DISABILITY RIGHTS VERMONT

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Date: January 17, 2014
To: Senate Committees on Judiciary and Health and Welfare
From: A.J. Ruben, Supervising Attorney, DRVT
In re: DRVT preliminary comments on S.287

The goal of our entire community is to improve the care of people who are involuntarily committed due to mental illness while in designated psychiatric hospital units so that their long term prognosis improves and they are able to have as productive and independent lives as possible. This laudable goal is not addressed by S.287. The current unsatisfactory situation to be addressed by the bill, some very few patients who are refusing psychiatric medications and causing disruptions and harm to themselves and others pending the court process to involuntarily medicate them in non-emergency situations, is caused by a lack of adequate resources in most aspects of our mental health and judicial system. Because S.287 does not adequately identify the causes of the current problems it will not succeed in improving the situation. Instead aspects of S.287 are likely to exacerbate the current problems.

Under current law, forced medication petitions could be heard and decided within 32 days if all aspects of the system worked efficiently. This is because from Emergency Exam to Commitment Order (AIT) the length of time required by the current law is no more than 25 days (four days of EE and 72 hour hold, 20 days to hearing if independent exam, and one day for court decision), and the petition for forced medication could be filed and heard very soon after, possibly within a week. In almost all cases, under current law, if the system was fully funded and had adequate capacity, the time between EE and forced medication order could be less than 45 days. However, as the data from DMH and MHLP demonstrate, many cases do not move through the system this fast. Why are these cases not moving as fast as they could? The statute is not the reason for the delay, but rather DRVT's review of the system demonstrates that the lack adequate court time, attorney time, and psychiatric evaluation time results in these delays.

S.287 fails to address the actual cause of the delays that many observers find unacceptable. The reasons that these delays in forced medication are so unacceptable are mainly because during the time the patient is refusing medication and the doctors are waiting for a forced medication order, the patient may be experiencing significant agitation that often results in increased use of seclusion and restraint against them, causes a deterioration of the entire unit milieu and poses increased potential for staff injuries. The way to address this problem is to assure that the facilities treating these patients are adequately constructed and staffed to provide treatment safely, as was regularly done at the old Vermont State Hospital. This would include the provision of alternative treatments, such as individual therapy, outdoor recreation, and even physical therapy. These efforts would be effective in preventing the suffering and disruption that is the identified problem. However the existing physical environments, staffing and programmatic resources at the private hospitals treating involuntary patients do not provide these requisite aspects. Speeding up the judicial process will not positively impact this root cause of the problem to be addressed.

DRVT is concerned that S.287 will actually create more delays and less effective legal process for this population than exists at present. S.287 seeks to require mandatory preliminary hearings, increasing the number of hearings from a handful a year to several hundred a year. This increased burden on the system is not addressed with increased funding under the bill. So the participants in the system who are already overwhelmed with work will be even more overwhelmed with the increased number of preliminary hearings. Under the bill these hearings will be based on the existing paperwork and probably perfunctory, adding very little in terms of real adversarially-based judicial review or patient protections. In addition, S.287 will add to the burden on the system, again without increased funding, by including Section (a)2 in § 7615 which allows the state to expedite forced medication for "good cause" - a new legal level of danger to self or others.

Finally, S.287 will increase the number of forced medication petitions filed because it will allow filing to be done at the same time as the filing for the Application for Involuntary Treatment (AIT). Currently there are about 60 forced medication petitions filed each year (that is up from 40 when VSH existed), but if doctors can file them at the same time that the AIT is filed many more will be filed. This is so because patients who in the past may have worked through refusal or gotten better without medications over the time it takes now to get the AIT done and then file the petition for medication will not have that time to

change and doctors will feel justified in filing for forced medication orders more often based on the patient's refusal presentation early on in their relationship.

There are clearly legitimate concerns about patients being in the units for weeks or months, very ill and harming themselves, harming or scaring others, including staff, and being subjected to emergency involuntary procedures while the doctors wait for the AIT process to run and then seek a forced medication order. The right way to impact that problem is twofold: a) assure that the environment in the units is appropriate for the type of patients they will receive. Right now they are not, they are understaffed, there are insufficient areas for outdoor recreation and to allow a patient to be away from the milieu safely, for patients to have individual therapy and physical therapy, and various other types of "treatment" that does not involve medications; b) assure that the judicial system is fully staffed. Right now there are delays that are not required by the statute. Under the current law a person can be ordered committed within 25 days and ordered to be forced medicated within a week after that. The reason it takes on average about 70 days to get it done now is because there are insufficient court resources to hold hearings when needed, insufficient attorney resources to be able to promptly and efficiently work the cases up in the shortest time allowed for by the statutes, and inadequate independent psychiatric evaluator resources to similarly work the case within the shortest time frame allowed.

Against this backdrop is the Legislative mandate to work towards a system that does not rely on coercion and forced medication and a growing understanding that there are legitimate concerns for the harmful effects that the medications at issue can have on patients in the long term and the lack of resources to assist patients in becoming less reliant on these powerful and often harmful drugs. Given these circumstances, DRVT is concerned that S.287 will harm rather than help people with mental health related disabilities who find themselves in psychiatric hospital units in Vermont and therefore we urge more consideration and study of the real impacts of the bill prior to it being adopted.