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MENTAL HEALTH LAW PROJECT

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Dear Senators:

We urge you to oppose S.287, An act relating to involuntary treatment and medication. The bill would increase forced medication, undermine legal representation and diminish civil rights. It would *not* address the inadequate capacity of Vermont's inpatient -- and community -- system of care.

For decades Vermont law has required that "Involuntary treatment shall be utilized only if voluntary treatment is not possible." 18 V.S.A. § 7703(a). In 1998 the legislature declared: "It is the policy of the general assembly to work towards a mental health system that does not require coercion or the use of involuntary medication." 18 V.S.A. § 7629(c). While the law promotes voluntarism, autonomy and self-determination, the mental health system has failed to honor these policies.

S.287 promotes involuntary medication. The state has admitted that involuntary medication applications have more than doubled since the last year of the Vermont State Hospital. Section 4 would allow immediate filing of applications for involuntary medication for any involuntary patients in any psychiatric facility. It would also allow motions for consolidated hearings on applications for involuntary treatment (commitment) and involuntary medication, in virtually every case. **The probable outcome would be to greatly increase the number of involuntary medication applications filed and pushed to a hearing on the merits.**

"And you're making it much earlier now on medication. So will that mean that we have much more contested medication hearings? I don't know the answer to that. But we worry. I mean, it is definitely a worry."
--Judge Amy Davenport to Senate Health and Welfare Committee, 2/20/2014

S. 287 would deprive patients of the time needed to prepare an adequate defense. Involuntary commitment and medication proceedings implicate major liberty interests protected by the United States and Vermont Constitutions. Due process requires that patients have the opportunity to develop and present an adequate defense, including reviewing hundreds of pages of medical records, interviewing witnesses, and a review by an independent psychiatrist. The expedited hearing provision of S. 287 will enable the State to force commitment and involuntary medication cases to trial before the attorneys for

the patient and the independent psychiatric examiner can fully complete their work and be prepared to address the complex factual and medical issues these cases raise.

Section 3 of the bill would allow a motion for expedited hearing for patients who pose **no** present risk of significant bodily injury to self or others, but who were subject to an involuntary medication order at some time in the past two years, with a hearing to be held on as little as seven days' notice.

S.287 would not address the causes of delay. Involuntary mental health proceedings are complicated cases that require significant preparation. The courts actively manage their dockets to address the needs of the parties and competing demands for court time. The state already has the ability to move for expedited treatment of priority cases, and it does so.

S. 287 demonstrates the shortcomings of Vermont's involuntary mental health system. Hospitals already have the options of seclusion, restraint and emergency short term involuntary medication to ensure immediate physical safety. If private hospitals cannot protect the safety of patients and staff and maintain control of the hospital milieu this raises serious questions about whether they are equipped to care for involuntary patients in psychiatric crises; whether the current design of the mental health system, with no dedicated unit for the most dangerous patients, is adequate to meet Vermont's needs; and whether the system, even with the additional beds now under construction, will be sufficient to meet Vermont's needs. Before truncating due process protections the Legislature should examine all components of the system and consider how to provide better care to people in crises.

S. 287 is based on unexamined and questionable assertions about the nature, benefits, and costs of involuntary medication. The rush to involuntary medication is based on the assumption that antipsychotics are effective in both the short and long term, are the only thing that works, and have benefits that outweigh any potential harms. These assumptions have been increasingly shown to be unwarranted based on current scientific research.

In the largest long-term study of antipsychotics, in eighteen months approximately three quarters of the patients treated with antipsychotics discontinued them due to inefficacy or intolerable side effects. Dr. Grace Jackson testified that antipsychotics are "predictably neurotoxic" and increase rates of mortality. Dr. Ronald Bassman testified that many recent studies show that delaying medications does no harm and that medications can have long and short term harmful consequences.

Not one witness who identified as having been involuntarily medicated testified on the record in support of the bill. Witnesses who had personally experienced involuntary medication spoke of its long-term negative effects on

their willingness to seek help, even when help was needed. The falsity of the claim that involuntary medications are necessary for recovery was borne out by the many witnesses who testified that their recovery began when they stopped the medications.

The Legislature should expand and improve current protections for involuntarily hospitalized patients.

18 V.S.A. § 7627(f) requires the patient's treatment provider "to conduct monthly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and shall document this review in detail in the patient's chart." What is not required, though, is an assessment of whether the patient has regained the capacity to make a decision concerning the medication. As soon as a patient regains competency the justification for involuntary medication ends and the patient must be released from the involuntary medication order. Section 7627 should be amended to require and document weekly review of the patient's competency, and to require discontinuation of the order as soon as capacity has been regained.

The law should prohibit excessive dosing and the involuntary use of long-acting drugs. It has become common for the State to seek authorization for involuntary medication at rates far in excess of the FDA maximum recommended dose, sometimes **double** the recommended maximum. While a patient making such a decision for him or herself might choose, based on the risks and benefits that a treating doctor explains, to take doses above the FDA maximum, this should not be permitted when the court takes the decision making authority away from the patient.

It has also become routine for the State to seek authorization for long-acting injections of neuroleptic medications. Even with an involuntary medication order, giving the patient the chance to exercise a choice every day, coupled with the interaction with the treatment team that the choice entails, is preferable to removing all choice. The statute should be amended to prohibit the court from ordering long-acting medications.

In a recent case the State requested the court's permission to administer medications by means of nasogastric intubation. Although the court denied the application, the statute should be amended to prohibit this gross and dangerous invasion of any patient's bodily integrity.

In order to protect against these practices, the current statute should be amended as follows:

Section 7624(c)(3) any proposed medication, including the method, dosage range, which shall not exceed the maximum dosage recommended by the Food and Drug Administration, and length of administration for each specific medication;

. . .

7627(f). (f) If the court grants the petition, in whole or in part, the court shall enter an order authorizing the commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the dosage range, which shall not exceed the maximum dosage recommended by the Food and Drug Administration, length of administration, and method of administration for each. The order for involuntary medication shall not include long-acting injections, nasogastric intubation, electric convulsive therapy, surgery, or experimental medications. The order shall require the person's treatment provider to conduct ~~monthly~~ weekly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient is able to make a decision and appreciate the consequences of that decision, and shall document this review in detail in the patient's chart and provide the patient's attorney with a copy of the documentation within five days of its creation.

There is no need or justification for Section 9.

Review of court statistics demonstrates that requests for continuances are unusual, that they are filed by both sides in approximately equal numbers, and that they are rarely, if ever, caused by inadequate availability of independent psychiatric examiners. While there are questions as to whether additional psychiatrists would help and not hurt the current situation, MHLP is willing to examine, in consultation with the Department of Mental Health, whether it would be advisable to seek additional psychiatrists to perform this important function. We suggest that Section 9 be amended as follows:

Sec. 9. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall ~~examine its contract~~ consult with Vermont Legal Aid's Mental Health Law Project to determine whether ~~continued State funding to the Mental Health Law Project may be made contingent upon the Mental Health Law Project contracting with a sufficient number of~~

~~psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.~~ existing and projected caseloads justify expanding the number of psychiatrists available to perform independent psychiatric examinations pursuant to 18 V.S.A. § 7614 and increasing the funding available for independent psychiatric examinations.

In conclusion, S. 287 would increase involuntary medication, impair patients' due process rights, without addressing serious problems in the mental health system. We urge you to oppose this legislation.

I have shared this with Disability Rights Vermont and the Vermont Coalition for Disability Rights and they concur with my analysis of the effects of this legislation.

Very truly yours,

John J. McCullough III
Project Director