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## Opinion

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### **Guest: Is warehousing mental patients another state constitutional dilemma?**

Article XIII in the Washington state constitution mandated that the state “foster and support” prisons, universities and institutions for the mentally ill, according to guest columnist Hugh Spitzer.

By Hugh Spitzer

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When the Washington Supreme Court recently banned the state and counties from warehousing the mentally ill in hospital emergency rooms, the judges put another serious funding issue squarely in the hands of the Legislature.

Gov. Jay Inslee quickly shifted \$30 million to treat the 200 patients currently subject to “psychiatric boarding,” but that amount is not enough to handle the number of people for whom treatment facilities are needed over the course of a year.

The court unanimously ruled that mentally ill people who present an imminent risk of harm to themselves or others can’t be held in ERs instead of properly certified detention facilities unless there’s a medical justification or it “would facilitate continuity of care.”

The court’s decision on psychiatric boarding was short and was based solely on the statutory definition of an “evaluation and treatment facility.” The justices did not rely on any constitutional provisions. That means, in theory, that the Legislature could amend the law, keep underfunding services to the mentally ill and let the overcrowding continue.

But that might propel the state into yet another constitutional standoff between a state constitutional provision requiring adequate service levels and the Legislature’s unwillingness to pay for those services.

When Washington gained statehood in 1889, the founders placed three constitutional mandates on state government. One was in Article IX, the “paramount duty” to make “ample provision” for the education of children. The second was in Article X, requiring a home for disabled soldiers and sailors. The third, in Article XIII, mandated that the state “foster and

support” prisons, universities and institutions for the mentally ill, for the developmentally disabled, and for blind and deaf youth.

The “paramount duty” clause has led to the current deadlock between the state Supreme Court’s requirement that K-12 funding be increased by billions of dollars, and the Legislature’s unwillingness to raise taxes soon enough, and high enough, to satisfy the court’s ruling in the McCleary case.

The Article XIII requirement that state institutions be “fostered and supported” is historically related to the Article IX mandate of a sufficiently funded “general and uniform system of public schools.” Both have their roots in the 1830s movement led by Massachusetts legislator Horace Mann, who fought successfully to outlaw child labor, mandate basic education, fund schools for disabled youth, and open state mental institutions, reform-oriented prisons and teacher-training colleges. This institutions movement spread through much of the country, and many new state constitutions after 1850 contained provisions for both educational and mental institutions.

The Washington Constitution’s mandate for institutional care is not worded as strongly as the schools provision, and there are no clear judicial holdings on the scope and extent of the state’s obligations. But if the Legislature failed to provide for the three state veterans’ homes, or did not adequately “foster and support” prisons, higher education or facilities for the mentally ill and developmentally disabled, the state constitution would in some manner be violated. We could then see another round of lawsuits over the state’s budgetary obligations.

Our elected lawmakers are in a bind. The state constitution’s drafters had clear ideas about the state’s duty to provide certain basic services. In 1889 the electorate overwhelmingly approved the constitution and stood behind the early legislators who funded new mental institutions, reformatories, schools, colleges and universities. It is likely that today’s voters firmly support the services their great grandparents entrenched in the Washington Constitution. The problem is that today’s voters are also prone to think that someone else (not they) should pay for the services.

If the public agrees with the justices that psychiatric boarding needs to stop, and that mentally disturbed people who threaten themselves or others should be detained appropriately, then the public needs to be willing to back the governor and the Legislature if they take political risks and raise taxes to adequately support those and other constitutionally required facilities.

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