No. 119392

IN THE SUPREME COURT OF ILLINOIS

In re LINDA B., A person subject to an order for involuntary commitment People of the State of Illinois, Appellee v. Linda B., Appellant	Appeal from the Appellate Court, First Judicial District No. 1-13-2134 Original appeal from the Circuit Court of Cook County No. 2013 CoMH 1381 Honorable David Skryd, Presiding Judge

BRIEF AND ARGUMENT OF AMICUS CURIAE EQUIP FOR EQUALITY IN SUPPORT OF PETITIONER, LINDA B.

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POINTS AND AUTHORITIES

I. Involuntary Civil Commitment to a Mental Health Facility Has Profound and Devastating Effects on the Individual

II. Involuntary Civil Commitment of a Person to a Mental Health Facility is a Massive Curtailment of the Fundamental Right to Liberty

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STATEMENT OF INTEREST

Amicus Equip for Equality ("EFE") is a private nonprofit organization designated by the governor in 1985 to implement the federally mandated Protection and Advocacy system for the state of Illinois. EFE's mission is to safeguard the rights of people with physical and mental disabilities in Illinois through the provision of legal and advocacy services, public policy initiatives, abuse and neglect investigation and self-advocacy training. In furtherance of that mission, EFE has worked to promote and uphold the rights of people with mental illness to liberty, privacy, and self-determination. EFE has also worked to promote and expand the quality and availability of community-based mental health services because treatment that is easily accessible and voluntarily undertaken is more effective than coercive measures and leads to more individuals living successfully in the community.

This case raises questions regarding the fundamental liberty interests that are implicated by the involuntary commitment of an individual to a mental health facility and the due process protections that flow from those interests. The appellate court deemed timely a petition to involuntarily commit Ms. Linda B. pursuant to Section 3-611 of the *Mental Health and Developmental Disabilities Code* ("Code") that was filed 17 days after she was admitted and confined to the hospital for treatment of her mental health and medical conditions. EFE believes that the appellate court's ruling was in error because it directly contravenes the 24 hour filing deadline of Section 3-611 and would allow individuals with mental illness to be indefinitely detained in a mental health facility, thereby depriving

them of the fundamental right to liberty without due process of law. As the Governor-designated organization to protect and advocate for people with disabilities, including mental illness, EFE is keenly interested in this Court's resolution of the questions raised by this appeal.

EFE has broad state and federal oversight authority to carry out its duties and responsibilities. One of the statutory mandates under which EFE operates is the Protection and Advocacy for Individuals with Mental Illness Act ("PAIMI Act"). 42 U.S.C. § 10801 (2012). The purposes of the PAIMI Act are, *inter alia*, "(1) to ensure the rights of individuals with mental illness are protected, and (2) to assist States to establish and operate a protection and advocacy system for individuals with mental illness which will . . . protect and advocate the rights of such individuals through activities to ensure the enforcement of the Constitution." *Id; see also* 405 ILCS 45 (West 2016).

This case also impacts Illinois public policy with regard to the proper treatment and protection of individuals with mental illness. EFE has worked to safeguard the rights of people with mental illness through: individual and systemic legal advocacy; investigations of abuse and neglect; legislative advocacy; education of policy makers on issues that affect people with mental illness; efforts to expand the funding and availability of quality community mental health services; participation in statewide mental health organizations and advisory councils; working with mental health consumers, advocates and providers who serve on EFE's PAIMI Advisory Council and provide input and suggestions to help guide EFE's activities. As a result, EFE has extensive

knowledge of the impact of involuntary commitment upon persons with mental illness and its relation to the public policy of Illinois.

INTRODUCTION

In its brief *amicus curiae* in support of Petitioner, Linda B., *Amicus* EFE will address the issue of whether the appellate court's decision that a petition for involuntary commitment on an inpatient basis filed 17 days after the admission of Ms. Linda B. to a mental health facility was timely comports with the due process protections contained in the Code. For the reasons set forth in this brief *amicus curiae*, EFE submits that the appellate court's decision impermissibly infringes upon the fundamental right of liberty implicated by involuntary commitment and violates the due process rights of individuals with mental illness in Illinois.

ARGUMENT

I. Involuntary Civil Commitment to a Mental Health Facility Has Profound and Devastating Effects on the Individual

As the Protection and Advocacy (P&A) system for people with disabilities in Illinois, *Amicus* is keenly aware of the serious and long-term effects of forcing a person with mental illness into treatment. Unlike voluntary patients admitted to hospitals for non-mental health reasons, involuntary mental health patients are subjected to extreme rights restrictions, isolation and the stigma associated with being labeled mentally ill and forcibly confined. They are stripped of control over even the most basic decisions: when and where they eat, sleep, shower, or get dressed; in what activities, if any, they are allowed to engage; and with whom, if anyone, they are allowed to talk or associate. Their movement in and out of the mental health facility is strictly limited. They are subjected to invasions of their privacy and personal security. As is generally true of people with disabilities in institutional settings, people with mental illness confined to a mental health facility are far more likely to be victims of violence. World Health Org., *Violence against adults and children with disabilities*, http://www.who.int/disabilities/violence/en/ (last visited 7-1-16).

The National Council on Disability (NCD), an independent federal agency mandated to make recommendations to the President and Congress on disability issues, conducted an investigation into the treatment of people with mental illness in the U.S. Unlike most investigations of this kind, the primary participants were people with mental illness themselves. NCD received extensive testimony from those individuals, as well as testimony from mental health professionals,

attorneys, advocates, and family members of people with mental illness. The resulting report illustrates the true magnitude of the deprivation of liberty that involuntary commitment entails. Nat'l. Council on Disability, From Privileges to Rights: People Labeled with Psychiatric Disabilities Speak for Themselves, January 20, 2000, *available at* http://www.ncd.gov/newsroom/publications/2000/privileges.htm.

The individuals with mental illness who participated in the NCD investigation testified in graphic detail how they had been "beaten, shocked, isolated, incarcerated, restricted, raped, deprived of food and bathroom privileges, and physically and psychologically abused in institutions and in their communities." *Id.* at 11. Patients described the gross disparity between the involuntary treatment of individuals with mental illness and the voluntary treatment of individuals with non-mental health problems. "Forced treatment and abuse aren't synonymous with healing. When persons are admitted in a general hospital for any other problems – stroke, cancer, broken hip, X rays, tests – these persons wouldn't dream of allowing the doctors, nurses, or nursing aides to lock them up, shock them up, tie them up, or drug them up, and the staff wouldn't do it to them. Those patients are treated with compassion, caring, respect and dignity, and persons who have serious enough emotional/mental problems need to be treated the same." *Id.* at 1.

A person involuntarily committed also described how "cruelly this system preys on the worst fears and vulnerabilities of people in crisis. They isolate you from the rest of the world, and they become your only reference point. When

they accuse someone of being treatment resistant, they are accusing them of not wanting to change their lives. It is important to realize how I was told that this was the end of the line for me. If this didn't work, nothing would, and if I left, I would very likely kill myself. During the entire length of my treatment, they did nothing constructive for me, and they hurt me deeply." *Id.* at 2.

Consider further the degrading extent of the denial of basic human rights experienced while institutionalized, and the punitive character of the experience. As one patient reported, "The unit structure is based on privileges and punishments, which are referred to as consequences, since they maintain they are not punitive. It does not allow any kind of privacy whatsoever, and everything is a potential treatment issue, including nail-biting and not making one's bed. They maintain control through humiliation and fear of humiliation." *Id.*

Overall, the testimony elicited in the study demonstrated that people with mental illness are systematically and routinely deprived of their rights, and treated as less than full citizens or human beings. *Id.* at 3.

Involuntary treatment is extremely rare outside the mental health system. It is typically allowed only in cases involving unconsciousness or the inability to communicate. *Id.* at 11. In contrast, people with mental illness, even when they vehemently protest treatments they do not want are routinely subjected to them anyway, based on the rationalization that they lack insight or are unable to recognize their need for treatment because of their mental illness. In practice, lack of insight or inability to recognize the need for treatment becomes

disagreement with the treating professional, and people who disagree are labeled noncompliant or uncooperative with treatment. *Id.*

Consequently, it is not surprising that much of the testimony in the NCD report focused on the harmfulness of involuntary interventions on people's sense of dignity and self-worth, and the fact that these interventions were seldom helpful in assisting people with their immediate problems or with their ability to improve their lives long term. *Id.* at 25. The overwhelming majority of those testifying were against forced treatment. They repeatedly expressed feelings of abandonment, helplessness and vulnerability. They also related that involuntary treatments are often used when people are not dangerous to themselves or others, but simply an annoyance to relatives or neighbors. *Id.* at 26. Given the profoundly negative impact that involuntary commitment has on the emotional and physical well being of the individual, and the unacceptably high risk of abuse of the process, forced confinement and treatment should be held to a heavy burden of proof that they are indeed the absolute last resort. *Id.* at 27.

It is precisely because of their profound and devastating effects that involuntary commitment of an individual to a mental health facility and the use of aversive measures such as restraint and seclusion have been identified as practices that may constitute psychiatric torture and ill treatment. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report of the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 16-17, U.N. DOC. A/HRC/22/53 (February 1, 2013), *available at*

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf

In the case of Ms. Linda B., the appellate court held that a petition to involuntarily commit her that was filed 17 days after she was forcibly confined and treated for her mental health and medical conditions was timely. In considering whether the appellate court's decision was erroneous, it is critical to keep in mind both the significance of the fundamental right of liberty that involuntary commitment invokes and the enormity of the loss that ensues when there is a deprivation of that fundamental right.

II. Involuntary Civil Commitment of a Person to a Mental Health Facility is a Massive Curtailment of the Fundamental Right to Liberty

The involuntary commitment of an individual to a mental health facility implicates the fundamental right to liberty. Freedom from unwarranted and unjustified governmental confinement lies at the heart of the Bill of Rights in the U.S. Constitution. Protection from this type of restraint is essential to the basic guarantees of liberty found in the Fifth and Fourteenth Amendments to the U.S. Constitution and is the very essence and foundation of the liberty protected by the Due Process Clause. U.S. Const. amend. V; U.S. Const. amend. XIV; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo,* 457 U.S. 307, 316 (1982).

The U.S. Supreme Court has recognized that involuntary civil commitment of an individual to a mental health facility is "a significant deprivation" and a "massive curtailment" of liberty. *Foucha,* 504 U.S. at 80;

Jones v. United States, 463 U.S. 354, 361 (1983); *Addington v. Texas,* 441 U.S. 418, 425 (1979); *Humphrey v. Cady,* 405 U.S. 504, 509 (1972). The U.S. Supreme Court has further recognized the liberty interest implicated by involuntary commitment as a fundamental right that triggers due process protections. *Cooper v. Oklahoma*, 517 U.S. 348, 368-69 (1996). ("The requirement that grounds for civil commitment be shown by clear and convincing evidence protects the individual's fundamental interest in liberty".).

Illinois courts have similarly recognized the significant deprivation of fundamental liberty interests that involuntary commitment represents. "Because involuntary administration of mental health services implicates fundamental liberty interests, statutes governing the applicable procedures should be construed narrowly." *In Re Barbara H.*, 183 Ill.2d 482, 498 (1998); *In re Robinson,* 151 Ill.2d 126, 130 (1992) ("Involuntary admission procedures implicate substantial liberty interests.").

Given the weight and gravity of an individual's liberty interest in the outcome of an involuntary commitment proceeding as compared to the state's interests in providing care and protection to the individual or others, courts must carefully balance and assess these competing interests so as to minimize the risk of erroneous decisions. *Addington,* 441 U.S. at 425. Because the risk of injury to the individual is far greater than any potential harm to the state, the individual may not be required to share equally in that risk of error. *Id.* at 427. The appellate court's ruling that the petition to involuntarily commit Ms. Linda B.

filed 17 days after her admission was timely impermissibly balances the risk of error in favor of the state and against Ms. Linda B.

III. The Appellate Court's Decision Significantly Erodes the Due Process Protections to which Individuals with Mental Illness are Entitled

A. The fundamental liberty interests at stake demand strict compliance with the Code's procedural protections

Article VI of the Code requires a petition for emergency admission by certification of an individual alleged to be subject to involuntary commitment on an inpatient basis to be filed with the court within 24 hours of the individual's admission to a mental health facility, excluding weekends and holidays. 405 ILCS 5/3-611 (West 2016). A mental health facility is defined as "any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons." 405 ILCS 5/1-114 (West 2016).

The procedural requirements to involuntarily commit a person to a mental health facility set forth in the Code are precise and unequivocal. Their precision—and the need for strict compliance—are grounded in the fundamental liberty interests that are implicated when the state seeks to force a person with mental illness into treatment. It is for this reason that Illinois courts have required strict compliance with the Code's 24 hour filing deadline.

> The legislature has created a bright line. *The State has 24 hours* (emphasis added). No doubt the bright line was created as a prophylactic against deciding these kinds of cases on an *ad hoc* basis. When we recall that other governments have used involuntary commitment to a mental hospital

> as a ruse, as a device to silence critics, we feel that the bright line is but one brick in a wall against the evils of tyranny that we, in this country, have erected. One brief glance toward the recent history of Eastern Europe is persuasive of the wisdom of this rule. *In Re LaTouche*, 247 Ill.App.3d 615, 620 (2nd Dist. 1993) quoting *People v. Valentine*, 201 Ill.App.3d 10, 13 (5th Dist.1990).

"Involuntary commitment proceedings involve a person's strict liberty interests and, thus, the statutory sections of the Code should be construed strictly in favor of the respondent." *In the Matter of Demir*, 322 Ill.App.3d 989, 992 (4th Dist. 2001), citing *In re Houlihan*, 231 Ill.App.3d 677, 681 (2nd Dist. 1992). "The Code creates a bright-line test with which the facility director must strictly comply." *Id.* at 994.

The undisputed facts in this case demonstrate that Ms. Linda B. was admitted to and treated at Mount Sinai Hospital without her consent beginning on April 22, 2013. (R. 12, 15, 20, 35) At the time of her admission, Ms. Linda B. had a known diagnosis of schizophrenia and a history of refusing to take medications, having been admitted to Mount Sinai for mental health treatment just months earlier. (R. 10, 11, 15-16) According to her treating psychiatrist, Dr. Mirkin, upon admission Ms. Linda B. was "agitated and had very angry behaviors" (R. 9-10), necessitating that she be "supervised in the structured environment with a sitter next to her *all the time.*" (R. 15) (emphasis added). Thus, from April 22nd forward, Ms. Linda B.'s liberty was constantly restricted. (R. 9, 30; C. 32-34) She was not free to leave her room, let alone the hospital.

It is a well-established fact that individuals with serious mental illness often have co-morbid medical conditions. Thomas Insel, Nat'l. Inst. of Mental Health, *Director's Blog: No Health without Mental Health,* February 6, 2011,

http://www.nimh.nih.gov/about/director/2011/no-health-without-mental-health.shtml. Such was the case with Ms. Linda B. who, in addition to schizophrenia, had tachycardia and anemia at the time of her admission. (R. 9-10) As a result, she was placed on a medical floor where she received both mental health and medical treatment. (R. 9-10)

In order to lawfully commit Ms. Linda B. for mental health treatment against her will, the director of Mount Sinai Hospital was bound to file a petition and certificate within 24 hours of her April 22nd admission. That is unquestionably the operative date. The petition that was filed by the hospital director plainly states and acknowledges that Ms. Linda B. was admitted to a mental health facility on April 22, 2013. That is the date upon which her forced mental health treatment began and that is the date from which she was confined against her will by constant one-to-one supervision. Yet, the petition to involuntarily admit Ms. Linda B. was not filed until 17 days later on May 9, 2013. Contrary to the bright line test established by the legislature, the petition was seriously late and should have been dismissed. The appellate court, however, held that the petition was timely.

The appellate court's holding is based on the conclusion that Ms. Linda B. was not admitted in a legal sense on April 22, 2013. The implication is that Ms. Linda B.'s legal status somehow changed between April 22nd and May 9th, thus triggering the duty to file a petition. However, this finding is not born out by the facts. Ms. Linda B.'s treating psychiatrist, Dr. Mirkin, testified that from the time of her April 22nd admission:

- Ms. Linda B. had co-morbid mental health and medical conditions;
- Ms. Linda B. refused treatment of any kind;
- Ms. Linda B.'s liberty was constantly restricted;
- Ms. Linda B. received both mental health and medical treatment on the medical floor where she was placed.

For all intents and purposes, the hospital viewed and treated Ms. Linda B. as a person subject to involuntary admission on an inpatient basis from the time of her admission on April 22, 2013. However, it failed to take the requisite legal steps to have her adjudicated as such, thereby depriving her of the due process protections to which she was entitled under the Code. Even assuming for the sake of argument that Ms. Linda B. met the definition of a person subject to involuntary commitment on April 22nd, the hospital had no authority to forcibly detain and treat her absent compliance with the Code's strict procedural requirements. The hospital administrator failed to file a petition within 24 hours of Ms. Linda B.'s admission. Consequently, the petition filed on May 9, 2013 was late and rightly should have been dismissed.

There are no facts to suggest that there was any change in Ms. Linda B.'s legal status on May 9, 2013. According to Dr. Mirkin, her mental health condition was essentially the same from the time of her April 22nd admission until the date of the hearing on June 11, 2013. If anything, Dr. Mirkin saw some improvement in her mental health condition over time. (R. 10-12) Throughout her admission, Ms. Linda B was forcibly confined and treated for her mental health and medical conditions on the same medical floor of the hospital. Her

freedom of movement was constantly restricted due to one-to-one supervision, which is why Dr. Mirkin saw no need for her to be transferred to a psychiatric floor. (R. 30) The ability to restrict an individual's liberty in order to compel mental health treatment is the fundamental reason why there must be strict compliance with the due process protections of the Code, including the requirement that a petition be timely filed.

The appellate court's holding that Ms. Linda B. was not admitted in a legal sense on April 22, 2013 cannot be sustained. The appellate court, based on this court's decision in *In re Andrew B.,* 237 Ill.2d 340, 350 (2010), found that an admission for purposes of Section 3-611 is not limited to the date of initial physical entry into a facility. Granted, there may be instances in which the date of initial physical entry may not constitute an admission for purposes of Section 3-611. If, for example, a person was admitted to the hospital solely to address her medical conditions and then days or weeks later experienced an acute psychiatric episode warranting emergency mental health treatment, the date of initial physical entry might not qualify as an admission for this purpose. But that is not this case. Ms. Linda B. was admitted to the hospital on April 22nd for *both* her mental health and medical conditions and she received treatment for *both* conditions from the first day of her admission on April 22, 2013 until her last. In this case, the date of Ms. Linda B.'s original physical entry into the hospital, April 22nd, is the date of admission for purposes of Section 3-611.

Contrary to the appellate court's holding, the date of May 9th is not significant because it marked a change in Ms. Linda B.'s legal status. There was

no such change. The hospital director arbitrarily decided to file a petition on that date. Rather, May 9th is significant because it marked the 17th day after Ms. Linda B.'s admission that she was involuntarily confined and treated for mental health reasons without due process of law.

If allowed to stand, the appellate court's decision would set a dangerous precedent having consequences of great magnitude. Mental health facilities like Mount Sinai Hospital would have unfettered discretion to decide whether or when to comply with the procedural requirements of Section 3-611 of the Code. 405 ILCS 5/3-611 (West 2016). They would be empowered to disregard the fundamental liberty interests that are implicated by involuntary commitment and authorized to detain individuals with mental illness against their will for indefinite periods of time without the benefit of the due process protections mandated by the Code.

Given Dr. Mirkin's testimony that she saw 4 or 5 psychiatric patients a day on the medical floors at Mount Sinai Hospital, this could result in hundreds if not thousands of individuals with mental illness having co-morbid medical conditions being forcibly detained and treated for undetermined periods of time each year. And this represents only one psychiatrist in one hospital in Illinois. Statewide the potential for abuse in this scenario is enormous as is the deprivation of rights that would follow if the appellate court's decision is not reversed.

The Code's due process protections, including the requirement that a petition be filed within 24 hours of admission to a mental health facility, exist to prevent involuntary commitment from becoming a tool of oppression. *In Re*

LaTouche, 247 Ill.App.3d 615, 620 (2nd Dist. 1993). The appellate court's decision, if not reversed, would result in a massive curtailment of the fundamental liberty interests of individuals with mental illness without affording them due process of law. Add to this the profound and devastating effects of involuntary commitment, as demonstrated by the NCD study, and the significant stigma and shame associated with being forcibly confined in a mental health facility, and it is clear that the appellate court's decision, if allowed to stand, would result in a tragic miscarriage of justice.

B. The plain language of the Code makes clear that a hospital that provides treatment to persons with mental illness constitutes a mental health facility

While not an explicit holding of the case, the appellate court did discuss whether Ms. Linda B. was admitted to a "mental health facility" on April 22nd as that term is defined by the Code. 405 ILCS 5/1-114 (West 2016). Based on its discussion of *In re Moore*, 301 Ill.App.3d 759 (4th Dist. 1998), the appellate court seemed to imply that because Ms. Linda B. was placed on a medical floor for treatment of her co-morbid medical conditions, she was not admitted to a "mental health facility" on that date. However, Ms. Linda B.'s placement on a medical floor is not dispositive of whether she was admitted to a mental health facility as defined by the Code. A mental health facility is "any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes *all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such*

persons." 405 ILCS 5/1-114 (West 2016) (emphasis added). Unquestionably, Mount Sinai Hospital provides mental health treatment to individuals with mental illness and did so provide treatment to Ms. Linda B.

The rules of statutory construction require statutes to be accorded their plain and ordinary meaning. Often, this is best determined by legislative intent. *In Re Mary Ann P.,* 202 Ill.2d 393, 405 (2002). If the legislature intended the definition of a mental health facility to apply only to hospitals or units within hospitals that are dedicated to providing mental health treatment, it would have stated so. It did not. The plain language of the statute makes clear that *all* hospitals that provide treatment for people with mental illness constitute a mental health facility.

Ms. Linda B.'s de facto status as a person subject to involuntary commitment commencing on April 22, 2013 is in no way changed or diminished by the fact that she was treated on a medical floor. In addition to schizophrenia, Ms. B. had co-morbid medical conditions, including tachycardia and anemia, when she was admitted. Given the specialized equipment and treatment needed and used to address Ms. B.'s medical conditions (C. 32-33), it was entirely logical that she would be placed on a medical floor to ensure that she received appropriate care.

It was a common occurrence to provide mental health treatment to patients with co-morbid medical conditions on the medical floors at Mount Sinai Hospital. Dr. Mirkin alone saw four or five psychiatric patients *a day* on the medical floors. Notably, Dr. Mirkin testified that while psychiatric patients were routinely seen

and treated on the medical floors, typically a petition for involuntary commitment was not filed unless the patient became noncompliant with treatment (R. 30). Although Dr. Mirkin stated that Ms. Linda B. was consistently noncompliant with treatment, thus prompting her admission on April 22, 2013 (R. 15-16), the petition was not filed for another 17 days.

Based upon *In re Moore,* 301 Ill.App.3d 759 (4th Dist. 1998), (finding that respondent, who presented at the emergency room for mental health treatment, was not admitted to mental health facility within the meaning of the Code until his admission to the psychiatric unit), the appellate court inferred that the medical floor on which Ms. B. was treated for her mental health and medical conditions would not meet the definition either. However, in the nearly two decades since *Moore* was decided, the landscape of mental health services in Illinois has changed dramatically. Following the U.S. Supreme Court's holding in *Olmstead v. L.C.,* 527 U.S. 581 (1999) that the unnecessary segregation of people with disabilities constitutes discrimination under the *Americans with Disabilities Act,* 42 U.S.C. 12101 (2012), states have increasingly moved away from institutional care for people with disabilities, including those with mental illness.

The number of beds in state-operated mental health hospitals in Illinois has thus declined significantly, as has the number of inpatient psychiatric beds. Jamey Dunn, *The state of mental health funding in Illinois is ill,* Illinois Issues, March 2013, *available at* http://illinoisissues.uis.edu/archives/2013/03/strained.html. Yet despite this trend away from coercive treatment in segregated settings in favor of voluntary

treatment in the community, the requisite investment in community mental health services in Illinois has not been made. *Id.* In fact, just the opposite has occurred.

> The economic collapse — and the state budget woes that followed — left legislators looking for ways to slash spending. From 2009 to 2011, states cut more than $1.8 billion from services for adults and children with mental illnesses. During that time, Illinois cut almost $114 million in general revenue funding for mental health and was fourth in all the states for total cuts. Only California, Kentucky and New York cut more dollars from mental health spending. During that period, Illinois cut its total mental health care budget by more than 30 percent. Only three other states — South Carolina, Alabama and Alaska — reduced their budgets by larger percentages. *Id.*

The deep cuts to community mental health services along with the decreased number of psychiatric beds has given rise to a new reality in the delivery of mental health services in Illinois. Given this reality, it is hardly surprising that people with mental illness often seek or receive mental health treatment in places other than dedicated psychiatric hospitals or units. Hospital emergency rooms have experienced a significant uptick in the number of individuals presenting for mental health treatment. Julie Steenhuysen & Jilian Mincer, *Mentally ill flood ERs as states cut services,* Reuters, December 24, 2011, 5:09 p.m. EST, http://www.reuters.com/article/us-usa-health-psychiatric-idUSTRE7BN06820111224.

The lack of community mental health services has also led to a significant number of people with mental illness becoming involved in the criminal justice system. As a result, the Cook County Jail has been depicted as the largest mental health hospital in the country. Matt Ford, *America's Largest Mental Hospital is a Jail,* The Atlantic, June 8, 2015, *available at*

http://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/.

The definition of a mental health facility in the Code recognizes that mental health treatment may be provided in a variety of settings. 405 ILCS 5/1-114 (West 2016). It does not require that the treatment be provided in facilities or units dedicated to the treatment of mental illness or that mental illness is the only or primary reason for providing treatment. The crux of the definition is whether the facility or unit within that facility provides treatment for persons with mental illness. Mount Sinai Hospital decidedly does.

The plain language of the definition of a mental health facility set forth in the Code envisions and anticipates the provision of mental health treatment in a variety of places and settings. It thus allows for the changed landscape of mental health services in Illinois that has occurred in the nearly 20 years since *Moore* was decided. To construe the definition of a mental health facility as limited to hospitals or units dedicated solely to the treatment of mental illness, particularly given the high rate of com-morbidity among people with mental illness, would lead to an absurd, unreasonable and unjust result. Such an outcome must surely be avoided. *In Re Mary Ann P.,* 202 Ill.2d 393, 406 (2002). This court should determine that Ms. Linda B. was admitted to a mental health facility on April 22, 2013, thus triggering the requirement to file a petition for involuntary admission within 24 hours. Otherwise, hospitals will have free reign to disregard the fundamental liberty interests of individuals with mental illness and the due

process protections that flow from those interests—simply by placing them on floors that are not devoted to providing mental health treatment.

CONCLUSION

The decision of the appellate court that a petition for the involuntary commitment of Ms. Linda B. filed 17 days after her admission to a mental health facility was timely impermissibly infringes upon the fundamental right to liberty of individuals with mental illness and deprives them of the critical due process protections to which they are entitled.

For the reasons stated above, the decision of the appellate court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance and the certificate of service, is 22 pages.

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