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WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

SB 5073: Involuntary Treatment Act

WDA and WACDL have concerns about many of the proposals in SB 5073 and believe that these issues should be addressed by the Involuntary Treatment Act (ITA) workgroup that was enacted by ESSB 5720.

WDA and WACDL appreciate the proposed directive that the Designated Crisis Responder (DCR) attempt to ascertain if the patient has an Advanced Mental Health Directive (AMHD).

Unfortunately, the bill contains no directives about following the AMHD, what would occur if the patient's wishes are no longer consistent with the AMHD, whether the DCR must address the existence of the AMHD in the petition for involuntary commitment and provide recommendations about following or not following the AMHD, and other issues. It is a proposal without substance.

Patients should not be transferred to a different kind of treatment facility without a new petition to support that change. The patient has a right to notice and providing for such a transfer without a supporting petition violates the patient's rights

We oppose changing the use of the term Least Restrictive Alternative (LRA) to Court-Ordered Involuntary Outpatient Behavioral Health Treatment (COIOBHT). Many patients, courts and practitioners are familiar with the term LRA and recognize the concept. An amendment to change the term to Court-Ordered Involuntary Behavioral Health Treatment is unnecessary and confusing. If there is a desire to incorporate this term, the legislature could amend the statute as follows: "Least restrictive alternative to inpatient treatment that is court-ordered involuntary outpatient behavioral health treatment." Such an amendment will maintain the ability to use the term LRA and will provide consistency for the vulnerable adults with behavioral health disorders.

Treatment must be related to the basis for commitment. This bill proposes to mandate outpatient treatment for disorders that may not be the basis or even related to the current commitment. Certainly a person can engage in voluntary treatment but to mandate treatment for unproven disorders is a violation of the respondent's due process rights.

The allowance of "periodic court review" should be addressed by the ITA work group. There may be times when periodic court review is appropriate, such as when a person cannot be released on an LRA due to the inability to find a person willing to manage the LRA. The proposal may be overly burdensome to individuals treated under the ITA. People give up rights and knowingly enter Therapeutic Courts. They are not forced into them by courts in order to gain release from an involuntary commitment. Without some clear guidelines, this portion of proposed amendment should not occur.

The proposal to allow amendment to an order of release with only input from treatment provider violates the respondent's rights to due process. It is extremely concerning that the legislature is

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considering a bill that does not mandate notice to the respondent of proposed changes or mandate that the court consider the respondent's position.

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