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March 14, 2017

Honorable Susan Talamantes Eggman
California State Assembly
Capitol Building, Room 4117
Sacramento, CA 95814

RE: AB 720 (EGGMAN) – OPPOSE

Dear Assembly Member Eggman:

Disability Rights California, a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, opposes AB 720. This bill is currently pending in the Assembly Public Safety Committee.

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; individuals awaiting arraignment, transfer, or release; and, intoxicated people being held until sober.

DRC opposes this bill for several reasons. First, because of the undetermined, and often short, time periods that this newly affected group is in custody. This expansion of a county jail's authority may mean the person will not be afforded due process. Second, the uncertainty of continued access to medication raises continuity of care concerns. Third, it may impact a person's ability to participate in the defense of their active criminal case. Fourth, the bill impacts poor people disproportionality. And fifth, this bill would treat differently situated individuals in very dissimilar

positions the same, when different procedures are appropriate.

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 2013, 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, including AB 109.

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. It compromises their due process and other rights, and suggests that the administrative convenience of a county trumps the rights of these individuals who have not been convicted of a crime.

Further, 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.

Additionally, 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.

The United States Supreme Court has recognized that the administration of involuntary medication "can compromise the right of a medicated criminal defendant to receive a fair trial." *Riggins v. Nevada*, 504 U.S. 127, 142 (1992) (J. Kennedy, concurring). Involuntary medication "can prejudice the accused ... (1) by altering his demeanor in a manner that will prejudice his

reactions and presentation in the courtroom, and (2) by rendering him unable or unwilling to assist counsel.” *Id.*; see also *id.* at 139 (“When the State commands medication during the pretrial and trial phases of the case for the avowed purpose of changing the defendant's behavior, the concerns are much the same as if it were alleged that the prosecution had manipulated material evidence.”). In *Sell v. United States*, the Supreme Court emphasized the need for a meaningful “cost-benefit” judgment that balances a pretrial detainee’s dangerousness with due process and trial-related concerns: “Whether a particular drug will tend to sedate a defendant, interfere with communication with counsel, prevent rapid reaction to trial developments, or diminish the ability to express emotions are matters important in determining the permissibility of medication to restore competence[.]” 539 U.S. 166, 185 (2003). It is the role of the legislature to consider these interests in determining whether the proposed policy change is appropriately tailored. Here, AB 720 fails to adequately take into account criminal defendants’ due process rights, raising potential constitutional concerns as well as concerns about the fair and efficient administration of justice.

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.

Lastly, under this bill, the same involuntary medication procedures would be given to people in very different situations. 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 also applies to intoxicated people – involuntarily medicating such individuals could be dangerous and life

threatening. In addition, they will most likely be released before a hearing to determine if medication is appropriate.

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 long horizontal flourish extending to the right.

Margaret Johnson, Esq.
Advocacy Director
Disability Rights California

cc: Honorable Chair and Members, Assembly Public Safety Committee
Logan Hess, Legislative Assistant, Office of Assembly Member
Eggman