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April 26, 2017

Honorable Mark Stone
Chair, Judiciary Committee
California State Assembly
Capitol Building, Room 3146
Sacramento, CA 95814

RE: AB 720 (EGGMAN) – OPPOSE

Dear Assembly Member Stone:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, opposes AB 720. This bill is scheduled for hearing in the Assembly Judiciary Committee on May 2, 2017.

Current law allows for the involuntary medication of sentenced inmates in county jails as long as they are provided due process protections distinct from the protections that apply to the general population. This bill expands who a county jail can involuntarily medicate to include a very different group: individuals detained in a county jail who face criminal charges but have not been convicted and sentenced; and individuals awaiting arraignment, transfer, or release.

DRC opposes this bill for several reasons. First, jails should not be facilities where people with mental health disabilities are treated. People should be moved to an appropriate treatment facility for care, if their needs are that intensive. Second, because of the undetermined, and often short, time periods that this newly affected group is in custody, an expansion of a county jail's authority may mean the person will not be afforded due process. We suggest shortening the length of time for an involuntary

medication order. Third, the uncertainty of continued access to medication raises continuity of care concerns. Fourth, it may impact a person's ability to participate in the defense of their active criminal case. We appreciate the author's amendments to help lessen this impact. Fifth, the bill affects poor people disproportionality. And finally, the bill would treat differently situated individuals in very dissimilar positions the same, when different procedures are appropriate. Amendments should be taken to narrow who the bill applies to.

Jails Should Not Be Mental Health Treatment Facilities

Resources should be put into increasing diversion and community mental health programs rather than using jails as mental health treatment programs. Allowing jails to become treatment facilities criminalizes people who have mental health disabilities and treats them in nontherapeutic environments. We encourage the legislature to ensure it is California's public policy to treat people in the least restrictive environment and ensure our laws are not biased towards criminalizing mental health disabilities. People placed in jail who need mental health treatment should be transferred to a licensed facility to receive treatment rather than be housed in jail.

Shorter Orders Required

The original law, upon which Penal Code section 2603 is based, sought to codify patients' rights protections outlined in the *Keyhea v. Rushen* decision, which applied to sentenced individuals serving a set amount of time in state prisons. These individuals had known release dates and many were housed in designated mental health units to provide comprehensive psychiatric care. In 2012, the law was expanded to include the growing number of sentenced individuals who serve their time in county jails as a result of legislative changes (see AB 1907 (Lowenthal)).

Unlike the individuals currently covered by Penal Code section 2603, individuals in this new group are not incarcerated for a set period of time. The proposed bill would take away this group's right to a timely hearing to determine if involuntary medication is in fact warranted and if warranted allows the order to last for one year. Given detainees are not likely to be held for a year, this is too long a period of time for the order. Further, the pretrial attorney should be immediately notified if an involuntary medication order is sought. Thus, the bill compromises due process and other rights,

and suggests that the administrative convenience of a county trumps the rights of individuals who have not been convicted of a crime.

Continuity of Care Concerns

If pretrial defendants are released quickly, as many are, they may have continuity of care issues that may lead to life threatening medical situations. Insufficient monitoring of side effects and other dangers is inherent in unmonitored and involuntarily imposed medication. Given the difficulty in providing continuing services to this population after release, it is impossible to ensure the continuity of medication needed, a problem that does not occur under current law.

Ability to Participate in Trial

Medicating people in the midst of their trial may negatively impact their ability to participate in their case. It can take a while to identify the proper medication and become stabilized on it. Forcing an individual to go through this process pretrial threatens the person's constitutional right to participate in their case. A person may be drowsy, have side effects or even be aggressive because of the type of medication given resulting in challenges when working with their attorney or participating in court proceedings, at a time when their involvement is crucial. It is the role of the legislature to consider these interests in determining whether the proposed policy change is appropriately tailored.

We appreciate the amendments taken by the author to address our concerns in this area. The amendments allow for a review of the medication order if the medication is impacting the person's ability to participate in their trial.

Disproportionate Impact on Low Income Defendants

The change would also disproportionately affect low-income defendants. Criminal defendants who are poor and unable to afford or secure bail are more likely to be detained in a county jail while awaiting trial and resolution of criminal charges. There would be a deep and fundamental unfairness if this bill passes: allowing a criminal defendant with the financial ability to secure release while awaiting trial to maintain the customary statutory protections against involuntary medication enshrined in state law, while criminal defendants too poor to afford bail face the watered down legal

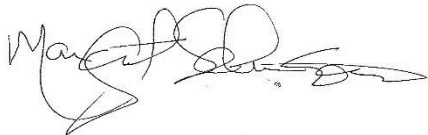
protections currently reserved only for individuals who have been convicted of a crime and sentenced.

Applies to People in Very Different Situations, Including ICE Detainees

Lastly, under this bill, the same involuntary medication procedures would be given to people in very different situations, including civil detainees. For example, many Immigration and Customs Enforcement (ICE) detainees are currently housed in county jails. Their ability to participate in pending deportation proceedings, where the stakes are often extraordinarily high, may be compromised by the imposition of involuntary medication without adequate due process protections. Further, they may be deported while on medication, which would likely be abruptly stopped, causing continuity of care concerns raised above. This bill should not apply to civil detainees, including ICE detainees.

For these reasons, we oppose this bill. Please contact me if you have any questions about our position on this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Margaret Johnson", with a stylized flourish at the end.

Margaret Johnson, Esq.
Advocacy Director
Disability Rights California

cc: Honorable Susan Talamantes Eggman, California State Assembly
Logan Hess, Legislative Assistant, Office of Assembly Member
Eggman
Honorable Members, Assembly Judiciary Committee
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee