

TESTIMONY OF MILTON MACK

STATE COURT ADMINISTRATOR

Good afternoon. My name is Milton Mack. Before my appointment as State Court Administrator last year by the Michigan Supreme Court, I had served as a probate judge for 25 years, hearing thousands of mental health cases. I am a witness to the failures of the current system.

First, I want to thank Lt Gov Calley and Speaker Pro Tem Leonard for their outstanding leadership on this vital issue. The Michigan Probate Judges Association has been advocating for reform for many years and this effort has been endorsed by every judicial association in Michigan. We are grateful that we have now found a champion for this cause.

Kevin's Law was intended to permit judges to order assisted outpatient treatment for people, earlier in the course of their untreated mental illness. The law is named for Kevin Heisinger, who was beaten to death in a Kalamazoo bus station in August 2000, by Brian Williams, a man with untreated schizophrenia. Williams' illness had caused him to cycle in and out of institutions and the criminal justice system for years. He was functional when in treatment, but his condition deteriorated when he stopped taking his medication.

Kevin's Law, adopted in 2004, was introduced by Senator Tom George. Senator George said that Kevin's Law will "make our communities safer and at the same time provide compassionate, earlier care for people who seriously need it." At a press conference Senator George said:

until today, families had to wait until their loved ones made a threat or actually hurt someone before they could get help, and

then, the only help was inpatient care. Now, people can be helped earlier, and on an outpatient basis. If the treatment is successful, the person never needs to reach a crisis point and hospitalization may be altogether avoided.

Earlier treatment, on an outpatient basis, means avoiding crisis, preserving wellness, improving outcomes and avoiding incarceration, homelessness and poverty. The thinking behind Kevin's Law recognized that early intervention would help people get well faster and avoid the terrible consequences of untreated mental illness.

Kevin's Law also recognized the failures of the current system. As designed, the system only reacts to crisis. The result is that our jails and prisons are the new institutions for persons with mental illness. Countless others are homeless or suffer state-imposed impoverishment in order to maintain eligibility for mental health care. Other victims of our broken mental health system include actual victims of avoidable crimes and frustrated, burned-out family members.

Sadly, Kevin's Law has not lived up to its promise because the law as written, has too many barriers to its actual use. The proof is in the data. On average, over 20,000 petitions seeking mental health treatment are filed in Michigan every year. They are only filed once the person's mental illness has reached a crisis. Yet, fewer than 100 petitions seeking assisted outpatient treatment are filed each year. With so little use, Kevin's law is ineffective in its mission to make our communities safer.

What is peculiarly perplexing is that the ability to invoke the use of Kevin's Law is much more restrictive than the ability to seek involuntary hospitalization.

Rather than permitting outpatient treatment before crisis, as promised, the law requires crisis. Just to get in the court house door you must show that the person has been placed in a psychiatric hospital, prison or jail at least twice in the previous 48 months OR that noncompliance with treatment was a factor in the individual committing, attempting or threatening an act of serious violent behavior within the last 48 months. In other words, Brian Williams would have still needed to beat Kevin Heisinger to death in order to be ordered into outpatient treatment.

But, even if you can produce admissible evidence to establish this history, more is required. You must show that the person is noncompliant with recommended treatment by a mental health professional that is necessary to prevent a relapse or harmful deterioration. Good luck getting the treatment plan when that plan is protected by HIPPA. What if there is no treatment plan? This requirement is only in place for those seeking outpatient treatment. That requirement is not necessary for those seeking involuntary hospitalization.

There is also no mechanism in the law to secure an examination of the person in order to establish that the person is mentally ill or to even secure the person's attendance at trial.

Frankly, it is far easier to simply file a petition for hospitalization. It is much easier to prove and the process is far more workable. The mental health code, still favors inpatient over outpatient treatment.

Kevin's Law, as written, fails to permit early treatment. It fails the needs of those with mental illness by looking at their conduct and not their capacity to make informed decisions. Once a person is incapacitated by

mental illness, why would we wait to treat that person? Why wait for a crisis? Treating that person sooner means restoring their independence and preserving their freedom. Prison is a far worse alternative than outpatient treatment.

We should treat mental illness like any other illness. We don't wait until a person is dangerous to self or others to treat any other illness. For example, as a probate judge, I could appoint a guardian for someone who is unable to make informed decisions due to mental illness; however, the guardian cannot be authorized to consent to mental health treatment, even if that treatment would restore the person's capacity to make their own decisions and terminate the guardianship.

A guardian of a person with mental illness can make end of life decisions, agree to amputation, chemotherapy and virtually any other treatment, over the objection of the ward, but the guardian cannot consent to treatment of mental illness so that the person can make their own decisions about their health care and living arrangements.

The mental health code was written in a time when mental illness was considered incurable. That is no longer the case. We now know that for many, mental illness is treatable, recovery is possible, and people with mental illness can lead productive lives. We live in an age of outpatient treatment, but the mental health system is locked in an age of inpatient treatment. There is no good reason to withhold mental health treatment from those suffering from mental illness whose symptoms have temporarily left them unable to make informed decisions. Frankly, it is cruel to wait, to wait for behavior which results in terrible consequences before we act.

I urge you to remove the barriers to the promise of Kevin's Law.