Summary of JFBA opinion paper (summarised by Mari Yamamoto)
The bill of MHA should not be proposed to the Diet again.

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Japan Federation of Bar Associations
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I The points of the opinion paper

The bill obligates the local government to make “the support plan” to only persons experienced coercive hospitalisations by article 29 and the “the committee of community support for the mentally disordered persons”, and the police discusses to make “the support plan” without the consent of the persons concerned. The police are not the agent of medical or welfare services.

It has the prejudice that persons with psychosocial disability are dangerous to commit crimes and its purpose is to monitor the persons after discharged from the hospitals and it promotes the discrimination against persons with psychosocial disability.

It violates the article 14 of the Constitution that prohibits discriminations and also it is problematic from CRPD point of view.

There are three main problems in the bill.

The first is that in the bill there is no guarantee that “the support plan” is based on the will of the persons concerned.

The second is that “the committee of community support for the mentally disordered persons” system is the ambiguous and also members are ambiguous, so the police participation might make the purpose of the system stop crimes again or prevent crimes.

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1 Coercive hospitalisation based on dangerousness.
(Involuntary Hospitalization Ordered by Prefectural Governor)
Article 29: If a prefectural governor recognizes that a person is mentally disordered and is likely to hurt himself/herself or others because of mental disorder unless hospitalized for medical care and protection based on the result of examination under Art. 27, he/she may cause said person to enter the Mental Hospital established by the national government, etc. or the Designated Hospital.
and the system might work as if it is the security measure or the social control and it might make barriers to medical treatments.

The third is that the bill might invade the right to control own private information of persons experienced coercive hospitalisation by article 29.

We ask the government not to propose the bill again in reasons mentioned above.

II The problems of the bill

II -1 It promotes discrimination against persons with psychosocial disability

II -1-(1) The process of making the bill and the discussion during the Diet (omitted by Yamamoto)

II -1-(2) Discrimination against the person experienced coercive hospitalisation by Art.29

The discussion of the bill started in the House of Councilors at first and the government explained that the police participated to “the committee of community support for the mentally disordered persons”.

But there was no promise that the police destroy the information of the persons experienced the coercive hospitalisation by article 29 after the plan was completed, while the government did not explain the evidence why only the person experienced coercive hospitalisation by Art.29 should be the target of “the support plan” in the bill.

After the cancelation of coercive hospitalisation by Art.29, about 70 % of the persons continue to be hospitalized, so there is no rational reason to make only the person experienced coercive hospitalisation by Art.29 should be the target of the “support plan”.2

2 After the cancelation of the coercive hospitalisation by Art.29 49.9% persons continue the coercive hospitalisation by Art.33: the coercive hospitalisation based on incompetency, 20% of them continue voluntary hospitalisation, 19.2 % of them become the outpatients and 10.9 % of them change the hospitals etc. by the government research.(The answer of the government on 25 Apr. 2017 in the Diet discussion)
II -2 In the articles of the bill the plan is not based on the will of the persons concerned.

II -2-(1) How the bill positions the persons concerned
The persons concerned are only described that the plan should give to them in the articles of the bill, and there is no guarantee in the bill that the persons concerned can express the will, and can check the plan before it is decided and also there is no procedure in the bill that the persons concerned can complain and challenge the plan or change the plan by themselves. And also there is no language in the bill that the person concerned is the member of the committee which makes the “support plan”.3

II -2-(2) What it means that the will of persons concerned is denied and is not guaranteed to be respected.
In general, medical and welfare services are based on the will of the person concerned and the service plan does not send to the third parties without the consent of the person concerned. But in the bill making “the support plan” is the obligation of the local government (Art.47-2-1 of the bill) without consent of the person concerned and furthermore when the person concerned moves, the local government should send “the support plan” to the local government where he/she moves to without his/her consent.(Art.47-6 of the bill).

It violates CRPD principle—nothing about us without us (especially CRPD Art.5, Art.19 and Art.25).

And also it might violate Art.14 of the Constitution because the bill treats persons with psychosocial disability and persons experienced coercive hospitalisation by Art.29 of MHA differently from other persons with disability without rational reasons.

II -2-(3) “The support plan” in the bill violates CRPD and the Constitution and should not be accepted.

3 The director of the division of MHWL, Mr. Horie explained that the plan should not be coercive but the Minister of HWL, Mr.Shiozaki explained that it was necessary that the plan should be changed by will and preference of persons concerned as needed, but even after these measures, the person concerned did not accept the plan, as you asked, staffs of community health centres would provide consultation with persons concerned or family members of them, or might write down the plan to visit and monitor patients as needed.(the explanation on 25 Apr. 2017 in the Diet)
II · 3 The problems of “the committee of community support for the mentally disordered persons”

II · 3- (1) The system of “the committee of community support for the mentally disordered persons” is ambiguous.

The bill describes “the committee of community support for the mentally disordered persons” as only one organisation but it has two agendas to discuss. One is the policy of whole mental health system in the community and another is the individual support case managements. And also the members of the committee will access to information about two agendas (Art.51-11-2 of the bill). Though the members have the confidentiality obligation, the members can share information of the agendas between members.

But in the discussion of the Diet there was different explanation. The government explained that “the committee of community support for the mentally disordered persons” had two different committees that were “the representatives’ conference” and “individual case management team” and “the representatives’ conference” did not handle individual cases. And the police participate in “the representatives’ conference” and in some cases it also participate in “the individual case management team” by the government explanation.

“The committee of community support for the mentally disordered persons” system is different between the languages of the bill and the explanation of the government at the Diet discussion, so the system of “the committee of community support for the mentally disordered persons” is ambiguous.

II · 3- (2) The extent of the confidentiality obligation is ambiguous.

II · 3- (2)-1 As mentioned above, the system of “the committee of community support for the mentally disordered persons” by the languages in the bill describe that there is one organisation and as one organisation “the committee of community support for the

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4 In Art.51-11-2-2. in Art.51-3 of the bill, the members of the individual case management team will be elected from the members of “the committee of community support for the mentally disordered persons”.

5 In Art.51-11-2-6 and 7 “the committee of community support for the mentally disordered persons” shares the information and discusses the agenda.

6 On 11 Apr.2017 the director of the MHWL division Mr. Horie answered that the police participated in “the individual case management team”, when the patients became suicidal or there was the necessity to rescue frequently, and the police support was necessary to protect and sustain the community living of the patients.
mentally disordered persons” is the extent of the confidentiality obligation. But the government explained in the Diet that “the committee of community support for the mentally disordered persons” had two organisations and they did not share information between them. The languages of the bill and the government explanation in the Diet are contradictory accounts of the system of “the committee of community support for the mentally disordered persons”, so the extent of the confidentiality obligation is ambiguous.

The government explained that the members of “the representatives’ conference” did not handle the personal information.\(^7\) \(^8\) But in Art.51-11-2-6 and 7 of the bill there are languages that information is shared between members of “the committee of community support for the mentally disordered persons”, furthermore in Art.51-11-8 there are languages that could be implemented as it is not violation of Art.51-11-8 that the members of “the representatives’ conference” access the personal information of agendas in “the individual case management team”, so we cannot deny that the members of “the representatives’ conference” can access the personal information shared between the members of “the individual case management team”.

The police participates to the “the individual case management team” when it is asked to participate in it to protect the patients.\(^9\)

But if the police would make the perfect protection, it would work as the police organisation and share information between policemen in the organisation.

So if sharing information between members of the organisation that the members of “the individual case management team” belong to, and it is allowed in the bill, there are many members of many organisations share information and the extent of sharing information becomes very wide.

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\(^7\) On 25 Apr. 2017 the Vice Minister of MHWL Mr. Hashimmoto explained that only information unidentified the individual would be sent from “the individual case management team” to “the representatives’ conference”.

\(^8\) On 11 Apr. 2017 the Minister Shiozaki explained that the support system introduced by the bill was never the monitoring system and “the representatives' conference” discussed only the general system to support persons with psychosocial disability and did not handle the personal information and we would present it in the guideline (after the bill would pass the Diet), for instance.

\(^9\) On 25 Apr. 2017 Mr. Otake with National Police Agency explained that the police participation resulted in better information sharing with relevant parties and better practice of coercive hospitalisation by Art.29.
II-3-(2)-2 The system of “the committee of community support for the mentally disordered persons” is ambiguous, so the extent of confidentiality obligation is also ambiguous.

The very sensitive personal information including patients’ criminal record or coercive hospitalisation record etc. might be shared even when it is not necessary and we are afraid that the confidentiality obligation might vanish away.

And the police participation in “the committee of community support for the mentally disordered persons” might make “the support plan” the security measure.

If two organisations are necessary, the bill should have clear languages that clarify the role and members of two organisations and also the extent of confidentiality obligation of them.

II-3-(3) The police participation with uncertain roles brings patients distrust and results in adverse effect to mental health system.

II-3-(3)-1 The role of the police in “the representatives’ conference”

In the discussion of the Diet we recognized the police participation in “the committee of community support for the mentally disordered persons” by the government explanation but the role of the police is uncertain and there are some people who admit the police participation same as the police participation to the conference of relevant people in the case of persons with disability abused.

But in the explanation of the bill the government provided the examples that “the representatives’ conference” discussed.

Those are how to deal with two cases. One is “persons who were making the criminal plan based on firm belief” and another is “the case using the illegal drugs”. And it suggests that persons with psychosocial disability are on the side of perpetuator of crimes and it is much different from the case of abused victims.

And Minister Shiozaki explained that the mission of the police was the prevention of crimes. And if the role division between the police and medical professionals is

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10 On 11 Apr. 2017 Minister Shiosaki explained that the mission of psychiatry was
necessary, only one time discussion is all that is needed.

As the notification system by the police operates differently by each prefecture, the standard of the police notification system should be established throughout the nation and it should not depend on each prefecture’s own standard.\(^{11}\)

There is no promise in the bill that the personal information should be destroyed, when persons concerned refuse the police participation, and we are afraid that “face to face” intimate relationships might result in informal sharing of personal information between the police and medical professionals.\(^ {12}\)

Therefore the bill suggests that the regular session between the police and the medical professionals and the languages in the bill and also explanation by the government cannot address the concern for leaking the patients’ information from the medical professionals to the police and personal information might for monitoring the patients.

The new system might plant the seed of distrust between patients and medical and welfare professionals, if the bill is introduced without patients

**II -3-(3)-2 The role of the police in “the individual case management team”**

The police participation in the “individual case management team” is for the protection of the patients\(^ {13}\)\(^ {14}\) but there is no support system for the patients in the community by treatments or to promote health and to prevent crimes was the mission of the police. But there were some difficult cases at psychiatric examination in MHA to decide if the case depended on mental disorder or not, so at “the representatives’ conference” the police and medical professionals discussed for the clear role division between the police whose mission was to prevent crimes and medical professionals whose mission was treatments and to promote health. Then medical professionals could concentrate to treatments for patients.

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\(^{11}\) Article 23 of MHA (Notification by Police)

Article 23: When the police, in executing their duties, finds a person who is deemed likely to hurt himself/herself or others because of mental disorder judging from abnormal behavior and other circumstances, the police shall immediately notify the same to the prefectural governor via the director of nearby Health Center.

\(^ {12}\) On 11 Apr. 2017 Vice Minister of MHWL Hashimoto explained that “the representatives’ conference” is the system for day to day and face to face communication.

\(^ {13}\) The director of MHWL Mr.Horie explained that if the persons concerned refused the police participation, the police did not participate on 16 May 2017. But there is no language in the bill the right of refusal.

\(^ {14}\) On 25 Apr. Mr.Otabe with National Police Agency explained that gray zone cases
the police. There is no reason to justify the police participation in “the individual case management team”.

**II·3-(3)-3 The effect of the police participation without the uncertain role.**

As described above, there is no rational reason for the police participation and the bill does not address the concern that the police participation results in the monitoring and prevention of crimes. Especially for illegal drug users, it makes them prevent from getting supports or medical treatments, because the using illegal drugs itself is the crime. And also there is no clear standard of the extent of confidential obligation as mentioned above, the police participation itself makes distrust of persons concerned for mental health professionals and might make their symptoms worse.

**II·3-(4) What the purpose of “representatives’ conference” is**

II·3-(4)-1 “Cases of gray zones”

By the government explanations in the “representatives’ conference” the members discuss “the agenda of the adequate system for the coercive hospitalisation by article 29” and it is how to handle the “cases of gray zones” and as the “cases of gray zones” the government explained as two cases. One is the persons who was making the criminal plans by the firm belief and another is the case that the hospitals found the illegal drug users after the coercive hospitalisation.

The minister Shiozaki explained “the gray zone cases are the cases that psychiatrists wonder if the dangerousness is from persons’ mental disorder or not on the psychiatric

would be discussed in another meeting separately from the “representatives’ conference”. And he also explained that the conference after the Sagamihara attack in the MHWL, there were two agendas. One was that there were cases brought difficult questions which police or medical agency should handle and the regular meeting between the police and medical agency was necessary to discuss these cases by sharing information and recognition between the police and medical agency. Another was the disparity rate of coercive hospitalisation by Art.29 after the police notification by Art.23 between prefectures. To resolve these two problems “the committee of community support for the mentally disordered persons” was established in the bill and in the “representatives’ conference” relevant parties would discuss how relevant parties share the information and would discuss to make the adequate operation of coercive hospitalisation by Art.29 and the police participation would make it realise.

His explanation clearly declared that sharing information is one of the purposes of the bill.

On 13 Apr. 2017 Mr.Otabe with National Police Agency answered for the question that there was no system by the police to support patients in the community and could not answer to the question if there was any problem as the police did not participate in the support system or not.
exam for coercive hospitalisation by Art.29” on 11 Apr. 2017.

But if his explanation is true, there are cases that dangerousness is not from mental disorder but results in coercive hospitalisation. MHA never allows such cases and discussion about in the “representatives’ conference” of Mr. Shiosaki’s explanation itself contradicts MHA.

**How to handle “the persons who was making the criminal plans by the firm belief”**

Mr. Hashimoto –Vice Minister of MHWL explained “when there is the person who is not dangerous by mental disorder and the coercive hospitalisation should be cancelled but the person is dangerous to commit the crime after the discharge from the hospital, the hospital would consult with the police” on 16 May 2017 and such cases will be the agenda in the “representatives’ conference” by the bill.

But it means that “the support plan” becomes the measure of preventing the crimes and the purpose of the plan changes from support persons concerned to the security measure and the public control. And it promotes the prejudice and discrimination against persons with psychosocial disability.

Preventing crimes is the agenda of the criminal policy and it should not depend on the discussion in the prefectures’ “representatives’ conference” or prefectures’ policy but it should be national level policy.

Also how to handle the illegal drug users should not depend on prefectures’ policy but it should be by the national uniform the standard.

These so called Gray Zone Cases are not the matter of coercive hospitalisations or community supports and the “representatives’ conference” should not handle these matters.

(omissions by Yamamoto)

**II -4 The bill might violate the right of control own personal information.**

**II -4-(1) How the personal information is handled in the bill.**

Even if persons concerned refuse making the plan or the plan, the local governments have the obligation to make the plan, though the government explained that the plan was not made without the consent of persons concerned in the Diet discussion.
The persons concerned cannot select the members of the conference which makes the plan. For instance it is possible that the police participate in the conference even when the person concerned refuses it. Then persons whom the person concerned refuses can access the personal information.

There is no time limitation of the “support plan”. The “support plan” can exist indefinitely and there is the possibility that the plan indefinitely is sent to other prefectures where the person concerned moves to.

Furthermore when the plan is completed, there is no language to guarantee to banish the personal information in the bill.\(^{16}\)

The items of the personal information about the person concerned experienced coercive hospitalisation by Art.29 is the very sensitive information and it needs careful method to handle them. But as mentioned above there is no justification to get these sensitive information and handle it by “the committee of community support for the mentally disordered persons” and there is no justification to restrict on the right to control own personal information.

And also the restriction is not least restriction to get, to use and to keep them, so it is the violation of the right to control own personal information.

(Omissions by Yamamoto)

\(^{16}\) On 25 Apr. 2017 the director of MHWL Mr. Horie explained “The local governments make the support plan and it is kept by them after the plan is completed. How long they keep them depends on the local government policy.