

Senate Committee on Judiciary

S. 193 An act relating to establishing a forensic facility for certain criminal justice-involved persons

Disability Rights Vermont Addendum to Previous Testimony

March 30, 2026

As the Protection and Advocacy agency for Vermont it is imperative that Disability Rights Vermont (DRVT) remain vigilant when restraint and seclusion and involuntary medication are being used against disabled members of our community. As the Mental Health Care Ombudsman (MHCO) for the State, we are also statutorily mandated to receive all the reportable adverse events (death or serious bodily injury) and certificates of need (CON) for incidents of restraint, seclusion, or involuntary medication, also known as Emergency Involuntary Procedures (EIPs), pertaining to individuals in the custody or temporary custody of the Department of Mental Health. 18 V.S.A. 7259. All reportable adverse events (often referred to as Critical Incident Reports (CIRs)) include all events that take place in the following settings: acute inpatient hospitals, intensive residential recovery facility, a designated agency, a psychiatric residential treatment facility for youth, or a secure residential recovery facility 18.V.S.A. 7257. DRVT believes that any possible forensic facility should be added to this list.

Every EIP, or the use of restraint, seclusion, and/or involuntary medication on any person in the care or custody of the Department of Mental Health (DMH) is recorded in a Certificate of Need (CON). In current statute, regardless of location or responsible entity, all CONs must be reported to DRVT as the MHCO, for individuals in the temporary custody or custody of DMH. 18 V.S.A. 7259(d). DRVT's understanding is that the current proposed forensic facility is for individuals who would not be in the custody of DMH but in the custody of the DOC. As a result, there would be no oversight as to the frequency or appropriateness of the use of these invasive and aggressive practices without a clear designation that DRVT receive them from any forensic facility.

EIPs are not therapeutic interventions. Each of these procedures is an infringement upon individual, constitutional liberties. There is legal authority that demands that we do not use these tools unless in the most extreme circumstances, where serious harm to self or others is involved. Because the use of EIPs is intended in the proposed forensic facility, with special provisions being made for the use of involuntary medication for competency restoration purposes, then the same treatment and reporting rules must apply to the forensic facility, as to all others.

Even with all the amendments that have been made to S. 193, DRVT still does not support the passing of this bill. That being said, should this bill be passed, it is imperative that it include provisions that make the same requirements of the Department of Corrections that are made of the DMH regarding care and treatment, reportable adverse events, and certificates of need. Under an existing agreement with the Department of Corrections, DRVT already is entitled to receipt of any uses of force upon an individual identified to need mental health treatment. By extension, and due to the severe civil liberty infringements that placement in a forensic facility entails, Vermont law should be amended accordingly to offer some oversight and monitoring of

these forceful and traumatic procedures to hopefully prevent extraneous abuse and rights violations from occurring.

Current law states:

Treatment

(b) "The Department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint. The Department shall oversee and collect information and report on data regarding the use of emergency involuntary procedures for patients admitted to a psychiatric unit, a secure residential recovery facility, or a psychiatric residential treatment facility for youth, regardless of whether the patient is under the care and custody of the Commissioner." **18 V.S.A. § 7703(b)**

Reportable adverse events

(a) "An acute inpatient hospital, an intensive residential recovery facility, a designated agency, a psychiatric residential treatment facility for youth, or a secure residential recovery facility shall report to the Department of Mental Health instances of death or serious bodily injury to individuals with a mental condition or psychiatric disability in the custody or temporary custody of the Commissioner." **18 V.S.A. § 7257(a)**

S. 193 specifically approves the use of Involuntary medication for competency restoration. Due to the use of EIPs in this proposed forensic facility, DRVT recommends that the language of **18 V.S.A. § 7703(b)** be amended to say,

"The Department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff, **and forensic facility staff**, be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint. The Department shall oversee and collect information and report on data regarding the use of emergency involuntary procedures for patients admitted to a psychiatric unit, **a forensic facility**, a secure residential recovery facility, or a psychiatric residential treatment facility for youth, regardless of whether the patient is under the care and custody of the Commissioner."

And **18 V.S.A. § 7257(a)** be amended to say,

"An acute inpatient hospital, **a forensic facility**, an intensive residential recovery facility, a designated agency, a psychiatric residential treatment facility for youth, or a secure residential recovery facility shall report to the Department of Mental Health instances of death or serious bodily injury to individuals with a mental condition or psychiatric disability in the custody or temporary custody of the Commissioner."

As mentioned above, in our role as the MHCO, it is essential for oversight and accountability that we receive regular reports containing all CIRs and CONs.

"The Department of Mental Health shall provide any reportable adverse events reported pursuant to section 7257 of this title and a copy of the certificate of need for all

emergency involuntary procedures performed on a person in the custody or temporary custody of the Commissioner to the Office of the Mental Health Care Ombudsman on a monthly basis." **18 V.S.A. § 7259(d)**

DRVT should receive CONs of all EIP's that are conducted in any setting, including the forensic facility. Current law requires all EIPs, regardless of custodial status, to be reported to, collected and tracked by DMH, and in the interest of protecting our most vulnerable and people with disabilities, all of these same EIPs should be passed along to DRVT as the Protection and Advocacy Agency for the State of Vermont, and as the MHCO, without a State Department (DMH) being able to sift through and only report out on a selection of these same reports. A person's custody status should not dictate the level of quality oversight their care receives.

Again, DRVT wants to make it clear that the forensic facility bill violates the integration mandate of the Americans with Disabilities Act, and the U.S. Supreme Court in *L.C. v. Olmstead*, wherein it is required that individuals be treated in the least restrictive settings. Moreover, Vermont has declared,

"Vermont's mental health system shall provide a coordinated continuum of care by the Departments of Mental Health and of Corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with a mental condition or psychiatric disability receive care in the most integrated and least restrictive settings available. **18 V.S.A. §7251(3).**"

This proposed bill suggests that regardless of whether they require a forensic facility level of restriction, if someone otherwise qualifies for the forensic facility by being a person accused of a crime carrying a life sentence, who is either incompetent to stand trial or not guilty by reason of insanity, then they should be in a forensic facility regardless of the lack of community integration, and at the highest level of restriction. Therefore, for those individuals already experiencing rights violations, if restrictive infringements upon one's personal freedoms in the form of EIP's are to be employed as well, then there must be appropriate reporting and oversight on each and every incident to the protection and advocacy agency, DRVT.

I want to thank you again for considering our testimony. I would be happy to further discuss our concerns regarding this bill at your request.

Thank you,



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