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To: House Committee on Judiciary

From: A.J. Ruben, Supervising Attorney, Disability Rights Vermont

Date: April 28, 2014

Re: DRVT Concerns Regarding S. 287 Version 3.1

DRVT provides the following concerns and issues to consider in regard to the 3.1 version of S. 287 issued by the House Judiciary Committee over this past weekend. DRVT is available to provide additional information or analysis on these suggestions at the Committee's convenience and thanks the Committee for its consideration of this material.

At Section **7508 (e)** the proposal is to create "interim DMH custody" to clarify that DMH is responsible for people held involuntarily in its custody. However the language is confusing and unclear as to when the "interim custody" begins, with two distinct potential starting points. DRVT suggests the section be made clearer by identifying that **a person shall be deemed to be in DMH interim custody from the time that the person is brought to or detained at any hospital or other treatment facility based on Emergency Examination paperwork or a Warrant for Immediate/Emergency Examination.**

Further in the proposal for amendments to **7508** at (e)(2) the proposal is to require ONLY that DMH "make every effort" to ensure appropriate care and treatment. This direction is clearly not sufficient to ensure the safety and dignity of people involuntarily in DMH custody as exemplified by DMH witness testimony that people in DMH custody often held in inappropriate circumstances, including emergency departments and jail cells, due to lack of DMH resources. The proposed "make every effort" standard will likely be relied upon by DMH to prove that they have Legislative approval to maintain people in DMH custody in the inappropriate circumstances that currently exist. DRVT suggests the Committee consider directing, without room for avoidance, that **the Department ensure that all people held in its custody are placed in**

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appropriate treatment environments. DRVT suggests that without a strong statement on this issue from the Legislature, DMH will simply continue making excuses as to why people held in its custody are held in inappropriate circumstances instead of obtaining resources necessary to insure appropriate placement and treatment for all such patients.

In section **7615**, DRVT suggests that the proposal to allow the Court to review the evidence on expediting hearings in the light most favorable to the moving party is not consistent with a focus on patients' rights and dignity. DRVT suggests that the proposal require **the Court to view the evidence for expedited hearings in the light most favorable to the patient** in order to preserve what should be an emphasis on a patient's right to choose.

At section 7612a, the Probable Cause Review, DRVT suggests the Committee consider having the Probable Cause review be done **within three days after a person has been held involuntarily under EE or Warrant provisions.** DRVT suggests the Review should happen soon after the person is detained, as is done in Criminal Law, instead of after the AIT paperwork is filed. After the AIT paperwork is filed, MHLP is assigned to the patient and thus the patient has legal representation to assert illegal confinement. The patient has no such representation during the time between when they are detained for the EE and when the AIT is filed. This time period is the most crucial and the most likely to yield effective judicial oversight.

DRVT has also reviewed suggestions on version 3.1 of S. 287 made by Jack McCullough from Vermont Legal Aid's Mental Health Law Project . We support improving the current draft bill as proposed by Mr. McCullough. However, DRVT does not believe the aspects of the current draft that expedite and consolidate non-emergency involuntary medication petitions are appropriate because of the current ability of the State to seek expedited hearings and the obvious lack of resources throughout Vermont's legal and mental health system that testimony has demonstrated is the actual and difficult problem facing Vermonters that wish to improve outcomes for people held involuntarily by the State of Vermont because of their mental health conditions.