or mellaril, six are on high dosages of these stronger tranquilizers. These six are all returnees from Hawaii State Hospital. It was stated that misrepresentation of drug needs by patients can usually be avoided since most have some obvious symptoms or verifiable previous history at drug-related institutions.

Those psychiatric patients who need hospitalization or who are considered dangerous to themselves or to others are sent to Hawaii State Hospital. The Halawa administrator, both on the advice of the psychiatrist and depending upon the nature of criminal charge, recommends either maximum security or minimum security for transferees to the State Hospital, i.e., for an inmate who has been charged with murder, the recommendation would be to place him in the maximum security unit. An inmate charged with theft or robbery could be placed in an open ward.

Often transferees from Halawa are returned to the jail with heavy dosages of medicines which are used for major disorder psychoses, with the rationale that they have responded adequately to treatment. Sometimes inmates' return to the jail environment causes them to revert to an unstable condition. Because of lack of appropriate staff and facilities, in most cases the administrators of the jail feel that they are not equipped to maintain inmates either on high dosages of medicine or in an unstable condition and, subsequently, returns these patients to the State Hospital.

AREAS OF CONCERN AND RECOMMENDATIONS

HALAWA CORRECTIONAL FACILITY

The implementation of programs at Halawa Correctional Facility since the take-over by the State, 4 weeks ago, is not sufficiently advanced for analysis at this time. However, there are several areas of concern that should be mentioned in the hope that certain inadequacies and problems will be recognized and overcome in the process of reorganization.

FACILITIES -

A speed-up of the timetable for the renovation of the clinic should be undertaken.

STAFFING -

In view of the 24-hour, 7-day admissions of inmates at this facility, round-the-clock medical staffing would seem to be a necessity for immediate medical evaluation and treatment. There is an obvious need for the two paramedics which have been requested.

MENTAL HEALTH CARE -

A major area of concern is the evaluation of inmates on arrival at the facility.

A one-month study of potential suicide risk was to be undertaken. However, on examination, the adequacy of this study is questionable. Potential suicide screening and more definitive evaluation of mental problems should be a routine and on-going procedure for all arrivals at the facility.

An overall plan should be adopted to handle the needs of potential suicides and psychotic inmates. The shifting back and forth of inmates between Halawa Correctional Facility and the State Hospital is evidence of the lack of such a plan. The use of isolation cells and the resultant 8 out of 9 suicides in the last 10 years taking place in these cells is further proof of the non-existence of any coordinated plan for the mentally ill inmate.

C. Hawaii State Hospital

1. Security Facilities

The security facilities at the Hawaii State Hospital include a seclusion ward containing 20 individual rooms in Goddard Building, and Hina Mauka which is now used occasionally for maximum security or for other cases which must be isolated. The seclusion ward has double locked doors, no bars on the windows, and is not considered really secure. (Since the inspection tour some additional security measures have been taken.) Rooms are located around small open courtyards and are locked only when maximum security is necessary. Hina Mauka has open interior space, a day room, and a lanai, but no fenced areas for outdoor activity.

Hina Mauka will be renovated to accommodate maximum security cases, most of which will be handled there without "lock up". There will be four 4-bed wards, one 2-bed ward, three seclusion rooms, and fenced outdoor recreation space. Renovation will cost roughly $250,000 and will include security arrangements and conformance to life-safety standards. The consultant contract is now being negotiated; total project is expected to be completed in 1-1/2 to 2 years. (Since the inspection tour, a Governor's task force has recommended the speeding up of the time table for renovation and possible expansion of the facility.

2. Medical Staffing

Except for the adolescent unit, the administrators stated that staffing is generally inadequate throughout the hospital. There are 2 male aides, 2 female aides, and 1 nurse for round-the-clock care of 60 patients including those in the seclusion wards. Psychiatric staffing for the purposes of psycho-therapy, rehabilitation, and counseling is insufficient.

Fourteen additional positions for nurses and paramedics are scheduled to be filled.

3. Mental Health Treatment

Medication is the main method of treatment.

One psychiatrist stated that he has brief weekly group meetings with the patients in the maximum security ward. Other psychiatrists are available for emergency treatment. Administrative procedures rather than direct treatment seem to account for large proportions of the doctors' time. The committee was unable to gather any definitive information on the number of psychiatrists attending patients or treatment plans.

4. Youth Correctional Facilities Transfers

Official transferees from the Hawaii Youth Correctional Facility average four or five at any one time. Two kinds of cases are transferred to Hawaii State Hospital - those which need 24-hour care and those which are expected to benefit from the hospital atmosphere because of the character of their disability; in these latter instances, hospitalization is said to be elective rather than necessary.

Youths are placed on 48-hour restriction when they arrive at the State Hospital, during which time they are evaluated. They are placed "on contract" which designates certain behavioral requirements and are returned immediately to the Correctional Facility if the "contract" is broken. They may then be returned to the hospital again. An average of two out of five adolescents escape the first time they are sent from the Youth Facility. The staffs of both institutions become familiar with the cases of those who are apt to try to leave and the escape rate at subsequent commitments is lower.

According to the staff there are extensive individual programs, regular therapy, and, to the extent possible in each case, involvement in educational programs at Olomana.

Most of the patients from the Youth Facility are in open wards, which, in general, the staff prefers. They say "lock up" invites problems because the patients try to test the security of the unit. The administrator said more closed ward security ward space is needed and there was some

small indication from him that there may generally be a move in the direction of more closed units. However, the staff feels that, if patients are coming into a therapeutic program, they should not be treated as criminals.

After being judged non-violent, or "cured", the youths are sent back to the Youth Facility. The hospital has no authority to permanently release patients transferred from correctional institutions but release is discussed by both the youth correctional facility staff and the hospital staff and "reasonable action always seems possible".

The Hawaii Youth Correctional Facility would like to develop a program of psycho-therapy within its own facility with the help of the State Hospital staff.

5. Adult Correctional Facilities Transfers

At the time of the inspection, among the hospital's population ten adult patients had been committed by the courts under the penal code and seven or eight additional patients were from Halawa Correctional Facility. The population of the maximum security unit was eleven. Three or four were not from the courts but were considered dangerous. Under present conditions, patients from each of these categories can be placed in the security units together.

Transferees from Halawa Correctional Facility can be assigned to open wards at the discretion of the hospital staff. None of the four recently publicized escapees had been in the security units. Three of them had privileges or were on pass when they escaped; one escaped during his first day of transfer to the hospital. The staff had judged him to be "cooperative" and therefore placed him in an open ward from which he escaped.

For both adults and adolescents, after 90 days the law allows the hospital to authorize absence on pass of up to 30 days without court consent.

It was stated that some patients are put on medication because of their types of illnesses, and

may have life-time needs for medication. Psycho-therapy depends on the case, but, in general, psycho-therapy, rehabilitation, couseling, or alternate methods of treatment are either inadequate or non-existent throughout the hospital because of staff limitations.

MEDICAL STAFFING

It appears to be an acknowledged fact by state administrators that the staffing of Hawaii State Hospital is far below par. Steps have been taken to alleviate some of the shortages but lack of comprehensive planning may be hampering the efforts to make decisions relating to best use, numbers, and types of personnel needed.

MENTAL HEALTH TREATMENT

Minimal effort at meaningful treatment is apparent. Medical maintainance seems to be the only mode of handling the cases in the security units. No individualized plans of treatment leading to a renewal of good mental health has been evident. Little effort is being given to individualized psycho-therapy or group therapy. Other alternate methods of eventual rehabilitation are totally lacking. Under the current procedures, the inmate may be returned to Halawa Correctional Facility "maintained" by large doses of tranquilizers.

Treatment plan records are deficient or not meaningful. A variety of medical experts seem to visit the hospital but no cohesiveness or coordination is evident in terms of treatment. To the committee's knowledge, no overview of treatment is being considered which might eventually lead to an inmate's cure.

YOUTH CORRECTIONAL FACILITIES TRANSFERS

The fact that two out of five youths transferred from the Hawaii Youth Correctional Facility go AWOL raises serious questions about security, as well as the judgement of the staff in placing the youths in open wards. While it is understandable that the staff chooses to give priority to the youths' problems and rehabilitation, the fact that these adolescents have been placed at a Correctional Facility for an offense must also be given consideration. While no statistics were available on how many of these AWOLs commit additional offenses before being caught, in the Committee's opinion, these youths must be maintained within a more secure unit rather than being placed with other adolescent patients who have not exhibited criminal behavior. The only plans expressed for such future containment is the possibility of placing these youths in the renovated Hina Mauka security unit with the adults. It was pointed out that there will be separate programs for the two groups, but this leaves a considerable amount of time for them to be together. This

is an undesirable situation because of the cross-effects between the adult inmates and the youths and should not be implemented. Instead, a separate wing of the security facility should be considered for their needs.

ADULT CORRECTIONAL FACILITY TRANSFERS

The current approach to transfers from the Correctional Facilities as well as the courts, of mentally ill people who have either displayed criminal tendencies or actually committed a crime, is to give consideration only to the violent aspect of their current condition. Therefore, many of these inmates are placed in open wards without security. The decision is made by the hospital staff. Considering a uniform approach for the penal system's mentally ill people we must give priority to the protection of society. If a line must be drawn as to which inmates get placed in the security unit, the fact that they have committed a crime and its seriousness must be given consideration. It must hold that those who have been sentenced are not to be placed in open wards but instead be given treatment within the confines of a security unit.

In addition, passes to leave the hospital of up to 30-day duration can be extended to mentally ill prisoners at the discretion of the hospital staff without prior approval of the jail or court must be reexamined. It would seem that the prison, jail, youth facility, or court should have primary jurisdiction over the freedom of movement of these inmates.

II. CORRECTIONAL SYSTEM PROCEDURES FOR MENTALLY DISTURBED

A. MENTAL COMPETENCE

When a defendant files notice that competence is to be used as a defense and the court feels that there is reason to doubt the fitness of the defendant to proceed, all proceedings are suspended. (Hawaii Penal Code Sec. 404-1) The court must then appoint a three-member panel to determine the competence of the defendant. The panel is to consist of one Department of Health physician or clinical psychologist and two qualified, unbiased physicians. The court may order the defendant to be committed to a hospital at this time for the purpose of examination. (Sec 404-2)

If the defendant is found unfit to stand trial, the proceeding may be suspended. The defendant may be placed into the custody of the director of health to be committed to an institution where proper care and treatment shall be given. If the court feels that the defendant can be released without danger to himself or others, he is released under the supervision of the court. (sec. 406-1)

When the court, director of health, prosecutor, or defendant determines that the defendant has regained fitness to proceed, the proceeding shall be resumed. If the court feels that so much time has lapsed that it would be unjust to resume the proceedings, the court can dismiss the charge and the defendant, conditionally release the defendant, or order the defendant committed to the custody of the director of health to be given proper care and treatment. (Sec. 406-2)

During commitment the defendant, counsel, or director of health may apply for a special post-committment hearing. If counsel satisfies the court that there is a defense other than incompetence that excludes responsibility, a hearing shall be granted. Following the hearing, all defects that may exist in the case must be amended or the court must discontinue commitment or conditional release that was previously ordered and discharge the defendant, or commit the defendant to the custody of the director of health to be placed in an institution to receive proper care and treatment. (Sec. 407)

B. ACQUITTAL

If the court determines that the defendant was incompetent when he committed the crime, he is acquitted. (Sec. 408) Following the decision of acquittal, the court may have a hearing to determine the risk of danger the defendant poses to himself and to others. (Sec. 411-2) The court shall appoint a panel consisting of one Department of Health physician or clinical psychologist and two unbiased, qualified physicians to determine the present physical and mental condition of the defendant. The court shall then commit the person to the custody of the director of health, order a conditional release, or discharge the defendant basing their decision upon the panel's evaluation of the defendant's mental condition. (Sec. 411-1)

C. COMMITMENT AND CONDITIONAL RELEASE

An application for conditional release or discharge may be made to the court by the director of health or the person committed 90 days after commitment. (Sec. 413) If the court's decision is adverse, a duration of one year is required before reapplication. (Sec. 412-2; Sec. 413-3)

Upon application for discharge, conditional release, or modification of conditional release, the court shall appoint a panel to determine for the court whether or not the person is of no danger to himself or others. (Sec. 414)

If the court is satisfied with the person's condition it shall order discharge, conditional release, or modification of conditional release. If the court is not satisfied it shall order a hearing to determine what action is to be taken. The hearing shall be a civil action in which the burden shall be upon the state to prove why the conditions asked for in the application should not be granted. According to the outcome of the hearing, the court shall commit the person to the custody of the department of health or place the person on conditional release or discharge. (Sec. 415)

Under conditional release the court may decide within five years after the original order that the conditions of release have not been fulfilled or a change is needed for the safety of the person himself

and others. Acting upon this decision the court shall commit the person to the custody of the director of health or make a modification of the conditional release. (Sec. 413-2)

AREAS OF CONCERN AND RECOMMENDATIONS

CORRECTIONAL SYSTEM PROCEDURES

Some of Hawaii's methods of dealing with the area of incompetence in criminal cases should be re-examined:

1. When a defendant's competence is to be decided by a court-appointed panel, it should be mandatory, rather than discretionary as it now is, that the defendant be placed in a hospital during the course of the examination. (Sec. 404-2)

2. After a defendant is declared incompetent it should be mandatory, rather than discretionary as it is now, that a second panel shall decide upon the defendants potential threat to society. (Sec. 411-2)

3. The panel to decide the potential threat to society of the defendant should include only one of the original panel members and two unbiased members of the public. (Sec. 411-3)

4. If the defendant is declared incompetent and the crime was of a violent nature, or if the defendant has a past history of violence, automatic commitment to the state hospital should be required with no option of conditional release. (Sec. 406-2)

5. If the defendant is declared incompetent, he should not automatically be acquitted. (Sec. 408) Instead, the trial should be suspended until the defendant is declared competent. (See California Penal Code, Sec. 1370)

6. If the offense was of a minor nature, i.e. a petty misdemeanor, and the defendant is declared incompetent and in the judgement of the panel and the court poses no threat to society, the defendant may be placed on conditional release.

7. If a defendant is on conditional release, adequate mechanisms for follow-up procedures and monitoring of records by the court should be established.

8. Separate files should be created by the courts on all cases which have gone through competency hearings to expedite follow-ups.

9. The court and not the hospital staff shall have jurisdiction over short or long term leaves from the state hospital for the incompetent defendants it places there.

10. California's Penal Code was amended in 1974 relating to the criminally insane. Their philosophy and approach should be examined.

III. RIGHT TO TREATMENT

A. GENERAL

The Sub-committee on Health in its fact-finding inspection trips and in discussions with State authorities has developed grave concerns over the apparently inadequate treatment of mental health problems of inmates at the Hawaii State Hospital. Additional discussions with private attorneys have confirmed some of these concerns by way of focusing attention on possible future litigation against the State in the area of Right to Treatment. The following research was directed toward this area:

Analysis of laws and court decisions that affect a patient's right to treatment does not portray Hawaii as an effective state in dealing with the problem of mental health treatment. Perhaps the recent case of Michael Figueroa in the Hawaii Youth Correctional Facility is an indication of things to come. When there are laws and recent Federal court decisions that specifically indicate a patient's right to treatment, an occurrence such as the Figueroa case demands special attention. If our own institutions do not meet the required standards, we may have even more reason for alarm.

B. STATE AND FEDERAL LAW

At the base of our concern should be two laws, one federal and one state. In 42 U.S. Code §1983 (1970), the law indicates that anyone who deprives another person of rights granted by the Constitution of the United States is "liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (42 U.S. Code §1983)." In the Hawaii Revised Statutes, Title 19, Chapter 334-35, the right to treatment of a mentally ill individual is more specifically stated..."The director of health shall 1) see that every patient receives care and treatment commensurate with his needs and the means available for such treatment, 2) make periodic reexamination of each patient and review his records,.." It should be noted however, that regarding the means available for such treatment," it has been ruled in Federal Court (503 F 2d 1305, 493 F 2d 507) that inadequate funding by the state for staff or facilities cannot be interpreted as a reasonable excuse for inadequate treatment. Any individual then, who is committed to a mental institution who does not receive

proper treatment, may sue the state, the federal government, and/or individuals responsible for the inadequate treatment they recieved.

C. FEDERAL CASES

The right to adequate treatment is supported, also, in the Federal Courts. In 1966 in the U.S. Court of Appeals, D.C. Circuit, Charles Halpern argued the precedent-making case of Rouse v. Cameron in which mental patients were for the first time acknowledged to have a right to adequate treatment. (373 F 2d 451) In the most recent case, Wyatt v. Aderholt (503 F 2d 1305), the U.S. Court of Appeals, Fifth Circuit upheld a decision made in an Alabama district court that patients involuntarily committed to a mental institution have the constitutional right to treatment. More specifically, treatment is constitutionally required in the hospital if confinement is for treatment. This applies to patients who voluntarily commit themselves as well as those involuntarily committed. To not give treatment is to transform the institution into a penitentary "where one could be held indefinitely for no convicted offense." (Ragsdale v. Overholser 281 D 2d 943, 950)

D. INTERPRETATION OF ADEQUATE TREATMENT

The Wyatt v. Stickney (325 F Supp. 781, 334 F Supp. 1341, 344 F Supp. 373, 387) decisions, which were upheld in Wyatt v. Aderholt, describe what is adequate treatment for a mental patient. For example, "medication shall not be used as punishment, for the convenience of staff, as substitute for program, or in quantities that interfere with the patients treatment program." In the patient's treatment plan should be "criteria for release to less restrictive treatment conditions, and criteria for discharge." Treatment should prepare a patient to live outside of the hospital. "As part of his treatment plan, each patient shall have an individualized post-hospitalization plan." There should be treatment or observation of the patient after he has been released. (344 F Supp. 387, Minimum Constitutional Standards for Adequate Treatment of the Mentally Ill, upheld in 503 F 2d 1305). The Hawaii Penal Code, in fact, specifically states that after release from the State Hospital a check-up is to be made periodically (Sec. 413).

Another area that should be of legal concern is mootness. It would seem that releasing a patient

after suit has been filed will make the case moot. This is true; but Donaldson v. O'Connor (493 F 2d 507) which sets another precedent in the right to treatment does away with the mootness solution. Donaldson provides for redress in the instance of inadequate treatment as is indicated in 42 U.S. Code 1983. Recourse of a patient who has not had adequate treatment is to sue after he is released.

AREAS OF CONCERN AND RECOMMENDATIONS

RIGHT TO TREATMENT

Federal Law, State law, and judicial law has clearly stated that a person committed to a mental institution has a right to treatment. Thorough programs involving adequate treatment plans are mandated by the courts. People who do not receive treatment have the right to sue for damages while they are in or out of the institution.

The treatment received by mental patients at Hawaii State Hospital is inadequate by the standards set in the Federal courts. The State of Hawaii may very well find itself involved in law suits relating to the right to treatment in the near future. To avoid such court actions steps must be taken to set aside funds to meet adequate standards in staff, facilities, programs, individualized treatment, and post-hospitalization programs.

END