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September 7, 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, Law Foundation of Silicon Valley and California Association of Mental Health Patients' Rights Advocates opposes AB 720.

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.

We oppose 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. We appreciate the author's amendment to require jails to look for a community placement. 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 to 30 days. Further, there is no appeal process when the court reviews the treating psychiatrist's 90-day affidavit,

hence violating the inmate's due process rights. 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. Finally, the bill affects poor people disproportionately.

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.

The author amended the bill so that the jail must document attempts to transfer an inmate to a community-based program if one is available.

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 6 months. Given detainees are not likely to be held for very long, this is too long a period of time for the order. Further, the counsel representing the individual in the pending criminal proceeding 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.

The author amended the bill to require at 90-day intervals that the attending psychiatrist file an affidavit with the court affirming the continued need for medication and allow for supplemental information from the defendant's attorney. While we appreciate the amendment, we propose the involuntary medication order should last for no more than 30 days for individuals in jail who have not been convicted and sentenced. Further, at a minimum the inmate should be given an opportunity to appeal the court's decision to continue medication at the 90-day interval. Not to do so violates the inmate's due process rights.

Continuity of Care Concerns

If pretrial criminal defendants are released quickly, as many are, they are likely to 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, and counties' demonstrated failures with current resources, in providing continuing services to this population after release, it is impossible to ensure the continuity of medication needed. The bill will only further contribute to and complicate this problem, jeopardizing individual well-being and public safety. The changes proposed in this bill must be accompanied by further meaningful investment in community mental health services.

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 time to identify the proper medication and become stabilized on it. Forcing an individual to go through this process pretrial involuntarily threatens the person's constitutional right to participate in their case. A person may be drowsy or sedated, 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.* 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: a criminal defendant with the financial ability to secure release while awaiting trial will 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.

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



Alison Brunner
CEO
Law Foundation of Silicon Valley

Law Foundation  **OF SILICON VALLEY**



Samuel Jain
President
California Association of Mental Health Patients' Rights Advocates



cc: Honorable Members, California State Senate
Logan Hess, Legislative Assistant, Office of Assembly Member
Eggman