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To: House Judiciary Committee
From: Zachary Hozid, Staff Attorney
Date: February 18, 2021
Re: Police Use of Force Bill H. 145

Dear Members of the Committee,

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. DRVT has worked with many people with disabilities who have suffered harm and trauma as a result of law enforcement uses of force, sometimes within the current standards and sometimes apparently in violation of those standards. The following comments are based on this experience and hopefully will assist you in your efforts to improve the standards in Vermont for law enforcement use of force, especially in the context of interactions with people with disabilities.

The Americans with Disabilities Act and the Vermont Fair Housing and Public Accommodations Act both require law enforcement to reasonably accommodate people with disabilities and avoid uses of force. *See Sheehan v. City & Cty. of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014), *rev'd in part, cert. dismissed in part sub nom. Sheehan*, 135 S.Ct. 1765 (2015) (applying the Americans with Disabilities Act to police use of force against a person with a psychiatric disability); *See also Haberle v. Troxell*, 885 F.3d 170, 180 (3d Cir. 2018) (“police officers may violate the ADA when making an arrest by failing to provide reasonable accommodations for a qualified arrestee's disability”); *Brunette v. City of Burlington, Vermont*, No. 2:15-CV-00061, 2018 WL 4146598, at *32 (D. Vt. Aug. 30, 2018) (holding that even though the deceased “charged” the officer with a four-foot long pointed shovel, the officers were still required “to reasonably accommodate the person's disability in the course of investigation or arrest”); *Williams v. City of New York*, 121 F. Supp. 3d 354, 368 (S.D.N.Y. 2015) (“The only reasonable interpretation of Title II is that law enforcement officers who are acting in an investigative or custodial capacity are performing ‘services, programs, or activities’ within the scope of Title II”). Having

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principals and strategies aimed at implementing these important protections and best serving people with disabilities codified in statute would help guide law enforcement in the field and improve outcomes for everyone involved.

DRVT has represented individuals with psychiatric and developmental disabilities that impacted their behavior and resulted in law enforcement uses of force. In many of these incidents it was possible that, had law enforcement officers recognized that the behaviors were the manifestation of a disability that could be accommodated, the harm to the person with the disability could have been avoided. Ensuring that State policy require officers to be trained to recognized disability-related behavior, how to interact with people experiencing disability-related behavior, and importantly, who and how to contact for additional, specialized support to resolve the interaction in a non-violent, non-coercive and yet safe fashion would be optimal.

As an example, DRVT worked with an individual with a known psychiatric disability who suffered a police use of force due to his disability. The individual was known in the community as having a psychiatric disability and had several other interactions with his local Police Department throughout the years. On this occasion, he was being served an arrest warrant at his home in a non-emergency situation. When law enforcement arrived at his home, he panicked and retreated. Use of force ensued and he was harmed. This use of force likely could have been avoided had law enforcement accommodated his arrest and attempted to collaborate with mental health workers or peer supports. Based on this example and others, DRVT supports including specific direction in statute regarding how disability and law enforcement use of force interact. DRVT provides the attached redlined draft of H. 145 with specific suggestions for the Committee to consider to realize this goal.

Thank you for your consideration and work on this important issue. Please contact me is you or any of the Committee Members have questions or requests for additional information that DRVT may provide.

Sincerely,
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