



Supporting Vermonters to lead healthy and satisfying lives community by community



LEGISLATIVE UPDATE FOR APRIL 17, 2023

Last week Vermont Care Partners provided testimony on transport of people in psychiatric crisis. We also followed multiple bills impacting our services and those we serve related to: adult protective services, development of a forensic facility, seclusion and restraint, warrantless arrest in hospitals, housing, equity, suicide prevention and interstate compacts for mental health professionals.

PROGRESS and TESTIMONY

House Health Care Committee Considers Updating the Warrant Statute

House Health Care took testimony on S.47, the bill brought forward by VCP that updates and clarifies the warrant statute. Legislative Counsel Katie McLinn walked the Committee through language updates from VCP and DMH that addressed DMH's concern about unintentional expansion of the transport responsibilities for DMH.

Jack McCullough from Vermont Legal Aid [VLA] [testified](#) that the application for the warrant has to be based on facts that have been personally observed. In recent years, Vermont Legal Aid has observed circumstances where that has not been what has not been the case, and the information has come "more as a telephone kind of thing" where VLA doesn't necessarily know who the person observing it was. He gave an example of a person who was subject to a warrant where an application asserted that she had started a fire in her apartment where it turned out the fire-setter was a completely different person, and yet the client was taken into custody against her will. VLA is proposing that the person filling out the application needs to have personally observed the behavior or have obtained a written statement from the person who did. VLA is also proposing an expiration to the warrant timeframe of 72 hours. If someone is acutely dangerous on Monday, they may not be dangerous on Thursday.

Wilda White, Founder of Mad Freedom, is an attorney who practiced 35-40 years in New York and California and is also a psychiatric survivor. She has experience with this procedure. She was involved in developing the Use of Force Policy and part of the training team that trained law enforcement. She is opposed to the bill. Rather than make the law conform to the practice in the field, she believes the practice in the field is unconstitutional. The current statute has problems, and the proposal exacerbates the problems. She said this is not a benign procedure. People are often wrong in their assessment, and people [i.e. witnesses] can lie for

the person's own good. She supports the use of the term "warrant" as it relates to the fourth amendment, as people deserve due process and specific facts. She believes that the term "temporary custody" needs a definition. "Custody" means safekeeping, protection, charge, or care. This is something that a QMHP can do. White would like to see this bill go to the Judiciary Committee as it's about protecting the rights of all Vermonters. She showed the Committee the current application form, which she describes as unlawful practice, because it allows non-personal observation. It's important to train law enforcement on existing law. She also believes that people should be taken to a police barracks rather than a hospital. She recommended that the whole statute needs to be rewritten and this should go to a study committee.

Sheriff Roger Marcoux demonstrated soft restraints and described the success of their implementation in partnership with DMH. He supports the use of soft restraints as proposed in the bill.

Mourning Fox, Director of Mental Health Programs at Department Public Safety, testified that DPS is pleased with the collaborative work with VCP and the DAs and is not opposed to the bill or VLA's proposed language. Most law enforcement officers are used to working with individuals to get signed affidavits, but he believes that the requirement for an affidavit would create some delays. He proposed revised language that the person could be transported once the warrant process has begun. Rep Goldman brought up the impressive work of HCRS's Christine Bullard in the embedded social worker position.

VCP's Dillon Burns and Team Two Coordinator Kristin Chandler testified, noting areas of consensus among all stakeholders. VCP supports a warrant expiration but proposed 5 days instead of 72 hours because it can take days to get law enforcement to transport the person. On the personal observation, Burns provided three case scenarios from Washington County where the person was not personally observed but the warrant was issued because all criteria were met.

DMH General Counsel Karen Barber testified that DMH appreciated the collaboration with the VCP, having worked through some concerns that DMH had. DMH would like to see the reference to Emergency Departments removed. When asked about VLA's proposed changes, Barber said she hears both sides. DMH relies on its designated agency partners—they want to "balance [DA] needs and assuring due process...the overall goal is to make sure people are getting treatment."

Rep Berbeco asked about the involvement of people with lived experience in the stakeholder group. Burns shared that Karim Chapman of Vermont Psychiatric Survivors was invited and attended a meeting or two. NAMI-VT was also invited. Rep Peterson wondered, "if [a witness] doesn't want to sign, where does that leave everybody?" Rep Houghton shared that her family recently heard a fight on their busy street and called the police, and her husband did not want to sign the affidavit.

Rep Berbeco referenced a recent position in Mental Health America condemning involuntary treatment because it represents a failure in the ability to get people the care that they need and deserve. She wondered if this bill is improving that. The Committee will come back to decide on the personal observation and 72-hour language on Tuesday, April 18.

Suicide Prevention Bill Presented in Senate Health and Welfare Committee

Representative Brian Cina presented H.481 to the Senate Health and Welfare Committee. The House Health Care Committee took action on multiple fronts to address increasing rates of suicide, and because firearm legislation can be controversial, they separated their education and prevention activities in this bill from firearm safety legislation in H.230. Cina talked about his experience of being trained in Collaborative Assessment for Managing Suicidality [CAMS], and Counseling on Access to Lethal Means [CALM] as a crisis clinician and explained that the state funds these activities in its suicide prevention activities. This bill codifies the role of the Suicide Prevention Director for the state and gives the role direction, including the updating of its suicide prevention strategic plan with stakeholders. He noted that this goes beyond the Department of Mental Health and includes all departments of the Agency of Human Services. The Committee will be taking further testimony.

Firearm Safety Bill Testimony in Senate Judiciary Committee

Senate Judiciary heard testimony parallel to the testimony in House Health Care this week. Sen Sears stated that these are laws that will be challenged, and one side will be correct on constitutionality but no one knows which side yet. To address that unknown, Senator Sears recommended a section on severability so that if one provision is found unconstitutional the others still stand.

The Committee heard testimony from Mike Ferrant, a concerned citizen, about gun locks. Sen Vyhovsky noted that Howard Center gives out gun locks as part of safety planning.

Billy Clark, a litigation attorney for the Giffords Law Center to Prevent Gun Violence, advocated for secure storage and waiting periods, emphasizing that 90% of suicide survivors do not go on to die by suicide. Sen Sears commented that he believes there needs to be clear and convincing evidence if family members are going to be able to apply to the court for Extreme Risk Protection Orders. It can't be because a kid is "mad at dad for taking his cell phone." The Committee also [received the testimony](#) of the Vermont Medical Society and several partner healthcare organizations, and will continue to take testimony on this bill.

Mental Health Compacts in Senate Health and Welfare Committee

Senate Health and Welfare heard testimony on several license compacts. Regarding H.282 Interstate Psychological Compact known as "Psychpact," Marlene Maron, a psychologist at the University of Vermont, [testified](#) in favor of the Psychpact. This would help extend treatment relationships for students and their clinicians across state borders and would also help the UVM

Health Network deliver psychology services across New York and Vermont. Telehealth is as effective—and in some cases more effective—than in-person care. It will increase Vermont’s capacity in a region that is desperately in need.

Lauren Hibbert, Deputy Secretary of State, and Lauren Laymen from the Office of Professional Regulation [OPR] testified that OPR supports the Psychpact and all compacts. There is a fiscal impact and there are some complications for enforcement. H.62 is the Interstate Counseling Compact for licensed mental health counselors and marriage and family therapists that 16 states have adopted. This will benefit the Vermont workforce because it can be hard to move from state to state and be able to practice. This is just getting off the ground nationally and they will start issuing those privileges in 2023 or 2024. There have been concerns raised about out-of-state providers not knowing the crisis resources in Vermont. OPR believes the benefits outweigh the concerns. Melissa Willette from the Department of Defense [advocated](#) for interstate compacts for military families. This will also help military spouses with portability of their licenses. Chair Lyons said that the next time the Committee looks at this they will vote on it.

House Judiciary Review Bill Separating Competency and Sanity Evaluations

The House Judiciary Committee took a full day of testimony on S.91 from a variety of stakeholders. This bill would separate competency and sanity evaluations which are currently combined, require a report on a competency restoration program in Vermont, and consider allowing other mental health professionals to perform evaluations in addition to psychiatrists and doctorate-level psychologists. Separating competency and sanity evaluations was a recommendation made by the national group that has been performing these evaluations over the last year to catch up on the backlog. They have told DMH that Vermont is an outlier in performing these together and there are ethical concerns and resource concerns.

Defender General Matt Valerio testified that this hasn’t been a problem until recently with more acute need and fewer available evaluators.

Jennifer Poehlmann from the Center for Crime Victim Services would like to see relevant stakeholders, such as victim advocates, represented in the stakeholder group looking at competency restoration.

DMH General Counsel Karen Barber shared that in the Forensic Workgroup they heard from Designated Agencies that it can be a conflict to be in the role of parallel to “outpatient probation or parole” in monitoring a person on an Order of Non-Hospitalization. There was talk of an additional entity that could take on that role that would not be the treatment provider. “We never fleshed it out, but the idea has been out there, and we want to think about it more. The goal is to get the person treatment.”

Jack McCullough from Vermont Legal Aid reasserted his testimony to Senate Judiciary that increased funding for community services and housing is needed. “The best bang for your buck is to make sure that people get what they need when they are not in the hospital.”

House Judiciary Committee Continues Testimony on Warrantless Arrest

Legislative Counsel Eric Hall presented a strike-all amendment to S.36. The amendment has the same three crimes as passed by the Senate, with adjustments.

1. Misdemeanor assault is narrowed to health care workers in hospitals or EMT (struck health facilities).
2. Criminal threatening is narrowed to health care workers in hospitals or EMT (struck health facilities).
3. Disorderly conduct was adjusted to “engaging in fighting or in violent, ~~tumultuous~~, or threatening behavior that interfered with the provision of medically necessary health care in hospitals or EMT (struck health facilities and tumultuous behavior).

The new draft has this language added:

The law enforcement officer shall not remove the patient from the facility if a health care provider at the facility informs the officer that the patient is not stabilized, has not yet been evaluated, or is awaiting transfer for inpatient care.

Sec. 4. REPORT ON DE-ESCALATION

On or before January 15, 2024, the Vermont Program for Quality in Health Care, in consultation with stakeholders, including hospital employee stakeholders, shall provide a report to the Senate Committee on Health and Welfare and the House Committee on Health Care regarding adequate training, including de-escalation of potentially violent situations in hospitals, sufficient staffing levels, ongoing assessment of visitors and patients for aggressive behavior, indicators to adapt care interventions and environments appropriately, centralized reporting, and factors related to physical environments. With a health equity impact informed lens, the report shall include best practices, barriers to training best practices, and recommendations for appropriate policy improvements.

Sec. 5. DEPARTMENT OF PUBLIC SAFETY REPORT ON ARRESTS WITHOUT WARRANT

On or before January 15, 2024, the Department of Public Safety shall report to the House and Senate Committees on Judiciary on arrests pursuant to Vermont Rule of Criminal Procedure 3(c)(18), (19) and (20) since the passage of this Act, including the number and demographics of persons arrested, the town and county where the arrest occurred, and the number and types of charges filed after the arrest.

Rep Dolan asked about what would happen if the person were not stabilized and couldn't be arrested. There are constitutional issues with temporary custody. The Committee will return to this issue. A law enforcement officer could be present without making an arrest.

Defender General Matt Valerio said this bill will not alter the ability of law enforcement to make arrests; he warned the Committee that health care workers will have no further protections. He is not against the bill because it won't make a difference one way or another.

Daniel Batsie, Deputy Commissioner, Department of Public Safety, said they are checking on whether the data can be collected, but it's probably doable. Rep Dolan would rather the data be collected on an annual basis than one-time as indicated in the bill.

Health and Health and Welfare Committees Receive Report from Health Equity Advisory Commission

Health Equity Bill created an Office of Health Equity and a Health Equity Advisory Committee which was given the power to review the Vermont Department of Health (VDH) budget. They created a report with 37 recommendations.

The Chair of the Health Equity Advisory Commission Mark Hughes said they were able to uncover disparities experienced by LGBTQ+, Disabilities, and BIPOC communities. The goal is to promote health equity and reduce health disparities, as well as to provide strategic guidance for the Office of Health Equity. Additionally, they were directed to do state agency policy review and monitoring, plus advising VDH and the general assembly.

Kristen Murphy, Executive Director, Vermont Developmental Disabilities Council, noted a report by VDH found health disparities of people with disabilities is significant.

The Commission is requesting baseline funding of \$1.5 million for the Commission and Office of Health Equity to conduct their work. They said to achieve transformation of health equity, all state government must be involved, and only focusing on health would be focusing too far downstream. The Office of Health Equity will need to be an independent instrument of the State and advised by the committee. A key recommendation is that training occur not only across all government, but also include people who provide health and human services.

Senate Health and Welfare Takes up Adult Protective Services Bill

Joe Nusbaum, Director, Licensing and Protection, Department of Disabilities, Aging and Independent Living (DAIL) gave background on the definition of vulnerability. John Gordon, Director, Adult Protective Services Division, DAIL, spoke to specifying caregiver definition. But testimony was interrupted by a fire alarm and will be continued this Wednesday.

House Judiciary Committee Studies the Bill to Develop a Forensic Facility

The House Judiciary Committee is working on a "strike all" amendment on S.89. It changes admission criteria for the facility to statutory language, creates a community safety panel that makes recommendations to the respective commissioners for candidates for admission. Commissioners of DAIL, DMH, DOC and AHS serve on the panel. The judge can ask the panel to make a recommendation to the commissioner for placement and consider:

1. Least restrictive setting for treatment and programming required in a residential setting
2. If the person dangerous to self, others, including sexual and leud and lascivious behavior
3. The potential danger if the person is not in a secure facility
4. Whether the person's behavior presents a significant risk
5. May consider victim and other parties involved.

If an individual regains competence to stand trial, custody goes from DMH to DOC Commissioner. Additionally, when a person committed under this subchapter or 13 V.S.A. § 4823 has been placed in a forensic facility, the Commissioner shall provider notice at least ten days prior to discharging the person from a forensic facility to the State's Attorney where the prosecution originated.

Emily Hawes, Commissioner, Department of Mental Health, said the forensic facility would provide a level of care and supervision between the secure residential facility (River Valley) and inpatient hospitalization facility. The primary difference is that it allows staff to use hands-on intervention (preventing someone's free movement) and involuntary medication. It is for people presenting symptoms of mental illness and high level of violence which may not be related to the mental illness. The population has significant treatment needs plus criminal justice system involvement, but they don't need hospital level care. The Commissioner noted that there are other initiatives pending to meet needs at the community level: mobile crisis outreach, embedded social workers with VSP, and work to support before requiring higher level of care. DMH generally has 5-8 people per year who would need this level of care. DMH is coordinating with DAIL to develop training for staff. There will be a 4-bed and 5-bed unit.

Monica White, Commissioner, Department of Disabilities, Aging & Independent Living, testified in support of S.89, which will meet the needs of people who fall under Act 248 eligibility. The Judiciary reviews the placement of these individuals. DAIL must continually evaluate to ensure they are served in the least restrictive setting. Currently, 27 people are under Act 248 supervision. She knows of 2 individuals that would be appropriate for this setting and these individuals had to be served in corrections because no other option was available due to their high level of violence.

Commissioner White said the goal is always provide community treatment and that the federal Olmstead decision and Americans with Disabilities Act requires supports and services be provided in the least restrictive environment possible.

Jack McCullough testified in opposition to the bill on behalf of the Mental Health Law Project. He said the clinical needs of the person and risk of danger of self to harm or others should be the criteria, whether or not there are criminal charges. He sees the secure residential facility already meeting this need.

Bor Yang, Director of the Human Rights Commission, said the inadequacy of resources affects people with psychiatric disabilities. She wants to see the necessary mental health resources in

the community and appreciates that the bill reinforces the services in the least restrictive environment.

Jared Bianchi, Deputy States Attorney in Bennington County, said clarity and security is critical for victims and prosecutors. They want discharge hearings.

House Judiciary Committee Continues Working through Hospital Warrantless Arrest Bill

Devon Green of Vermont Association of Hospitals and Health Systems (VAHHS) said the bill now has language allowing the hospital to make a statement with sufficient information to indicate the person is safe to leave the hospital without violating HIPAA. This reduces liability for law enforcement. VAHHS is happy to do reporting and will collect data on LGBTQ+ and BIPOC prevalence in responses and arrests to include victims and people arrested.

On or before January 15, 2024, and annually on that date for five years thereafter, the Vermont Program for Quality in Health Care, in consultation with stakeholders, including hospital employee stakeholders, shall provide a report to the Senate Committee on Health and Welfare and the House Committee on Health Care regarding adequate training, including de-escalation of potentially violent situations in hospitals, sufficient staffing levels, ongoing assessment of visitors and patients for aggressive behavior, indicators to adapt care interventions and environments appropriately, centralized reporting, and factors related to physical environments. With a health equity impact informed lens, the report shall include best practices, barriers to best practices, and recommendations for appropriate policy improvements.

Vermont's Mental Health Advocate is satisfied with the bill but would like security to be provided as much as possible by hospital staff rather than law enforcement. Mental Health Law Project continues to have concerns about increased law enforcement presence impacting care for people with mental health conditions in hospitals.

Forensic Facility Testimony Heard in House Corrections and Institutions Committee

House Corrections and Institutions took testimony on April 12 on the plan to create a forensic facility as a wing of the Vermont Psychiatric Care Hospital [VPCH]. Chair Alice Emmons stated that the committee has a limited view, focusing on beds. Legislative Counsel Katie McLinn described the forensic facility for people with mental health and developmental disabilities and would not be a hospital level of care. The only people eligible are those who are incompetent to stand trial or those who are found insane at the time of the crime. Karen Barber, General Counsel for DMH, explained that there are gaps in the system of care for those who have been charged but found incompetent to stand trial or in cases of insanity. She noted that the difference between the proposed forensic facility and the Middlesex Therapeutic Community Residence is Medicaid reimbursement (Medicaid does not reimburse for treatment of this population) and the use of emergency involuntary procedures. Rep Conor Casey expressed concern about taking mental health beds offline given the current capacity problems in the system. Chair Emmons is skeptical, that creating this 9-bed forensic wing may not be the solution to the State's need to reduce beds at "Institutions of Mental Disease" [IMDs] to 16 beds. Barber stated that preliminary conversations with the Center for Medicaid Services [CMS]

has been positive, but the State can't know for sure whether this will work until the facility is up and running. DMH isn't anticipating having to do significant renovations since VPCH already meets hospital level-of-care standards.

Senate Economic Development and Health and Welfare Committees

Both Chairs, Senator Lyons and Senator Ram, recognized the tragic death of shelter staff member at the Morningside House. Senator Ram spoke about the value of our compassionate response to the crisis to so many people who are unhoused. Supportive, transitional and recovery housing require the attention of both Committees.

Susan Aranoff of the VT Developmental Disabilities Council (VTDDC) said housing is health care. She spoke about the report on service-supported housing and the importance of funding services for the 600 more units of housing. She said some are living with parents, some are in hotels or temporary housing. She mentioned the request made in the House to allow SLPs as landlords to be able to access VHIP funds for accessibility and other improvements and to include people with disabilities as a priority of who the funded housing should serve. She also requested that parents be able to be paid as shared living providers. Senator Clarkson said families are eligible for financial support to purchase accessible dwelling units.

Anne Sosin, Interim Director of the VT Affordable Housing Coalition, said VT has the second highest rate of homelessness of any state. Many Vermonters will be losing shelter in hotels. Homelessness has adverse health impacts and adds costs to schools, human services, etc. She requested:

- \$40 million one-time investment to VHCB
- \$10 million in supplemental funding for shelter operations and supportive services
- \$72 million in GA Emergency Housing funding to maintain shelter

Brenda Siegel, policy advocate spoke about the costs of not housing people and echoed Anne Sosin's proposal to develop non-congregate housing and transitioning hotels to permanent housing and other flexible approaches to developing permanent housing.

Laurie Mumley, Member of the Developmental Disabilities Housing Initiative, spoke on behalf of her son and hundreds of other families who support their family members with I/DD. She provides 24/7 care to her son who needs support with all activities of daily living. Schools were not able to meet his needs. He had to leave the State to get needed support in a residential school. When he turns 22, he will not have any options to meet his high support needs. Brandon was shut down 30 years ago, but the promise to fully replace it has not been met. She asked that funding be set aside for housing for Vermonters with high support needs. She reinforced the VCP request for a 10% Medicaid rate increase so that there will be adequate workforce to support her son and others with similar support needs.

The Committees will continue this testimony next week.

UPCOMING EVENT

Disability Awareness Day “We Are Your Neighbors”

Online Forum Event, Wednesday, April 19 – 5:00 to 6:30 PM

[REGISTRATION LINK](#)

LEGISLATIVE RESOURCES

Vermont Care Partners Advocacy Fact Sheet

Here is a link to our updated [Advocacy Fact Sheet](#). The critical points are the rising demand, the impact of the ongoing workforce crisis and need for improved funding.

[YouTube link](#) for Mental Health Advocacy Day

NAMI-VT Fact Sheet on Mental Health

Here is the [NAMI-VT fact sheet on mental health](#).

Vermont Care Partners Legislative Advocacy Webinar

In case you missed it, here’s a link to the [recording](#) of our Legislative Advocacy Webinar to help guide you through the process of working with legislators. In just 40 minutes you can learn the basics for effective advocacy.

Key Committees in relation to Network Agencies

Here are the key Committees in relation to our network services with the Agencies in each legislator’s region noted. We encourage everyone to reach out to your local legislators to introduce yourself and share the issues most important to you: [Legislative Committees by DA and SSA Region](#).

The purpose of the legislative update is to inform individuals who are interested in developmental, mental health and substance abuse services about legislative advocacy, policy development and activities that occur in the State Legislature. The Vermont Council is a non-profit trade association which works in partnership with Vermont Care Network to form Vermont Care Partners. Together our mission is to provide statewide leadership for an integrated, high-quality system of comprehensive services and supports. Our membership consists of 16 designated and specialized developmental and mental health service agencies.