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ACLU OF RI POSITION: OPPOSE

**TESTIMONY IN OPPOSITION TO 21-H 5155,
AN ACT RELATING TO MENTAL HEALTH LAW
March 1, 2021**

On behalf of the ACLU of Rhode Island, I write to express my strong opposition to H-5155, and urge its rejection by the Committee.

The taking of someone's liberties and basic freedoms are extraordinarily serious matters and are only permitted when clear due process has been complied with. When those liberties are being taken because of mental health concerns, Rhode Island's due process requires an evaluation by experts of the highest qualifications to determine if that is necessary. Currently, at a bare minimum, the person whose liberties are about to be taken must be evaluated by a physician or psychiatrist. This bill would eliminate that basic protection.

This bill would fundamentally change the law surrounding mental health commitments. It eliminates the requirement that a patient be examined by 2 psychiatrists, who then certify that the patient meets the mental health standards, before their most fundamental liberties and freedom are taken from them. In fact, this bill, as written, would permit a person to be committed without even the basic requirement that they are even seen or evaluated by <u>one</u> psychiatrist or physician. On top of that, the bill also makes clear that although the patient can request an independent evaluation, it strips the patient of the right to require that person be a doctor (Page 7, 40.1-5-8(c)).

Our concerns apply whether the commitment is to an outpatient or in-patient facility. Outpatient civil commitment carries with it most of the same civil liberties deprivations that in-patient commitment does. In fact, the only difference between the two types of commitment is where the person lives. They both mandate treatment and possible medication against a person's will – treatments and medications designed to alter how a person thinks and feels, and how their brain works. This is on top of significant limitations on what the person can and cannot do. Both types of involuntary treatment implicate the most fundamental of civil liberties.

It is because of these significant civil liberty interests that there have been prohibitions against imposing involuntary treatment upon a person unless someone of the highest qualifications can state that the treatment is necessary for the safety of the individual or community, and that there is no lower level of treatment that would suffice. Individuals are required to go through extensive training, testing, and certifications in order to be imbued with the ability to make these sorts of life-altering judgments on an individual. Only doctors go through that training, including cross-disciplinary training and practice to make these judgments.

While APRNs are an important part of mental health practice in Rhode Island, they are not doctors. They have had different training and exposures. APRN codes of practice mandate that they acknowledge the limitations on their ability, and have plans for what to do when things are beyond their ability, precisely because of this lesser standard of training and exposure. APRNs are simply not trained to think of things in the same way that doctors are trained to do. It is this higher level of training and rigor that Rhode Islanders, especially those most vulnerable, should remain entitled to before such a fundamental deprivation of liberty takes place.

Civil commitments are, in this context, analogous to a criminal law proceeding. Even if there is overwhelming evidence against a criminal defendant, we still afford them the right to an attorney. There might be amazing paralegals or clerks available to handle the case, but we require defendants to be represented by someone who has met the higher level of training provided to lawyers. It would certainly be easier and cheaper for the state to not have to provide these attorneys, but we have, as a society, determined that defendants are entitled to someone of their qualifications before stripping them of their most basic and fundamental civil rights. Even if there is a shortage of lawyers willing to do the work, we have decided that people are entitled to these basic rights. The same should be true when it comes to involuntary commitment – either in-patient or outpatient.

There are also equity concerns presented by making the changes proposed in this bill. If a patient wants to challenge his commitment, bring a cause of action to change the conditions of their commitment, or take any other related action, they would be required to present the testimony of doctors or psychiatrists to make any such case. They would not be permitted to proceed based only on the testimony of an APRN. The state would be permitted to take someone's fundamental rights based on one standard, but require a much higher standard for someone to seek to restore their rights.

APRNs are a vital and integral part of the mental health system. They often have the most direct knowledge of a patient and do crucial work with them. They have some of the best and most important information and evidence in civil commitment proceedings. Nothing under current law prohibits them from being witnesses and sharing that information with either the doctors or the courts. But as important as their judgments, insights, and interactions are, they should not be a substitute when it comes to making certifications that could result in the significant deprivation of a person's liberty.

While the ACLU is mindful of the expense and difficulty of having physicians or psychiatrists do these certifications, those difficulties should not be an excuse for permitting a lower standard when it comes to the civil rights of Rhode Islanders.

These protections are what due process and fundamental liberties should require. Rhode Islanders deserve no less. Thank you for your time and consideration.

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