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

**TO:** Senate Committee on Health and Welfare

**FROM:** Jack McCullough

**SUBJECT:** Mental Health Bill--Draft 10.1

**DATE:** March 16, 2017

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I am pleased that the committee is interested in taking a serious look at the operations of the mental health system. We always support such scrutiny. Unfortunately, we are concerned that certain elements of the legislation as drafted will naturally tend toward an increase in the use of involuntary medication. We have some changes to propose to address this problem.

Section 5. **Involuntary Treatment and Medication**. We completely agree that extended periods of involuntary detentions in emergency departments has been at crisis levels for years. Perhaps the highest immediate priority for the mental health system is to resolve this crisis, and it is vital to engage in a full-ranging examination of the causes for this crisis. As originally drafted, this section enunciated an outcome-neutral review of involuntary medication and involuntary treatment. By adding language specifying the direction of proposed legislation to be developed by the Department of Mental Health, the new draft seems to assume that expansion of involuntary medication and restriction of patient rights in litigation is the appropriate approach.

We propose language that would focus on the problem, excessive reliance on emergency department detention, and provide for the study of the true causes and solutions to this problem:

INVOLUNTARY TREATMENT AND MEDICATION

The Secretary of Human Services, in collaboration with the Commissioner of Mental Health and the Chief Administrative Judge of the Vermont Superior Courts, shall conduct an analysis of the causes of excessive stays in hospital emergency departments and wait times for inpatient beds on psychiatric units. The analysis shall examine gaps and shortcomings in the mental health system, including the adequacy of housing and other community resources available to divert patients from involuntary hospitalization and to accept patients ready for discharge from involuntary hospitalization; treatment modalities, including involuntary medication and non-medication alternatives available to address the needs of patients in psychiatric crises while protecting patients' rights; and other characteristics of the mental health system that contribute to prolonged detention in hospital emergency departments and psychiatric units.

On or before November 15, 2017, the Commissioner shall submit an analysis with any legislative proposals to the Senate Committee on Health and Welfare and the House Committee on Health Care.

We also object to the direction to focus on restoration of competency for all forensic patients. This would require a significant change of Vermont law and would potentially be unconstitutional. At present, Vermont law does not provide for involuntary medication for the purpose of restoring a defendant to competency to stand trial. This is not a minor oversight, but a specific recognition that the purpose of involuntary treatment, including involuntary medication, is to serve the treatment needs of the individual. Allowing involuntary medication simply to increase the opportunity to proceed with criminal charges and imprison the defendant perverts the nature and goals of any medical treatment.

In addition, the United States Supreme Court held in *Sell v. United States*, 539 U.S. 166 (2003), that "[T]he Constitution permits the Government to administer antipsychotic drugs to a mentally ill defendant **facing serious criminal charges** in order to render that defendant competent to stand trial . . ." Authorizing involuntary medication to all defendants, even if their charges are minor or involve no threat to the public safety, would go beyond what the Supreme Court has found to be constitutional.

Overlooked opportunities for improvement. For nearly twenty years 18 V.S.A. § 7629(c) has established the policy to "work toward a mental health system that does not require coercion or the use of involuntary medication". We recommend that the Department of Mental Health be mandated to identify the efforts it is engaged in to accomplish these goals, the individuals responsible for these efforts, its plans to further advance these goals, and its recommendations for further actions to be taken.

In addition, for as long as the Legislature has required annual review of the process and outcomes of Act 114 cases Disability Rights Vermont and the Mental Health Law Project have been arguing for a study to determine the long-term outcomes of involuntary medication. At a time when we are evaluating the entire mental health system a major component of the evaluation should be a scientific investigation of whether, in the long run, involuntary medication is more beneficial than harmful to the patients who are subjected to involuntary medication. Consequently, we propose a new section mandating such a study:

NEW SECTION. EFFECTIVENESS OF INVOLUNTARY MEDICATION.

The Department of Mental Health shall design and conduct a longitudinal study comparing the outcomes of patients subjected to involuntary medications and patients who have been involuntarily hospitalized and discharged without involuntary medications. The study shall include all patients subjected to involuntary medications from 1998 to the present and shall examine the following measures: length of involuntary hospitalization; time spent in inpatient and outpatient settings; number of hospital admissions, both voluntary and involuntary; residential placement; the patients' success in different types of residential settings; employment or other vocational and educational activities; criminal charges; quality of life, determined by both qualitative and quantitative measures; and other parameters determined in consultation with representatives of the inpatient and community treatment providers and advocates for the rights of psychiatric patients.