

House Judiciary
S.36 Non-Witnessed Warrantless Arrests
Disability Rights Vermont Testimony
Lindsey Owen, Executive Director
March 30, 2023

Thank you for inviting me to speak with you today about the proposed additions to Rule Three of the Vermont Rules of Criminal Procedure in Vermont, which relates to warrantless arrests in healthcare settings. My name is Lindsey Owen, and I am the Executive Director at Disability Rights Vermont. I have been with the organization for over ten years. I started as an intern doing a semester in practice from Vermont Law School, and was hired on a part time basis while I finished law school the following semester. I worked as an advocate until I was sworn in to the Vermont Bar in November 2013. I served as a staff attorney for the next 8 years or so and have served as the Executive Director since May 2021.

Disability Rights Vermont is the Protection and Advocacy agency for the State of Vermont. The Protection and Advocacy system was established after much attention in the media of horrific treatment of people with disabilities at a place named Willowbrook that was supposed to be providing care to these individuals. The abuse and neglect was profound and shocking. As a result, P&As across the country receive a variety of federal grants to investigate and remedy abuse, neglect and serious rights violations impacting individuals with disabilities. DRVT monitors all environments where individuals with disabilities are being served, this includes inpatient psychiatric facilities, prisons, residential programs, in places of public accommodations, as well as Emergency Departments. DRVT is also designated as the Mental Health Care Ombudsman for the state of Vermont. In this role, we receive Certificates of Need involving emergency involuntary treatment procedures performed on people in the custody and temporary custody of the Commissioner of the Department of Mental Health and we receive Critical Incident Reports involving individuals

receiving mental health services. One of our grants specifically requires that we monitor and investigate concerns raised about medical or mental health care by individuals who have had an Emergency Examination filed against them or an Application for Involuntary Treatment.

First, DRVT fundamentally believes that hospitals should be a safe space, for everyone, above all, for patients who are in the vulnerable and often frightening position of experiencing a medical emergency. Coming into a hospital environment is an anxiety-inducing experience for many. There is so much unknown, and for many, there is an experience of loss of control that comes with seeking or being brought to a hospital for care.

We recognize, and know you have heard powerful testimony from hospital personnel that their work place is not always safe for them. These hospital staff are doing incredibly difficult and invaluable work. They have told stories involving brutal assaults and extreme threats.

The stories you have not heard, and the stories we hear and see at DRVT, are just as important in considering this legislation. These are stories involving people with disabilities being assaulted and threatened by hospital staff while seeking treatment or being forced into treatment.

For example, an older, petite, woman who had begun leaving the hospital against medical advice, was followed into the entrance way and toward the parking lot. She then decided to return to the hospital, and while voluntarily entering through the hospital doors, she was tackled to the ground by the large male nurse who had gone to retrieve her. He yanked her to her feet and covered her mouth with his hand as she screamed for help. In another case, while disagreeing with a security guard, a man was shoved to the ground and his hand slammed on the hard floor. He had visible injuries resulting from this interaction.

These experiences will not be resolved or prevented through this legislation because it does not protect patients, only health care workers, because they were unpredictable and unforeseen actions.

To be frank, this legislation falls short because it is not preventative of assaults against either patients or health care workers. Nothing here

increases staffing for hospitals, provides staff with de-escalation training, or adopts best practices for providing care to individuals in crisis.

It *will not* prevent healthcare workers from being assaulted or threatened. It is an after the fact reaction that works to remove someone from a health care setting who may very well need health care at that time.

This legislation is also not going to change the legal remedies or processes relating to whether or not the arrested person is held accountable for their actions.

While testimony has been provided to the legislature that the scope of Vermonters impacted by this bill is not limited to any group of people, and that it would apply to patients and visitors and everyone else, DRVT's experience leads me to conclude that this bill will disproportionately impact people with mental health conditions:

- (1) This bill is **highly likely** to put more people with mental health conditions in the criminal system because of their disability-related behaviors, whether they are patients or visitors.
- (2) This bill is **highly likely** to deter people from seeking treatment at all for fear of being arrested. For someone who is in crisis, it might be already difficult to reach out for help, and the hospital is the right place to go.

DRVT appreciates the decision to eliminate two of the three categories of disorderly conduct from the bill, that change does not alleviate the problems with this bill.

The bill would allow arrest without warrant for "tumultuous conduct," which is a broad and *undefined* term that might include, if not describe, a patient experiencing a mental health crisis, but also describe a woman in labor. I certainly was loud and excited and emotional when I gave birth to my daughters, but no one is going to call law enforcement on laboring women.

So who is going to discern what specific tumultuous behavior justifies a warrantless arrest? The room for abuse and error is enormous with such a

vague and broad category of so-called “disorderly conduct.” As is true in most psychiatric facilities, persons trained in assessing threats, deescalating behaviors and safely restraining individuals should be available to prevent injury to patients and staff alike.

This bill raises many important questions, relating to people’s civil rights, which simply cannot be answered as quickly as this bill has been projected to move.

The potential for abuse in this bill cannot be understated.

If this committee nevertheless decides to pass this bill in some form, DRVT would strongly suggest the following:

- (a) Exclude any reference to or category for disorderly conduct, in hopes to minimize the disproportionate impact this would have on people with disabilities; and,
- (b) Require a report to be filed by the hospital when making a request for a warrantless arrest pursuant to this bill to Vermont’s Protection and Advocacy Agency, DRVT.

Again, the Protection and Advocacy System was born from thousands of instances of abuse and maltreatment of people with disabilities. The right to access health care, and the duty to provide health care to a person until they are medically stable pursuant to EMTALA, should not be exchanged for handcuffs and potential institutionalization and incarceration. We have come too far to take so many steps backward.