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January 20, 2015

By Fax and U.S. Mail

San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, Room 335
San Diego, CA 92101

Re: Implementation of Assisted Outpatient Treatment/ "Laura's Law"

Dear Supervisors Greg Cox, Dianne Jacob, Dave Roberts, Ron Roberts, and Bill Horn:

Disability Rights California¹ opposes implementation of an involuntary Assisted Outpatient Treatment (AOT) program in San Diego County. We are concerned that implementation of AOT may result in serious violations of the statutory and constitutional rights of people with mental health disabilities.

The California AOT statute itself contains certain requirements that must be met in order to implement AOT. The statute prohibits the diversion of funds from voluntary mental health to pay for implementation of AOT.² The statute further requires that a county that provides AOT offer the same comprehensive array of services on a voluntary basis to all those who need them.³

¹ Disability Rights California is a non-profit disability rights organization federally-mandated to advance and protect the rights of Californians with disabilities.

² Ca. Welf. & Inst. Code § 5349.

³ Ca. Welf & Inst. Code S 5348(b).

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It is highly unlikely that San Diego County will be able to meet these requirements. There is significant unmet need for mental health services and for affordable permanent housing among the population of people diagnosed with serious mental illness in San Diego County. This includes high rates of homelessness.⁴ Many San Diego residents with severe mental health disabilities are turned away each year from voluntary services such as Full Service Partnerships and case management;⁵ and rationing severely restricts the availability of long-term psychotherapy.⁶

In addition, depending in part on how the law is implemented in this County, AOT may create serious constitutional violations. Under the AOT statute, individuals may be subjected to AOT even though they are not a danger to themselves or others, and have not been found incompetent to make their own medical decisions. Courts have held that only persons currently dangerous may be constitutionally deprived of their liberty.⁷

AOT also creates potential civil rights violations. AOT may be found to discriminate against individuals with mental health disabilities in violation of the Americans with Disabilities Act since no competent adult with a physical health condition, even those “non-compliant” with their doctor’s orders, would be subjected to court-ordered treatment and forced hospitalization.

⁴ As of 2012, the median cost of renting an efficiency apartment in San Diego was 112% of the monthly SSI payment. *Priced Out in 2012: The Housing Crisis for People with Disabilities*, The Technical Assistance Collaborative, 2013. In 2014 there were more than 8500 homeless people in San Diego, 36% which had been identified as having a severe mental illness. *2014 San Diego Regional Homeless Profile*, Regional Taskforce on Homeless, 9/24/14.

⁵ Even chronically homeless individuals with severe mental illness may be turned away from Full Services Partnerships and similar programs if they do not have sufficiently high usage of hospitalization and emergency rooms.

⁶ San Diego restricts adults to eight (8) sessions of individual psychotherapy even when there is severe mental illness and long term needs. Clients must periodically fight to obtain additional sessions through engaging in a prolonged and complex appeals process or simply go without care.

⁷ See, e.g., *United States v. Charters*, 829 F. 2d 479 (4th Cir. 1987).

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Moreover, AOT has historically discriminated against persons based on race. For example, under Kendra's Law, the New York AOT statute, African American clients were found to be nearly five times as likely as whites, and Latinos twice as likely as whites, to be the subject of court-ordered treatment.⁸

In addition, depending again on how the law is implemented, the AOT process may violate the constitutional right to privacy as well as state and federal laws protecting the confidentiality of medical information by allowing release of confidential health information without an individual's consent.⁹

In light of the many hazards involved with implementing the AOT law, we urge you to reject any proposal that moves San Diego County towards implementation of this law. Instead, the County should invest scarce public dollars in expanding voluntary mental health services and permanent housing for County residents with mental health disabilities.

Yours very truly,

ANN E. MENASCHE
Attorney

⁸ NY Lawyers for the Public Interest, 2005.

⁹ See, e.g., Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §1320(d); *Miguel M. v. Barron*, 17 N.Y. 3d 37 (N.Y. 2011); Cal. Const. Art. 1 §1.