



Vermont Developmental Disabilities Council

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TO: House Judiciary Committee
RE: Comments on S. 89
FROM: Susan Aranoff, J.D., Senior Planner and Policy Analyst
DATE: April 19, 2023

My name is Susan Aranoff. I am the senior planner and policy analyst for the Vermont Developmental Disabilities Council. It is a pleasure to see you here today. Thank you for the opportunity to testify about S. 89 and the development of a new forensic facility in Vermont.

The Vermont Developmental Disabilities Council

The Vermont Developmental Disabilities Council (hereafter “VTDDC”) is a statewide board created by the federal Developmental Disabilities Assistance and Bill of Rights (hereafter “the DD Act”), first adopted by Congress in 1970. Our constituents are Vermonters who have an important stake in the availability and viability of home and community-based services and support for people with disabilities in Vermont.

An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving some type of community-based support through Medicaid.

VTDDC is charged under federal law with engaging at the state level in “advocacy, capacity building and systems change activities that... contribute to the coordinated, consumer-and-family-centered, consumer-and-family directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families.”

Although the Council is housed in the Agency of Human Services, we operate under a federal statute and a memorandum of understanding with AHS guaranteeing our independence. I am free therefore to advocate on behalf of Vermonters with disabilities and their family members, regardless of any official agency positions on this bill or these issues.

The Council, which is made up of over 60% people with developmental disabilities and their families. The Council adopted a Legislative Platform for the 2023 Session, which I have shared with your Committee.

When I testified before Senate Health and Welfare Committee on March 28th, the Council did not have a position on S. 89. Our Policy Committee met on April 10th and voted unanimously to oppose the creation of a forensic facility in Vermont.

Background

I served on the forensic study committee created by Act and wish to share a few observations of the process and outcome. First, I want to commend the legislature for creating a committee with diverse viewpoints represented. I want to note that I was the only person on the Committee representing the interests of people with developmental disabilities. Green Mountain Self Advocates, Vermont's statewide organization for self advocates was not represented, nor was the Vermont Coalition for Disability Rights.

I also want to Commend the staff from the state agencies, most notably DMH Counsel Karen Barber, for their amazing effort to create an inclusive and functional committee process.

President Obama frequently observed that the toughest problems to solve are the ones where everyone is right. And we had a Committee where everyone was right. The relatives of people who had been killed were right that the system as it is is not working for them. The state attorneys who have cases dismissed and have no choice but to set people who they think are dangerous free are right that the system as it is is not working for them .

And when everyone is right – and passionate about their rightness- it is hard to compromise and find common ground.

The Committee failed to find common ground- and instead of a well crafted proposal for a forensic facility with adequate due process – we have S. 89 – something thrown together in the aftermath – after the Committee disbanded- and with unknown input.

In addition to serving on the Committee, I have other subject matter experience I would like to share with you.

I taught mental health law to masters students at the University of New Haven for 5 years. UNH is renown for its criminal justice and forensic programs. Every year I assigned students to research the definitions of things like competent to stand trial, gravely disabled, brain disease or defect, danger to self or others- among the 50 states. The differences would amaze you. Also, every year, the students would create the best statute for commitment or for involuntary medication. They would draw from the best due process clauses they could find, the best definition sections they could find, the best approaches to balancing treatment issues and public safety issues, and they would construct a statute with the best bells and whistles and guardrails and suspenders.

Act 89 is not the best statute that Vermont could have constructed. Where is the due process with the AHS selection committee process? Are the people in the hospital facility going to be patients, under patients bill of rights? What protections will they be afforded from abuse? Do they have a right to appeal the AHS decision to the Human Services Board?

As I previously mentioned, given AHS non-compliance with Medicaid's rules for Home and Community Based Services, I do not have confidence, that AHS is competent to operate this program safely.

While I was in CT, I was a staff attorney at CT Legal Rights Project. We provided legal and advocacy services to low income adults labeled with psychiatric disabilities. I supervised our agency's work at the Connecticut Valley Hospital which was home to the Whiting Forensic Hospital.

Please google Whiting Forensic Hospital and Abuse. You will find news articles as recent as last week. And you will find a raft of articles about horrific abuse that was uncovered in 2017.

The abuse involved dozens of staff of all ranks. One head nurse, Mark Cusson is serving 5 years in prison for abusing a patient I knew. He did such things as put a soiled diaper on his face, Soiled with someone else's waste. He also gave him a bottle of hand sanitizer, instead of hand lotion to use to masturbate. And then laughed while the patient screamed in agony. How do we know- this was all on film. Why was it one film – because years earlier- after another abuse scandal – cameras were installed at the Whiting

Hospital. Even cameras were not enough to protect this Bill Shehadi, the man who was tortured on a daily basis, for years, if not decades, at the Ct Forensic Hospital.

For reasons I do not yet understand, the Legislature directed the Committee to consider CT's psychiatric security review board.

At no time prior to receiving testimony from CT personell was the committee informed about the nature and scope of problems in CT. I am raising this here now, not to point fingers at Connecticut.

Rather it is a cautionary tale. I don't think there is a single forensic facility that does not have staff that abuse its patients. Discovering that abuse is never easy. Even with cameras. In CT, it took the brave action of a whistle blower whose life was ruined to uncover the abuse at Whiting. Its much easier to prevent institutional abuse by not having people with disabilities in institutional like settings.

Failure to Support The Community Based System Does Not Justify A Forensic Facility

Vermont's home and community-based service system is in crisis. Robust state oversight must be funded. There must be checks and balances in the systems that deliver community-based services.

It should be noted that Vermont's Agency of Human Services has violated Medicaid rules that took effect in 2014 and is operating under one HCBS Corrective Action Plan.

In August, criminal charges were filed against 4 Medicaid-funded shared living providers in Franklin County. The allegations of abuse and neglect are horrifying – one of the victims is alleged to have nearly starved to death – normally weighing up to 130 pounds, his weight was reportedly 68 pounds when authorities intervened. [Digger Article](#), [DD Council letter in response to abuse allegations in Franklin County](#).

In December, we learned about more criminal charges against a Medicaid funded provider serving a people with developmental disabilities. This time someone died. [Digger Article](#).

On January 18, 2023, [an article in Digger](#) laid bare a system in crisis. While detailing the plight of one young man, the article captures the harsh reality on the ground today. Perhaps the overall situation was summed up best by my boss, Kirsten Murphy, Executive Director of the Vermont Developmental Disabilities Council, who said [T]here's just so

many different problems,” said Kirsten Murphy, the executive director of the Vermont Developmental Disabilities Council. “And it's not anyone's fault, or bad actors. It's just that it's been an under-resourced system for a very long time. It doesn't have the quality oversight mechanisms it should. It doesn't have enough checks and balances.”

In addition to oversight, there is a severe need for housing. There are over 100 people receiving state funded services for a developmental disability who are waiting for a shared living provider.

Thirty Years ago, Vermont was the second state in the country to close its institution for people with developmental disabilities, Brandon Training School. In 1993, Vermont was a leader in providing individualized community-based services for people with developmental disabilities.

The mission of DAAL is to make Vermont the best state in which to grow old or live with a disability. For that to happen, Vermonters with disabilities must have permanent supportive housing in our communities.

I want to share the promise made by Governor Howard Dean when Brandon Training School closed in 1993. Governor Dean said, “I’m proud to maintain the commitment of the state to the very kind of services that we still owe to the population that was once at Brandon and is now in the community. We will continue to assure that individuals receive support and services; We will continue to assure that those services meet acceptable levels of quality; We will continue to assure that persons receiving the services are free from abuse and neglect or mistreatment; To assure that the folks taking care of the people needing these services have adequate training and support. So, our commitment does not end with the closing of this institution. Our commitment continues.”