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

TO: House Appropriations Committee

FROM: John J. McCullough III, Project Director

SUBJECT: Accelerated Involuntary Medication Proposal

DATE: February 11, 2016

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I am taking the opportunity to provide some reactions to the Department's proposal to amend Title 18 to accelerate commitment and involuntary medication proceedings, but there is one very important thing I must say first.

We should not be here. The Department of Mental Health convened a working group in 2013 that consumed months, hundreds of person-hours, and untold financial costs; the Legislature took up the Department's proposed legislation in 2014, spent months taking testimony, debating some very divisive issues, and essentially gave the Department everything it asked for in that legislation. We should not be here having this same conversation in 2016.

I realize that in general Appropriations is not the place to address policy issues, but it is important to say that budget necessities are never a justification to curtail basic civil rights. We understand that the state wants to save money wherever possible. Nevertheless, I see no reason to believe that these proposals will save the $5 million that is claimed for them. If the budget is adopted with those illusory savings, one must wonder what the consequences will be when they do not materialize.

A review of the Department's public statements demonstrates just how unreliable these projected savings are. In the AHS Budget Book the state asserts that approximately 50 persons per year are the subject of involuntary medication petitions and that the median time from admission to a decision on an involuntary medication petition is 90 days. The actual record for calendar year 2015 was 80 involuntary medication petitions. The same week that AHS was proclaiming a median time of 90 days, the filing from DVHA alleged a median 60 day period for the exact same measure, and on February 8 VTDigger, presumably based on statements from the Department, was reporting an average of 128 days for involuntary medication decisions. Meanwhile, at a meeting convened by the Department of Mental Health on Tuesday, the medical director of the psychiatric unit at Rutland Regional Medical Center stated that it takes approximately thirty days to go through the involuntary medication process.

I can tell you that it is very difficult to analyze and present case processing times. In late 2013, when the Department of Mental Health was pursuing the legislative proposals that were enacted in 2014, I had many meetings with DMH staff to go over our respective datasets, analyze the timelines, and produce a relatively uncontested report on how long it takes to go through the admission, commitment, and involuntary medication process. The most reliable figure we could arrive at was a median of 56 days from involuntary admission to the court's decision on an application for involuntary medication, but there was considerable variation among counties. The fact that various components of AHS and its contractors are still producing widely varying figures demonstrates that the Legislature should not be making decisions of this magnitude without much better data than is now available.

There are other areas of operation in which the Department could save money, improve patient care, and reduce its reliance on force. First, in every hospital in the state there are patients being held involuntarily not because they require inpatient care, but because there are not sufficient housing and outpatient treatment resources to serve them. Those patients are merely waiting for an outpatient bed, and according to a comment at Tuesday's meeting, they can represent up to 20% of the patients at VPCH at any given time. If the state were to adequately fund these outpatient resources it could save the very expensive hospital costs that are so crucial to these legislative proposals. Second, how much is the Department paying hospitals, and particularly community hospitals, to keep people in emergency departments? How much is the Department paying sheriffs' departments to station armed deputies in emergency departments? How much has the Department paid community hospitals for capital modifications to their emergency departments, not to provide high quality psychiatric care, but for security?

How much would reduction of these expenditures contribute to the Department's $5 million savings target? All of these options should be fully explored and exhausted before any changes to the protections the law now affords patients in the involuntary mental health system.

Second, even at this stage it is difficult to be clear on exactly what is being proposed. The legislative language that has been circulated calls for a radical shortening of the time for the parties to prepare a court hearing and for the courts to hold those hearings, but retains the concept that involuntary medication decisions will be made in court. The DVHA proposal, on the other hand, states that "Clinical, ethical and economic issues would be remedied by the use of an **administrative model** of due process, common in other states." Emphasis supplied. Even if there is some possibility of monetary savings, the Legislature should know what the Agency is asking for before embarking on what is certain to be a painful and divisive process.

Finally, the projected cost savings in the administration's proposal ignore the increased costs of the speedup. As things have stood for many years, the majority of applications for involuntary treatment (AIT's) do not go to trial. Generally, once the patient has been in the hospital for a while and started to form relationships with the treatment team it is possible for them to be discharged or to negotiate an agreed-upon resolution, such as a "best efforts" settlement that contemplates a discharge a few weeks into the future. If the absolute latest date a case can go to trial is twelve days after the AIT is filed, many of those cases will be going to trial. Thus, this change alone would create an explosion in the number of trials consuming court time. This will greatly increase the cost of the court process, and will impose dislocations and hardships on other cases in the Family Division, all of which are vitally important to the litigants.

In conclusion, the constant attacks on patient rights emanating from the Department of Mental Health are unconscionable. We must not try to balance the DMH budget on the backs of the most vulnerable segment of our society. Instead of taking action to diminish due process and civil rights, the Department should be spending its time on carrying out its legislative mandate, and working toward a system in which coercion and forced medication are history.

I urge you to reject the unwise and financially unsound proposal before you and make no change in the procedures now in place in Title 18.