

July 22, 2019

Mr. Marvin Figueroa
Deputy Secretary of Health and Human Resources
Commonwealth of Virginia
P.O. Box 1475
Richmond, VA 23218

Dear Mr. Figueroa:

I write to you as chair of the statewide work group charged with developing policy reforms to reduce the number of people admitted involuntarily to the state's psychiatric hospitals.

The well-documented rise in involuntary commitments in Virginia in recent years is alarming, and any reform efforts must balance the interests of public safety and the constitutional rights of individuals. To that end, we ask that the work group consider the following basic principles.

The ACLU of Virginia believes a properly administered and adequately funded system of mental health services is a requirement of civilized society. Such a system must respect due process and the privacy rights of people with mental illness. Any reform legislation must ensure that we never treat someone as a criminal simply because the Commonwealth did not provide adequate funding for mental health facilities and for adequate transportation services to those locations.

The ACLU of Virginia is opposed to involuntary civil commitment – or other types of temporary custody – for any of the following reasons (or other reasons unrelated to patient therapeutic needs or public safety):

- The exercise of constitutional rights;
- Non-conformity or social deviance;
- Unpopular political expression; or
- Annoying members of an individual's family, community, or public officials.

Involuntary civil commitment and other forms of custody should only be utilized as a last resort for a person who is in need of mental health services. Those persons must also refuse to voluntarily and without coercion commit themselves to a mental health facility



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after an appropriate mental health evaluation concludes he or she is in need of services.

Mental disability [or psychiatric disability] cannot by itself be a justifiable reason for depriving a person of liberty against his or her objection unless it has been judicially determined that an individual is a danger to himself or others, and no other less restrictive, alternative environment is suitable. All other possible options to involuntary custody should be considered and eliminated before a decision is reached. No person should be involuntarily held without having been offered a full and free opportunity to become a voluntary patient without the use of coercion.



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Court-ordered temporary detention periods should be as brief as possible, but last no longer than seventy-two hours without a mandatory hearing to avoid violating the due process rights of the individual in custody. Court ordered emergency custody periods should also be as brief as possible. While we understand the need for procedures that allow for emergency court ordered psychiatric examinations, no person should ever be held in a nontherapeutic environment for an unnecessarily long time period. Extended involuntary periods in non-therapeutic settings are not only against the constitutional rights of Virginians, it also exposes individuals to an unhealthy environment and one which could exacerbate mental health issues.

Individuals in custody should be held in the least restrictive environment to be evaluated by qualified medical professionals and in no circumstances, be held in jails or prisons. Individuals who have mental illness are not criminals. It is an unjustifiable deprivation of liberty to detain an individual to a facility that is not properly staffed and equipped to provide a meaningful medical evaluation and, if necessary, treatment.

Individuals held in custody have the right to an attorney at every step of the judicial process. Qualified and independent counsel should be appointed by the court if a person cannot select or afford an attorney. Individuals should have complete access to communicate with his or her attorney and with medical professionals. If extensions of emergency custody periods are being considered that are significantly beyond the four plus two hours

currently allowed by law, those individuals should also be granted a hearing.

Due process requires that individuals in custody have a full opportunity to prepare for judicial proceedings and to make an informed defense. Individuals held in custody must receive advance written notice of judicial proceedings, possess the right to be present at such proceedings, and have access to all records relevant to his or her case.

In addition, we hope your work group will consider supporting a change to § 18.2-57 of the Code of Virginia regarding felony assault on a police officer. This charge is all too often applied to people experiencing mental health crises who may commit an act as minor as spitting on an officer while being taken into emergency custody (frequently based on the observation of a single law enforcement officer pursuant to §37.2-808.G). It is wrong to make felons out of individuals in crisis who act out without endangering anyone's life or causing any physical harm. These charges result in needless incarceration and felonization of individuals in need of help, with all of the resulting collateral consequences of a felony conviction including loss of their voting rights and limitations on employment. At a minimum, the law should be changed so that no criminal charges can be filed in any such case involving a person being taken into involuntary custody and transported by law enforcement that have not been reviewed by a Commonwealth's Attorney.

Thank you for your service on this critically important issue. I hope you will share these principles with other members of the work group. If the ACLU of Virginia can assist you or be a resource in any way, please do not hesitate to contact me.

Very truly yours,



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