WASHINGTON DEFENDER ASSOCIATION

WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

March 7, 2018

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: Veto Request SB 6124: Clarifying that court hearings under the involuntary commitment act may be conducted by video

Dear Governor Inslee,

We are writing on behalf of the Washington Defender Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL) to request you veto SB 6124: Clarifying that court hearings under the involuntary commitment act may be conducted by video. WDA and WACDL oppose this legislation that would require Involuntary Treatment Act (ITA) patients to participate in video rather than in-person civil commitment hearings. We would support making video hearings an option for our clients who might prefer it rather than imposing it as a requirement, but those amendments were not adopted by the legislature.

SB 6124 is unnecessary, denies vulnerable mentally ill litigants important fundamental rights, can negatively affect the litigant's mental health as well as ties to family and community connections, creates the appearance of bias, and is subject to technical difficulties. The rights of all Washington residents deserve to be protected regardless of a person's mental state; if anything, those individuals deserve heightened not lessened protections. These changes should not be imposed merely due to the convenience of the court or county. Specifically:

- ***There is no other proceeding when someone's freedom is at stake in which they are barred from physically being in the courtroom with the judge who is making the decision about their liberty*.** This bill treats the mentally ill different from other litigants. It bars a person facing involuntary commitment to a locked psychiatric ward the right to physically be in the courtroom with the judge deciding their fate. Currently civil commitment respondents have the option of having their 90/180-day hearings by video. Video participation should reflect the client's wishes, it should not be imposed due to convenience for the court or county. It is unfair and discriminates against mentally ill litigants.

- ***Legal Issues.*** Language in this bill is similar to a local King County court rule that was overturned in *In the Matter of the Detention of J.N.*, No. 75319-3-1 WL 3699668 (Wash. Ct. App. Aug. 28, 2017). That case is now before the Washington State Supreme Court. Once the mandatory video rule was overturned, the number of clients requesting in-person hearings was small and had little impact on the system.

- ***It isolates patients from their families and friends who may wish to support them during the proceedings.*** Friends and families cannot be in the hospital with the client

during video proceedings. If they want to support their loved one, they must be in the courtroom with the prosecutor. This especially may be challenging when the client is suffering from paranoid delusions as it may reinforce the perception that everyone in the system is working together against the patient. Even without those considerations, the separation of the patient from the court creates the appearance of a biased and uncaring justice system.

- ***Video hearings can negatively impact the metal health of certain clients who may be suffering from delusions*.** Some clients believe the television is talking to them. Hospital staff will tell such a client that is not possible, but then the next minute they are taken to a video courtroom where the TV is actually talking directly to them.

- ***Appearance of lack of impartiality.*** This bill does not address how video proceedings are to be conducted. It is important that the judge be separate from the prosecutor and witnesses during such proceedings when the defense counsel and person facing commitment are in a separate facility. Without this separation, it reinforces the perception that the system is biased, uncaring and working against the patient.

- ***Technical difficulties.*** Video is not as ideal as painted even when the patient agrees to a video hearing. During the legal arguments in the *J.N.* case at Harborview, which lasted about an hour, the proceeding was interrupted four times due to technical issues – either the court or client could not hear the proceedings. Technical problems were so bad the court had to recess and reconvene the parties on two separate occasions. Despite best efforts, technical issues will always arise.

Once again we respectfully urge you to veto this unnecessary bill. Thank you for your consideration and please feel free to contact us if you have any questions.

Sincerely,

Christie Hedman
Executive Director, WDA

Teresa Mathis
Executive Director, WACDL