Mental Health Reform Update

Concerns and Recommendations for the Report Stage of the Mental Health Bill 2024

August 2025

Glossary of Terms

Involuntary Treatment: refers to any form of medical or psychological intervention that is administered without the consent of the individual receiving it[1]

Involuntary Admission: being admitted to hospital against your will [2]

Capacity Assessment: is a structured process used to determine whether an individual has the ability to understand, retain, use or weigh information relevant to a decision, and communicate their decision, either verbally, non-verbally, or by any other means.[3]

Advance Healthcare Directive (AHD): A legal document through which a person sets out their preferences for future healthcare and treatment, to be followed if they lose capacity to make decisions.[4]

Decision-Making Representative: A person legally appointed under the Assisted Decision-Making (Capacity) Act 2015 to make certain decisions on behalf of an individual who lacks capacity.[5]

Will and Preferences: Refer to a person's values, beliefs, choices, and expressed wishes, which must be respected in accordance with the Assisted Decision-Making (Capacity) Act.[6]

Coerced Consent: is when an individual feels they have no real choice but to agree to treatment, particularly in the face of leverage or threats such as involuntary hospitalisation, removal of support, or legal action. In such circumstances, the apparent consent may not meet the ethical or legal standards of being free and informed.[7]

Statutory Right to Advocacy: is a legal entitlement to independent support that empowers individuals to express their views, make informed decisions, understand their rights, and access the services and supports they are entitled to.

Independent Complaints Mechanism: a mandated process for reviewing individual complaints about a person's care or treatment, independent of service providers, with clear timeframes for investigation, defined investigatory powers, and safeguards against retaliation.

Chemical Restraint: The use of medication (generally sedatives) primarily to control or modify a person's behaviour, or to restrict their freedom of movement, rather than to directly treat the person's condition.[8]

[1] https://doi.org/10.3390/healthcare12040445
[2] https://www2.hse.ie/mental-health/services-support/involuntary-admission/
[3] Irish Statute Book, mhcirl.ie , WHO
[4] Assisted Decision-Making (Capacity) Act 2015
[5] ibid
[6] ibid
[7] https://doi.org/10.1080/09638230802052203
[8] https://www.mhcirl.ie/publications

Mental Health Reform Update

Concerns and Recommendations for the Seanad on the Mental Health Bill 2024

Thursday 7TH August

The Mental Health Bill represents a landmark effort to modernise Ireland's mental health legislation in line with human rights principles and international best practice. Throughout the legislative process, Mental Health Reform (MHR) has continued to play a central role in advocating for stronger protections for people experiencing mental health difficulties. This advocacy has spanned several years and included key milestones, such as appearing before the Oireachtas Joint Committee on Health to present concerns and recommendations directly to policymakers.

The legislative process for the Mental Health Bill began in 2011, when the Government committed to a comprehensive review of the existing Mental Health Act 2001, and has since progressed through several key stages, including public consultations and pre-legislative scrutiny. In May 2025, the Cabinet approved a package of 241 amendments, which were subsequently introduced during Committee Stage in June. Unlike the usual procedure, where Committee Stage is held within an Oireachtas Committee, this phase of the Bill was instead carried out directly in the Dáil chamber. While this expedited the legislative process and allowed for Minister-led debate, it also limited opportunities for detailed scrutiny, stakeholder engagement, and expert input. In July, the Bill progressed through Report and Final Stage in the Dáil and was passed by 86 votes to 69. It is now scheduled to move to the Seanad after the summer recess.

Mental Health Reform acknowledges the Government's commitment to prioritising this important piece of legislation and welcomes a number of positive developments in the Mental Health Bill 2024. These include stronger guiding principles and the use of more person-centred language throughout the Bill, the inclusion of a dedicated section focused on children's mental health needs, and the extension of the Mental Health Commission's regulatory powers to include community mental health services. While these reforms are welcome and reflect long-standing calls for greater accountability and person-centred care, MHR remains concerned about the late-stage introduction and limited scrutiny of several substantial amendments passed at Committee and Report Stage. Many of these changes have significant implications for human rights and for people receiving mental health services. As the Bill moves to the Seanad, there remains a crucial opportunity to address these concerns and further align the legislation with the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

The recently approved amendments that continue to concern Mental Health Reform, along with our recommendations for improvement, are outlined below:

1 Involuntary treatment can begin before a capacity assessment is completed[9] [10].
While previous versions of the Bill clearly outlined an expectation that involuntary treatment should generally only occur after a capacity assessment was completed, recent amendments have removed this explicit expectation, meaning that involuntary treatment can commence without a capacity assessment. This is of concern in light of the recently widened criteria for involuntary treatment (see point 4 below). We are further concerned that there is not a clear timeline for when a capacity assessment must occur once involuntary treatment has commenced, nor is there a requirement for repeated capacity assessments throughout the involuntary detention period. As capacity is dynamic and can fluctuate, timely assessment and regular review are essential to ensure that individuals' will and preferences are actively sought and respected throughout the course of their care.

Recommendations:

- Mandate that a comprehensive capacity assessment must occur within a short, clearly defined timeframe (e.g. 72 hours) from the initiation of involuntary treatment. If this cannot be done, the capacity assessment should be completed at the earliest possible opportunity and the reasons for the delay should be clearly documented.
- Introduce mandatory periodic reassessments of capacity throughout the involuntary detention period, with a requirement that all assessments be clearly documented and reviewed by the multidisciplinary team.
- Each capacity assessment should include a written record of how an individual's will and preferences were identified and respected, or why they could not be followed.
- The Mental Health Commission should establish procedures for independent audit and review of all involuntary treatment given before a capacity assessment was completed.

2 The timeframe for involuntary treatment can be doubled from 21 to 42 days[11] [12].
This increases the risk of prolonged, involuntary interventions. The doubling of the original timeframe and the fact it has been introduced at such a late stage in the Bill's progress without adequate discussion or consensus is a matter of concern. Furthermore, the additional 21-day extension for involuntary treatment appears to proceed without necessitating a new capacity assessment, only a continued determination that the

[9] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"A new Section 47 which allows for treatment to be administered to an involuntarily admitted person who has been assessed as lacking capacity, or who is undergoing capacity assessments, for a period of 21 days or 42 days following admission. A person must meet criteria for treatment set out in this section."
[10] Mental Health Bill 2024, As Passed
[11] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"Amendments to section 47 provide for treatment of involuntarily admitted people lacking capacity following their admission. Such people may be treated for a period of up to 42 days, increasing from 21 days in the Bill as initiated. An initial 21-day treatment window is provided for in the amendments, which can be extended by one further period of 21 days where it is approved by a second consultant psychiatrist."
[12] Mental Health Bill 2024, As Passed

individual meets the criteria for involuntary detention. This is particularly troubling given, as noted above, that capacity is fluid and could have changed considerably after 21 days.

Recommendations:

- We recommend that the involuntary treatment window be reduced back to 21 days.
- At a minimum, we believe there must be a statutory requirement for continued capacity assessments, particularly in cases where a person is subject to involuntary treatment for a period exceeding 21 days.

3 There is a risk of individuals undergoing prolonged involuntary treatment without timely access to decision-making supports[13]. An application to the Circuit Court to put decision-making supports in place for someone who lacks capacity, or who is waiting for a capacity assessment, can be made at any time within the involuntary treatment window (21 to 42 days), raising the risk of delays in accessing the supports necessary to protect an individual's rights and preferences. Involuntary treatment can continue while awaiting the Court's decision, even beyond the 42-day window.

Recommendations:

- To ensure people get decision-making supports in a timely way, we recommend that an application to the Circuit Court be made within a short and clearly specified time period (e.g. no more than five days from the commencement of involuntary treatment. At the very least, this application should be in place before any treatment continues past the first 21 days. Having access to an independent advocate would help ensure these supports are provided in a timely manner (see point 7 below).

4 The criteria for involuntary treatment have been significantly expanded[14]. Section 48 of the Bill, broadens the criteria for involuntary treatment to include circumstances where a psychiatrist believes treatment is immediately required and the suggested treatment would be "likely to benefit" the person's condition. We are concerned that this change could potentially grant excessive discretion to impose forced treatment based on presumed benefit – a threshold that virtually all recommended treatments could meet.

Recommendations:

- Instead of the term "likely to benefit", we recommend clearer and more precise language to ensure the legislation reflects that involuntary treatment may only be administered in urgent circumstances where the delay or absence of such treatment would pose a serious impact to the health or safety of the individual.

[13] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"A new section 48 which provides for an application to be made to the Circuit Court to seek the appointment of a decision-making representative or the making of a decision-making order where a person lacks capacity and does not have a valid substitute decision-making arrangement. The application to the Circuit Court must be made at any point within the 21 or 42 days following admission, and treatment may be administered before the application is made to the Court."

[14] Mental Health Bill 2024, As Passed

- The requirement under the Bill to record the absence of consent and details of treatment in medical records is a welcome provision. However, it is essential to introduce mandatory review mechanisms and ensure access to an independent complaints process (see point 7 below). This would allow individuals to challenge treatment decisions once they regain capacity, providing a necessary safeguard for their rights.
- The Mental Health Commission should establish procedures for independent audit and review of involuntary treatment decisions.

5 Involuntary treatment may proceed prior to a High Court Ruling, even where a person has capacity[15]. Section 51 of the Bill allows for involuntary treatment to be administered for up to 72 hours, or until the High Court hearing (whichever is sooner), once an application has been made to the Court. This can occur even where the individual:

- Has capacity
- Has a valid Advance Healthcare Directive (AHD)
- Has an appointed Decision-Making Representative

This marks a significant step backwards from earlier versions of the Bill, which prohibited involuntary treatment of a person with capacity prior to a High Court ruling. It also represents a marked deviation from the standards applied to physical health interventions.

Of particular concern is the administration of medication during this period, which may compromise the individual's ability to effectively communicate their will and preferences to the Court, thereby placing them at a clear disadvantage. Moreover, the Bill does not outline what legal or procedural supports will be provided to the individual during this critical window.

Recommendations:

- In line with existing provisions for physical health care, no person with capacity should be involuntarily treated prior to a High Court ruling.
- At a minimum, such treatment should only occur when strictly necessary to protect life.
- If a person with capacity, a valid AHD, or decision-making supports is subjected to involuntary treatment, the case should proceed to the High Court for review, even if the individual subsequently consents to treatment after the application has been made
- Introduce a rigorous review mechanism for any instance where a psychiatrist overrides a person's clearly expressed will and preferences, with a clear avenue for recourse.
- Clearly articulate all legal, procedural, and advocacy supports available to individuals in this 72-hour window.

[15] ibid

6 Risk of Coerced Consent[16]. Section 51 provides that an application to the High Court for involuntary treatment will be withdrawn if the person revokes their refusal and consents to treatment. While this provision may appear to respect personal autonomy, in practice it risks legislating for coerced consent. This raises serious ethical concerns, particularly in situations where the individual may feel pressure to agree to treatment in order to avoid Court proceedings, extended detention, or other negative consequences. In the absence of independent review, such consent may not be freely given or fully informed. Removing the requirement for judicial oversight once consent is obtained undermines the very safeguards designed to protect individual rights, especially in the context of involuntary detention and treatment.

Recommendations:

- All cases where an individual withdraws their refusal to consent after an application has been made should continue to the High Court for review, to ensure the voluntariness of the decision.
- Introduce mandatory review procedures in such cases to assess whether consent was given freely, without coercion, and with the support of legal representation and/or an independent advocate.
- Ensure the individual is fully informed of their rights and the consequences of consenting to treatment (e.g., accessible language and formats).

We also note general concerns relating to the Bill:

7 A key omission from the Bill is the continued **absence of a commitment to an independent complaints process and a statutory right to independent advocacy** for those who experience involuntary detention and treatment. These measures, long advocated for by MHR, are essential to uphold the rights and dignity of those placed in such inherently vulnerable and coercive circumstances, particularly where treatment is administered without consent. Their importance is only amplified by the Bill's recent amendments, which significantly broaden the scope and duration of involuntary interventions. In the absence of these safeguards, individuals remain at risk of being subject to prolonged, coercive interventions without an independent advocate to amplify their voice, without a pathway to meaningfully challenge decisions, and without an accessible pathway to seek redress for inappropriate care.

Recommendations:

- Introduce a statutory right to independent advocacy[17] for all individuals subject to involuntary detention from the moment of admission. This right should include the

[16] Mental Health Bill 2024, As Passed

[17] We note that the absence of a statutory right to independent advocacy for people being involuntarily detained puts Ireland significantly out of step with international best practice, including in the examples of our neighbours England, Scotland and Wales. We would also note a clause that has recently been introduced to the UK Mental

option to decline advocacy support (opt-out), as well as the ability to re-engage with advocacy services (opt-in) at any stage during their detention.
- Introduce a right of access to an independent complaints mechanism for reviewing individual complaints by persons accessing mental health services, particularly those who are involuntarily detained. This mechanism must be legally separate from service providers, with defined timeframes for investigating complaints, clear investigatory powers, and protections against retaliation.
- Require that individuals are informed of their right to both an independent advocate and to submit a complaint in accessible formats, with advocates supported to represent individuals' expressed wishes and concerns.

8 The Bill continues to allow for the admission of children to adult units. Although the decrease in the number of such admissions in recent years is recognised and certainly welcome, the absence of legislative safeguards leaves children vulnerable to this practice becoming more widespread again in the future. Notably, concluding observations from the Committee of the UN Convention on Rights of a Child state that they are seriously concerned about Ireland's practice of admitting children to adult units.

Recommendations:

- The Bill should explicitly prohibit the admission of children to adult units.
- In cases where emergency admission of a child to an adult unit is deemed unavoidable, at a minimum, the Bill should ensure there is clearly defined maximum timeframe (e.g. 72 hours) in which children may be treated in an age-inappropriate environment.

9 The term "Mental Disorder" still needs to be replaced. We continue to advocate for the term "mental disorder" in the legislation to be replaced by "mental health difficulties" in line with Sharing the Vision, the national mental health policy in Ireland or "psychosocial disability" in line with the UNCRPD. At a minimum, we contend that the term "mental disorder" should be replaced with the term "mental illness" which, while still problematic, is generally agreed to be less stigmatising than the term "mental disorder" and is in line with the recommendation of the Expert Review Group[18].

10 Chemical Restraint. The Bill provides no specific safeguards or statutory provisions governing the use of chemical restraint against persons subject to involuntary detention and treatment. Earlier drafts included a comprehensive section on chemical restraint but all references to and protections against the use of chemical restraint were subsequently removed. This omission is troubling, given that this practice is not covered under existing

Health Bill requiring that, in order to learn from those with lived experience, a person detained must be offered a consultation with an independent mental health advocate to review their experiences of hospital treatment within 30 days of their discharge.

[18] https://assets.gov.ie/static/documents/report-of-the-expert-group-review-of-the-mental-health-act-2001.pdf

regulations or Codes of Practice and is not reviewed by the Mental Health Commission. It should be noted that the Mental Health Commission had requested that a section on chemical restraint be included in the Bill.

Recommendations:

- Reintroduce a dedicated section under Chapter 4 (Restrictive Practices) of the Bill explicitly regulating the use of chemical restraint.
- Chemical restraint must be governed by the same clear rules and subjected to the same oversight as other restrictive practices already outlined in the Bill.

11 Guiding Principles Regarding Age of Consent[19]. While the age of consent has been lowered, Section 10 of the Bill provides that the views, will, and preferences of the parents or guardian of a child aged 16 years or older must be recorded and given "due weight". This guiding principle, as it applies to children, requires further clarification. In circumstances where the will and preferences of the child conflict with those of their parent or guardian, it remains unclear whose decision should ultimately prevail. Clear statutory guidance is needed to ensure that the rights and autonomy of the child are appropriately upheld in such cases.

Conclusion

The Mental Health Bill presents a unique and vital opportunity to uphold the rights and dignity of some of the most vulnerable individuals in our society – those experiencing serious mental health difficulties – and to bring Irish legislation in line with the progressive aims of the UNCRPD. There is still an opportunity to introduce key changes that would significantly strengthen the Bill. By addressing the concerns outlined above, the Bill can more fully reflect a rights-based approach to mental health, one that respects dignity, autonomy, and the voices of those with lived experience.

MHR continues to carefully review the changes in the Mental Health Bill. We reserve the right to alter our comments and observations in the light of new information and further changes to the Bill and we welcome feedback from our members.

[19] Mental Health Bill 2024, As Passed

To support public understanding of the Mental Health Bill and its implications, Mental Health Reform developed a Plain English Guide of the Mental Health Bill 2024 to make complex legal language more accessible to individuals with lived experience, families, and the wider public. We have also produced a range of other supporting materials including reports and webinars that are all accessible on our webpage Reform the Mental Health Act.

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Mental Health Bill 2024

Mental Health Reform

Longstanding Issues and Matters for Clarification

ISSUE	RECOMMENDATION & CLARIFICATIONS
Continued use of the term "mental disorder"	"Mental health difficulties" in line with Sharing the Vision or "psychosocial disability" in line with the UNCRPD
Section 10(c)(II) – the views and the will and preferences of the parents or guardian of the child (16+ years) be recorded and given due weight	This guiding principle in regard to children needs clarification. If a child's decision is different to that of their parents, whose decision must the psychiatrist follow?
No dedicated section for safeguards regarding the use of chemical restraint	Reintroduce a dedicated section under Chapter 4 (Restrictive Practices) of the Bill explicitly regulating the use of chemical restraint
Continued allowance of admission of children to adult units	The Bill should explicitly prohibit the admission of children to adult units. At a minimum, If a child must be admitted to an adult unit in an emergency, the Bill should set a clear time limit (e.g. 72 hours) within which the child must be transferred to an age-appropriate setting
Absence of an independent complaints process and a statutory right to independent advocacy	Introduce a legal right to independent advocacy for everyone using mental health services, along with access to an independent complaints process, especially for those who are involuntarily detained

Overriding Capacity and Decision-Making Safeguards

Section 51 - Application to High Court for treatment order in certain circumstances

(1) (2) (5)

- Once an application has been made to the High Court, involuntary treatment can be administered, even where the individual has Capacity, an Advanced Healthcare Directive or a relevant Decision-Making Representative
- For up to 72 hours after its initiation or until the high court hearing, whichever is sooner.
- Under 2(a) the application to the High Court will be withdrawn if a person decides to withdraw their refusal and now consent to the treatment – significant concerns about implications for coerced consent

RECOMMENDATIONS

No person with capacity should be involuntarily treated before a High Court ruling

At a minimum, treatment should only be provided if necessary for the protection of life

If a psychiatrist overrides someone's clearly expressed wishes, there must be a strong review process and a clear way for the person to challenge the decision

In cases where a person with capacity, a valid AHD or valid decision-making support has been involuntarily treated, the case should continue to the High Court for review, even if the individual has since withdrawn their refusal to consent

All legal, procedural and other supports to be offered to an individual in these cases should be clearly articulated

Involuntary Treatment

Section 48- Administration of treatment following admission

1 • **Involuntary treatment can begin before a capacity assessment has been completed.**

RECOMMENDATIONS

Capacity assessments should be completed before a person is involuntarily treated. If, in the very limited circumstances where this cannot occur before involuntary treatment is initiated, it should occur within a short, clearly defined timeframe (e.g. 72 hours).

Mandate periodic reassessment of capacity during detention, reviewed by the multidisciplinary team

Document how the person's will and preferences were identified and respected, or explain why this was not possible

The Mental Health Commission should audit all involuntary treatment provided before a capacity assessment is completed

2 • **The criteria for involuntary treatment has been significantly expanded – "likely to benefit" the person's condition.**

RECOMMENDATIONS

Replace "likely to benefit" with more precise language to limit involuntary treatment to urgent cases where delay or absence would seriously endanger the individual's health or safety.

The requirement to document the absence of consent and treatment details is welcome, but must be supported by mandatory reviews of all involuntary treatment and a clear pathway for individuals to challenge decisions once capacity is regained

The Mental Health Commission should establish procedures for independent audit and review of all involuntary treatment decisions to ensure accountability and safeguard rights

3
- **The timeframe for involuntary treatment can be doubled from 21 to 42 days**
- **An application to the Circuit Court for decision making support only needs to occur at some point in this 42 day window.**
- **Involuntary treatment can continue beyond the 42 days while awaiting the Court's decision**

RECOMMENDATIONS

Reduce the involuntary treatment window back to 21 days

At a minimum, there must be a statutory requirement for continued capacity assessments, particularly in cases where a person is subject to involuntary treatment for a period exceeding 21 days

Applications to the Circuit Court for decision making support should be made within 72 hrs of involuntary treatment being initiated.

Substantially greater safeguards must be put in place for a person being involuntarily treated for longer than 42 days (or 21 days if the allowed treatment period is reduced) who are awaiting a Circuit Court decision.