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*In Memoriam (1935–2019)

Senator Steven Bradford, Chair
California State Senate Public Safety Committee
Capitol Office, Room 2059
Sacramento, CA 95814

June 29, 2021

HUMAN
RIGHTS
WATCH

HRW.org

Re: Human Rights Watch's Opposition to AB 1542

Dear Senator Bradford:

Human Rights Watch opposes the AB 1542 Yolo County pilot program that authorizes judges to sentence people to confinement in a locked treatment facility instead of prison or jail if the judge determines that their crime was motivated in part by substance abuse. We ask legislators to reject this bill and take a more holistic, rights-respecting approach to addressing problematic substance use and crime that may be connected to it.

The apparent premise of AB 1542 is that people with substance use disorders (SUDs) have a medical condition that is best addressed through treatment as opposed to punishment. Human Rights Watch supports significantly increasing the availability of evidence-based voluntary treatment and other needed support for people who struggle with problematic use of psychoactive substances, as most people who want such treatment in the United States are unable to access it. However, this bill proposes forcing people involuntarily into “secured” or locked treatment, regulated by the courts, thus blurring the lines between medical care and punishment, and undermining the goal of helping those in need.¹ It runs directly counter to the principle of free and informed consent to mental health treatment, which is a cornerstone of the right to health. Conflating health treatment and jailing, as envisioned by AB 1542, risks substantial human rights abuse, is ineffective as a treatment, and takes resources and policy focus away from initiatives that are much more likely to help people.

AB 1542 Conflates Treatment with Punishment

AB 1542 would give judges power to sentence people convicted of felony offenses to “secured residential treatment” facilities if the judges determine that those people have SUDs that in any way contributed to the crime for

¹ “District Attorney Jeff Reisig’s Five-Point Plan to Reduce Homelessness,” Yolo County District Attorney, [District Attorney Jeff Reisig's Five-Point Plan to Reduce Homelessness | Yolo County District Attorney \(yoloda.org\)](https://www.yolodistrictattorney.org/DA-Reisig-is-a-primary-proponent-of-AB-1524). DA Reisig is a primary proponent of AB 1524. He is presenting “involuntary residential treatment,” as envisioned by AB1524 as part of his response to rising homelessness.

which they were convicted.² Convictions for common criminal offenses, including theft, drug sales and others, would be eligible.³ Convictions for simple drug possession, sex crimes, or statutorily defined “serious” or “violent” crimes,⁴ would be excluded.⁵ Judges would be responsible for overseeing that treatment.⁶

However, judges lack the professional health training or knowledge required to determine whether a person has a health condition like substance use disorder or if substance use motivated their crime or to make decisions on the course of a person’s treatment. The bill does not require an evidentiary hearing to assess these underlying conditions; the health and human services agency conducts an assessment after a person has been identified by a judge or prosecutor as a candidate for the locked program.⁷ In other contexts where judges have been put in charge of overseeing treatment, like drug courts, experts have observed that judges have taken punitive approaches—for example, punishing relapse, which is a natural part of recovery—rather than evidence-based approaches focused on therapeutic benefit.⁸

While billed as an alternative to incarceration, permitting judges to confine people to a locked treatment facility effectively authorizes their detention in that facility, while violating the detainees’ right to informed consent by imposing involuntary treatment..

AB 1542 Standards Deny Due Process

The decision-making process envisioned by AB 1542 lacks defined standards, raising serious concerns about due process. The bill does not say how courts will identify people who will be sent to the locked treatment. The bill says nothing about procedures or standards for how courts are to make the ultimate decision, other than to permit judges to sentence people to the locked treatment if they determine the crime was caused in part by an SUD.⁹ Judges lack training to make such diagnoses, and the bill establishes no fact-finding procedure beyond the judges’ subjective beliefs, informed by a report with input from prosecutor and probation officer, neither of whom have expertise in making determinations about mental health care, as well as the local health agency.¹⁰ This pilot threatens to create a separate legal track for people perceived to have SUDs, with lowered due process, negatively implicating basic rights.¹¹

² AB 1542, County of Yolo: Secured Residential Treatment Program (McCarty) 2021, Sec. 2, Sec. 1203.44(c).

³ The bill author amended this provision to restrict the program to felony offense and exclude misdemeanors. While, this limitation reduces the number of people exposed, it does not fix the harmfulness of the program and only minimally mitigates the objections we raise.

⁴ California Penal Code sections 290(c), 1192.7(c), and 667.5(c).

⁵ AB 1542, Sec. 2, Sec. 1203.44(b)(1).

⁶ AB 1542, Sec. 2, Sec. 1203.44(a)(7), (c)(1), (c)(3), (e), (f), (g) and (h).

⁷ AB 1542, Sec. 2, Sec. 1203.44(a)(2). It is unclear how this provision would work. Since most cases resolve through plea agreements, it is likely that the assessments would occur after an agreement is made. Plea agreements generally involve the threat of harsher punishment and, therefore, are coercive by nature.

⁸ Physicians for Human Rights, *Neither Justice nor Treatment: Drug Courts in the United States*, (June 2017), p. 3. [phr drugcourts report singlepages.pdf](#)

⁹ AB 1542, Sec. 2, Sec. 1203.44(c).

¹⁰ AB 1542, Sec. 2, Sec. 1203.44(d).

¹¹ Committee on the Rights of Persons with Disabilities, “Guidelines on article 14 of the Convention on the Rights of Person with Disabilities: The right to liberty and security of persons with disabilities,” (September 2015), par. 14,

Even if amended to create stronger judicial procedures and to elevate input from health professionals, this program would remain objectionable because it is premised on coercing people into a locked treatment facility.

Coerced Treatment Violates Human Rights

Under international human rights law, all people have the right to “the highest attainable standard of mental health.”¹² Free and informed consent, including the right to refuse treatment, is a core element of that right to health.¹³ People have a right to be free from forced mental health treatment.¹⁴ Having a “substitute” decision-maker, including a judge, make orders for health care can deny a person their rights and infringe on their personal autonomy in health care.¹⁵ The World Health Organization condemns involuntary mental health treatments as inconsistent with international human rights standards.¹⁶ Due to the coercive circumstances under which the AB 1524 sentencing would take place, the treatment would not be voluntary, with prison or jail as the only other option allowed.

In practice, courts may use the threat of jail or prison time to pressure people to plead guilty to a sentence of treatment, regardless of whether those people are independently willing or ready to accept treatment, and in many cases even if they do not need treatment. Prosecutors could simply demand longer prison or jail sentences in plea negotiations to leverage people into accepting this treatment “voluntarily.” This coerced process leading to “treatment” undermines any therapeutic aim of the bill. Despite language purporting to call sentencing to the locked facility “voluntary” or consensual, this coercive structure will dictate actual implementation of the bill. Further, judges will be able to re-sentence to jail or prison if they determine a person has not adequately complied with the terms of the locked program, meaning that the coercion continues throughout the course of treatment.¹⁷

https://www.google.com/search?q=Guidelines+on+CRPD+article+14%2C+paragraph+21&rlz=1C1PRFI_enUS936US936&oq=Guidelines+on+CRPD+article+14%2C+paragraph+21&aqs=chrome..69i57j33i160.3045j0j7&sourceid=chrome&ic=UTF-8

¹² International Covenant on Economic, Social and Cultural Rights, (“ICESCR”), adopted December 16, 1966, entered into force January 3, 1976, Art. 12(1), [OHCHR | International Covenant on Economic, Social and Cultural Rights](#).

¹³ Human Rights Council; United Nations, General Assembly, “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health,” (March 28, 2017), Par. 64. [A/HRC/35/21 - E - A/HRC/35/21 -Desktop \(undocs.org\)](#)

¹⁴ Convention on the Rights of Persons with Disabilities, art. 14; Committee on the Rights of Persons with Disabilities: General comment No. 1 (2014), (May 19, 2014), par. 31, 41. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/031/20/PDF/G1403120.pdf?OpenElement>

¹⁵ Convention on the Rights of Persons with Disabilities, art. 14; Committee on the Rights of Persons with Disabilities: General comment No. 1 (2014), (May 19, 2014), paras. 31, 41.

¹⁶ Freedom from coercion, violence and abuse. WHO Quality Rights core training: mental health and social services, 2019, p. 2-. <https://apps.who.int/iris/bitstream/handle/10665/329582/9789241516730-eng.pdf?sequence=5&isAllowed=y>

¹⁷ AB 1542, Sec. 2, Sec. 1203.44(h).

Even with amendments limiting its application to felonies, people who might otherwise face little or no time in prison or jail may be pressured into locked treatment if the judge or prosecutor wills it. Time detained in treatment can exceed time expected to be spent serving traditional jail or prison sentences for such crimes, as long as it does not exceed the maximum allowable term.¹⁸ AB 1542 requires the judge to decide the length of time spent in the locked facility, unlike truly voluntary treatment which would be determined by the patient in consultation with health professionals.¹⁹

AB 1524 envisions treatment providers reporting the person's therapeutic progress to the court²⁰; it requires Yolo County to collect that individual's data and to report it to the state.²¹ It allows probation officers and prosecutors to have input into the course of treatment.²² These provisions violate the right to confidentiality, a key component of the right to health.²³ This violation will undermine patient-healthcare provider relationships that are necessary to successful treatment outcomes.²⁴ By requiring healthcare providers to report treatment progress to the courts, including relapses—which are a normal part of recovery—this bill compromises medical ethics requiring loyalty to patients.²⁵ Healthcare providers should be working directly with their patients, without outside interference especially from courts, to create good health outcomes.

Coerced Treatment is Ineffective

The coercion involved in this approach to treatment not only encourages abuse and violation of basic rights, but is also ineffective.²⁶ Like more traditional drug courts, this pilot may result in courts sentencing people who do not actually need treatment, wasting their time, and diverting resources from those who do.²⁷ For treatment to work, people generally need to be willing and ready to accept it; compulsory treatment ignores this reality.²⁸ Blurring lines between treatment and incarceration, especially betraying patient confidences to judges and prosecutors who can order further jailing, damages the trust necessary for a person to embrace their treatment.²⁹ Studies of court ordered

¹⁸ AB 1542, Sec. 2, Sec. 1203.44(c)(2).

¹⁹ AB 1542, Sec. 2, Sec. 1203.44(a)(7).

²⁰ AB 1542, Sec. 2, Sec. 1203.44(e) and (f).

²¹ AB 1542, Sec. 1203.44(a)(11) and (12).

²² AB 1542, Sec. 2, Sec. 1203.44(d).

²³ *Neither Justice nor Treatment: Drug Courts in the United States*, p. 20.

²⁴ *Neither Justice nor Treatment: Drug Courts in the United States*, p. 20.

²⁵ *Neither Justice nor Treatment: Drug Courts in the United States*, p. 20.

²⁶ Shawn Radcliffe, “Should People with Drug Addictions Be Forced Into Rehab?” *Healthline*, (June 25, 2018); [Drug Addicts and Forced Rehab? \(healthline.com\)](https://www.healthline.com/health/addiction/should-people-with-drug-addictions-be-forced-into-rehab).

²⁷ Joanne Csete and Denise Tomasini-Joshi, *Drug Courts: Equivocal Evidence on a Popular Intervention*, Open Society Foundation, (February 2015), p. 8, [Drug Courts: Equivocal Evidence on a Popular Intervention - Open Society Foundations](#); *Neither Justice nor Treatment: Drug Courts in the United States*, p. 3.

²⁸ Richard M. Ryan, Martin F. Lynch, Maarten Vansteenkiste, Edward L. Deci, "Motivation and Autonomy in Counseling, Psychotherapy, and Behavior Change: A Look at Theory and Practice," Invited Integrative Review, (2011), [motivation-autonomy.pdf \(apa.org\)](#); *An Assessment of Opioid-Related Deaths in Massachusetts (2013-2014)*, Massachusetts Department of Public Health, (September 2016), p. 49, [Microsoft Word - dph-legislative-report-chapter-55-opioid-overdose-study-9-15-2016 \(mass.gov\)](#)

²⁹ Leo Beletsky, Wendy E. Parmet, Ameet Sarpatwari, “Expanding Coercive Treatment is the Wrong Solution for the Opioid Crisis,” *Health Affairs*, February 11, 2016, [Expanding Coercive Treatment Is The Wrong Solution For The Opioid Crisis \(updated\) | Health Affairs](#)

drug treatment generally have not shown positive outcomes.³⁰ Studies have correlated coerced treatment to increased occurrence of overdoses and relapse compared to voluntary treatment.³¹

California Should Invest in Voluntary Treatment and Supportive Services

Investing in carceral, involuntary treatment shifts resources away from providing voluntary treatment and the services necessary to make that treatment effective.³² Instead of investing in locked facilities, Yolo County and the State of California should scale up evidence-based treatment capacity for people who need and want to access it.³³ Providing well-resourced holistic community-based options and removing barriers to evidence-based treatment will help people struggling with problematic substance use and reduce related harms.³⁴ Such options should be coupled with investment in other social supports, including housing.

An initial draft of the pilot program bill explicitly stated that it was designed to address the homeless population in Yolo County, which has grown substantially in recent years.³⁵ The bill as introduced removed most of that language from its introduction, but the content of the pilot remains substantially the same. Without addressing the need for housing and ongoing services, it is unlikely that locked treatment will help people experiencing homelessness improve their situation. Instead, it will perpetuate the revolving door of incarceration and lack of meaningful support that traps so many of them.

Yolo County and California would more effectively address these problems by providing more affordable housing and voluntary services and health care, instead of spending resources on detaining people in the name of treatment.

AB 1542 is simply a plan for more detention under the guise of treatment. More harmfully, it co-opts the language of the movement to address health problems related to crime with supportive solutions and redirects it toward more detention, compounded by violations of the rights to informed consent and health. We ask that you reject this harmful and abusive pilot program and, instead, direct resources towards making voluntary treatment and other necessary services accessible to all.

³⁰ Healthline; D. Webb, et al., "The effectiveness of compulsory drug treatment: A systematic review," *International Journal of Drug Policy*, (February 2016) [The effectiveness of compulsory drug treatment: A systematic review - ScienceDirect](#): Only 22% of studies reviewed showed positive outcomes for compulsory treatment. The rest showed either negative impact, no impact, or inconclusive data.

³¹ *An Assessment of Opioid-Related Deaths in Massachusetts (2013-2014)*, p. 49; Beletsky, et. al, "Expanding Coercive Treatment is the Wrong Solution for the Opioid Crisis"; Claude Rafful et al., "Increased non-fatal overdose risk associated with involuntary drug treatment in a longitudinal study with people who inject drugs," *Addiction*, Vol. 113, Iss. 6, (June 2018) [Increased non-fatal overdose risk associated with involuntary drug treatment in a longitudinal study with people who inject drugs - Rafful - 2018 - Addiction - Wiley Online Library](#).

³² *Neither Justice nor Treatment: Drug Courts in the United States*, p. 3.

³³ Beletsky, et. al, "Expanding Coercive Treatment is the Wrong Solution for the Opioid Crisis."

³⁴ *An Assessment of Opioid-Related Deaths in Massachusetts (2013-2014)*, p. 52, 57.

³⁵ "Yolo County Homeless Count," Yolo County Homeless and Poverty Action Coalition, (January 22, 2019), p. 2, [showdocument \(yolocounty.org\)](#).

Sincerely,

A handwritten signature in black ink, appearing to be 'JR' or similar, with a long horizontal stroke extending to the right.

John Raphling
Senior Researcher, US Program
Human Rights Watch

cc.

Senator Rosilicie Ochoa Bogh
Senator Sydney Kamlager
Senator Nancy Skinner
Senator Scott D. Wiener