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141 Main Street, Suite # 7, Montpelier, VT 05602

Date: February 19, 2020
To: House Committee on Human Services
From: A.J. Ruben, Supervising Attorney, Disability Rights Vermont
Re: **Woodside Closure Initiative**

Thank you for inviting me to testify regarding Woodside on behalf of Disability Rights Vermont (DRVT), the federally authorized protection and advocacy system for people with disabilities in Vermont pursuant to 42 U.S.C. 10801 et seq., as well as the Mental Health Care Ombudsman for the State of Vermont pursuant to 18 V.S.A. §7259.

I have personally been involved with youth at Woodside since 1993 when I was a Public Defender in Rutland and had juvenile clients who were placed at Woodside. Starting in 2002 at DRVT I helped focus our attention on Woodside because of concerns I had developed about the welfare of youth placed there. Currently DRVT staff visit Woodside regularly to monitor the facility and meet with residents, and we have a lawsuit pending in Federal Court regarding conditions there.¹

Woodside was created by the Legislature in the mid-1980's because there was a horrific murder committed by two adolescents and at the time Vermont had no secure detention facility for juveniles.² Originally intended to be a secure detention facility that provided some mental health treatment for juvenile offenders, it evolved into a long-term sex offender treatment program in one wing and a short term detention program in the other. Eventually the long-term treatment program was ended, and the Vermont Legislature, at the Department's request, amended the statute to require Woodside to fulfill the specific role of a **“residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting for adolescents who have been adjudicated or charged with a delinquency or criminal act.”** 33 V.S.A. §5801(a). This change at Woodside, becoming a mental health treatment facility that provides those services to justice-involved youth and not a detention facility

¹ *Disability Rights v. VT DCF*, Case No. 5:19-CV-106.

² https://www.uvm.edu/newsstories/news/rethinking_juvenile_justice

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

for adolescents that also provided some treatment and medical services, was in the making for a long time.

In 2006 and 2007 DRVT published investigative reports about Woodside identifying immediate danger and significant harm to youth placed there.³ Based on these reports the Dept. for Children & Families (DCF) agreed to make significant changes at Woodside, including adding additional mental health and educational supports, classroom space, janitorial services, and air conditioning. As DCF added mental health staff and programming to Woodside, and budget constraints were felt within the Department, DCF eventually determined it could bill Medicaid for some of the costs of Woodside. When the Federal Government refused to fund services at Woodside, DCF attempted to maintain that funding by requesting a statutory amendment and modifying its internal policies to become a “Psychiatric Treatment Facility for People Under 21” (PRTF), an entity eligible to receive Medicaid funds.⁴ Despite these efforts, Medicaid refused to fund Woodside.

Confusion about what needs Woodside should fulfill, and how best to meet those needs, is a primary obstacle to implementing prompt and necessary improvements in Vermont’s system of support and treatment for at risk youths. For example, despite the legislative treatment mandate that Woodside be a residential mental health treatment facility, DCF has placed youth at Woodside that may not have a clinically-identified, residential-level mental health treatment need. Youth in Dept. of Corrections (DOC) custody, and youth detained for other states under an interstate agreement, reportedly were placed at Woodside without the requirement of clinical necessity.

DCF has created more confusion by erroneously asserting that Woodside is a no reject/no eject facility. In fact, Woodside has always been a facility that could and did both reject and eject youth.⁵ More importantly, a Federal Court found that Woodside accepted and maintained youth in the facility when they should not have. See Attachment A, Order on Motion for Preliminary Injunction, *Disability Rights v. VT DCF*, Case No. 5:19-CV-106, August 9, 2019. In response to litigation DCF has revised Woodside policies to clarify that it is not a no reject/no eject facility, but instead is a facility that will appropriately deny admission to, or transfer, a youth who has mental health needs that cannot be safely met at Woodside.

³ http://www.disabilityrightsvt.org/pdfs/Investigative_reports/VP&A_WoodsideReport.pdf
http://www.disabilityrightsvt.org/pdfs/Investigative_reports/Woodside_redacted_7.27.pdf

⁴ See 42 C.F.R. §441.151 et. Seq.

⁵ https://www.caledonianrecord.com/news/teen-shooting-suspect-kicked-out-of-juvenile-detention-facility-/article_96d10589-6b25-5233-b184-a545771aa4b8.html

Defending and Advancing the rights of people with disabilities & mental health issues, and of the Deaf.

DCF's legislative report on Woodside indicates that the census at Woodside was over 10 youth at the time DRVT filed the lawsuit in June 2019, and that number dropped precipitously after the Court's Order in August 2019. In the years prior to the litigation the census at Woodside had been consistently above 15. While DCF asserts the census at Woodside is now very low due to overall reduction in youth in custody eligible for placement there, the historic numbers and coincidence of the drastic reduction in census after the Court's Order may indicate that a decision was made at a policy level to divert youth from Woodside around July 2019. Asserting otherwise adds to the confusion of what is really needed to replace Woodside.

DRVT suggests that the Committee consider there may be two general categories of youth that need to be served and supported, and for whom Woodside has heretofore been the only alternative: youth with intense whom other facilities, like the Retreat, will not accept, or may seek to return to Woodside on an emergent basis from their program, and who are not appropriate for inpatient psychiatric treatment, and youth that do not have a residential-level of mental health treatment need but due to other factors require secure detention by professionals well versed in adolescent development and trauma-sensitive practices (i.e. interstate compact youth or youth in DOC custody). For the latter population, youth without disabilities, a proposal for a specially-designed and staffed 2 to 4 bed facility seems sufficient.

For the former group, those youths with significant mental health treatment needs that are not appropriate for inpatient hospital treatment and have not been able to remain safe in Vermont's existing residential placement options, access to appropriate and timely treatment and support is crucial and long overdue. This group of youth often spend time 'boarding' in Emergency Departments when no appropriate level of care can be found for them. As the prior witnesses in this Committee testified, the best practices for working with these youth include small, therapeutic environments with the minimum coercion and maximum relationship building and community involvement as possible. Many of the prior witnesses commented that they look to the State as a place of last resort to place youth that pose the most risk and liability, boding poorly for the RFP process to fully solve our systemic capacity problem.

The ongoing RFP process may not adequately meet the potential opportunity closing Woodside presents. There are approximately 60-70 children placed out of state under DCF auspices, but there may also be 100 or more other children placed in out of state residential programs under the auspices of DMH or the Agency of Education. A granular analysis of what specific services/programs these out of state youth require and the feasibility of reinvesting some of the money Vermont is currently spending at Woodside

into programs that could serve these youths in Vermont would help justify the policy and funding decisions that will have to be made.

DRVT also suggests that the Committee carefully question the rationale behind the plan to have the State stop providing secure, residential mental health and substance abuse treatment to youth involved in the justice system, and instead privatize this important governmental function. DCF's plan relies on private organizations responding to Requests for Proposals, a process that is both time consuming and not guaranteed to achieve the precise capacity and geographic distribution of services that Vermonters need and expect for these vulnerable and challenging youth. These are important points that cannot be over emphasized

Every entity that has reviewed the Woodside's physical plant has determined that Woodside is not an appropriate building to provide residential mental health treatment within, given its prison-like atmosphere and age. DRVT agrees with this position. The development of sufficient capacity to meet the needs of the youth heretofore placed at Woodside, as well as other youth that receive services from DMH or AOE out of state, is needed promptly to address Vermont's overall lack of adequate capacity for youth mental health treatment and supports in our communities.