



Vermont Developmental Disabilities Council

100 State Street, suite 342
Montpelier, Vermont 05633-0206

(802) 828-1310
vtddc@vermont.gov
www.ddc.vermont.gov

TO: Working Group on Policies Pertaining to Individuals with Intellectual Disability Who Are Criminal-Justice Involved

FROM: Susan Aranoff, JD, Senior Policy Analyst and Planner

RE: Forensic Facility

DATE: November 1, 2023

Failure to Support Community Based Services Does Not Justify A Forensic Facility

The Vermont Agency of Human Services (AHS) wants to create a new facility to institutionalize people with disabilities who are involved with the criminal justice system.

The Vermont Developmental Disabilities Council (VTDDC) does not support the creation of a new involuntary, institutionally based treatment program for people with disabilities in Vermont.

Vermont, through its laws and policies, has chosen to support nearly all individuals with developmental disabilities in community-based settings as opposed to institutions. In 2010, the AHS and the Department of Disabilities, Aging, and Independent Living (DAIL) affirmed the success of Vermont's community-based service system for people committed to custody of the DAIL Commissioner under Act 248 in a legislative report about people with developmental disabilities who pose a public safety risk.

In that Report, then-DAIL Commissioner Joan Senecal wrote the following:

Certain individuals are particularly hard to serve in any setting. They may have complex psychiatric needs, they may be highly resistant to supervision, they may try to elope, they may be highly assaultive to staff and to peers, or they may be extremely emotionally volatile. These characteristics may make it difficult to supervise these individuals in a shared living home or a group home. It may be difficult to retain staff to work with them. When these characteristics are combined with risk to the public, agencies may feel overwhelmed. In the past two decades, a few agencies have stepped forward to take on

these exceptionally challenging individuals, but, at present, no agencies feel able to accept hard-to-serve individuals from another region because of concerns about budget, liability, and community reaction.

Some have suggested a small secure facility to house a group of these uniquely hard-to-serve individuals, but it is unlikely that grouping the most hard-to-serve individuals together in a single location would be beneficial or cost-effective. The individuals who are the hardest to serve are difficult and dangerous in unique ways. To assemble the combination of treatment and staffing resources to meet the differing needs of the individuals in a single location, while keeping the individuals safe from one another, would almost certainly exceed the costs of our current individually tailored services. Emphasis added. Id at 16.

The reasoning behind then-Commissioner Senecal's opposition to a secure forensic facility was sound in 2010, and it is sound today.

In her 2010 report, then-Commissioner Senecal suggested that Vermont may wish to provide incentives for a current agency to extend its capacity for these hard-to-serve individuals, or it may wish to develop a new service program with a particular mission of serving extraordinarily high-risk individuals with developmental disabilities. It appears that Commissioner Senecal's sound suggestions were rejected by AHS.

AHS Facilities Require Independent Oversight

On October 25, 2023, *Seven Days* published a 16 page ad-free investigative story by an award winning journalist about how young Vermonters were physically restrained, stripped, and held in isolation for days in AHS's Woodside Juvenile Rehabilitation Center before a lawsuit brought by Disability Rights Vermont caused it to be shuttered in 2020 .

The article details gross malfeasance on the part of AHS with respect to its oversight of Woodside. As the article makes clear, even though the horrific abuse that was allowed to occur at Woodside has ceased, AHS has never explained to the public what happened at Woodside, how it was allowed to occur, who was responsible, and whether anyone has ever been held accountable? AHS should not be permitted to operate the new forensic facility until it provides answers to these important questions, along with a detailed plan regarding how it will undertake appropriate oversight of institutional settings for vulnerable Vermonters in the future.

It appears DCF may have learned some important lessons from Woodside. In a presentation before the Joint Justice Oversight Committee on October 26, DCF Commissioner Christopher Winters presented slides about the juvenile treatment system that included the following lessons:

- There must be transparent oversight and accountability for the entire system, but more so for the higher levels of care, particularly any locked/secured sites.

- The State cannot be both the ultimate regulator and the provider.

The Vermont Developmental Disabilities Council endorses these sound findings. The forensic facility must have identified watchdogs who are separate from the providers at and operators of the facility.

Vermont's Home and Community-Based Service System is in Crisis

On January 18, 2023, an article in *vt-digger* described an HCBS system in crisis. While detailing the plight of one young man, the article captures the harsh reality that exists for scores of others today. The overall situation was summed up best by Kirsten Murphy, Executive Director of the Vermont Developmental Disabilities Council, who said, "There's just so many different problems. And it's not anyone's fault, or bad actors. It's just that it's been an under-resourced system for a very long time. It doesn't have the quality oversight mechanisms it should. It doesn't have enough checks and balances."

The VTDDC does not support holding people with intellectual disabilities in an in-patient unit in a hospital-like building for indefinite periods of time. The State has failed to provide adequate funding for community-based support for people with disabilities. The solution is not to build more inpatient hospital beds, but to invest in sufficient community capacity.

Vermont is Failing to Honor its Olmstead Obligations

Over twenty years ago the U.S. Supreme Court issued the landmark decision in *Olmstead v. L.C.* affirming that people with disabilities have a right to live in the most integrated setting appropriate to their needs, and that the failure to realize such integration is a violation of the Americans with Disabilities Act.

After the *Olmstead* decision, states were mandated to develop enough community programming to avoid the unnecessary use of psychiatric and other institutions. While Vermont takes pride in its community-based system of care, recent funding priorities focus on building more inpatient capacity - more hospital beds and nursing homes – rather than investing its limited resources to fill the huge gaps currently existing in community services.

Vermont's *Olmstead* Plan has not been Updated since 2006. Vermont needs a current and effective *Olmstead* plan. Such a plan would include policies and procedures to systematically prevent unnecessary institutionalization. The plan must include a financially sound road map for the creation of an adequate community-based system of care.

The Governor and Legislature Must Remedy Vermont's Olmstead Crisis

Vermonters with disabilities and their families rely on AHS to provide services that are adequate to meet their needs and do not violate their rights. While AHS has acknowledged its systemic lack of adequate community support, it is not investing in solutions.

Instead, the State is investing in plans that are contrary to the law and will not solve the problem. Building more high-end, restrictive beds, and hoping that will result in people being served in the community is illogical.

New resources should be targeted to new providers with skills and expertise in serving people with intellectual disabilities who are forensically involved.

Conclusion

Thirty years ago, Vermont was the second state in the country to close its institution for people with developmental disabilities, Brandon Training School. Back then, Vermont was a leader in providing individualized community-based services for people with developmental disabilities.

Vermont must keep the promise made by Governor Howard Dean when Brandon Training School closed in 1993.

Governor Dean said, "I'm proud to maintain the commitment of the state to the very kind of services that we still owe to the population that was once at Brandon and is now in the community. We will continue to assure that individuals receive support and services; We will continue to assure that those services meet acceptable levels of quality; We will continue to assure that persons receiving the services are free from abuse and neglect or mistreatment; To assure that the folks taking care of the people needing these services have adequate training and support. So, our commitment does not end with the closing of this institution. Our commitment continues."