DISABILITY RIGHTS PENNSYLVANIA

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December 11, 2017

Re: HB 1233 and SB 599 Assisted Outpatient Treatment (AOT)

Dear Senator Baker:

As leaders in Mental Health advocacy in Pennsylvania, we would like to highlight the concerns that we have regarding HB 1233 and SB 599 as currently drafted. **We have significant concerns regarding these bills and oppose the bills as currently drafted.** Without significant changes, we simply cannot support the bill. We have outlined our main issues with the bill as drafted.

Funding implications of introducing AOT: If AOT is passed, the services associated with it must be funded. The population who will be implicated in this legislation are individuals with Serious Mental Illness. We know from the planning process associated with moving people from state hospitals into the community that the services they will need are often high end, costly services. This is not just about ensuring that they take medications. We have attached the follow up study of the Mayview State Hospital closure. This shows that only 24% of people used medication checks, while 77% used Assertive Community Treatment and 54% used Outpatient Mental Health services. See this report: https://www.ahci.org/Documents/Mayview%20Five%20Year%20Report%20Final.pdf .

Please note that not all counties currently have Assertive Community Treatment (ACT) Teams, mobile medication services, psychiatric

rehabilitation services, supported housing, peer supports, financial services or access to timely outpatient services. These would need to be made available to assure that people have access to the services they are committed to receive and which will support successful community living that will allow them to be discharged from involuntary outpatient commitment. We cannot have a situation where a person needs ACT to avoid continued commitment, yet cannot access the service because the county of residence cannot offer the needed services. We note that if these services were funded and available, the need for AOT would likely be averted or, at least, reduced. There is irony in passing legislation that requires a person to accept mental health services for which funding is reduced or inadequately maintained year after year.

We realize that there is disparity between county based Mental Health Services currently, but note one important difference if counties do not provide a fuller array of high end services to go along with AOT. Any type of involuntary commitment implicates a person's Constitutional liberty interests. There would be a clear Constitutional violation by taking away a person's liberty interest for a potentially indefinite and ongoing basis because the needed services to support discharge from involuntary services are not provided. This bill will cost the State money. As noted in the Stakeholder meeting, Deputy Secretary Kovich identified significant program and court costs associated with implementation of a similar bill in New Jersey, and she said the situation would likely be the same in Pennsylvania.

The argument that counties will save money because individuals will not be interacting with the criminal justice system fails to recognize that any savings from people avoiding criminal prosecution and incarceration is a saving for the Department of Corrections and will not end up in the community mental health system. An increase in the use of AOT will also require additional funds to address the Constitutional due process requirement, including more public defender and mental health review officer time. Further, the idea that the only funding involved is the amount to support the court process suggests a lack of understanding about the meaning of assisted outpatient treatment. We would hope that the purpose

of the bill is to obtain mental health services for individuals, not simply to bring someone before the court.

Ultimately treatment works best when people come into the services voluntarily. We feel that this is an important step if AOT must be introduced. Engagement of people through the Targeted Outreach Program must be required before someone becomes a candidate for AOT. Although family members may have unsuccessfully tried to help a person and therefore feel that outpatient commitment is the only option, the reality is that family members are not trained mental health professionals. Mental health professionals are more likely to be able engage the person and convince the person to voluntarily take advantage of services.

Look Back Period and Future Predictions: Our organizations have additional concerns regarding the look back period contained in Section 4 (c)((ii)(B) in the bill and ensuring that Due Process rights are protected. It is unclear why dangerous acts that occurred up to 48 months ago is relevant to the person's current need for treatment. Extending the look back period by time spent in hospitals is a deterrent to people seeking help, and is already accounted for in the requirement that the person had at least two hospitalizations within the last 36 month period. The potential for the look back period to become indefinite brings serious concerns regarding the liberty interests of individuals.

We are troubled that a person can be committed to involuntary treatment upon a finding that "the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the others or himself." This standard is not based on any imminent harm but rather a prediction that undefined harm may or may not occur in the distant future. It is important to eliminate or at least limit the requirement of future harm predictions. If a mental health professional cannot document that a substantial risk of harm to self or others is likely to occur within thirty days[1]

[1] It is worth noting that Pennsylvania's Mental Health Procedures Act already allows for involuntary outpatient commitment, including pursuant to a finding that "the person has acted in such a manner as to evidence that

there simply is no basis for violating a person's constitutional liberty interests. We question whether a mental health professional can ethically make such a prediction or would even be willing to commit in writing to such a future prediction.

Finally, we note a few observations about how Assisted Outpatient Treatment (AOT) is currently utilized in Pennsylvania. First, as highlighted at the meeting last week, AOT is currently already an option available under the Mental Health Procedures Act. Counties are currently utilizing it for individuals with Serious Mental Illness. AOT is primarily used as a Step Down for people who recently had an Inpatient Hospitalization. It is not often used for people with Serious Mental Illness who are not currently receiving services or complying with their CSP. Viewing AOT as a method to coerce people into treatment before they enter crisis is a mischaracterization of how it is utilized in Pennsylvania, and likely to substantially increase the number of people subject to involuntary treatment.

We also would like to highlight that Pennsylvania fails to require and fund the specialized services that are necessary to keep people well. Services such as targeted outreach, crisis services, Intensive Case Management, Assertive Community Treatment Teams, mobile medication services, peer support services, psychiatric rehabilitation services, and adequate housing must exist in every county. As long as this lack of commitment to funding for mental health services continues, this legislation will do nothing to make meaningful inroads to providing critical mental health supports and services to ensure successful recovery.

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he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded," that comports with constitutional standards. See 50 P.S. § 7301(b)(i).

Finally, as discussed at the meeting last week. We are willing to be part of discussions and solutions that will work for Pennsylvanians with Serious Mental Illness. Legislation and processes must work for Pennsylvania. Simply because other states have passed similar legislation, does not mean it is the right course for the Commonwealth. As outlined previously, many of these other states likely did not previously have process for AOT, as we do here through the Mental Health Procedures Act. The fact that some states have such a statute, without a serious review of the funding, utilization, and success rate in those states, is meaningless. We urge you to listen to Pennsylvania's stakeholders including the Pennsylvania Department of Human Services and the Pennsylvania counties responsible for delivering services.

We are happy to provide additional information of these concerns. Please contact Jennifer Garman at 717-236-8110 or jgarman@disabilityrightspa.org with any questions.

Sincerely,

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