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**Testimony to the House Judiciary Committee on S. 141**  
**April 8, 2015**

S. 141 calls upon this committee to identify the boundaries between legitimate interests in protection of the community, and a critical human rights issue: preventing discrimination against persons with mental health disabilities.

There is no question that when a person is experiencing a psychiatric illness with symptoms that create a risk of violence that is demonstrably greater than the risk caused by other individuals, society has a valid interest in preventing access to weapons by that person. But you are called upon to set aside an underlying bias when you act upon this valid interest. Our fears and our prejudices that tie mental illness to violence, and our history of discrimination as a society, are deeply engrained in us in ways that we are often not even aware of.

Restrictions on the rights that every citizen holds – regardless of the weight that you believe that right should represent – should not be *greater* for a person with a psychiatric disability than for any other person *except for and to the degree that* the person presents a demonstrably greater risk to society. A person's rights should be restored as soon as they no longer present that demonstrably increased risk. Anything less than that is a concession to prejudice.

**The Senate went a long way in assessing this issue, and overall, did an excellent job. The framework of its approach is solid. It left some gaps, and it is those that I want to address today.** I have attached a draft of amendments that would address those gaps.

1. The 18-month delay from the termination of a court order finding a person in need of continuing treatment, and the time a person can *apply* for a “relief from disabilities,” has no basis in logic or in the interests of community safety and should be removed. A judge will be making a determination about restoring rights, based on the specific facts. A person should not be blocked from access to that judicial review.
2. There should be a presumption that a person's rights be restored once an order of hospitalization or of outpatient treatment (called an order of non-hospitalization) has been permitted to terminate. An ONH is not only based on a finding that a person was a danger to self or others in the past. It is a finding that without continued treatment, the person will likely again become a danger. The Department of Mental Health is required to seek to have that order extended for as many years as it determines that the need continues. A rational approach would be to restore an individual's rights at the point an order terminates. Federal law would block that approach, but would likely allow for a presumption of the right to relief from disabilities.

3. Although Vermont cannot control the categories established in federal law, it can control its criteria for turning over names to the National Instant Criminal Background Check Database. It should not include persons who have been committed solely based on self-neglect [category (B)(ii)] rather than on a risk of acts of violence.
4. The legal structure should not create heightened obstacles for a person to regain their rights after an illness, through automatically making an application a contested case by making the state's attorney or Attorney General the respondent. The state should instead be in the position of an interested party.
5. Individuals without resources should be provided with necessary legal assistance. Regaining a right that was lost through no fault of one's own, but instead, because of an illness, should not be dependent upon having financial means.
6. Criminal records review should be restricted to relevant records, in order to prevent bias. A decades-old shoplifting charge, for example, has no bearing on whether an individual presents a heightened risk of violence.
7. The presumption that an "offense" existed that led to the person's commitment must be removed; the section on victim statements should be clarified to apply only if there *was* an offense. [Sec. 7. 13 V.S.A. § 4825 (g)]
8. Under federal law, a state relief from disabilities plan must be certified by the Bureau of Alcohol, Tobacco and Firearms before it can take effect. A state statute violating privacy rights by turning in information should not be implemented before the ATF has accepted the state plan.

Many categories of individuals in society present a significantly heightened risk of violence; young males are a prime example. Only persons with a mental illness, however, are indiscriminately perceived as having a heightened risk, despite clear evidence to the contrary. And no other group of individuals who are banned from possession of firearms under federal law, with the exception of persons who commit a crime, have their names turned in to the National Instant *Criminal* Background Check Database.

Even though this bill is restricted to persons who have been committed by a court, public perception does not have a discriminate eye. It will act to perpetuate stigma against all persons with a mental illness: one only needs hear the news coverage about this bill's intent to keep guns out of the hands of "the mentally ill." There is also a legitimate concern that it will increase risks,

by dissuading people from seeking treatment because they fear their names will be sent to a federal criminally-banned list. We need to use great caution to tailor it as narrowly as possible.

In summary:

Identifying individuals who are under a current commitment order, if and when that commitment pertains to evidence of heightened dangerousness, is appropriate. Extending it beyond that is unjustified discrimination.

### **A note on Section 3**

Turning over names of those civilly committed does virtually nothing to address the number one cause for gun violence resulting in death in Vermont: the 90% of all deaths from suicide, in the fastest growing group of suicide victims in our rising statistics in Vermont: men between ages 35 and 60.

The New Hampshire Gun Shop Project does address that, and should not be *delayed*, which would be the effect of the study proposed in the Senate bill. A Vermont study has already been completed under the auspices of the DMH, a recommended action plan is in place, and sportsmen/firearms group are already getting on board to endorse and provide leadership, as has the Vermont Suicide Prevention Coalition.

This committee should simply direct DMH to coordinate the initiation of this project in Vermont.

Title 18 § 7101. Definitions

(16) "A patient in need of further treatment" means:

(A) a person in need of treatment; or

(B) a patient who is receiving adequate treatment, and who, if such treatment is discontinued, presents a substantial probability that in the near future his or her condition will deteriorate and he or she will become a person in need of treatment.

(17) "A person in need of treatment" means a person who has a mental illness and, as a result of that mental illness, his or her capacity to exercise self-control, judgment, or discretion in the conduct of his or her affairs and social relations is so lessened that he or she poses a danger of harm to himself, to herself, or to others:

(A) A danger of harm to others may be shown by establishing that:

(i) he or she has inflicted or attempted to inflict bodily harm on another; or

(ii) by his or her threats or actions he or she has placed others in reasonable fear of physical harm to themselves; or

(iii) by his or her actions or inactions he or she has presented a danger to persons in his or her care.

(B) A danger of harm to himself or herself may be shown by establishing that:

(i) he or she has threatened or attempted suicide or serious bodily harm; or

(ii) he or she has behaved in such a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, personal or medical care, shelter, or self-protection and safety, so that it is probable that death, substantial physical bodily injury, serious mental deterioration, or serious physical debilitation or disease will ensue unless adequate treatment is afforded.

§ 7620. Application for continued treatment

If, prior to the expiration of any order issued in accordance with section 7623 of this title, the commissioner believes that the condition of the patient is such that the patient continues to require treatment, the commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment