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TESTIMONY IN OPPOSITION TO 19-H 5751, RELATING TO HEALTH AND SAFETY – EMERGENCY COMMITMENT FOR DRUG INTOXICATION
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The ACLU appreciates the opportunity to provide commentary on H 5751, which would delineate a process for issuing 72-hour emergency commitments on individuals with a substance use disorder. While there have been some positive improvements made to the structure of the legislation from last year, the concerns raised by the bill remain significant and troubling, and we therefore urge its rejection.

We applaud the language in the bill that leaves the decision to issue a petition for commitment in the hands of a specialized doctor. It is imperative that such critical medical determinations are made by a physician, rather than other medical professionals who may not have as relevant or intensive training regarding recovery from substance abuse.

We also commend the attempt to provide a due process mechanism to challenge the commitment. Due process before involuntary commitment is a fundamental liberty which must be honored and protected. However, this proposed process exposes several substantial flaws with the bill.

The hearing contemplated by this legislation takes place, we presume, immediately upon the patient stating an objection to the commitment. The respondent is brought before a judge for an adjuctation on the facts and evidence to determine if they meet the standard for commitment. The respondent is provided no opportunity to gather evidence, contact their own witnesses, or otherwise meaningfully dispute the allegations before them. Such a rushed and abbreviated hearing provides the individual facing involuntary commitment not much more than the ability to say "I object" while the process proceeds around them.

While the respondent is permitted to seek the assistance of counsel to help them contest the allegations, the manner in which counsel would be provided does not constitute a meaningful right. The individual, in the "hearings" permitted by this bill, would only have counsel appointed to them as the hearing is beginning and progressing. As such, this gives the counsel no opportunity to do any independent investigation, review any information, or speak with witnesses or the respondent themselves.

Further, the provided "legal assistance," should the respondent be unable to procure legal counsel of their own, does not even have to be a licensed attorney. Instead, any law student who has simply had one year of education would be permitted to act as counsel in these critical hearings.

The bill suggests that only 72-hour commitments would be allowed; however, the language in Section 23-10.1-10 (d) provides that "the court may order such relief as it deems appropriate..."

Potentially, this could permit the court to order longer commitments, different treatment, different treatment settings, or any other care that the *court*, not an attending physician, believes is necessary. Seeing as the physician is the only individual who can expressly order this petition in the first place, it appears to be counterintuitive to the intent of the bill that the court can order further medical treatment as it deems fit.

Due process aside, we have concerns for patient privacy as well. The legislation appears to mandate the transfer of documents regarding the respondent's medical and substance abuse diagnoses and history, without court order, patient authorization, or other waiver of patient rights. In fact, even if the respondent objects to the petition, their personal medical information is central to the process of the subsequent hearing. We assume that the "clear and convincing evidence" referenced in Section 23-10.1-10 (c) would be composed of medical information, but there is no requirement for confidentiality once the records are transmitted to the court.

This legislation also asks doctors to take actions that will, at times, be directly contrary to the patient's express wishes and directives, which could do significant damage to the doctor-patient relationship.

Given the documented ineffectiveness of forced treatment, it is hard to imagine that the violation of patient rights and due process will result in a successful strategy to combat substance abuse. Amongst addiction specialists and medical professionals, it is generally agreed upon that the most successful substance abuse treatment is the willingness of the users themselves to participate in the process. In fact, a study conducted by the Massachusetts Department of Health noted that "clients who received involuntary treatment were 2.2 times as likely to die of opioid-related overdoses."

Finally, there are significant logistical issues raised by this legislation, which fails to address both the cost of this treatment and where the funding will come from. The bill requires insurance to cover the cost of one such commitment per year. However, who pays the cost if the individual has no insurance? What if they are indigent? What if they have insurance, but have already been subject to a prior commitment within the year? The bill provides for the state's responsibility for the costs associated with the hearing, but not the treatment itself.

Significantly, H 5751 also does not allocate resources to create treatment centers or beds for this purpose. The bill does not address when and where the patients will be treated, or where they can go if there are no available beds. A similar shortage of appropriate infrastructure in Massachusetts was addressed – quite inappropriately – by allowing the housing of committed individuals in correctional facilities. This solution could not be less suitable to the patient's needs and more antithetical to the purported goal of recovery, and we should not allow even the prospect of this in Rhode Island.

The ACLU understands the goals of this bill. Unfortunately, the legislation itself is deeply flawed in regards to constitutional and privacy protections, patient rights, and infrastructural support. For these reasons, the ACLU of Rhode Island urges rejection of this legislation.