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# ACLU of Nevada

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TO: Nevada Senate Committee on Human Resources

FROM: Richard Siegel, Ph.D., President of American Civil Liberties Union

RE: Comments on S.B. 82

DATE: February 26, 2003

We at the ACLU of Nevada have consulted with diverse national experts in law and public health and with such local experts as Gregory Hayes, M.D. (a former county health administrator and now Professor of Health Ecology and Public Health at UNR ). We offer important suggestions for changes in S.B. 82. The bill as presented to the Committee today has changed insufficiently since testimony was offered by the ACLU and others to the interim hearings of the Legislative Committee on Health Care. The present bill is characterized by its:

1. The present bill is characterized by its dominant use of a mental health involuntary commitment model that fits communicable disease quite poorly. For example, Sec. 24 allows courts to hear testimony of "any past actions of the person alleged to have been impacted." Past actions pertain to mental health issues, not contagion. This is not the only place where the inappropriate use of the mental health legal model creates a distorted bill.
2. The notation of "least restrictive environment" appears only in Sec. 24. This does not properly set off the legal necessity to emphasize "least restrictive environment", consistent with medical necessity, as a framework for the entire bill. We would like reference to the need for least restrictive environment at the beginning of the bill as a basic principle of the legislation. Every court will apply this standard.
3. Sec. 24 notes courts must consider the rights and desires of the person(s) to be isolated or quarantined. There must be added a statement of the pertinent rights involved, including (and not limited to):
  - Right to refuse treatment
  - Right to communicate electronically

- Right to contact attorney, family and friends
  - Right to challenge orders in court
4. Sec. 24. Involuntary court-ordered isolation or quarantine now runs 30 days with renewal by petitions by up to another 120 days at a time. The initial version in this bill of involuntary authority was up to 120 days in previous drafts.
    - a. Why not limit to 30 days or less the second order?
    - b. How long does any contagious disease last?
    - c. How are incubation periods to be considered?
  5. Where is the religious or conscience exemption for "Medical examination or test" in Sec. 1, 30?
  6. Sec. 8 refers to 72 hour emergency isolation or quarantine with continuation before court order if there is a written petition for involuntary court-ordered isolation or quarantine. Such authority for emergency or temporary quarantine need be subject to a right to seek immediate injunction or other court intervention to secure liberty of the subject person.
  7. Emergency isolation may be applied for by a physician's assistant, or registered nurse as well as a physician. A physician's assistant can also be one of two clinicians seeking or reviewing an order for quarantine lasting 30 days or more. Why so if such people are limited in their practice of medicine under current law or require physician direction and/or supervision. We insist that such authority in liberty deprivations be available only to physicians.
  8. Notice to spouse or legal guardian. There is only a limited and delayed requirement for such notification, requiring:
    - Good faith effort
    - Written notice

We insist on greater clarity on the obligations of courts and health authorities to notify family.

9. The criteria and/or standard of proof for findings of danger vary from the strongest in Sec. 24: court needs "clear and convincing evidence" regarding infection and immediate threat" to lesser standards in Sec. 10, line 11: "reasonably believed, "reasonably suspect", "reasonable degree of certainty."

We ask for consistency in application of the standard in Sec. 24, this set at a very high standard.

Thank you for your attention. We look forward to working with the committee on these issues.