

July 16, 2023

RE: Testimony regarding H.1694/S.980 “An Act to Provide Critical Community Health Services”

Chairpersons Senator James B. Eldridge and Representative Michael S. Day
Joint Committee on the Judiciary
Massachusetts General Court

Over the last decade I have made extensive study of the history of public policy in Massachusetts regarding people with mental health, intellectual, and developmental disabilities. My work focuses on the intent of legislators, implementation of laws they have passed, and most importantly, the impact of those laws on the equal rights of disabled people. With that experience, I write to ask that you vote down H.1694/S.980. This legislation does not meet basic constitutional rights and protections. It also repeats historic mistakes in ways that are widely known and understood, and have no place in modern legislation.

As with similar laws passed in Massachusetts over the last 200 years, these bills name, identify, and target a specific subset of disabled people—in this instance, the “gravely disabled”—through a combination of medical, legal, and social criteria that are not similarly used to identify any legally recognized class of disability. The term seems precise but is actually confusing and ripe for misinterpretation and abuse. The bills give numerous stakeholders the collective authority to identify the “gravely disabled” and I imagine the intent is to demonstrate that combined expertise will limit abuse. Yet, the history of similar legislation shows that:

(1) Intricate, multi-stakeholder guardianship, parole, and commitment laws which target ill-defined populations are invariably used in arbitrary and capricious ways. They disproportionately victimize people who are already victims of state-sanctioned human rights violations.

(2) These laws almost never withstand the most basic court challenges because they use a person’s past and present behavior to justify a state’s predictive restraint of an individual at the expense of that person’s individual rights and liberties.

History strongly suggests that these bills will not provide the relief intended by the authors and sponsors. Instead, it is likely that they will backfire, leading to a proliferation of people identified by courts as “gravely disabled” and deprived of legal rights as a result. For an example, look no further than Bridgewater State Hospital, which ran an intricate commitment and parole program regarding “defective delinquents” for much of the 20th century; a concept which was wholly invalidated by the Supreme Court in 1972 and had all the qualities of the legislation described above.

The fact that laws like this are in use in other states may sound appealing, but just because something is widely used does not mean it is an advisable course of action. Massachusetts also differs from other states in ways that make it highly unlikely that this legislation would survive a challenge in the courts.

Sincerely,

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These comments are solely my own and are not intended to reflect the view of Harvard University or Brandeis University.