



March 18, 2019

TO: Senator Floyd Prozanski, Chair  
Senate Committee on Judiciary  
FR: Bob Joondeph, Disability Rights Oregon  
RE: SB 762

Disability Rights Oregon (DRO) is the designated Protection and Advocacy program for Oregon. DRO is mandated by federal and state law to advocate for the rights of individuals with disabilities.

As a representative of DRO, I sat on the so-called “Workgroup to Decriminalize Mental Illness” that the written bill states to have requested this bill. I did not vote in favor of this bill and I do not recall that a vote was ever taken on the specifics of the bill.

SB 762 changes the civil commitment “hold” period from 5 judicial days to 15 judicial days. That is, when someone alleges that a person needs to be forcibly hospitalized for mental health treatment, 15 judicial days of forced hospitalization and treatment can transpire before the person has an opportunity to challenge that allegation in court.

Given that massive intrusion of the person’s civil rights, the bill provides for a type of preliminary hearing in which the person can challenge whether there is “probable cause” to believe they should be forcibly hospitalized. However, the person must make a request for this hearing in writing and within 5 judicial days of being taken into custody. Surely, such an important decision should be considered after talking with a lawyer, but while the person has a right to a lawyer, the lawyer must be provided “as soon as reasonably possible.” Not to put too fine a point on it, but the person who is likely to be experiencing a crisis is expected to complete the niceties of written, timely notice, with or without counsel, while the government is given the leeway of “reasonable possibility.”

The law presently allows a person who is being held to request an extension of the 5 day hearing deadline and they can opt for a diversion of 17 days. In other words, the person can “opt in” to short term hospitalization. SB 762 essentially flips this process to one in which a person has to “opt out” of 15 days of hospitalization by asking for a preliminary hearing and, of course, prevailing in showing lack of “probable cause”. SB 762 does not indicate whether the state, the person or someone else has the burden of proof in this adjudication of the person freedom.

In sum, DRO believes that SB 762 does not meet a reasonable standard of due process or fairness. If we had been given an opportunity in the work group to vote on whether to submit it to the legislature, our vote would have been “no”.