To: House Committee on Human Services

Re: Senate Bill S. 192 An act relating to forensic facility admissions criteria and processes

From: Disability Rights Vermont
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Thank you for the invitation to speak with this Committee today, as it relates to S. 192. For the record, my name is Lindsey Owen and I am the Executive Director at Disability Rights Vermont. I have been with Disability Rights Vermont (DRVT) for the last twelve years, as a legal intern, an advocate, a practicing attorney for the past ten years, and serving as the Executive Director for almost three years.

Disability Rights Vermont is the Protection and Advocacy (P&A) agency for the State of Vermont. Historically, the Protection and Advocacy system was established, in part, after the horrifying and dehumanizing treatment of people with disabilities at the residential school, Willowbrook, was exposed in 1973. Congress enacted a series of legislation mandating that every state and territory of the United States have a P&A agency to monitor, investigate and address abuse, neglect and serious rights violations experienced by people with disabilities.

The Governor also designated DRVT as the Mental Health Care Ombudsman. As the Mental Health Care Ombudsman, DRVT receives, reviews, and monitors the Critical Incident Reports and Certificates of Need (reports of emergency involuntary procedures) involving individuals receiving mental health services. DRVT receives these reports from the Department of Mental Health. Over the past couple of weeks you have also received testimony from various witnesses attesting to our role in protection and advocacy for some of the most vulnerable of our population.

The list of issues of concern for the disability community is long. I would like to highlight a couple that really are at the heart of S.192.

Following the decision in a case commonly referred to as *Olmstead*[1], healthcare providers (including mental health) are mandated to provide care in the least restrictive manner possible. Compliance with the *Olmstead* provisions means that substantive efforts are required to provide for care at all levels of intervention: home care through hospitalization. This results not only in improved outcomes but also substantial cost savings. In fact, The Vermont Developmental Disabilities Council testified to this Committee that:

"The Agency of Human Services had estimated that the cost of supporting an individual in a forensic facility is $3400 per day. Over the course of a year, this is an individual budget of over a $1,240,000 a year- well over a million dollars per year, per bed."

Sadly, to this day, the trend in Vermont continues to be an emphasis on increasing resources in more restrictive settings while treating the Olmstead requirements more like aspirational guidelines instead of what they are: the law. There is no secrecy or doubt about the fact that community-based resources foster financial, emotional and physical wellbeing, stability of patients, providers, and the State as a whole. Especially when we consider that making the appropriate services available to younger patients comes with an enormous reduction in costs and an increase in positive outcomes over the lifetime.

There is so much work before this legislature this session with asks for creating and funding more and more locked facilities, with more and more reactive policies to address an issue or event that has already happened and cannot be changed. DRVT would suggest that this Committee first ask the question: what is broken and what are we trying to fix? It seems that the problem is a sense of need to keep our communities

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[1] Olmstead v. L.C., 527 U.S. 581

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safe and to have a mechanism to hold a particular population of our communities accountable for something the judicial system says they cannot be accountable, either not now or not ever. But DRVT suggests that what would be even better is to stop the harm from occurring in our communities in the first place, by meeting people's needs and as early as possible.

The second question DRVT would suggest that this Committee ask is whether this particular bill is going to solve the problem of keeping communities safe and holding people accountable. The answer, I think you will see, is "no," it merely spends a lot of money to lock up more people with disabilities. The harm will have already happened, and, at least for the intellectual and developmental disability community, competency restoration is not going to happen. S.192 throws the baby out with the bath water at a literal extraordinary cost. There are already laws on the books, like Act 248, and the involuntary commitment laws for mental health, that provide for the ability to provide care and supervision over people in the least restrictive setting, and sometimes the least restrictive setting may very well be a locked bed, of which we have plenty.

DRVT thinks that is where the inquiry naturally stops. However, taking it one step further, is if this is the way the legislature decides the purported problem should be addressed, then the third question is what is it going to cost. DRVT is including as an attachment its report from March 2020 entitled Wrongly Confined, the report breaks down the costs of serving people in the community through a facility and the margins are drastically far apart. It is thousands of dollars more per day per person.

At the same time, there has been no appreciable effort on improving home and community-based services, low and mid-level resources, or to meet the actual treatment needs of our community members with all manner of disabilities. Providing our community enough services at the least restrictive levels provides more accurate measures of the real need

for services at more restrictive levels. Furthermore, by providing adequate resources so patients could receive appropriate care in their communities would likely free up resources in facilities that are already configured to care for those higher acuity cases.

In the spirit, intent, and letter of Olmstead, the community needs to be fully apprised of the enormous care gap in the treatment landscape. A gap that contributes to the relentless incarceration of Vermonters, particularly younger Vermonters, because the State has not seen fit to provide more effective alternatives to institutionalized treatments. It should hardly be astonishing to anyone that by failing to provide appropriate resources for care that the entire system becomes clogged and overwhelmed. Fashioning yet another restrictive setting is a waste of resources. We find ourselves in a "hole" and we expect to get out of it by digging faster.

Thank you for your time, attention, and interest,

Lindsey Owen