



## Vermont Developmental Disabilities Council

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TO: Senate Health and Welfare Committee  
RE: Institutionalizing People with Intellectual Disabilities  
FROM: Vermont Developmental Disabilities Council  
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DATE: January 25, 2024

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Thank you for the opportunity to comment on Senate Bill 192 An act relating to forensic facility admissions criteria and processes.

### **The unique role of 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 Act (hereafter “the DD Act”), first adopted by Congress in 1970. An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving Medicaid-funded, home and community-based support (HCBS) through the Developmental Disabilities Services System of Care or in some cases, the Choices for Care Program.

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

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assistance that promote self-determination for individuals with developmental disabilities and their families.”<sup>1</sup>

In addition to our federal mandate, we are commenting in our unique role within the Agency of Human Services (AHS). As per our signed assurances with AHS, the VTDDC advises AHS on quality strategies as they pertain to people with developmental disabilities.<sup>2</sup> The Assurances also protect the VTDDC’s right to advocate free from any interference from AHS. This right to advocate protects the VTDDC’s ability to speak on behalf of its constituents even – and especially- when the VTDDC’s position is at odds with an AHS proposal.

### **Failure to Support Community Based Services Does Not Justify A Forensic Facility**

The Vermont Agency of Human Services (AHS) wants to create a new facility to institutionalize people with disabilities who are involved with the criminal justice system. The Vermont Developmental Disabilities Council does not support adding people with intellectual disabilities to the populations eligible for placement in an involuntary and institutionally based treatment program like the one contemplated S.192. This setting is costly, inappropriate, and at odds with the values of the Developmental Disabilities Services System of Care.

Furthermore, people with intellectual disabilities are generally not considered appropriate candidates for competency restoration programs. The intellectual disabilities that may prevent an individual from being deemed competent to stand trial are not treatable by medication or alleviated by milieu based treatment programs.

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<sup>1</sup> Developmental Disabilities Assistance and Bill of Rights Act of 2000. 42 USC 15001 et. seq.

<sup>2</sup> “Section M. The Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.” Signed by AHS Secretary Samuelson.

## **Background**

Vermont, through its laws and policies, has chosen to support nearly all individuals with disabilities in community-based settings as opposed to institutions. In 2010, the Agency of Human Services (AHS) and the Department of Disabilities, Aging, and Independent Living (DAIL) affirmed the success of Vermont's community-based service system for people committed to custody of the DAIL Commissioner under Act 248 in a legislative report about people with developmental disabilities who pose a public safety risk<sup>3</sup>.

In that Report, then-DAIL Commissioner Joan Senecal wrote the following:

Certain individuals are particularly hard to serve in any setting.

They may have complex psychiatric needs, they may be highly resistant to supervision, they may try to elope, they may be highly assaultive to staff and to peers, or they may be extremely emotionally volatile. These characteristics may make it difficult to supervise these individuals in a shared living home or a group home. It may be difficult to retain staff to work with them. When these characteristics are combined with risk to the public, agencies may feel overwhelmed. In the past two decades, a few agencies have stepped forward to take on these exceptionally challenging individuals, but, at present, no agencies feel able to accept hard-to-serve individuals from another region because of concerns about budget, liability, and community reaction.

*Some have suggested a small secure facility to house a group of these uniquely hard-to-serve individuals, but it is unlikely that grouping the most hard-to-serve individuals together in a single location would be beneficial or cost-effective. The individuals who are the hardest to serve are difficult and dangerous in unique ways.*

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<sup>3</sup> <https://ddsd.vermont.gov/sites/ddsd/files/documents/Individuals-dd-pose-publicSafetyRisk-report2009.pdf>

*To assemble the combination of treatment and staffing resources to meet the differing needs of the individuals in a single location, while keeping the individuals safe from one another, would almost certainly exceed the costs of our current individually tailored services. Emphasis added. Id at 16.*

The reasoning behind then-Commissioner Senecal's opposition to a secure forensic facility was sound in 2010 and it is sound today.

In her 2010 report, then-Commissioner Senecal suggested that Vermont may wish to provide incentives for a current agency to extend its capacity for these hard-to-serve individuals, or it may wish to develop a new service program with a particular mission of serving extraordinarily high-risk individuals with developmental disabilities. It appears that Commissioner Senecal's sound suggestions were soundly rejected by AHS.

### **Institutionally Based Settings are Very Expensive**

The Agency of Human Services has estimated that the cost of supporting an individual in the proposed forensic facility is \$3400 per day. Over the course of a year, this is an individual budget of over a \$1,240,000 a year- well over a million dollars per year, per bed.

### **AHS Facilities Require Independent Oversight**

On October 25, 2023, *Seven Days* published a 16 page ad-free expose by an award winning journalist about how young Vermonters were physically restrained, stripped, and held in isolation for days in AHS's Woodside Juvenile Rehabilitation Center before a lawsuit brought by Disability Rights Vermont caused it to be shuttered in 2020<sup>4</sup>.

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<sup>4</sup><https://www.sevendaysvt.com/vermont/woodside-investigation-violence-and-isolation-at-vermonts-juvenile-lockup/Content?oid=39222023>

The article details gross malfeasance on the part of AHS with respect to its oversight of Woodside. As the article makes clear, even though the horrific abuse that was allowed to occur at Woodside has ceased, AHS has never explained to the public what happened at Woodside, how it was allowed to occur, who was responsible, and whether anyone has ever been held accountable? AHS should not be permitted to operate the new forensic facility until it provides answers to these and other important questions.

DCF learned important lessons from the atrocities committed at Woodside. In a presentation before the Joint Justice Oversight Committee on October 26, DCF Commissioner Christopher Winters stated the following<sup>5</sup>:

- There must be transparent oversight and accountability for the entire system, but more so for the higher levels of care, particularly any locked/secured sites.
- The State cannot be both the ultimate regulator and the provider.

The Vermont Developmental Disabilities Council endorses these sound principles. The forensic facility must have identified watchdogs who are separate from the providers and operators of the facility.

### **Vermont's Home and Community-Based Services is Out of Compliance with CMS**

The Vermont AHS disregarded important new rights for people with disabilities when it chose not to implement the Center for Medicaid and Medicare Services (CMS) 2014 Person Centered Planning Rules. As a result, Vermont is operating its Home and Community Based-Services (HCBS) system under a Plan of Correction that will not be completed until 2026.<sup>6</sup>

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<sup>5</sup><https://legislature.vermont.gov/Documents/2024/WorkGroups/Justice%20Oversight/Department%20%20of%20Children%20and%20Family%20Services/W~Chris%20Winters~High%20End%20System%20of%20Care~10-26-2023.pdf>

<sup>6</sup> <https://vermonthcbs.org/wp-content/uploads/2023/04/VT-GCH-Attachment-Q-Approval-letter-03-07-23.pdf>

Vermont is under a second corrective plan for failing to comply with CMS's rules regarding the settings where people receive Medicaid funded Home and Community Based Services.

The Vermont Developmental Disabilities Council urges this Committee to investigate Vermont's systemic noncompliance with CMS rules.

### **Vermont is Failing to Honor its Olmstead Obligations**

Over twenty years ago the U.S. Supreme Court issued the landmark decision in *Olmstead v. L.C.*<sup>7</sup> affirming that people with disabilities have a right to live in the most integrated setting appropriate to their needs, and that the failure to realize such integration is a violation of the Americans with Disabilities Act<sup>8</sup>.

After the *Olmstead* decision, states were mandated to develop enough community programming to avoid the unnecessary use of psychiatric and other institutions. While Vermont asserts that it aspires to develop a quality community-based system of care, its focus remains on building more inpatient capacity - more hospital beds and nursing homes – rather than investing its limited resources to fill the huge gaps currently existing in community services.

AHS wants to turn 9 psychiatric hospital beds into a therapeutic community residence without addressing its lack of available, less restrictive, community-based treatment. The result will be more people with disabilities being confined in a restrictive institution.

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<sup>7</sup> 527 U.S. 581 (1999)

<sup>8</sup> 42 U.S.C. Section 12101

## **Vermont's Olmstead Plan has not been Updated since 2006**

Vermont needs a current and effective Olmstead plan. Such a plan would include policies and procedures to systematically prevent unnecessary institutionalization. The plan must include a financially sound road map for the creation of an adequate community-based system of care.

## **The Legislature Can Fix Vermont's Olmstead Crisis**

Vermonters with disabilities and their families rely on AHS to provide services that are adequate to meet their needs and do not violate their rights. While AHS has acknowledged its systemic lack of adequate community support, it is not investing in solutions. Instead, the State is investing in plans that are contrary to the law and will not solve the problem. Building more high-end, restrictive beds, and hoping that will result in people being served in the community is illogical.

New resources should be targeted to new providers with skills and expertise in serving people with intellectual disabilities who are forensically involved.

## **Conclusion**

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

Vermont must keep 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.”**