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## LEGISLATIVE UPDATE FOR MAY 2, 2023



Last week Vermont Care Partners provided advocacy on the appropriations bill, adult protective services, the warrant process, independent schools, the forensic facility, and the State Auditor bills. We also followed multiple bills impacting our services and those we serve related to suicide prevention and competency and sanity evaluations. For the next two weeks many bills will be passed by both chambers and conference committees will work through differences whenever one chamber does not agree to changes made by the other chamber.

The last bill to pass is usually the appropriations bill. VCP will be advocating for improvements in the language related to the rate increase for designated and specialized service agencies and one-time funds for tuition assistance and loan repayment. The conference committee working through the differences consists of: Representatives Lanpher, Schue and Wood, and Senators Kitchel, Perchlik, and Westman.

### *PROGRESS and TESTIMONY*

#### **Progress on Updating the Warrant Statute in the House Health Care Committee**

The House Health Care Committee examined S.47, the bill put forward by VCP to update the warrant statute, several times this past week. On Tuesday, they reoriented themselves to the bill as well as to some of the concerns that were raised in House Judiciary around due process for individuals subject to a warrant. On Wednesday, Legislative Counsel Katie McLinn walked the committee through the multi-stage process for involuntary treatment, which intersects with S.89, which establishes a forensic facility.

On Thursday, the Committee heard testimony first from DMH Legal Counsel Karen Barber. Barber said that after hearing testimony in both Committees, DMH had a lot of concerns. They regrouped, talked with VCP about the concerns, and decided they need more time to come up with a thoughtful approach. They worked with VCP and Jack McCullough of Vermont Legal Aid to add some clarifying language and have it expire in a year, along with a stakeholder review process, as in [this version](#): “The application shall be based on facts personally observed by the mental health professional or the law enforcement officer or shall be supported by a statement of facts under penalty of perjury by a person who personally observed the facts that form the

basis of the application.” Barber was asked how this stakeholder process would be different than the group that met last summer. Barber said, “We did not necessarily support the language that made it through the Senate.” The process in this bill would be DMH-led.

Jack McCullough from Vermont Legal Aid testified that he had great appreciation for the work that Karen Barber has done in the last few days, feeling that it has been very constructive. He supports this language. He noted that his request for the 72-hour expiration, which was agreed to by all parties, was not included.

Dillon Burns from Vermont Care Partners testified that their goal in putting S.47 forward was to clean up an outdated statute to help expedite access to care, on behalf of the first responder Emergency Services staff out in the field. The new language addressing the personal observation concerns is not the outcome VCP was looking for but will be accepted. Burns believes there may have been a miscommunication as some of the other pieces of S.47, including who can transport, and whom a judge can order to transport, which were not included in the draft before the committee.

Rep McFaun pressed witnesses on what would happen with a witness statement if this version passes. Barber said that a statement signed under pains and penalty of perjury, not an affidavit (which would require a notarized signature), would be required. Rep Berbeco understands that DMH is trying to align this with a process, but she sees it as “incredibly important to support providers.” Others on the committee, including Rep Peterson and Rep Cordes, concurred, stating that they would like to see the other components of S.47 added back in. Houghton asked McCullough and Barber if they could live with that, and they said yes. Rep Houghton will ask Legislative Counsel to add the pieces around temporary custody, 72 hours, and who can transport to the latest version, along with the stakeholder group, and make this permanent with a report back. The Committee will return to the Bill this week.

### **House Human Services Reviews Forensic Bill Specific to Developmental Disabilities**

Chair Theresa Wood directed the House Human Services Committee to only consider aspects of the Forensic Bill H.89 that relate to intellectual and developmental disabilities (I/DD). Legal Counsel Katie McLinn explained that even though the facility will be located at the Vermont Psychiatric Care Hospital (VCPH), it will be a therapeutic community residence. The placements could come from correctional facilities or the community. The oversight will be shared by both the Department of Mental Health and the Department of Disabilities Aging and Independent Living. The facility is for people who are accused of a crime and are either not competent to stand trial or not guilty by reason of insanity and they present a danger or risk of harm to self or others. If a person has their competency restored, they return to the criminal justice system and custody of DOC. The panel that reviews potential placements is composed of the Secretary of Human Services and the Commissioners of DAIL, DMH and Corrections. The Commissioner of DAIL or DMH then decides about the placement. There would be judicial review of placements on an annual basis, but the current draft doesn’t clarify criteria for initial commitment. The

latest version of the Bill requires that DAIL and DMH present a programming plan to the legislative committees of jurisdiction next year.

Kirsten Murphy, Executive Director of Vermont Developmental Disabilities Council (VTDDC), testified that the Council members have grave concerns about the impact of H.89 on people under Act 248 in the custody of DAIL. She noted that this gap in services was not raised in the latest State System of Care Plan for I/DD. Additionally, she reported the proposal for development of a forensic facility was not reviewed with the State Standing Committee for Developmental Disabilities (SSCDD) prior to passing the Senate. Concerns raised by Kirsten Murphy:

- Disagreement that there are small number of people who can't be served in the community. She said, for 30 years everyone has been served in the community.
- The system of care serving I/DD is very stressed, but it is not a reason to layer on an institutional approach of services. Instead, the community system should have sufficient resources, and if the current providers can't meet the needs then a private vendor should be considered.
- "If you build it, they will come"; opening up the facility will lead to more people receiving care in a facility rather than in the community.
- She asked, "what is the problem being solved?", and wondered if it is the "25 IMD limit."

Max Barrows, Outreach Director for Green Mountain Self Advocates (GMSA), a disability justice organization, said many of the founding members had their rights taken away as residents of Brandon Training School. He said society denies people with disabilities their full rights because of ablism. GMSA does not support a forensic facility for people with I/DD. They ask that other options be explored and that the process includes people with I/DD. He reiterated that the SSCDS was not involved in the development of the proposal. Due to the pandemic and workforce crisis, he noted, many people with I/DD are not getting all their services from Agencies. He concluded that now is not the time to build a forensic facility, when there hasn't been adequate support to ensure people receive the quality services they need. That's where the investment is needed, he said, in fully inclusive programs. He closed by speaking about the promise made by Governor Dean when Brandon closed to continue the commitment to people with I/DD.

Barb Prine, Staff Attorney, Disability Law Project of Vermont Legal Aid, spoke in opposition of a forensic facility because it isn't the least restrictive option for people with I/DD. Her organization is also concerned about proposed changes to Act 248 and noted that there does not appear to be a standard for commitment to Act 248. She has experienced frustration in representing people who want to get off Act 248. When people only make threats, she explained, it should not be a reason to keep them under the custody of the Commissioner. Sometimes the best option is for people to live in the community with support. For example, they can live within a locked fenced yard with support in the community. The current situation is due to the staffing crisis, which should be addressed. She agrees that "if you build it, they will come." It's her estimate that 15 people currently under Act 248 and living in the community

would be eligible for the forensic facility. She is also concerned about confidentiality related to victim notification and with the power that the community safety panel has. She urged the Committee not to change Act 248 or support the creation of a forensic facility. She would like DAIL and DD Law Project to have a year to consider changes to Act 248. Barb Prine spoke about the curative power of relationships as the thing that supports people to make changes and enables some people to move off of Act 248. In her opinion, living in a hospital would not be as effective in supporting people to make changes.

When asked about correctional settings, Kirsten Murphy said that people with I/DD are eligible for ADA accommodations in correctional facilities. Barb Prine acknowledged that there are people with I/DD who are found competent to stand trial and are held in correctional facilities.

DAIL Commissioner White explained that starting in 2021 the legislature asked DMH and DAIL to study gaps in the system for people with I/DD and MH who commit serious crimes. A stakeholder forensic study workgroup was formed, and their feedback was used to develop the plan, although the workgroup did not come to consensus. VPCH was chosen because it is existing and available, not because of the IMD rule. When a person with an intellectual disability commits a crime and is found incompetent to stand trial by a criminal court, the person may be committed to the custody of the DAIL Commissioner if they present a danger or harm to self or others and that the DAIL commissioner and designated program can meet their needs. Currently, 27 people are under Act 248 order. The majority can live successfully in the community. She said only one person would meet the standard for the forensic facility at this time, disagreeing with Barb Prine because "it's not just about threatening harm." There are rare occurrences when a person can't be served safely in the community. If the person meets hospital level of care, they can be hospitalized, but if they don't meet hospital level of care, Commissioner White said there is currently nowhere to send them. She also pointed out that there have been incidents in the community, including elopements, staff getting hurt, etc. The State has had to use contracted staff. She also expressed concern about the risk of a person under the custody of the Commissioner being harmed by a community member. Right now, there is a person committed to Act 248 who was arrested for violent crimes and is in a correctional facility. The Commissioner assured the Committee that there will be multiple safeguards and focus on serving people in the community. The forensic facility is meant to be used for periods of stabilization. All people will be served in the least restrictive setting which protects them and the community at large.

Rep Garofano asked about adding a representative of the Office of Racial Equity and a person with trauma expertise to the safety panel.

Rep McGill asked about efforts to work with community providers to meet the needs of these individuals in the community in existing structures. The Commissioner said the mental health clinicians at a forensic facility could make a difference in serving these individuals and noted the gap between hospital level of care and community-based care. Committee Chair Wood asked if DAIL had looked into using other vendors if DA/SSAs cannot meet the needs in the community. The reply was that they hadn't, that they have looked nationally for specific resources for

individuals under Act 248. The programming is individually tailored to meet the needs of these individuals and DAs have reached out to DAHL seeking additional support. When asked where people under Act 248 are now, Commissioner White said the vast majority are in staffed living and there are rarely instances where those settings cannot meet the individuals' needs.

During the discussion it was clarified that the Safety panel offers a broad-based recommendation to the Commissioner who has custody of the individual, but then the Commissioner's decision is presented to the Court for the final determination for placement. Chair Wood expressed concern that there is no clinical expertise on the panel, but the Commissioner explained there is a consultation contract with Dartmouth Hitchcock Medical Center and DMH has in-house clinical expertise.

Rep Donahue pointed out that the impetus for the original study committee was to identify all the gaps in community-based services for people who are not adjudicated but have the need for services and supports; it was supposed to address people with TBI and dementia. She thinks it's radically inappropriate to approve this with so little review. She expressed concern about the restrictive level of care because a review is needed prior to discharge, but no one has been convicted of a crime. Committee Chair Wood pointed out that the report on the Forensic Facility didn't recommend a facility for the DS component. She shared that VCP, State Standing Committee and VTDDC all recommend a study committee.

The Committee made plans to share recommendations to the Judiciary Committee after further discussion, including deletion of the Act 248 revisions in the Bill to enable greater participation by people with I/DD before updating the statute. They are also recommending a diverse array of stakeholders to participate on the study committee on options for forensic care and used recommendations developed by VCP as a foundation for the duties of the study committee.

- Identifying unmet needs and resource gaps for people at-risk and in need of forensic level care.
- Recommending investments, policies, and programmatic options for high quality community-based support for people at risk and under Act 248
- Recommending whether the forensic facility at might be an appropriate option for people with intellectual disabilities
- Recommending whether clinical care in a forensic facility would fully address the State's commitment to community-based care and non-institutionalization
- Recommending updates to Act 248
- Recommending how development of a specific ombudsman or Disability Rights Vermont could ensure necessary oversight of quality care and protection of rights
- Recommending how to ensure due process rights for people with intellectual disabilities...(language needed)
- And any other items the group thinks are necessary. (Act that results from S.91)

### **Senate Health and Welfare Continues Review of Adult Protective Services Bill**

John Gordon, Director for Adult Protective Services, and Stuart Schurr, Legal Counsel for DAAL, explained proposed amendments of the Adult Protective Services Bill, H.171.

Jill Olson of the VNAs of Vermont reiterated the concern of providers that their amendments did not ameliorate our concerns around to language on neglect. She said our workforce challenges will be exacerbated because of the extensive reporting requirements. Carving out professionals doesn't reduce the potential of punitive actions against the multiple non-licensed professionals. She reminded the Committee that the community agencies are highly regulated and have significant quality oversight mechanisms. Providers, including Julie Tessler for VCP, spoke to the low standard of neglect, "not fulfilling plan of care as another caregiver would." We reiterated the potential negative impact on our workforce and the ensuing risk to quality of care.

After much discussion, the Committee responded to the concerns and developed an amendment to the bill as passed by the House, clarifying the definitions of abuse, neglect, and vulnerable adult that will not require mandatory reporting of unintended errors and has a less expansive definition of a vulnerable adult. The amendment will be considered by the full Senate this week and then go to the House for consideration.

### **House Health Care Reviews Forensic Bill**

At the Chair's direction, the House Health Care Committee reviewed S.89 from the perspective of whether the proposed forensic facility is required for mental health treatment in Vermont. Legislative Counsel Katie McLinn gave an overview of the Bill, explaining that it would serve people with mental health conditions who are determined to be dangerous and who are either incompetent to stand trial or deemed not guilty by reason of insanity and not in need of hospital level of care. They may currently be at Vermont Psychiatric Care Hospital or a correctional facility. Rep Cina said that it is better for people to be in a treatment facility than a correctional facility for their mental health and to improve their level of competence. They would go through a judicial procedure before they are admitted to the facility. She described the human service safety panel which assesses placement and said Vermont Legal aid could represent the client. Rep Cina asked about the definition of "dangerousness" and suggested considering expanding it.

Chair Houghton asked Karen Barber, Legal Counsel for the Department of Mental Health (DMH), about the certificate of need. The reply was that going through the certificate of need (CON) process is redundant to the review process occurring in the legislature for the development of the forensic facility. The Committee asked questions about the review panel and its clinical expertise.

### **House Government Operations Takes Testimony on State Auditor Review of Contractors**

After the Supreme Court blocked access by the State Auditor to the records of OneCare, Doug Hoffer is seeking a legislative remedy to have full access to all records of entities contracting with state government through S.9. The State Auditor testified about the value of the review of Designated Agencies several years ago, which found expenses could not be accurately tracked. At that time, his office directly accessed information from the agencies and maintained the confidentiality of private health information.

The Health Associations of the State, including VCP, wrote the committee in protest, sharing our concerns about unfettered access to information. Contractors would have to go to litigation to protest access to information like payroll data. Currently, the State Auditor can audit the performance of contracts and how agencies and departments are managing those contracts by auditing the governmental entity overseeing the contract. If the Auditor identifies a concern, it can be raised with the agency or department. The State Auditor does not and has not had authority under the Vermont Constitution, statute, or Bulletin 3.5 to directly audit nongovernmental entities. This bill represents a significant expansion of the Auditor's powers. Health care provider associations are concerned about an inadvertent release of HIPAA-protected and other sensitive information. To our knowledge, the Office of the State Auditor has not undergone a HIPAA security compliance audit. Given concerns over cyber security and data breaches currently under discussion in the legislature, we question why the auditor can't go to state agencies to get information. Devon Green from the Vermont Hospital and Health Systems and Julie Tessler both provided testimony. It appears that the Committee is not supportive of the legislation.

### **Separating Competency and Sanity Evaluations Reviewed in the House Judiciary Committee**

This week, House Judiciary passed a revised version of [S.91](#) out of committee. This included a revision addressing circumstances where a judge orders a subsequent evaluation after the first evaluation. It guides the judiciary to consider evidence from a treating physician, if there is any, to determine whether the person's competency status may have changed. The bill also:

- a) separates competency and sanity evaluations
- b) requires a report on developing a competency restoration program
- c) asks the Justice Oversight Committee to explore which provider types are qualified to perform these evaluations; and
- d) asks DMH, with input from DAIL, to provide recommendations around cumulative competency evaluations.

After a swift unanimous committee vote, Chair Lalonde stated that "waiting periods for competency evaluation are too long," and that this bill has largely received support .

### **Senate Education Committee Reviews Bill on Schools that Receive Public Tuition**

VCP provided [written testimony on H.483](#), requesting to carve out therapeutic schools from the moratorium on new independent school approvals .

Senate Education heard testimony from CJ Spirito, from Rock Point School, concerned about the impact on small private schools like his own. He described a spectrum of schools that meet student needs across a continuum that includes very high needs students. Rock Point is in the middle. Sometimes they have not accepted some students that were too high functioning, and not accepted some kids who have needed more than they have to offer. Without an admissions process, they can't protect that space. They aren't a therapeutic school. The Committee discussed that local tech centers also turn away kids. The challenge is "niche schools who aren't therapeutic schools." How do they balance "filling a niche" vs. schools that are actively discriminatory?

Erin Maguire, Director of Equity and Inclusion and Co-Director of Special Services at Essex Westford School District, and Past President of the Vermont Council of Administrators of Special Educators, provided an overview of the Vermont continuum, where it's been built to use public funds in a private space. She gave the example of the designated agency system in Vermont asking 501(c)(3)s to provide education services in Vermont. Private schools don't comply with all the expectations for public schools that the legislature has created, especially the small schools. She believes that as a state "We don't go far enough with a floor of non-discrimination" i.e., from Act 173. She said, "We have a long history of using SPED dollars [for] independent or private schools to do that body of work...Most states have public schools with a larger continuum of services [such as] SPED classrooms or schools." In K-8<sup>th</sup> grade, her district doesn't have that. Public schools need to increase their own capacity to have a continuum, rather than use separate settings. She noted that "this is not to say I want those schools to close," but "some are closing—because of the expectations around financing." She would like to see more of these services available in public schools. The Committee will have more discussion next week.

### ***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:**

<https://www.youtube.com/watch?v=S3ml6skUE4A>

#### **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.