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**ACLU OF RI POSITION: OPPOSE/AMEND**

**TESTIMONY ON 2023-H 5819,  
AN ACT RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL  
DISABILITIES AND HOSPITALS – MENTAL HEALTH LAW  
February 28, 2023**

On behalf of the ACLU of Rhode Island, I write to express my opposition to H-5819 in its current form, and to urge either its rejection or amendment 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 current due process standards require an evaluation by experts of the highest qualifications to determine if that deprivation is necessary. Currently, at a bare minimum, the person whose liberties are about to be taken must be evaluated by two physicians or psychiatrists. This bill would fundamentally alter that basic protection by permitting APRNs, providers with lower-level qualifications, to make the certifications.

Commitments 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, or where the person may or may not go. These types of involuntary treatment implicate the most fundamental civil liberties, and that is why there are stringent prohibitions against imposing involuntary treatment on a person unless it is absolutely clear 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.

We recognize that the years of failures to hire sufficient psychiatrists for the mental health population – for a variety of reasons – have left psychiatrists with caseloads that are unworkable and unmanageable, and little or no contact with their patients, and that is a major impetus for this bill. But even if one were to accept that APRNs should be able to play a formal role in the certification process, we think it is imperative that the evaluators have a psychiatric or mental health focus of their practice and qualifications. However, nothing in this legislation requires the APRN making certification decisions to have a mental health or psychiatric focus. We urge that, if this bill is to be favorably considered, it be so limited.

We believe that there are a few other changes necessary to clarify the scope of the bill, and we have shared them with the Mental Health Advocate for her review and consideration, and also attached them to this testimony. We believe they are non-controversial and should be acceptable to all, but we also consider them essential to ensure that the bill is not implemented in an overly

broad and inappropriate manner. We are hopeful that no action will be taken on this legislation until, at a minimum, those particular issues are addressed.

However, we strongly oppose one change in the current bill from previous versions, and urge that it be stricken. That involves changes to Section 40.1-5-11(c) on page 17 of the bill. These changes increase the length of a certification substantially, as they would allow someone to be locked up, treated and medicated against their will for nine months instead of the current six months. So, at the same time the bill is lowering the standards to forcibly admit someone to a mental health facility without their consent, it is making the length of that stay 50% longer. That is, in our view, both unnecessary and inappropriate.

Based on all of the foregoing, we urge opposition to the bill as currently drafted. We remain available to work with the sponsor to address the concerns we have raised above about the breadth and scope of the legislation. Thank you for considering our views.

Submitted by, Heather R. Burbach, Esq.  
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## SUGGESTED AMENDMENTS TO 23-H 5819

### **(Substitute for 40.1-5-2 (1) in the bill) [p 1]**

- (1) “Advanced Practice Registered Nurse” (APRN) for the purpose of this chapter, “Advanced Practice Registered Nurse” (APRN) is defined as someone licensed to practice by the State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) in the role of “Certified Clinical Nurse Specialist” as defined in §5-34-3(4). Or a “Psychiatric and Mental Health Clinical Nurse Specialist” as defined in §5-34-3(15). For all purposes in this chapter, the “Certified Clinical Nurse Specialist” must also have a population focus of Mental Health / Psychiatric as defined in §5-34-3(12)(iv).

### **(Substitute for 40.1-5-2(17) in the bill) [p 3-4]**

(17) “Qualified Mental Health Professional” (QMHP) means a mental health professional as approved by the licensing unit within the State of Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (BHDDH) as an APRN (as defined in §40.1-5-2(1) ) and who has a minimum of thirty (30) hours of supervised face-to-face emergency services experience as a psychiatric emergency service worker in Rhode Island. Such experience may be gained through employment with a community mental health center (CMHC) which is conducting emergency psychiatric assessment for individuals under consideration for admission to an inpatient mental health facility or a licensed hospital conducting emergency psychiatric assessment for individuals under consideration for admission to an inpatient mental health facility.

### **(Addition to 40.1-5-8(i)(1) in the bill) [p13]**

Add to the end of the paragraph: “The Court shall utilize the generally applicable rules of evidence for civil, non-jury cases to determine what evidence is admissible at the hearing, including the qualification and requirements for expert witnesses. That APRNs are permitted to file petitions under this chapter shall not be determinative of whether or not they are qualified as an expert witness.”