

To: House Committee on Health Care

Re: Senate Bill S. 192 An act relating to forensic facility admissions criteria and processes

**From: Disability Rights Vermont (DRVT)
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Having listened to the testimony presented last Thursday, by Jack McCullough of the Mental Health Law Project at Vermont Legal Aid, and Emily Hawes, Commissioner for the Department of Mental Health, and hearing the general discussion among the Health Care Committee legislators, we wanted to submit a supplement to our previous testimony.

We agree with the position of Jack McCullough that the fundamental basis for pursuing this legislation is nonsensical, and unnecessary. The one added factor of criminal charges does not require a new system, or facility type, or process for determining the need for services for the target individuals in this bill.

Also, consider a person who has complete capacity, intentionally and with malice and with a full appreciation of the horrible acts they committed is found not guilty because the State failed to meet its burden. This person will walk away, no restrictions, no facility placement, nobody asking if that person is a continued danger. Arguably, that person is more dangerous, but because that person does not have a disability we respect and protect their constitutional rights. Instead, you are now being asked to approve a process wherein a person who has also been found without capacity or not guilty, but due to their disability, doesn't have the same constitutional protections and we can still take away their freedom, regardless of any judicial verdict.

We also agree that the use of involuntary medication, and other EIPs should not be permitted in a forensic facility.

EIPs continue to be touted as merely "tools in a toolbox" that enable staff to do a good job. This description of EIP's; restraint, seclusion, and involuntary medication, is a gross oversimplification. Each of these procedures is an infringement upon our individual, constitutional liberties. And there is clear legal authority that demands that we do not use these tools unless, in only the most extreme circumstances, where

serious harm to self or others is involved. And, contrary to statements made by Commissioner Hawes, EIPs are still being used regularly and excessively in some of our facilities. No matter how much DMH gives lip service to improved strategies for patient-centered care in our facilities, to our knowledge, only Rutland Regional Medical Center has fully incorporated the Six Core Strategies program. Other facilities have cherry picked the Six Core Strategies and have incorporated only portions into their procedures. In last week's testimony, Commissioner Hawes indicated that she believed that Vermont Legal Aid Reviews the EIPs, but it is DRVT, as the Mental Health Care Ombudsman, that receives and reviews all EIPs regarding involuntary patients. Commissioner Hawes also represented that Vermont Psychiatric Community Hospital (VPCH) had, as of recent, hardly any EIPs. However, DRVT received 51 EIP reports and 30 Emergency Involuntary Medications (EIM) reports from VPCH for the time-period between February 4, 2024, and March 30, 2024. Reports received from Brattleboro Retreat from the time-period of February 4, 2024 to February 27, 2024, indicate that 114 EIPs, including those with involuntary medications, were conducted. It is concerning that anyone would suggest that these numbers are low. For what it's worth, to patients, EIP's are punishments for bad behavior; behavior that often the most acute and episodic patients are not able to control. EIPs should not be allowed to be employed as controls and punishments, even for these limited few persons with acute mental illness who have been accused of violent crimes. That is what the criminal justice system is designed to do. These are not therapeutic interventions and treatment. If you have ever witnessed an EIP in progress you would know that they are not "calming or settling to other patients and staff", but rather exacerbate and escalate a situation, are loud, violent, traumatic, and ironically often physically injurious. Because to some people who have a hammer, everything looks like a nail. EIPs in the wrong hands lead to rights violations.

Now consider the proposal to move "forensic" patients into the state's only Secure Therapeutic Residential Facility at River Valley. Bear in mind that River Valley is the only facility of its kind in Vermont, where patients reside and receive treatment, at this step-down level of care, without the use of EIPs. Providing residential treatment options for different people with different needs is paramount. How do we justify voting to eliminate the only Vermont facility at this level of restriction? It is contraction instead of expansion of services.

We see this as a disturbing trend of attempts by DMH to create more high-acuity beds and ignore their responsibility to meet and treat the individual needs of all patients entrusted to their care. There absolutely need to be more less restrictive treatment options for people with need of them. We have stated in our previous testimony that these efforts by DMH and these State and private providers have been a calculated misrepresentation of an unsupported need for more high-acuity beds in existing

facilities. There has been work during this session on this bill for the secured Forensic Psychiatric Facility, along with committee meetings regarding proposals for a secured Psychiatric Residential Treatment Facility (PRTF), at the Brattleboro Retreat, and the Southwestern Vermont Medical Center has applied for a Certificate of Need for the licensure of a 12-bed secured Inpatient Mental Health Unit for Adolescents. All of which would be locked facilities, allowed to use EIPs.

At the same time, there has been no appreciable effort on improving home and community-based services, low and mid-level resources, or to meet the actual treatment needs of our community members with all manner of disabilities.

We also ask, what of the rights of the 10 individuals currently residing at the River Valley facility, who presumably exercised their lawfully protected rights as patients to participate in their own case planning and treatment? They elected to go to a facility, knowing that the environment was one where EIPs would not be employed against them. They have also all transitioned from a hospital setting to a less restrictive milieu, without EIPs, which has been deemed appropriate to their treatment and service needs. Do we just pretend they do not have a right to self-determination? Will they become subject to EIPs? What is the alternative for them if they do not require this level of restriction? Where will they go after their current facility is no longer the least restrictive setting necessary for their care and treatment?

Just like a yoga teacher would not show up to teach class with a cannon, a therapeutic residential setting does not require EIPs. We do not believe you should look at EIPs as simple little tools. They are some of the most dangerous weapons against our individual freedoms.

DRVT would ask that the nature of River Valley, as a Secure Therapeutic Residential Facility, that receives patients transitioning out of hospitals and does not employ the use of EIPs, not be altered. However, if the Committee finds that River Valley is the preferred location for the placement of the target, "forensic" persons, that EIPs will not be permitted.

Thank you,

Lindsey Owen

and

Laura Cushman