House Committee on Judiciary, House Committee on Corrections and Institutions, House Committee on Health Care, and House Committee on Human Services

Disability Rights Vermont Testimony on S. 193 Addendum

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April 20, 2026

Honorable Chairs, Vice Chairs, and Representatives,

Disability Rights Vermont would like to thank your committees for your thoughtful amendments to the sections of this bill as it relates to competency restoration. As we believe there are still several issues to consider and amendments to be made, we are submitting this addendum to previous testimony to provide additional information to inform your decision making about S.193. There are ongoing concerns about S. 193 as related to forensic facility and competency restoration being administered by the DOC within a prison, the need for language in the bill related to oversight and monitoring of emergency involuntary procedures within the facility, and the lack of clarity about staffing, training, and treatment within the facility.

As previously disclosed, DRVT is here in our role as the Protection and Advocacy Agency for Vermont to encourage our legislators to make policy that protects the rights of individuals with disabilities, in equal measure to protecting the rights of all Vermonters. We are also here to advise our legislators to avoid making policy that will open the State up to costly litigation and will need to be walked back a few years down the road. We are here to encourage policy making that prioritizes the most important needs in our community, in accordance with the law, and that is economically sound.

As a legal advocacy organization, DRVT asserts that the DOC is not the appropriate department to administer competency restoration, and, moreover, it will be costly and detrimental to create a forensic facility within a correction facility. In general, Correctional settings worsen outcomes. Prison environments increase:

* Cognitive overload, trauma, and behavioral dysregulation
* Risk of victimization
* Disciplinary sanctions for disability-related behaviors

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There is no evidence base for DOC-run restoration for individuals with intellectual and developmental disability (I/DD). There is no credible national model supporting prison-based competency restoration for this population.

If Vermont creates a DOC administered competency restoration and forensic facility, we are setting ourselves up for costly litigation and potential loss of state control over our systems of care.

Federal Litigation & Consent Decree Risk (Real Examples)

Trueblood v. Washington State Department of Social and Health Services[1]: Federal court found unconstitutional delays in competency services; Washington was placed under strict court oversight with daily fines for noncompliance.
➤ What this means for Vermont: If restoration capacity or timelines fail (which is likely with I/DD populations), the state could face court-ordered deadlines, ongoing judicial control, and significant financial penalties.

Center for Legal Advocacy v. Marshall[2]: Individuals held in jail awaiting restoration led to a binding consent decree requiring systemic reform and enforced timelines.
➤ What this means for Vermont: Jail-based or DOC-based restoration models often trigger forced system redesign under court order, removing legislative control.

Briggs v. ODMHSAS[3]: competency restoration litigation lawsuit alleged unconstitutional delays and ADA violations for individuals waiting in jail; resulted in consent decree and ongoing financial consequences.
➤ What this means for Vermont: Failure to provide appropriate, timely, disability-compliant services can lead to DOJ intervention, ADA enforcement, and federally mandated reforms.

Hunter v. Beshear [4] (representative of similar litigation): Courts found prolonged jail detention of incompetent individuals unconstitutional, requiring strict transfer timelines and system changes.
➤ What this means for Vermont: If individuals, especially those who are not restorable, are held in correctional settings, the state risks immediate court intervention and mandated release/transfer requirements.

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[1] *Trueblood v. Wash. State Dep't of Soc. & Health Servs.*, 822 F.3d 1037 (9th Cir. 2016)
[2] *Center for Legal Advocacy v. Marshall,* 1:11-cv-02285, (D. Colo.) Date Filed: Aug. 31, 2011
[3] *Briggs v. Slatton-Hodges*, Case 4:23-cv-00081-GKF-JFJ (N.D. Okla. filed Mar. 1, 2023)
[4] *Hunter et al v. Beshear*, No. 2:2016cv00798 - Document 93 (M.D. Ala. 2018)

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Coleman v. Schwarzenegger[5]: Federal court found systemic failure in prison mental health care, resulting in decades of federal oversight and population reduction orders (and now a Receiver).
➤ What this means for Vermont: Expanding DOC into clinical roles without appropriate infrastructure can result in loss of state control over correctional operations and long-term federal oversight.

I am submitting some compelling information from our neighboring states, Massachusetts and New York, where they have recently successfully taken steps to improve the care for people with disabilities who are detained in their forensic facilities. Massachusetts's Disability Rights Center (DRC MA) has successfully fought to have a full-time monitor in the Bridgewater facility, paid for by the State, due to the outstanding number of incidents of abuse and rights violations and litigation complaints filed against the DOC administered facility. The DRC MA monitor produces a report on their Bridgewater forensic facility which I have attached here: https://docs.google.com/viewerng/viewer?url=https://www.dlc-ma.org/wp-content/uploads/2026/03/DLC-BSH-Public-Report-February-2026-1.pdf&hl=en I have also attached their fact sheet which discusses why they are seeking their own legislation in bills H.3291 and S.1386- An Act Transferring Bridgewater State Hospital from the Department of Corrections to the Department of Mental Health here: https://docs.google.com/viewerng/viewer?url=https://www.dlc-ma.org/wp-content/uploads/2026/02/2026.02-BSH-Prison-By-Another-Name-Public-Resource.pdf&hl=en

New York State has also committed to moving people with disabilities out of the North Infirmary Command at Riker's Island to a new unit in the Bellevue Hospital, with additional hospital facilities across New York City to be constructed for this purpose. Here is the link to an article on that subject. https://www.corrections1.com/rikers-correctional-facility/rikers-detainees-with-serious-health-issues-to-be-moved-to-new-hospital-unit

The numerous litigation cases that have come from these facilities and others should be a cautionary tale to our legislators as to why the Department of Corrections is not the appropriate agency to administer the proposed forensic facility or competency restoration in Vermont. DOC administration has been tried in other States and has not worked.

[5] *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882 (E.D. Cal. 2009)

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"Creating Community Care: Decarceration Strategies in Competency Litigation" by Rebecca Shaeffer analyzes how legal action can transition individuals with mental health disabilities from jails into supported community care, addressing the crisis of competency waitlists. The article advocates for a disability justice framework, highlighting court-mandated injunctions and community-based alternatives as essential to sustained decarceration. It utilizes a disability justice framework to promote forensic restoration and housing over incarceration. The full article can be accessed with this link: https://www.law.georgetown.edu/american-criminal-law-review/in-print/volume-62-number-4-spring-2025/creating-community-care-decarceration-strategies-in-competency-litigation/

The bottom line from these cases is that states that rely on correctional systems for competency and mental health services consistently face federal lawsuits, court-imposed deadlines and population controls, daily fines and escalating penalties, and long-term federal oversight or consent decrees.

We remain of the opinion that a separate forensic facility is not necessary, additionally, should the concept still proceed, we make strong recommendations that a forensic facility should not be administered by the DOC and should not be within a prison facility. Alternatives exist. Vermont should prioritize creating much needed diversion programs, community-based services, and secured and unsecured residential options. The cost of creating yet another institution at the highest level of restriction far outweighs the cost of creating community-based alternatives and will produce worse legal and clinical outcomes.

Thank you for your consideration of this added testimony. We would be happy to speak with your committee at your request.

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