**Sample Advisement Script**

**Introduction (provide business card)**

1. My name is Sol Kim, I’m a Patients’ Rights Advocate.
2. I don’t work for the jail/hospital, I work for The Law Foundation of Silicon Valley.
3. I’m calling to talk to you about your rights while you’re here at 8a which is the acute psychiatric unit of the jail (including your right to try to leave this unit)
4. Everything we talk about today is confidential, which means I won’t share your information with anybody unless you give me permission.

**Explain the 14 involuntary mental health hold (refer to paperwork as you go through advisement):**

1. The doctors informed me that they placed you on a 14 day hold. You should have received a copy of it, did you? (y/n) Part of my job is to explain the hold and talk about your options.
2. This is a 14-day involuntary mental health hold. What that means is the hospital can keep you here, even if you don’t want to be here.

1. Your hold started on \_\_\_\_\_\_\_\_\_. That means that you have been on this hold for \_\_\_ days. It could last up until \_\_\_\_\_\_\_. The doctor could keep you here up to \_\_\_\_ more days. But, if he decides you are ready to go before that time, they can always discharge you.

1. The doctor has to tell you the reasons why they put you on this hold. The doctor wrote that they believe you have a mental health issue that is making you

* A Danger to yourself, [and]
* A Danger to others, [and]
* Gravely disabled. This means the doctor thinks you can’t survive safely in general population

1. The doctor wrote some specific reasons why s/he thinks this, and I’m going to read them to you. She wrote “[read statement verbatim].”

**Explanation of Rights**

1. You have rights while you are on this 14-day hold. [My job is to help protect your rights while you are on this hold.]
2. Later today, there’s going to a hearing officer from Superior Court who can review your hold.
3. You can agree to stay on the unit, and waive your right to a legal hearing, or you can request to have a hearing where you ask to leave before the doctor is ready (or leave “against medical advice”) and go back to your old unit.
4. Can you tell me if you want to stay or go?
5. OPTIONAL: If the hearing officer agrees with the hospital, the hold will remain in place, and you will have to stay on 8a. If the hearing officer disagrees with the doctor, she will drop the hold and you can leave this unit.
6. OPTIONAL: If you don’t want to make the request to leave, I can still help you with any concerns you have about the hold or your treatment here.

**Begin making a choice with the client.**

1. We need to figure out what you want to do about the hold. Do you want to request to leave right away at the hearing this afternoon? Or, do you want to stay on 8a for now?

1. [If the client indicates they want to leave right away before the doctor recommends, prepare for hearing.]

1. If client indicates that want to stay for now, assess further for
   1. Postponement
   2. “Chart Review”
   3. Waiver
   4. Voluntary status (through hearing or negotiation)

**RIESE HEARINGS – SAMPLE QUESTIONS FOR CLIENT**

Do you know your current diagnosis?

Do you know what the diagnosis means?

Do you know the symptoms of this diagnosis?

Have you participated in any outpatient treatment?

Do you feel you are having any emotional problems at this time?

Do you understand why people might think your actions would be perceived as unusual?

Do you know the psychiatric medications that you have been prescribed?

Have you ever taken these meds. In the past?

What was your experience with these medications?

Why did you refuse to take the medication?

How did you make this decision?

Do you have concerns about side effects which affected your decision?

Do your beliefs/religion have an effect on your decision?

Does your medical condition affect your decision?

Do your circumstances have an effect on your decision? How?

Are you willing to take other medication?

Are you willing to take medication for physical conditions?

Do you think that psychiatric medications help some people?

Are you willing to accept alternative treatments to medication?

**Riese v. St. Mary's Hospital & Medical Center**

“The court is not to decide such medical questions as whether the proposed therapy is definitely needed or is the least drastic alternative available, but may consider such issues only as pertinent to assessment of the patient's ability to consent to the treatment.” [9]

[10] “Judicial determination of the specific competency to consent to drug treatment should focus primarily upon three factors:

(a) whether the **patient is aware of his or her situation** (e.g., if the court is satisfied of the existence of psychosis, does the individual acknowledge that condition);

(b) whether the patient is able to **understand the benefits and the risks** of, as well as **the alternatives** to, the proposed intervention (e.g., "an acutely **[209 Cal. App. 3d 1323]** psychotic patient should understand that psychotropic medication carries the risk of dystonic reactions [i.e., abnormal control and coordination of movement] ... that the benefit is the probable resolution of the psychotic episode; and that alternatives include psychotherapy and milieu therapy, and possibly ECT, but that at least the two former alternatives carry a lower short-term success rate than does medication." (Gutheil & Appelbaum, Clinical Handbook of Psychiatry and the Law, supra, at p. 219)); and

(c) whether the patient is able to understand and to knowingly and intelligently evaluate the information required to be given to patients whose informed consent is sought (§ 5326.2) and otherwise participate in the treatment decision by means of rational thought processes.

With respect to this last consideration, it has with reason been urged that "the appropriate test is a negative one: in the absence of a clear link between an individual's delusional or hallucinatory perceptions and his ultimate decision," it should be assumed "that he is utilizing rational modes of thought." (Id., at p. 220.)