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Testimony of

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on behalf of

New York Lawyers for the Public

Interest before

The Joint Legislative Budget

Hearing on Mental Hygiene

Thank you for the opportunity to present testimony today regarding the mental health provisions of the Governor's budget bill.

Since New York Lawyers for the Public Interest (NYLPI) was established over 40 years ago, we have prioritized advocating on behalf of individuals with mental health conditions, and we have consistently fought to ensure that the rights of individuals with mental health conditions are protected by every provision of New York's Mental Hygiene Law and in every aspect of New York's service delivery system. Core to our work is the principle of self-determination for all individuals with disabilities, along with the right to access a robust healthcare system that is available on a voluntary, non-coercive basis.

We have long been on record opposing Mental Hygiene Law Sections 9.6, 9.39, 9.41, 9.43, and 9.45 as insufficiently safeguarding the rights of persons with mental health concerns and failing to offer appropriate health services -- and we continue to oppose these provisions. We are, however, gravely concerned about the Budget Bill's proposed

amendments of these provisions, which would present even greater harms to the disability community.

Quite simply, there is no place for coercion. Forced "treatment" is not treatment at all, and it has long been rejected by health practitioners -- to say nothing of the disability community – in favor of numerous best practices strategies that offer assistance even to those who have previously resisted offers of care[1]. There are multiple less invasive models of care that New York must invest in to avoid the tragedy and enormous cost of forced treatment. At the heart of these models are the trained peers –individuals who have lived mental health experience that makes them ideally suited to implement effective harm reduction and de-escalation techniques, especially during crises. To quote my colleague Harvey Rosenthal, the executive director of the New York Association of Psychiatric Rehabilitation Services (NYAPRS) who is also testifying today, "We now know how to help the most troubled or challenged individuals…but all too often we don't because the services aren't sufficient or held to the highest account. But that's about system failure and it's our responsibility to fix that system and provide alternative housing and services, not cart off people to a psychiatric ward."

Any proposal to ease the ability to force people into in-patient or out-patient "treatment" must be seen in the context of whom we're entrusting to "remove" these individual. As we now surely know all too well, the police, who are steeped in law and order, are not at all well-suited to deal with individuals with mental health concerns. New York's grim statistics of its police killing 16 individuals who were experiencing mental health crises, and seriously injuring countless others, in the last five years alone, is sad testament to that.

Forced "treatment" must also be seen in the context of the ensuing racial disparities. Of the 16 individuals killed at the hands of New York police, 14 were people of color[2]. This systemic racism also underlies the disproportionate prevalence of disability in the Black community and other communities of color[3]. Likewise, racism is at the heart of the similarly vast disparities of forced treatment, which will only worsen if the current protections are removed from the Mental Hygiene Law and more discretion is left in the hands of the police.

Mental Hygiene Law Sections 9.41, 9.43, and 9.45

At first glance, the proposed amendments to this section appear favorable for persons

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[1] *See, e.g.,* de Bruijjn-Wezeman, Reina "Ending Coercion in Mental Health: The Need for a Human Rights-Based Approach," Committee on Social Affairs, Health and Sustainable Development, Council of Europe, Parliamentary Assembly, Doc. 14895 (May 22, 2019), https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=27701&lang=en.

[2] Correct Crisis Intervention Today – NYC (CCIT-NYC), Testimony before the New York City Council Committee on Public Safety (June 9, 2020).

[3] Mayor's Office for People with Disabilities, "Accessible NYC" (2016), https://www1.nyc.gov/assets/mopd/downloads/pdf/accessiblenyc_2016.pdf.

with disabilities. Police would now be able to "remove" an individual who "appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others" to a non-coercive "crisis stabilization center," in addition to the current options of a psychiatric hospital or psychiatric emergency program. As such crisis stabilization centers are not considered best practices locations, however, NYLPI recommends substituting a more appropriate non-coercive setting, such as the one recently approved in Dutchess County[4].

As the Governor no doubt realized by proposing to add crisis stabilization centers to the commitment laws, the centers are far more appropriate than a hospital or emergency program. However, the police cannot be left with a menu of equally permissible drop-off locations, with no guidance as to appropriateness of settings. The statute must express a clear preference for non-coercive settings, including the other existing choice of "another safe and comfortable place." The statute must only permit police to utilize the far more restrictive hospital and emergency programs settings when the individual does not agree to be brought to a non-coercive option.

<u>Mental Hygiene Law Section 9.60 ("Kendra's Law")</u>

The proposed amendments to this section will also further reduce the rights of persons with disabilities, whose rights have already been greatly limited by a statue that allows for forced Assisted Outpatient "Treatment" (AOT). Currently, a court is able to order an individual into forced outpatient "treatment," primarily based on an individual's "history of lack of compliance with treatment for mental illness," pursuant to a physician's in-person testimony, which is subject to cross examination. For no fathomable reason, the proposed amendment will do away with this most basic of procedural rights for those subject to liberty deprivations, and allow for an AOT order to be entered merely upon written testimony by the physician.

Another proposed amendment would allow an AOT order to be renewed (or as the proposal misleadingly calls it, "extended"), up to six months after its expiration, for any individual who "experienced a substantial increase in symptoms of mental illness and loss of function." The concerns here are myriad:

- How can an order simply be renewed without any due process?
- How can a prior, expired order – especially one that might have been entered years ago -- that may have nothing to do with the individual's current situation, serve as the basis for "treatment" of the current situation?
- There is no definition for "substantial increase in symptoms," no definition for "loss of function," and indeed, no definition for "mental illness."
- Who is to determine if there has been a "substantial increase in symptoms of mental illness and loss of function"?
- How often can AOT orders be renewed?

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[4] "Dutchess' Stabilization Center, Mobile Crisis Team is under New Management. What it Means," Poughkeepsie Journal (Dec. 12, 2020), https://www.poughkeepsiejournal.com/story/news/local/2020/12/09/dutchess-county-stabilization-center-mobile-crisis-team/6463212002/.

- Is there any cap on how long an individual can be the subject of an AOT order?

In another blow to due process, the amendments would allow an application for an "extended" AOT order when the relevant director "has made attempts but has not been successful in giving the subject of the petition the notice of the hearing." What constitutes an attempt? How many attempts must be made? Where's the due process?

The amendment further seeks to water down the statute's protections by no longer requiring that the individual "meet the criteria" for AOT, but merely "benefit" from AOT, with again no indication of what "benefit" means or who determines whether there has in fact been a "benefit."

Mental Hygiene Law Sections 9.1 and 9.39

The proposed amendments to Sections 9.1 and 9.39 seek to expand the definition of a "mental illness" which is "likely to result in serious harm" and which permits an "emergency admission" for psychiatric hospitalization against one's will. Such an amendment is wholly unnecessary as the current provision already enables commitment where the illness is likely to result in serious harm for *any* reason. There is absolutely no need to add a laundry list of types of serious harm of the sort the amendment proposes – "complete neglect of basic needs for food, clothing, shelter or personal safety."

If the basic needs neglect addition were merely a redundancy it would not be cause for concern by the community. But the basic needs provision has been added together with a reduction in the process due. While the current provision insists that "serious harm" mean the person "*is* dangerous to himself or herself," the amendment regarding basic needs defines serious harm as merely "highly probable" to result in danger (serious accident, illness, or death). A probability of dangerousness – even a high probability of dangerousness – is but a prediction. It does not even remotely approximate a showing of actual or imminent danger[5]. This is especially problematic when comparing the current "is dangerous" standard to the proposed "highly probably" to result in "illness."

Similarly, while the current provisions define "likely to result in serious harm" as requiring a showing of "serious bodily harm," the basic needs amendment does not require "serious" harm.

Permitting a commitment order for basic needs "neglect" simply goes too far. It is likely to sweep in thousands of individuals who are homeless and who require no treatment whatsoever – forced or otherwise. It will also sweep in those who may have a mental health diagnosis but do not present a danger to self or others. And what about the person who chooses to a wear a t-shirt in the dead of winter? The person who cannot afford clean and untattered clothing?

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[5] *See, e.g., Olivier v. Robert L. Yeager Mental Health Center*, 398 F.3d 183, 191 (2d Cir. 2005) (noting commitment standard as showing individual "posed an imminent danger to himself or others").

It is our understanding that Office of Mental Health Commissioner Ann Sullivan believes that the basic needs provision will capture a few dozen more people, but that clearly would not be the case if this provision were implemented as written. At the very least, the amendment does not appear to match the intent of those tasked to carry out the amendment. And where would all these thousands of basic needs neglect people go? Even if our society did think it would be good to force hospitalize all these individuals, there are clearly not enough beds to support such a wrong-headed plan.

We appreciate the Governor's concerns for people with mental disabilities. But the money that would be spent locking people up must be spent on appropriate, voluntary community-based healthcare services which will avert crises and harm to individuals with disabilities and others.

Thank you for your consideration. I can be reached at (917) 804-8209 or RLowenkron@NYLPI.org, and I look forward to the opportunity to discuss amending the mental health provisions of the Governor's budget bill, as outlined above, to ensure that we are appropriately serving ALL New Yorkers.

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About New York Lawyers for the Public Interest

For over 40 years, New York Lawyers for the Public Interest (NYLPI) has been a leading civil rights advocate for New Yorkers marginalized by race, poverty, disability, and immigration status. Through our community lawyering model, we bridge the gap between traditional civil legal services and civil rights, building strength and capacity for both individual solutions and long-term impact. Our work integrates the power of individual representation, impact litigation, and comprehensive organizing and policy campaigns. Guided by the priorities of our communities, we strive to achieve equality of opportunity and self-determination for people with disabilities, create equal access to health care, ensure immigrant opportunity, strengthen local nonprofits, and secure environmental justice for low-income communities of color.

NYLPI's Disability Justice Program works to advance the civil rights of New Yorkers with disabilities. In the past five years alone, NYLPI disability advocates have represented thousands of individuals and won campaigns improving the lives of hundreds of thousands of New Yorkers. Our landmark victories include integration into the community for people with mental illness, access to medical care and government services, and increased accessibility of New York City's public hospitals. W e prioritize the reform of New York's response to individuals experiencing mental health crises, and are engaged in multiple policy, education, and litigation efforts to that end.