

**Date:** February 6, 2014  
**To:** Senate Health & Welfare Committee  
**From:** Ed Paquin, Executive Director, DRVT  
**In re:** S.287

Please see our previously submitted comments. In those we highlighted how a lack of resources affects the timeframes for commitment and involuntary medication. And that lack includes the sorts of ancillary and alternative services and therapies that can create environments for de-escalation and for treatment geared towards Recovery as well as symptom reduction.

The most significant change proposed in S.287 is its allowing of concurrent filing of Application for Involuntary Treatment or “commitment” and Petition for Involuntary Mediation. These two issues have fundamentally different implications for rights and it is important to be clear about these. For commitment, the court must show evidence of an individual having a “mental illness” and presenting a danger to him or herself, or to others. Clearly this is rooted in society’s perceived right to protection.

In the involuntary medication process as it is currently formulated an individual’s right to accept or refuse medical treatment is the central issue. The legislative intent to work towards a system free from coercion is consistent with the recognition that unless the individual lacks capacity to make a decision, his or her choice of whether or not to accept medication is that individual’s to make, despite the individual having been determined to present a danger. That this has been clearly recognized is evident in that the law allows an individual to refuse or accept medication by means of an Advance Directive even though the state maintains the right to protection through the AIT process.

*DRVT is the protection and advocacy system for the State of Vermont.*

*DRVT is the Vermont Mental Health Care Ombudsman.*

Email at [info@DisabilityRightsVT.org](mailto:info@DisabilityRightsVT.org),

On the web: [www.disabilityrightsvt.org](http://www.disabilityrightsvt.org)

That the process allows some reasonable time is not generally a bad thing. As Judge Davenport pointed out, most cases are resolved short of the actual court hearing. It doesn't make sense that a time frame should be abbreviated with the result that patients, who would likely at some point engage with treatment voluntarily, be forced into an oppositional relationship that will color their view of the mental health system for years to come. We believe that conflating the two hearings will have the undesirable result of more involuntary medication petitions being filed.

We have heard that the process needs to be shortened for what might be seen as exceptions to what is the general rule, specifically, patients whose condition is so serious that their danger cannot be mitigated without use of emergency involuntary procedures or non-emergency involuntary medication. Just as we see a lack of resources in many areas, we see a misunderstanding that the current law does in fact allow for the filing of expedited petitions.

Regarding the issue of Preliminary Hearings – DRVT suggests that a paper review of filings is not a bad idea if the judiciary can absorb the added burden, but in no way is that a substitute for the current right of patient to request a full evidentiary preliminary hearing. DRVT suggests that the current right to a preliminary hearing should not be withdrawn.

The question has been raised as to whether this bill addresses the situation of people being held for prolonged periods of time in Emergency Departments under guard and without treatment. S. 287 does not address this specifically, but DRVT believes that this committee should look at the liberty rights of individuals being held by the state for days or weeks when the law is clear that they are due assessment within a day and emergency examination within 72 hours to determine the filing for commitment. There is an incredible incongruence between examining how to legally speed up involuntary processes while being unable to follow the spirit of the law for people who are entitled to timely assessment and treatment.