AMERICAN CIVIL LIBERTIES UNION of RHODE ISLAND

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BY EMAIL

Marea Tumber
Deputy Director of Policy
Office of the Senate President
State House, Room SB-27
Providence, RI 02903

RE: 17-S 326 and 17-S 492

Dear Ms. Tumber:

Thank you for reaching out to the ACLU of RI for comments on the possible amendments to Senate Bills 326 and 492 after our testimony in March. As you are aware, our organization is seriously concerned about the civil rights implications of both of these bills.

Our understanding of the possible amendments to these bills is that they would: a) make clear that APRN certification is only for out-patient civil commitments only; and b) eliminate the possibility of a good cause waiver of the second person signing the petition – and require that the second person be a physician or psychiatrist.

Our Board of Directors discussed these bills and the potential revisions to them at a meeting on Thursday night. Unfortunately, the Board concluded that these amendments do not mitigate the civil liberties concerns within the bills.

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 against a person's will and possible medication against the 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. Those 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 a significant and 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.

While testifying on SB 326 and SB 492, I analogized civil commitment to a criminal law proceeding. As I noted then, 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. The same should be true when it comes to involuntary commitment – either in-patient or outpatient.

For similar reasons, we cannot say that allowing APRNs to be one of two certifiers for commitments would satisfy the civil rights concerns. This is true even if the provisions permitting a good cause waiver were removed if an APRN was one of the certifiers. The current standard requires two physicians to certify before someone is committed against their will. Although waivers are permitted, there is judicial oversight and legal requirements that must be met before such a waiver can issue. From a civil rights, as well as a due process, perspective, Rhode Islanders deserve that standard, and one that can be deviated from only under exceptional circumstances and with independent judicial oversight.

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.

APRNs are a vital and integral part of the mental health system. They often have the most direct knowledge of a patient and do some 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 loss of a person's liberty.

It is for those reasons that the Rhode Island ACLU cannot support the proposed changes to permit APRNs to do the certifications for either in-patient or outpatient civil commitments. We hope that you and the committee will give our views continued consideration as you consider this legislation. Thank you very much for seeking our further input.

Sincerely,

Heather Burbach
ACLU of RI Board of Directors