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Kristin L. Clouser, Secretary

TO: Senate Committee on Health and Welfare
FROM: Office of Racial Equity
DATE: February 28, 2023
RE: Office of Racial Equity Testimony on S.36, An act relating to permitting an arrest without a warrant for assaults and threats against health care workers and disorderly conduct at health care facilities

Dear Chair Lyons,

The Office of Racial Equity supports the affected healthcare workers who have testified to their harrowing experiences in Vermont’s emergency departments. The testimony from healthcare workers in Vermont makes it clear that there is a real safety crisis occurring in our hospital systems.

Although some of the Office of Racial Equity’s testimony today is related to the impacts of law enforcement interaction on people with mental illness, this should not be construed to mean that all people interacting with healthcare workers in disrespectful or violent ways are experiencing mental illness. People with serious mental illness are less likely to commit violent acts than those without serious mental illness when statistical analysis takes into account the common factors associated with violent crime (DeAngelis, 2022). People not experiencing mental illness who are expressing their anger and frustration in inappropriate ways should be held accountable for their actions. The testimony from affected healthcare workers clearly shows a pattern of people not being held accountable.

The Office of Racial Equity is highly concerned that the passage of S.36 will dissuade hospital systems from addressing their own internal practices related to employee safety by creating the appearance of change without any real impact. We believe S.36 is unlikely to have the proposed effects of reducing health care workers’ safety concerns. Simply addressing the issue through increasing statutory powers of law enforcement is unlikely to change the outcomes shared by healthcare workers. In fact, it is likely to *increase* the disproportionate and racially inequitable outcomes that are associated with increased law enforcement presence. The following are two key statistics to consider with regards to the danger of law enforcement encounters:

- Black Americans are fatally shot by law enforcement officers at a rate that is almost 3 times higher than the rate of fatal law enforcement encounters for White Americans (*Washington Post*, 2023). This figure is likely to be an undercounting of the true rates of

violence experienced by Black people in America at the hands of law enforcement, as the U.S. government does not adequately track instances of nonfatal shootings and non-prosecuted cases of law enforcement violence (Fuller et. al, 2015).

- People with untreated mental illness are 16 times more likely to be killed during police confrontations than people without mental illness (Mubarak et. al, 2022).

S.36 is likely to increase the negative consequences of law enforcement activities that disproportionately impact people of color in Vermont without addressing the root causes of violence towards health care workers.

Furthermore, the Legislature must consider whether the changes proposed by S.36 will actually hold people accountable for their actions. On February 2, 2023, Vermont Defender General Matthew Valerio testified before the Senate Committee on Judiciary that there are numerous legal protections already in place under Vermont statute that protect healthcare workers, including, but not limited to:

- the prohibition on criminal threatening under 13 V.S.A. §1702 (Vermont Senate Committee on Judiciary, 2023)
- 13 V.S.A. section §1028, which specifically imposes additional penalties for actions taken with “the intent to prevent the protected professional from performing his or her lawful duty” (The Vermont Statutes Online, 2023). 13 V.S.A. §1028 (d)(1)-(3) further defines “protected professional” to specifically include “the employee of a healthcare facility or licensed physician who is on the medical staff of a healthcare facility who provides direct care to patients or who is part of the team – response to the patient or visitor incident involving real or potential violence” (The Vermont Statutes Online, 2023).

Through our consultation with the Vermont State Police, we heard concerns that S.36 will not have the intended effects the Legislature seeks because it is duplicative of existing Rules of Criminal Procedure, a point also raised by Defender General Matthew Valerio in his February 2, 2023 testimony (Vermont Senate Judiciary Committee, 2023). We further heard strong concerns that the passage of S.36 would lead to unnecessary or disproportionate law enforcement intervention in cases of mental health crises, noting that law enforcement should not be charged with removing people experiencing mental health crises from facilities where they need treatment. This raises the possibility that the passage of S.36 would lead to unnecessary law enforcement intervention towards people with severe mental illness. These reflections from the State Police echo those shared by the Director of the Mental Health Law Project at Vermont Legal Aid, Jack McCullough, Esq. in his testimony on S.36 before the Senate Judiciary committee on February 2, 2023 (Vermont Senate Judiciary Committee, 2023).

We also learned that law enforcement officers are often turned away from hospital emergency departments by hospital administrators who state that they wish to handle disturbances internally. The State Police experience raises the question of how S.36 would have the intended effect of making healthcare workers safer in those facilities where hospital administrators do not wish for law enforcement to intervene on their premises.

We understand that the bill before the committee today was developed in response to requests from the affected healthcare workers to do something to help prevent the violence they are currently experiencing. However, this bill is unlikely to change the outcomes at health care facilities and is likely to increase the potential for law enforcement violence against people of color. Therefore, the Office of Racial Equity opposes the passage of S.36.

For a path to address specifically the concerns of people experiencing mental health crises, we recommend the Justice and Mental Health Collaboration Program from the Council of State Governments (CSG). CSG recently released a toolkit for creating mental health crisis response teams that work in tandem with law enforcement while not additionally criminalizing people with mental illness (Lopez Wright & Haneberg, 2023).

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