



## **SB 075 is NOT the Answer**

February 5, 2020

**BACKGROUND AND WHO WE ARE** – We are Disability Law Colorado – the Colorado arm of a nationwide network of Protection & Advocacy Systems created by federal law and established in Colorado in 1976 to protect and promote the legal and human rights of people with disabilities.

### **THE JAIL WAIT LAWSUIT**

In 2011, our organization recognized that people were languishing in jail while the criminal justice system failed to timely and adequately identify and treat their mental health issues in an appropriate setting. We filed suit against the Colorado Department of Human Services and nearly a decade later, we are on our third settlement with the state – this time having a federal-court enforceable Consent Decree behind us. Under the Consent Decree, the state has agreed to conduct an evaluation within 28 days of receiving notice that a person is in jail and awaiting an evaluation. Unfortunately, for the first time in years, the state is not meeting its obligation. Many individuals are sitting in jail longer than they should awaiting an evaluation. Despite this, we at Disability Law Colorado still do not believe that SB 75 is the right answer.

### **OUR CONCERNS WITH THE BILL**

While we appreciate that SB 75 is trying to fix the new problem of not getting timely evaluations, we think the bill misses the mark. The cornerstone of the system is to get a person evaluated in a timely and appropriate manner. If the person is found incompetent to proceed, that indicates that the individual does not understand the charges against them and cannot assist in their defense. At that point, an individual in jail transfers to the custody of the state to undergo restoration treatment. It is only at this point that a person finally gets transferred out of the jail and into a more therapeutic and appropriate setting. This is often several months after they have been arrested. What's more, if any of the involved parties believes that the initial evaluation is not reliable, a second or even third evaluation will be ordered. In most cases, this means the individual with a severe mental illness sits in jail while further evaluations are conducted.

To get people with severe mental illness into an appropriate setting, we must ensure that evaluations are top quality and consistent throughout the state. Legislation last year added educational and on-going training requirements for the current workforce. We at Disability Law Colorado believe that we have the right people to conduct these evaluations and are concerned that adding an entirely new profession who is not currently trained will only lead to further delays and lead the parties to more frequently question the evaluations and seek second or third opinions. This means our constituents will languish in jail even longer without access to appropriate services in a therapeutic setting. Yes, there is a problem, but SB 75 does not get us to the right answer.

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