Vermont Legal Aid, Inc. **MEMORANDUM**
Montpelier, Vermont

TO: House Judiciary Committee

FROM: John McCullough III, Project Director

SUBJECT: S. 287

DATE: April 28, 2014

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Thank you for the opportunity to respond to the new draft of this legislation. I know that time is short for Committee action, but I do want to point out a few changes that would improve the bill.

INTERESTED PARTIES.

Page 1, line 11-12. We support the narrowing of the range of the "interested parties" who are entitled to commence involuntary mental health proceedings.

MENTAL HEALTH CARE OMBUDSMAN

Page 2, lines 9-12. We support the explicit requirement to provide copies of all certificates of need for emergency involuntary procedures to the mental health ombudsman.

Page 3, line 18. This is part of the complicated emergency admission changes. The warrant language is unchanged, but I think it would be good if we could get "by the applicant" inserted to make clear that the warrant can't be based solely on hearsay.

EMERGENCY EXAMINATION AND SECOND CERTIFICATION.

Page 6, line 20. As drafted this provision contains a gap in logic because it does not cover all possible outcomes. If the person is accepted as a voluntary patient and the state dismisses the AIT there is no order issued by the court, it is dismissed by action of the state. Adding "or accepted as a voluntary patient" would resolve this.

Page 7, line 1. As now drafted this section requires the commissioner to "make every effort" to ensure that the person being held is receiving treatment that meets certain standards. While we support the expanded standards, we believe it should be mandatory, and not limited to making efforts to provide appropriate care.

Page 7, line 9. We would propose a new section providing for appointed counsel for a person in the interim custody of the Commissioner.

HEARING.

Page 10, line 12-13. The new draft contains the following language: "After viewing the evidence in the light most favorable to the moving party". We appreciate the desire to avoid having to hold an evidentiary hearing on these motions, but I am concerned that this tips the balance so far that granting the motion would be automatic. We would suggest retaining the provision that the motion would be decided by the trial court without a hearing, but deleting the last sentence.

Page 10, subsection (2)(A)(i)-(ii). On Friday afternoon I met with Jill Olson, John Wallace, and Rep. Donahue to refine the language on the standards for these motions and I believe we have alternate language that we would suggest to replace the current language. Based on my recollection, this is the proposed language:

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a single motion to both expedite and consolidate the hearings on involuntary treatment and involuntary medication. The motion shall be supported by an affidavit. The Court may grant the motion if it finds that:
(i) the person has received involuntary medication pursuant to this section during the past two years and based upon the person's response to previous and ongoing treatment there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with 1 providers or regain competence and it is probable that serious mental deterioration will ensue unless the motion is granted.

ADVANCE DIRECTIVE

Page 18, line 20. We suggest that this provision also include Disability Rights Vermont, which has also developed advance directive forms and works with clients to create them.