DISABILITY RIGHTS VERMONT

formerly Vermont Protection & Advocacy
(800) 834-7890 (Toll Free)
(802) 229-1355 (Voice)
(802) 229-2603 (TTY)
(802) 229-1359 (Fax)
141 Main Street, Suite # 7, Montpelier, VT 05602

Date: February 11, 2014
To: Senate Health & Welfare Committee
From: A.J. Ruben, Supervising Attorney, DRVT
In re: What is S.287 trying to accomplish and will it?

Proponents of the bill say that it takes too long now to go through the process to involuntarily medicate a patient and that is why we need S.287. Some proponents say that most people should go through the process in about 30 days, while some special cases should go even faster. DRVT believes that our energies and policies should be geared towards alternatives to forced treatment and to truly "…work towards a mental health system that does not require coercion or the use of involuntary medication.[1]" If it were the case that people would be better served if the system moved faster we should examine the real reasons why the process takes the time that it does.

What is wrong with the current law? Proponents of the bill say that the problem is that they have to wait to file a petition for forced medication until after a court rules on the commitment petition.

But if you look at the law, it actually provides for the entire process from application for involuntary treatment (AIT) through court ordered non emergency medications to take about 30 days.

And if you look at the Vermont Rules of Civil Procedures, you'd see that V.R.C.P. 40a specifically allows attorneys for the hospital or the State to request that the Court expedite the hearing, and sometimes the State uses this rule for that very purpose.

So if the law currently allows for most cases to be heard in 30 days, and some cases to be heard much, much sooner, why do we need to change the law? Or another way to look at it is, if the current law is not causing the delays of 40, 50, up to 82 days to get a forced medication order, than what is?

Perhaps a lack of awareness of how the system can work, but most significantly, resources! A lack of them; lack of court time, lack of judicial review time, lack of attorney time to prepare and present the cases, and perhaps a lack of psychiatrist time to do the evaluations and testify. What does S.287 do to increase these resources? Nothing.

1. 18 V.S.A. § 7629. Legislative intent

S.287 actually increases the work load on the system by allowing for simultaneous filings of AIT's and forced medication petitions, which will undoubtedly increase the number of the forced medication petitions that are filed and thereby take up more court time and attorney time. Why would we think that increasing the workload without increasing resources will hasten these proceedings when current law absolutely allows them to occur within 30 days and the system still can't do it most of the time?

The concern about patient care for those held involuntarily in State's custody expressed by all segments of our community is a real one. But what will S.287 do to improve patient care? The entire mental health system was in dire straits before Irene, and much worse afterwards. There has been a chronic lack of capacity in our communities to provide both primary and available outpatient care and supports for people with mental illness in order to prevent hospitalization, and a lack of capacity to provide step down, supervised or supported housing placements for those able to leave a hospital.

Currently the system has become desensitized to a variety of bad practices:

- holding people in emergency rooms and jails for days or weeks awaiting a bed,
- reissuing emergency hold paper work every 24 hours when a patient isn't admitted to a hospital after being detained in an ED,
- small hospitals creating their own programs to deal with patients in State's custody when the State can't find an appropriate bed to provide them with treatment,
- supporting the hospitals in NOT having psychiatrists on site in order to be available to evaluate and order the use of emergency interventions because of cost concerns.

All these problems exist but the focus is on speeding and likely increasing the number of forced medication petitions that will be filed? Changing the forced medication law does not deal with the more serious problems, which if they were solved, would be a big help to the inpatient concerns. However, the not unfamiliar situation exists today of the State not providing sufficient resources to expand and improve community services and supports enough to really alleviate the inpatient concerns. The desire to get patients out of hospitals promptly again runs up against the failure of the State to create a community system capable of providing the needed services.

DRVT suggests that rather than focus on a S. 287, a bill that is unnecessary and ill-designed to obtain the goals of even its proponents, we should be focused on assuring that all parts of our mental health system have adequate capacity to provide the services to avoid unnecessary institutionalization and disruption in the lives of people impacted by involuntary mental health detention and treatment.