



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

To: Joint Justice Oversight Committee

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

Date: October 29, 2015

Re: People with Mental Health Treatment Needs in Correctional Facilities

Disability Rights Vermont (DRVT) is the federally authorized disability protection and advocacy system in Vermont pursuant to 42 U.S.C. 10801 et seq., and the Mental Health Care Ombudsman for the State of Vermont pursuant to 18 V.S. A. §7259. We thank the Justice Oversight Committee for inviting us here today to share our experiences and analysis of the situation facing people with mental health treatment needs in Corrections' custody.

DRVT conducts outreach and monitoring at all of Vermont's Correctional facilities in order to assess conditions facing prisoners with all types of disabilities, including mental health treatment needs. In addition to assisting prisoners with disabilities to understand their rights and advocate for themselves, DRVT pursues informal and formal resolution of disability-related concerns. DRVT also investigates allegations of abuse or neglect, including deaths and serious injuries, involving prisoners with disabilities. In that regard, over the last year DRVT has investigated the deaths of four individuals related to their incarceration and has identified troubling themes in those investigations. When there are no viable alternatives, DRVT does commence litigation in State and Federal Courts to vindicate the rights of prisoners with disabilities. Currently DRVT is the attorney of record in four cases involving the DOC: one involves allegations of wrongful death regarding a prison suicide in 2013, one involves allegation of abuse and neglect of a prisoner held in segregation rather than placed in a psychiatric hospital for treatment in 2014, one involves the allegation that DOC is failing to provide adequate mental health treatment to a prisoner requesting Dialectical Behavioral

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Treatment (DBT), and the final matter involves the allegation that the DOC and Agency of Human Services is violating the Americans with Disabilities Act by failing to furlough a prisoner with disabilities because of a lack of state-funded, disability-related supports in the community.

Based on this work and experience, DRVT suggests that Correctional issues facing people with mental health treatment needs requiring attention by the Legislature and the Administration include:

1. Assuring adequate resources are provided to prevent substandard mental health and other medical care of prisoners requiring treatment within correctional facilities, and that there are adequate resources to assure oversight and accountability of the providers of those services;
2. Assuring that the Agency of Human Services creates adequate capacity and a functional system to timely reintegrate prisoners with disabilities needing intense supports into our communities; and
3. Assuring that law enforcement and the Agency of Human Services and other stakeholders are working together consistently across Vermont to prevent the incarceration of people with disabilities when reasonable alternatives exist.

In reference to the first point, DRVT provides the Committee with a) a link to the Massachusetts DOC policy on mental health treatment, that includes the creation of Residential Treatment Units, and at Section 650.10 (A)(7) generally prohibits the segregation of prisoners with serious mental health treatment needs. <http://www.mass.gov/eopss/docs/doc/policies/650.pdf> and b) the attached copy of Pennsylvania's DOC press release on a similar policy change requiring the creation of treatment units and the diversion from segregation to these new units for prisoners with significant mental health treatment needs.

In addition, DRVT notes that while the VT DOC statistics consistently assert that there are approximately 100 prisoners identified as Seriously Functionally Impaired (SFI) out of our approximately 2400 prisoner population (approximately 4% of the population), authoritative national surveys imply that far more prisoners are actually SFI but are not identified as such by our DOC. For example, a study from Cornell in 2006 estimated that about 37 percent of jail

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inmates and 31 percent of state prison inmates report a disability of some sort. See <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1205&context=edicollect>.

A March 2015 report from the Urban Institute found that an estimated 56% of State prisoners and 64% of jail inmates had mental health problems that are often inadequately addressed. See <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000173-The-Processing-and-Treatment-of-Mentally-Ill-Persons-in-the-Criminal-Justice-System.pdf>

Without consistent and accurate data on the prevalence of prisoners with disabilities and their needs, it will be difficult to assure adequate capacity to care for and accommodate their disability-related needs.

DRVT also notes in reference to the first point above that the recent September 2015 Segregation Report provided to the Legislature by DOC indicates that 30 prisoners identified as having Serious Functional Impairments were subjected to segregation of at least one day, 17 of those 30 SFI prisoners were subjected to segregation between 2 and 15 days, and three SFI prisoners were held in segregation for over 120 days, with one person being held in segregation for a reported 335 days. DRVT notes that this data did not include prisoners who are held in segregated circumstances labeled “close custody” rather than administrative or disciplinary segregation, so that the number of SFI prisoners being held in segregated circumstances is likely higher than reported.

In reference to the second point, DRVT attaches a May 2015 letter sent to AHS Secretary Cohen by the Vermont Human Rights Commission raising concerns about the inadequate system in place to assure people with disabilities in prison are not denied reintegration solely due to their disabilities.

In reference to the third point, DRVT refers the Committee to the recommendations of the Act 80 Police Training Committee over the last several years that has emphasized the benefits of and need for more capacity to provide consistent and comprehensive police social worker-type positions throughout Vermont.

DRVT once again appreciates this opportunity to share our experiences and analysis of issues impacting prisoners with disabilities in Vermont. We remain available to provide additional information and analysis as you do the important work of assuring people with disabilities involved in Vermont's criminal justice system are not unfairly discriminated against, abused or neglected due to lack of capacity, understanding or effort to adequately provide and accommodate for their needs. Thank you.