





IACAPAP(国際児童青年学会)_2022




CHILD AND ADOLESCENT
MENTAL HEALTH:
SHAPING THE FUTURE
05 - 09 DECEMBER 2022
DUBAI | UNITED ARAB EMIRATES



The Law Related to Mental Health and Welfare of the Person with Mental Disorder from a Child's Rights Point of View


J. Ota^{1,4}, K. Kimura^{2,4}, K. Tanaka^{3,4}.

¹Mental Health and Welfare Center of Okayama-City, Okayama.
²Medical Corporation Shinshinkai Tama-Aoba Hospital, Psychiatry, Tokyo.
³Hyogo Mental Health Center, Child and Adolescent Psychiatry, Kobe.
⁴The Ethics Committee of JSCAP





CONFLICT OF INTEREST

No conflicts declared





The Law Related to Mental Health and Welfare of the Person with Mental Disorder(Japan)

This law basically does not distinguish between adults and children.
This law was established in terms of the due process of the law regarding involuntary hospitalization.
Therefore, corresponding ages are required.




History

The Law Related to the Mental Health and Welfare of Persons with a Mental Disorder was established after the Law for Custody of the Mental Ill of 1900, the Law for Mental Hospitals of 1919, and the old version of the Mental Health Act 1950 and the new version of the Mental Health Act 1987.
These series of laws were originally related to involuntary hospitalization.
Every mental health issue was added after the Mental Health Act 1950.
Even as times changed from the Law for Custody of the Mental Ill to the Law Related to Mental Health and Welfare of the Person with Mental Disorder, the tradition that a family member of a patient with a mental disorder decides on his or her hospitalization has not changed.



History 2

At present, since the law was revised in 2013, most involuntary hospitalizations have been for medical care and protection, which is one of type of involuntary hospitalization that remains today.
In these cases, a patient for whom a designated psychiatrist deems hospital treatment necessary is admitted to a mental hospital with the consent of a family member.
The Law for Custody of the Mental Ill was originally designed for the custody and restraint of a patient with a mental disorder by a family member.
The qualifications, procedures, and so on were provided for in the law.
A patient with a mental disorder was only an object that was placed in custody and restrained.
The patient's agreement to custody, restraint, and treatment was not legally required.
Therefore, it could be considered natural that the hospitalization of children and adolescents was not provided for in the law.





(1) Parental authority in the Civil Code

(2) The right of self-determination

(3) The right to express one's own views



Parental authority in the Civil Code

Parental authority in the Civil Code originated from a specific relationship such as parent-child, and provides parents with rights for the custody and education of children.

The rights of a person with parental authority are for custody, custodial education, determination of residence, disciplinary punishment, permission for occupation, proxy on status, and property management.

Before the revision, a person with parental authority had the rights and responsibilities for the custody and education of a minor. The revised version includes the words "for the benefit of the child".



The right of self-determination

a child enjoys the same fundamental human right as an adult in the Constitution, which is based on the right to pursue happiness. Therefore, in the case that a child has the capacity to determine this pursuit on his or her own, the right of self-determination is approved.



The right to express one's own views

The Convention on the Rights of the Child was strongly required for the right to express one's own views in article 12-1.

Approval of the right to express one's own views means that the parties have the following three duties:

- 1)The first duty is the obligation to provide the child with sufficient opportunities for self-expression and participation. For this, sufficient information needs to be provided.
- 2)The second duty is the obligation, in good faith, to respond to and explain to a child's expression of his or her own views. Particularly, if the child's view is different from that of an adult, the adult's view and reasons have to be explained in such a way that the child can understand sufficiently.
- 3)The third duty is the obligation to respect a child's views in accordance with the child's level of maturity.



Issues regarding children in medical practice

Based on these legal principles, I would now like to discuss issues regarding children in medical practice.

There are three level issues:

- 1)whether a child can validly engage in medical practice,
- 2)whether a child can consent to medical practice,
- 3)whether it is required for the process that the child's views are heard, even if he or she cannot provide consent.



1)The engagement of medical practice

it is a legal action.

If a minor enters into a contract independently, the juristic act is valid, but the person with parental authority can cancel the contract.



2) Consent to medical practice



the patient's consent is required if the procedure is invasive.

The right to consent to the medical practice is based on the right to self-determination and the right to pursue happiness in article 13 of the Constitution.

Accordingly, it is possible for a child who is judged based on age to be capable of determining consent independently, regardless of the intention of the person with parental authority.

Maturity differs between individuals, as does the ability to understand and make judgments depending on the illness and contents of the medical practice.

Therefore, whether the child is capable of providing consent independently is decided on a case-by-case basis.

As some general guides, children aged 15, 16, 18 years or older are judged competent according to Japanese law.



3) In the case a child is judged unable to provide consent



the person with parental authority makes the decision as a substitute authority.

The legal grounds for substitute authority is that the right of custody and parental authority is approved as the best position to make a decision based on the best interests of the child.

The right to express the child's view should be considered carefully even though the child is unable to provide consent.

The procedure to be heard depends on the age and maturity of the child and the contents of the matter.

The United Nations Committee on the Rights of the Child states that a child is a subject who can express their views at an early age.



(Let's turn back to) The Law Related to Mental Health and Welfare of the Person with Mental Disorder



Involuntary hospitalization with the agreement of one family member in cases of hospitalization for medical care and protection in the Law Related to Mental Health and Welfare of the Person with Mental Disorder should be abolished, and should only be possible with a court order issued by the national or local government.

The traditional view should be reconsidered in terms of a few questions: "Is a family member of a patient with a mental disorder an advocate for the patient's best interests?" and "Is a parent the ideal advocate for the child's best interests?" However, special consideration based on the characteristics of the child is required.



Special consideration based on the characteristics of the child



the relationship between the parent and the child, symbolized as "parental authority".

A person with parental authority holds the right to care for the child; therefore, their opinion is required when the child is hospitalized and/or undergoing treatment.

When a patient is hospitalized involuntarily under the provision of hospitalization for medical care and protection, agreement by another family member is necessary.

Until an amendment in 2013, the prioritization of the family member was clearly defined, but in the present law, any family member, including a spouse, parent, or sibling, can consent to hospitalization for medical care and protection.

However, a person with parental authority is prioritized if there is disagreement among the family members.



Involuntary hospitalization of a child and the person with parental authority



Consent to treatment and hospitalization is a very personal matter to an individual and is a moral right; therefore, consent by proxy is impossible.

If a new provision for involuntary hospitalization under court order is issued by the national or local government, the involvement of a person with parental authority should be provided for when a child is hospitalized.

For example, text should be required in the law such as "when involuntary hospitalization of a child is decided under court order issued by the local government, the local government must respect the opinion of the person with parental authority."



The person with parental authority as an advocator



In addition to the involvement of a person with parental authority in deciding hospitalization, the person with parental authority should be required to advocate for the rights of the patient.

Until an amendment in 2013, a patient could be hospitalized with the consent of "the person responsible for protection" appointed by a family court, a rule that was widely criticized because such a person was excessively burdened.

The person responsible for protection was obliged to take charge of treatment, protect the patient's property, cooperate with the doctor, follow the doctor's advice, take charge of the patient after the involuntary hospitalization ordered by prefectural governor, and so on.

"The person responsible for protection" was abolished by the 2013 amendment, allowing a person chosen by the family to provide consent for hospitalization. However, the person who provides consent for hospitalization remains free from obligations.



A new system regarding the protection of the rights of a patient



A new system is required regarding the protection of the rights of a patient who is hospitalized involuntarily, including the provision of advocacy, which was postponed in the 2013 amendment.

The core of a new system regarding the protection of such rights involves a clarification of the subject who decides on the hospitalization and the strength of the psychiatric review board; in either case, this means the child and the adult.



The psychiatric review board



The psychiatric review board is defined as the only organization responsible for protecting the rights of patients hospitalized in a psychiatric hospital.

Psychiatric review boards examine the necessity and validity of mainly involuntary hospitalization, and of the validity of treatment for hospitalized patients.

Such boards are composed of psychiatrists, lawyers, psychiatric social workers, and other specialists, and are regarded as an independent third party.

However, they have no full-time employees, and a mental health and welfare center, which is only one of several administrative bodies, plays the role of secretariat; therefore, it is not highly evaluated as an organization for protecting the rights of patients.



The protection of rights of inpatients



- by the patient themselves
- by the patient's family members
- by the patient's friends
- by other supporters



by the patient themselves



The function of the protection of rights by the patient themselves differs between children and adults.

Informed consent must be obtained from children in the same manner as that from adults.

Proper and careful explanations regarding the rights of hospitalized patients and so on must be provided in accordance with the capabilities of children who are unable to protect themselves from having their rights infringed upon to facilitate the expression of their opinions.



by the patient's family members, the patient's friends, and other supporters



The importance of personal human resources such as the patient themselves, the patient's family members, or the patient's friends and other supporters, in complementing the public system for the protection of rights should also be noted.

In the case of a child's involuntary hospitalization, the roles and opinions of the person with parental authority as an advocate for the child's rights need to be specified in the text of the law.

As mentioned above, the way of thinking as a parental authority exists for the benefit of child, and the child's rights should be specified in the law, in contrast to the old-fashioned way of thinking that a person with parental authority has the right to decide matters regarding the child independently.



5 points-(1)



(1) Involuntary hospitalization with the agreement of one family member in cases of hospitalization for medical care and protection in the Law Related to Mental Health and Welfare of the Person with Mental Disorder should be abolished. It should be specified in the law that only the national or local government can decide on involuntary hospitalization.



5 points-(2)



(2) The right of self-determination by children who are capable of providing consent for treatment should be specified in the law.



5 points-(3)



(3) In cases in which a child judged as being incapable of providing consent is to be involuntarily hospitalized, informed consent should still be sought from the child. Proper and careful explanations and the development of a support system should be required to facilitate a child's expression of their own opinions.



5 points-(4)



(4) The opinions of a person with parental authority must be respected in cases in which the child is to be hospitalized.



5 points-(5)



(5) The roles of a person with parental authority as an advocate for the rights of the child must be clarified.

