



Memorandum in Support

NYSBA #21

June 7, 2023

S.2992
A.5588

By: Senator Harckham
By: M of A Barrett

Senate Committee: Judiciary
Assembly Committee: Third Reading

Effective Date: Resolved that the foregoing amendment be referred to the first regular legislative session convening after the next succeeding general election of members of the assembly, and, in conformity with section 1 of article 19 of the Constitution, be published for 3 months previous to the time of such election.

CONCURRENT RESOLUTION OF THE SENATE AND ASSEMBLY proposing amendments to sections 3 and 4 of article 17 of the constitution, in relation to the protection and promotion of the mental health of New Yorkers

LAW AND SECTIONS REFERRED TO: Article 17, §3 & §4 of the Constitution

NEW YORK STATE BAR ASSOCIATION **SUPPORTS THIS LEGISLATION**

While the New York State Constitution in Article 17, §3 makes physical health a matter of public concern that must be provided for by the state and its subdivisions, no such constitutional protection is provided for mental health treatment. Instead the Constitution in Article 17, §4 provides only that mental health treatment and services “may be provided by state and local authorities.” The State has a mandatory obligation to provide for physical health, while it is merely permitted to provide for mental health.

The issue is whether mental health treatment in the State Constitution should be treated in the same manner as physical health. Should the State be mandated to provide for the mental health treatment of its residents? Is there any reason for the conceptual difference between medical and physical health? Why is physical health treatment a positive right while mental health treatment is not?

This amendment corrects this disparity and makes it explicit that the State has a mandatory obligation to provide mental health treatment. The reason for the amendment is a simple one. In the eighty-five years since the passage of the State Constitutional social welfare article in 1938, the American public and governments have determined that mental health is as vital as physical health. We have a mental health parity law in the federal government in the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. Similarly, there is a mental health parity law [Timothy's Law, 748, L. 2006] in New York State which provides "comparable coverage for adults and children with biologically based mental illness or serious emotional disturbance disorders affecting children under the same terms and conditions as provided for medical treatment for physical illnesses."

Establishing mental health treatment in the State Constitution as a matter of public concern would serve as a declaration of basic rights and a clear policy directive that mental health is especially valued in the State of New York. But elevating the importance of mental health treatment in the Constitution is not simply a symbolic act.

Making mental health treatment a matter of public concern and requiring that the state provide for mental health will provide a positive constitutional right for mental health consumers. It will provide a guaranteed bedrock of rights – arguably a mandatory obligation³⁴ – to support individual and families in need of mental health treatment and should provide substantial social benefits for the State of New York.

For the above reasons, the New York State Bar Association **SUPPORTS** this constitutional amendment.