



Vermont Developmental Disabilities Council

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TO: House Corrections and Institutions Committee
RE: S. 193 Institutionalizing People with Disabilities
FROM: Vermont Developmental Disabilities Council
Susan Aranoff, J.D. Senior Planner and Policy Analyst
DATE: April 23, 2026

Thank you for the opportunity to comment on Senate Bill 193 - An act relating to establishing a forensic facility for certain criminal justice-involved persons.

The unique role of the Vermont Developmental Disabilities Council

The Vermont Developmental Disabilities Council (hereafter “VTDDC”) is a statewide board created by the federal Developmental Disabilities Assistance and Bill of Rights Act (hereafter “the DD Act”), first adopted by Congress in 1970. An estimated 86,000 Vermonters experience a developmental disability as defined by the DD Act, with approximately 5,100 receiving Medicaid-funded, home and community-based support (HCBS) through the Developmental Disabilities Services System of Care or in some cases, the Choices for Care Program.

VTDDC is charged under federal law with engaging at the state level in “advocacy, capacity building and systems change activities that... contribute to the coordinated, consumer-and-family-centered, consumer-and-family directed, comprehensive system that includes needed community services, individualized supports, and other forms of

assistance that promote self-determination for individuals with developmental disabilities and their families.”¹

In addition to our federal mandate, we are commenting in our unique role within the Agency of Human Services (AHS). As per our signed assurances with AHS, the VTDDC advises AHS on quality strategies as they pertain to people with developmental disabilities.² The Assurances also protect the VTDDC’s right to advocate free from any interference from AHS. This right to advocate protects the VTDDC’s ability to speak on behalf of its constituents even – and especially- when the VTDDC’s position is at odds with AHS policies or positions.

Failure to Support Community Based Services Does Not Justify A Forensic Facility

The Vermont Agency of Human Services (AHS) wants to house people with disabilities who are involved with the criminal justice system in a prison – potentially forever. While policing itself. Given the rights of the people involved and the history of oversight of the Agency of Human Services at Woodside, alone, this is simply unacceptable.

The Vermont Developmental Disabilities Council does not support holding people with disabilities who have not been found guilty of crimes in prison. Specifically, the Vermont Developmental Disabilities Council opposes including people with intellectual disabilities in a prison based competency restoration program like the one contemplated S.193. This setting is costly, inappropriate, and at odds with the values of the Developmental Disabilities Services System of Care.

¹ Developmental Disabilities Assistance and Bill of Rights Act of 2000. 42 USC 15001 et. seq.

² “Section M. The Council will participate in the planning, design or redesign, and monitoring of State quality assurance systems that affect individuals with developmental disabilities.” Signed by AHS Secretary Samuelson.

Furthermore, people with intellectual disabilities are generally not considered appropriate candidates for competency restoration programs. The intellectual disabilities that may prevent an individual from being deemed competent to stand trial are not treatable by medication or alleviated by milieu-based treatment programs.

Last, under S.193, a noncompetent, non-restorable individual could spend the rest of their lives in prison.

Background

Vermont, through its laws and policies, has chosen to support nearly all individuals with disabilities in community-based settings as opposed to institutions. In 2010, the Agency of Human Services (AHS) and the Department of Disabilities, Aging, and Independent Living (DAIL) affirmed the success of Vermont's community-based service system for people committed to custody of the DAIL Commissioner under Act 248 in a legislative report about people with developmental disabilities who pose a public safety risk³.

In that Report, then-DAIL Commissioner Joan Senecal wrote the following:

Certain individuals are particularly hard to serve in any setting.

They may have complex psychiatric needs, they may be highly resistant to supervision, they may try to elope, they may be highly assaultive to staff and to peers, or they may be extremely emotionally volatile. These characteristics may make it difficult to supervise these individuals in a shared living home or a group home. It may be difficult to retain staff to work with them. When these characteristics are combined with risk to the public, agencies may feel overwhelmed. In the past two decades, a few agencies have stepped forward to take on these exceptionally challenging individuals, but, at present, no agencies feel able to accept hard-to-serve

³ <https://ddsd.vermont.gov/sites/ddsd/files/documents/Individuals-dd-pose-publicSafetyRisk-report2009.pdf>

individuals from another region because of concerns about budget, liability, and community reaction.

Some have suggested a small secure facility to house a group of these uniquely hard-to-serve individuals, but it is unlikely that grouping the most hard-to-serve individuals together in a single location would be beneficial or cost-effective. The individuals who are the hardest to serve are difficult and dangerous in unique ways. To assemble the combination of treatment and staffing resources to meet the differing needs of the individuals in a single location, while keeping the individuals safe from one another, would almost certainly exceed the costs of our current individually tailored services. Emphasis added. Id at 16.

The reasoning behind then-Commissioner Senecal's opposition to a secure forensic facility was sound in 2010 and it is sound today.

In her 2010 report, then-Commissioner Senecal suggested that Vermont may wish to provide incentives for a current agency to extend its capacity for these hard-to-serve individuals, or it may wish to develop a new service program with a particular mission of serving extraordinarily high-risk individuals with developmental disabilities. It appears that Commissioner Senecal's sound suggestions were soundly rejected by AHS.

AHS Facilities Require Independent Oversight

On October 25, 2023, *Seven Days* published a 16 page ad-free expose by an award winning journalist about how young Vermonters were physically restrained, stripped, and held in isolation for days in AHS's Woodside Juvenile Rehabilitation Center before a lawsuit brought by Disability Rights Vermont caused it to be shuttered in 2020⁴.

The article details gross malfeasance on the part of AHS with respect to its oversight of Woodside. As the article makes clear, even though the horrific abuse that was allowed to

⁴<https://www.sevendaysvt.com/vermont/woodside-investigation-violence-and-isolation-at-vermonts-juvenile-lockup/Content?oid=39222023>

occur at Woodside has ceased, AHS has never explained to the public what happened at Woodside, how it was allowed to occur, who was responsible, and whether anyone has ever been held accountable? AHS should not be permitted to operate a forensic facility or facilities in its prisons until it provides answers to these and other important questions. DCF learned important lessons from the atrocities committed at Woodside. In a presentation before the Joint Justice Oversight Committee on October 26, 2023, then-DCF Commissioner Christopher Winters stated the following⁵:

- There must be transparent oversight and accountability for the entire system, but more so for the higher levels of care, particularly any locked/secured sites.
- The State cannot be both the ultimate regulator and the provider.

The Vermont Developmental Disabilities Council endorses these sound principles. The forensic facility must have identified watchdogs who are separate from the providers and operators of the facility. Consider the role of the Protection and Advocacy System. Properly resourced, it could provide access to advocates on a 24/7 basis.

Vermont is Failing to Honor its Olmstead Obligations

Over twenty years ago the U.S. Supreme Court issued the landmark decision in *Olmstead v. L.C.*⁶ affirming that people with disabilities have a right to live in the most integrated setting appropriate to their needs, and that the failure to realize such integration is a violation of the Americans with Disabilities Act⁷.

After the *Olmstead* decision, states were mandated to develop enough community programming to avoid the unnecessary use of psychiatric and other institutions. While Vermont asserts that it has aspirations to develop a quality community-based system of

⁵<https://legislature.vermont.gov/Documents/2024/WorkGroups/Justice%20Oversight/Department%20of%20Children%20and%20Family%20Services/W~Chris%20Winters~High%20End%20System%20of%20Care~10-26-2023.pdf>

⁶ 527 U.S. 581 (1999)

⁷ 42 U.S.C. Section 12101

care, its focus remains on building more inpatient capacity - more hospital beds and nursing homes – rather than investing its limited resources to fill the huge gaps currently existing in community services.

Conclusion

Thirty years ago, Vermont was the second state in the country to close its institution for people with developmental disabilities, Brandon Training School. Back then, Vermont was a leader in providing individualized community-based services for people with developmental disabilities.

Vermont must keep the promise made by Governor Howard Dean when Brandon Training School closed in 1993.

Governor Dean said, “I’m proud to maintain the commitment of the state to the very kind of services that we still owe to the population that was once at Brandon and is now in the community. We will continue to assure that individuals receive support and services; We will continue to assure that those services meet acceptable levels of quality; We will continue to assure that persons receiving the services are free from abuse and neglect or mistreatment; To assure that the folks taking care of the people needing these services have adequate training and support. So, our commitment does not end with the closing of this institution. Our commitment continues.”

ADDENDA

Specific Comments on Draft 2.1

Revisit Act 137 of 2024

FROM ACT 137 of 2024

* * * Proposal for Enhanced Services * * *

Sec. 27. INDIVIDUALS WITH INTELLECTUAL DISABILITIES; SECURE, COMMUNITY-BASED RESIDENCES

(a) The Department of Disabilities, Aging, and Independent Living shall propose alternative options, including building and staffing cost estimates, for a secure community-based residence or residences to treat individuals who have been charged with a crime and found incompetent to stand trial or adjudicated not guilty by reason of insanity, who are in the Commissioner's custody, and who require a more secure level of care than is currently available. The Commissioner shall ensure that a secure community-based residence proposed under this section would provide appropriate custody, care, and habilitation in a designated program that provides appropriate staffing and services levels in the least restrictive setting. The alternative options shall be developed in consultation with interested parties, including Disability Rights Vermont, Vermont Legal Aid, Developmental Services State Program Standing Committee, Vermont Care Partners, and Green Mountain Self Advocates with final placement determinations made by the Commissioner. The alternative options may be eligible for funding through the Global Commitment Home- and Community-Based Services Waiver. Prior to seeking funding for constructing, purchasing, or contracting for a secure

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community-based residence for individuals in the Commissioner's custody, the Department shall propose to the House Committees on Human Services and on Judiciary and the Senate Committees on Health and Welfare and on Judiciary any necessary statutory modifications to uphold due process requirements.

(b) As used in this section:

(1) "Designated program" has the same meaning as in 18 V.S.A. § 8839.

(2) "Secure" means that residents may be physically prevented from leaving the residence by means of locking devices or other mechanical or physical mechanisms.

* * * Fiscal Estimate of Competency Restoration Program * * *

Sec. 28. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL ESTIMATE

On or before November 1, 2024, the Agency of Human Services shall submit a report to the House Committees on Appropriations, on Health Care, and on Human Services and to the Senate Committees on Appropriations and on Health and Welfare that provides a fiscal estimate for the implementation of a competency restoration program operated or under contract with the Department of Mental Health. The estimate shall include:

(1) whether and how to serve individuals with an intellectual disability in a competency restoration program;

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(2) varying options dependent upon which underlying charges are eligible for court-ordered competency restoration; and

(3) costs associated with establishing a residential program where court-ordered competency restoration programming may be performed on an individual who is neither in the custody of the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

Additional resources:

<https://www.ctpost.com/news/article/CT-settles-psychiatric-hospital-abuse-lawsuit-for-17276464.php>

<https://www.americanprogress.org/article/the-trump-administrations-war-on-disability/>

<https://www.sevendaysvt.com/news/woodside-investigation-violence-and-isolation-at-vermonts-juvenile-lockup-39222023/>

<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT137/ACT137%20As%20Enacted.pdf>