January 21, 2020

Washington State Senate

Washington State Legislature

Olympia, Washington

RE: SB 5720, **"Concerning the Involuntary** Treatment Act" (**5720-S2.E AMS S5361.2)**

Dear Senators,

We are writing to you to express our opposition of SB 5720, which significantly expands the scope of the Involuntary Treatment Act. This legislation is currently on the Senate calendar on Third Reading. We urge you to consider the following major negative consequences, including the impact this bill will likely bring to the behavioral healthcare system, peers and their families.

Excessive and unconstitutional initial detention period. The bill would greatly expand the time a person can be detained before a hearing is held. Currently, the Involuntary Treatment Act allows 3 days – 72 hours. This bill allows 5 days – 120 hours, which ends up being over a week in any case because courts don't convene on weekends and holidays. This excessive detention violates Article 1, Section 10 of the Washington State Constitution. *See In re D.A.H*., 84 Wn.App.102, 924 P.2d 49 (1996) and *In re Young*, 122 Wn.2d 1, 857 P.2d 989 (1993). The State Constitution and these cases make it clear that a hearing should be held without unnecessary delay. SB 5720 will spawn expensive, disruptive litigation.

In addition, the impact of long detention on the individual should be considered. Being detained and likely medicated against one's will involves a very significant, and for many traumatic loss of personal liberty. A week away from work will likely result in a lost job for the affected individual. Loss of pay can result in homelessness. Additionally, detention of this length may cause further trauma experienced by the peer and their families. There are human costs to consider with extended detention.

Expensive. By more than doubling the number of days an individual will be held involuntarily in a hospital before going to court, the bill will greatly increase hospitalization expenses. The expanded definition of "gravely disabled" will result in more hospitalizations. This bill should go no further without a realistic accounting of the costs that will be incurred.

New definitions are unconstitutionally vague and broad. The suggested definition of grave disability is vague and does not provide improved guidance to courts. For

example, the definition of severe deterioration from safe behavior is: “The person will, if not treated, suffer or continue to suffer severe abnormal, emotional, or physical distress, and this distress is associated with significant impairment of judgement, reason, or behavior.” Who will be swept up in the application of this vague, subjective standard?

The bill also expands the definition of “Violent Act” to include acts that create “injury”. It is likely to be challenged as unconstitutionally vague. Under current law, a “violent act” includes homicide and attempted suicide. By contrast, under the broad definition which includes any acts that cause injury, would a brother accidently scratching his brother while trying to get the TV remote because he won’t change the channel a “violent act?”

Community forced medication undermines less restrictive conditions. The bill allows involuntary medication for patients in the community. This raises many concerns, including safety, inconsistency with voluntary nature of community services, more trials by individuals challenging restriction. This is likely to promote court challenge based on violation of substantive and procedural due process requirements.

Overwhelms Hospital Capacity, Fueling Increased “Single Bed Certification”. The bill is designed with the intent to make it easier to commit individuals to hospitalization, and that will increase the demand for beds. However, even under the current law there is often no psychiatric hospital bed available. As a result, the state frequently certifies emergency room or other non-psychiatric hospitalization beds because they have no other place to hold the person. The result is the patient is placed in whatever bed is found, and the state declares the placement a “single bed certification”. This might even be just an emergency room! For patients, it means that they are not provided appropriate mental health treatment, are held in potentially trauma-inducing settings and are not afforded privacy and dignity. See the July 2019 report on single bed certifications: https://www.hca.wa.gov/assets/program/sbc-quarterly-report-67-22-19.pdf

Single bed certifications are on the rise (over 20 % in the past five years). In June 2019, 190 people were detained via single bed certification in hospital emergency rooms and medical wards for longer term commitments, often well beyond the initial 72 hour DCR commitment. This clinically inappropriate, expensive, wasteful, practice will only increase with the demands resulting from SB 5720.

A Workgroup is an *excellent* Idea. The bill creates a workgroup, which is necessary given the number of questions and challenges raised by its provisions. However, a workgroup should be convened *first*, before legislative action on the substantive changes brought by this bill. A workgroup would gather stakeholders and build consensus recommendations for improving our mental health system and our involuntary treatment system. Washington needs a forum for that discussion in order to bring changes that result in improved outcomes, reasonable costs, and attention to individual rights. There is currently no such forum in the behavioral healthcare system.

Please do not take action on SB 5720. Instead, we respectfully request that the Senate move forward with a workgroup of stakeholders to develop recommendations to improve our behavioral health and involuntary treatment systems.

Sincerely,

Disability Rights Washington

American Civil Liberties Union

Washington Defender Association

Washington Association of Criminal Defense Lawyers

Washington ADAPT

Disability Community Hub

Laura Van Tosh
Seattle, WA.

Zelda Menard
Kirkland, WA.

Lisa Lovejoy
Seattle, WA.

Rebecca Faust
Tumwater, WA.

Beverly Miller
Burton, WA.

Janine Bertram
Burien, WA.

Contact: *David Lord*, Disability Rights Washington davidl@dr-wa.org