

To: Chair Theresa Wood and the House Committee on Human Services  
From: Alex Karambelas, Policy Advocate, American Civil Liberties Union of Vermont

The ACLU of Vermont encourages revisions to 26-0766 (draft 2.1) to advance the following principles and goals:



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1. **Lead with equity:** We must address disparities in our homelessness response system and ensure that people with disabilities have equitable access to benefits and services.
2. **Rights matter:** When it comes to services and benefits that provide for the basic necessities of life, like shelter, rights matter – as a matter of life and death. Access to housing, shelter, and services should be defined by rules enforceable by applicants and recipients.
3. **Liberty and self-determination matters:** People experiencing homelessness and living in deep poverty make decisions every day in a scarcity situation. Taking away their agency will not result in better solutions. Eliminating some of that scarcity will – by ensuring the Vermonters experiencing homelessness have access to shelter, food, and safety. Services to meet the variety of people’s needs, including housing navigation, healthcare, and other support services, should be available as a service separate and apart from housing.
4. **Reducing homelessness:**
  - Reduce the number of people entering homelessness by providing rental arrears and rental assistance, and where services are wanted and needed, providing housing case management or other prevention services.
  - Help people more rapidly exit homelessness by developing permanently affordable housing, investing in rental assistance, and providing support services where they are wanted and needed that are not tethered to the tenancy itself.
  - Permanent affordable housing can take multiple forms, including affordable publicly-subsidized housing developments, permanent supportive housing, tiny homes, SROs, and shared housing.
5. **Ensuring that no Vermonter is unsheltered:**
  - Equitable access to emergency shelter that serves all Vermonters experiencing homelessness, as a matter of right, is essential to protect our unhoused neighbors.
  - Emergency shelter must be accessible and inclusive. People with disabilities experiencing homelessness must not be segregated in restrictive shelters, isolated from the rest of the community.
  - Emergency shelter can take multiple forms, including shelters, motels, and master-leased units.

**Lead With Equity**

Consistent with the Americans with Disabilities Act and its implementing regulations, and with the Vermont Public Accommodations Act, the Department should ensure that people with disabilities have equitable access to shelter and services. Therefore:

1. Shelters and programs receiving state funding must be accessible to people with physical and mental health disabilities.
2. Motels and other placements must be accessible to people with physical and mental health disabilities.
3. Adequate services must be equitably available whether people experiencing homelessness are unsheltered, in motels, in community shelters, or in other temporary emergency shelter or temporary housing. Services should be available, but eligibility for shelter should not be dependent on participation in services.
4. Where reasonable modifications to program rules or procedures are necessary to ensure equitable access, they should be liberally granted.
5. For people at risk of institutionalization, adequate home and community-based services must be made available. To make such services reasonably available, people at risk of institutionalization cannot be unsheltered. They must have access to temporary shelter or permanent housing.

In addition to the concepts listed above, we encourage the Committee to use a definition of disability that is consistent with current Vermont law (e.g., 9 V.S.A. 4501). Similarly, the definition of “permanent supportive housing” (PSH) should be consistent with the definition provided at 24 CFR 583.5. Under the definition proposed in the bill, PSH would be limited to people with a disability that impacts activities of daily living (a significantly narrower class of persons with disabilities than what is authorized under federal law). We are concerned that “specialized shelter” may lead to warehousing of people with disabilities in segregated spaces, a violation of the Americans with Disabilities Act’s integration mandate. Finally, services should be equitably available and offered separate and apart from shelter. The ability to access consistent and person-centered services should not be dependent upon remaining in shelter.

### **Rights Matter**

Vermonters have a right to common benefits under our Constitution. Access to life-sustaining shelter and other benefits cannot be dependent upon where a person lives or whether an individual is working with a case manager. Services and benefits should have eligibility rules, people should have notice of rules, and applicants, residents, and program administrators should be able to enforce those rules.

We support inclusion of the following language:

- All Vermonters have a right to free speech pursuant to Article 13 of our Constitution and the right to petition their government under Article 20. No people experiencing homelessness or service provider working with people



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- experiencing homelessness shall incur any adverse action or be treated differently for exercising their constitutional rights.
- Shelter benefits and services, whether state-administered or funded in whole or in part by the state, are essential necessities of life, and as such, recipients for such services have the right to notice and a pre-deprivation opportunity to be heard by the Human Services Board. Applicants shall have the right to notice and an expedited opportunity to be heard by the Human Services Board.
  - 3 V.S.A. § 3091 shall be amended to make any decision of the Human Services Board finding that a decision of the Agency or an Agency rule is in conflict with State or federal law binding on the Agency in the nature of a declaratory judgment. Unless and until a decision of the Human Services Board is overturned by the Vermont Supreme Court, the Agency shall be required to comport all future decisions on the Board's interpretation of the law.
  - 3 V.S.A. § 3092 shall be amended to require the Director of the Office of Economic Opportunity to be required to adopt rules setting forth clear standards for financial assistance to community service agencies, including an appeal process for providers, and setting forth client privacy standards. The amendment shall be worded as follows: (c) The Director shall be authorized to adopt rules pursuant to chapter 25 of this title to: (1) carry out this chapter and its purposes; (2) to set forth an appeal process for community service providers aggrieved by any agency decision under this section; and (3) to define information and data privacy standards for recipients of services and benefits.
  - No recipient or applicant for benefits or services, and no service provider working with people experiencing or at risk of homelessness, shall be subject to discrimination due to an actual or perceived disability, or for requesting an accommodation or modification for the same, consistent with the Vermont Fair Housing and Public Accommodations Act.
  - Recipients and applicants for benefits and services shall be provided with a notice of their rights with each notice of decision, including the right to request a reasonable accommodation, the right to appeal the decision, and how to file a complaint based on discrimination.

Additionally, we believe that any effort to develop a continuum addressing homelessness should address the rights of people actively experiencing homelessness. Towards this end, we recommend including language of [H. 885 An act relating to use of public lands by individuals for life-sustaining activities](#) in this bill, which has the following goals:

1. Codify the right of people experiencing homelessness to conduct life-sustaining activities on public land, allowing for some reasonable limitations.
2. Bar punishment for soliciting and accepting donations in public places.
3. Recognize the right to privacy in the temporary dwellings of people experiencing homelessness, including in tents or vehicles.
4. Add "housing status" as a status protected from discrimination in housing, employment, and places of public accommodation.

## **Liberty and Self-Determination**

Strong evidence exists to show that the Housing First model leads to quicker exits from homelessness and greater housing stability over time than making housing dependent on forced compliance with services.<sup>1</sup> People have better health outcomes and reduced health service use.<sup>2</sup> The same, we posit, is true for shelter. Best practice is to ensure that people have housing and their other basic needs met, and services are made available, unattached to housing.

### **Reducing Homelessness**

In addition to the eviction prevention measures advocated for by Vermont Legal Aid, we encourage the inclusion of robust funding for rent arrears and rental assistance as a state benefit, similar to General Assistance Personal Needs & Incidentals, Reach Up, and AABD.

Currently, there is a geography-dependent mix of programs available to help low-income tenants with back rent. The General Assistance Rental Arrears Program, 33 V.S.A. § 2114, is supposed to provide up to three months of back rent assistance, so far as funding allows, but the program has not been funded for many years. HOP funding is issued to OEO, and a portion of that funding is distributed to CAP agencies to offer “financial assistance” for arrears on a first-come, first-served basis, for households up to 50% AMI, not to exceed 3 months rent. In reality, due to inadequate funding, local CAP agencies must further restrict eligibility and sometimes run out of funds before the end of the year. The availability of such a critical benefit should not be dependent upon where a family lives in Vermont, or if an individual happens to fall behind on rent late in the fiscal year rather than earlier. By making rent arrears a state benefit, arrears could be made available more fairly and consistently. Further, rent arrears funding could be diversified. For instance, federal TANF can be used for “one-shot” payments for back rent (for no longer than four months), but currently most TANF funding is diverted away from providing cash assistance for low-income families. Similarly, pursuant to Vermont’s 1115 waiver, Medicaid funds may be used to pay for up to six months of rent for some households at risk of homelessness.

Similarly, ongoing rental assistance for low-income families is currently available through a number of different programs administered at the state or local level, and many eligible households (and their advocates) are not aware of their existence. For example, HOP funds can be used for financial assistance for prospective rent for a limited term, managed at the local level by CAP agencies or other local nonprofits. The Vermont Rental Subsidy was designed to provide up to twelve months of rental assistance to low-income households experiencing homelessness, but the program is not currently accepting new referrals. Upon information and belief, pursuant to Vermont’s Medicaid 1115 waiver for room and board, households at risk of homelessness may be eligible for up to 6 months of rental assistance. Similar to rental arrears programs, these ongoing rental assistance programs are underfunded and not subject to clear eligibility rules and benefit amounts. Once again, such important benefits should be made available equitably and consistently.



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Ultimately, Vermont needs to invest heavily in the development of permanent deeply affordable housing and permanent supportive housing. That housing can and should take a variety of forms, including single-room occupancy, cooperative homes, shared housing, tiny homes, mobile homes, home ownership, mixed-use developments, and more. Similarly, permanent supportive housing can be offered in a variety of formations, including scattered site units and master-leased properties. It is critical for housing to be paired with the right level of voluntary and accessible supports based on each resident's expressed and individualized needs and preferences. Further, to increase trust, a best practice is to disentangle the supports from the housing itself – i.e., a tenant's case manager or counselor is not the same entity as their property manager. Are municipalities being asked to stand up shelters? For emergency cold weather shelters, is this limited by the capacity/willingness of municipalities to do this work? Are these congregate? Who is facilitating the winter use of hotels?

### **Ensuring No Vermonter Is Unsheltered**

Fundamentally, it is the State's duty to ensure that every Vermonter's life, liberty, and property is afforded protection. And there is no protection in the absence of shelter – shelter that is accessible and made available as a right.

Emergency shelter can take a variety of forms – currently, it is offered in shelters with individual rooms for guests, congregate shelters, leased apartments, and in “pods” (extremely tiny homes). Evidence clearly shows that residents fare better in shelter that is non-congregate. Studies on this topic found [increased individual stability](#), a [reduced need for emergency health services](#), [positive health and social outcomes](#); and [better housing and general well-being outcomes](#) in non-congregate shelters. For that reason, we discourage reliance on non-congregate shelters. In particular, we are concerned that the proposal does not indicate that families with children will never be placed in non-congregate shelter, or that people with disabilities in need of private accommodations will always be offered an accessible space.

Upon information and belief, there is no evidence in Vermont showing that providing shelter in a motel is any less effective than providing shelter in a a congregate shelter or in a standalone apartment. They all save lives by helping people protect themselves from the elements. For that reason, since we have yet to have a clear understanding of how many new shelter beds should be constructed, and whether there are always likely to be times when using motels for overflow will be necessary (e.g., in the event of a natural disaster), we believe that it is premature to state that the use of motels should be fully eliminated.

People experiencing homelessness may have complex needs or only need housing navigation assistance. Similar to the provision of services for people in permanent housing, we support investing in voluntary supportive services that are available and accessible to any person experiencing homelessness, whether they are in a shelter, in a master-leased apartment, in a motel, or completely unsheltered. We cannot support

forcing people to engage in services in order to access shelter, as § 2210 appears to require.

To ensure the people with disabilities in need of assistance with activities of daily living are not segregated into institutional environments, they, too, should be able to access home and community-based services while they are experiencing homelessness in environments no different from other members of the community. Where such services cannot be made available while they are experiencing homelessness, to comport with the integration mandate of the Americans with Disabilities Act, they must be provided with permanent housing.



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Services should be grounded in evidence of best practices. Forced treatment of individuals with mental health disabilities and substance use disorders is not best practice and does not lead to more positive results than provision of community-based services. In addition to our concern that some services appear to be mandatory in the proposal, we encourage the Committee to consider how services can be provided through programs that already exist, independent of shelters. For instance, the Vermont Chronic Care Initiative, Pathways, and Medicaid home and community-based services, if funded adequately, may be able to provide additional services to people experiencing homelessness where they are.

Finally, while sheltered, people experiencing homelessness should be able to maintain their family relationships. Currently, in the proposed definition of “minor child,” a child is defined as a person under the age of eighteen. Reach Up, conversely, includes the following in the definition of dependent child: “is 18 years of age or older who is a full-time student in a secondary school, or attending an equivalent level of vocational or technical training, and is reasonably expected to complete the educational program before reaching 22 years of age or is not expected to complete the educational program before reaching 22 years of age solely due to a documented disability.” 33 V.S.A. § 1101(12). We encourage a thorough review of the definitions used throughout the proposal so as to align them with definitions currently used in Vermont law.

## **Conclusion**

We strongly believe that now is the time for a strategic plan to address our homelessness crisis in Vermont. To do so during a single legislative session is impossible. We support the Committee’s goal of taking some interim steps now to improve access to and oversight of benefits and services, but these interim steps should not reinforce what already makes Vermont’s homelessness response system feel inequitable and inaccessible for so many.



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