



Department of
PUBLIC DEFENSE

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Judge Mary E. Roberts
King County Superior Court
516 3rd Avenue, Room C-203
Seattle, WA 98104

ITA Court Operations Team
Involuntary Treatment Court
King County Superior Court
516 3rd Avenue, Room C-203
Seattle, WA 98104

RE: Use of Restraints in King County's Involuntary Treatment Court

Your Honor and Operations Team,

We write to request that you use the minimum restraint required for clients who appear for hearings at Involuntary Treatment Act Court (ITA Court) facilities. Using restraints in excess of what is required is both unconstitutional and an affront to our clients' dignity.

Currently ITA Court policy requires a blanket use of restraints for all clients appearing for a hearing. It directs ambulance crews and nursing staff to "not release" an individual patient from physical restraints at any time they are in ITA Court facilities. Exhibit A (Guide to ITA Court Practices and Procedures) (ITA Court Restraint Policy). The ITA Court Restraint Policy directs medical providers to deny patients access to the bathroom and instead directs medical providers to "bring a bed pan" to the patient if there is a need to urinate or defecate. *Id.* This policy of placing all ITA Court patients in restraints and forcing them to use bedpans impinges on the dignity of ITA patients and raises constitutional concerns.

The policy has harmed DPD clients. In August 2019, an attorney with the King County Department of Public Defense (DPD) raised concerns about her client being shackled while in the ITA Court's facilities. Her client is elderly, suffers from dementia, and medical professionals determined that restraints were unnecessary for him as he did not pose a risk of self-harm, escape, or assaultive behaviors. *See* Exhibit B (declining to identify patient as assaultive, at risk of self-harm nor unable to follow staff directions). Notwithstanding the medical professional's recommendation, the patient was placed in restraints and requests to remove the restraints were denied including initial

requests to use toileting facilities instead of a bedpan.¹ The patient's DPD attorney moved for an emergency hearing to allow her client access to the bathroom, and eventually the Court intervened and allowed access to the toilet.

While we are grateful that the court made the correct decision in this case, the Court's policy violates the constitution. "Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement" than those convicted of a crime. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004). *See also Youngberg v. Romero*, 457 U.S. 307, 321-22 (1982); *Sharp v. Weston*, 233 F.3d 1166, 1172-73 (9th Cir. 2000). To ensure this protection for those who are civilly committed, the Due Process Clause requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed. *Youngberg*, 457 U.S. at 321. The Due Process Clause also cautions that "liberty from bodily restraint is an interest that survives even after involuntary commitment. *Id.* at 316. In determining whether a substantive right protected by the Due Process Clause has been violated, it is necessary to balance "the liberty of the individual" and "the demands of an organized society." *Id.* at 320. Generally, this requires weighing the individual's interest in liberty against the State's asserted reasons for restraining individual liberty. *Id.* "Moreover, there certainly is no reason to think judges . . . are better qualified than appropriate professionals in making such decisions[.]" *Id.* The ITA Court Restraint Policy which requires all patients to be held in restraints—regardless of whether a medical professional deems such restraints are warranted—raises grave concerns.

Every patient transported to ITA Court receives a medical assessment regarding the appropriate and necessary level of restraint for that individual. *See* ITA Court Restraint Policy at B(1)(d)-(e). These recommendations are detailed and include the following options: (1) no restraints; (2) 2-4 point restraints; (3) restraints that may be removed if court orders so for bathroom breaks; and (4) requirement to stay in restraints unless the court orders otherwise. *See* Exhibit B (ITA Court's RN Restraint & Transportation by Ambulance and/or Contact Health Precaution Status form (Restraint Recommendation)). The medical professionals' recommendation also provide information regarding the basis for the recommended level of restraint. *Id.* (allowing medical professional to determine level of restraint predicated on: escape risk, inability to follow directions, assault risk, self-harm, high level of agitation, etc.). However, the ITA Court Restraint Policy's blanket directive ignores medical professionals' individualized recommendations regarding patient's needs. This raises concerns that patients are being subjected to restraints that are unnecessary and unjustified.

Further, the Court's blanket policy of restraining individuals during hearings—without an individualized assessment of the necessity of such restraints—raises the same concerns and also raises concerns regarding a patient's ability to effectively participate in their court proceedings. *See Duckett v. Godinez*, 67 F.3d 734, 748 (9th Cir. 1995) (noting that use of physical restraints during court hearings raises concerns beyond that of presumption of innocence including impeding an individual's ability to communicate with counsel and impairing cognitive functioning due to pain and embarrassment). *See also Tyars v. Finner*, 709 F.2d 1274, 1284-85 (9th Cir. 1983).

¹ The patient bathroom in the waiting area of the ITA Court facilities was designed to protect against harm including being ligature resistant.

For these reasons, DPD requests that the court revise its restraint policy and make individualized decisions regarding the use of restraints, both in and out of the courtroom. We look forward to hearing from you by October 18, 2019.



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