



**LEGISLATION &
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September 12, 2019

Honorable Robert Hertzberg
Senate Majority Leader
State Capitol, Room 313
Sacramento, CA 95814

RE: SB 36 (HERTZBERG) – REMOVAL OF SUPPORT

Dear Senator Hertzberg:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, **withdraws support for SB 36 as amended on September 6.**

The September 6 amendments to SB 36 removed from the bill the requirement that evaluations of any pretrial assessment tool include disparate effect or bias based upon “behavior or developmental disabilities” leaving gender, race or ethnicity as the only demographics for evaluation. This means the Judicial Council can disregard the accuracy and reliability in the evaluation of risk assessment tools and the potential impact of any biases built into them that may result in disparate effects for people with these disabilities in pretrial incarceration.

DRC has conducted monitoring inspections and investigations of jails throughout the State. Through our monitoring work, we have found that people with mental illness fare very poorly in jail detention. Research supports this proposition. Prisoners with mental illness tend to stay in detention longer and face worse conditions than those without mental illness. They are more likely than those without mental illness to be abused, and more likely to commit suicide, the leading cause of death in jails.

One of the purposes of the pretrial risk assessments is to avoid inappropriate detention decisions that result in incarcerating individuals that

do not pose public safety risks. In order to achieve this goal, the assessment tools should not be biased in its built in assumptions. This is particularly true for assessing the circumstances of people with disabilities, particularly mental health disabilities.

Data collection is a powerful and essential tool in identifying and addressing the inequities in California's criminal justice system. As amended, SB 36 excludes the examination of assessment tools and compilation of data relating to the disparate impact of the tools on people with developmental disabilities or behavior health conditions that can leave them at risk of languishing in jails.

DRC agrees that factors such as race and gender should be included in pretrial risk assessments. However, people with behavioral or mental health disabilities are disproportionately represented in pretrial detention. In San Diego County for example, 40 percent of the jail population is living with mental illness, mirroring national figures provided by the United States Department of Justice's Bureau of Justice Statistics. By omitting populations with behavioral and developmental disabilities from the evaluation of pretrial risk assessment tools, this legislation will leave risk assessment tools unexamined for determining impacts on a significant portion of the pretrial jail population.

We are hopeful that we may be able to join you in the future in working toward ensuring that any pretrial assessment tools will be validated to avoid disparate effects and bias on people with behavior and developmental disabilities. California's jail population is already overrepresented by people with mental health disabilities. Biased risk assessment tools should not compound the existing challenges of ensuring that individuals are provided with community based treatment opportunities.

For these reasons, DRC cannot support SB 36 in its current form. Please contact me if you have any questions about our position or if I can provide any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis Child". The signature is fluid and cursive, with the first name "Curtis" and last name "Child" clearly distinguishable.

Curtis Child
Legislative Director
Disability Rights California

cc: Alex Barnett, Consultant, Office of Senator Hertzberg
Diane M. Griffiths, General Counsel, Senate President Pro Tempore
Toni Atkins
Gregory Pagan, Chief Counsel, Assembly Public Safety Committee
Stella Choe, Counsel, Senate Public Safety Committee
Gary Olson, Consultant, Assembly Republican Caucus Committee
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