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MENTAL HEALTH LAW PROJECT

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February 9, 2021

Frank Reed, LICSW
Director of Mental Health Services
Department of Mental Health
Agency of Human Services
280 State Drive, NOB 2 North, Waterbury, VT 05671-2010

Re: Annual Act 114 Study

It is the policy of the General Assembly to work toward a mental health system that does not require coercion or the use of involuntary medication.
18 V.S.A. §7629(c)

Dear Frank:

Thank you for asking me to participate in this year's study of the State's use of involuntary psychiatric medications. Involuntary psychiatric medication is the most extreme invasion of personal liberty the State of Vermont can engage in, and it is vital that the State honor the human rights of psychiatric patients and the policies established by law to protect those rights.

Ever since 1998 the law in Vermont has been clear. "It is the policy of the General Assembly to work toward a mental health system that does not require coercion or the use of involuntary medication." 18 V.S.A. §7629(c) Unfortunately, the Department of Mental Health has failed to follow thus policy. This has resulted in an endless increase in the use of involuntary medications, precisely at a time when the routine and lifelong use of psychiatric medications, which is the core ideology of Vermont's involuntary mental health system, has come under serious question. In my view, the State should be looking seriously at alternatives to involuntary medication, and should be reducing its routine reliance on this extremely intrusive practice.

Our records show that in State Fiscal Year 2020 the Department of Mental Health filed one hundred one (or possibly one hundred) involuntary medication cases, which demonstrates that since 2008 the number of involuntary medication cases has more than quadrupled, and nearly tripled since 2011, the year Vermont State Hospital closed. This is particularly disturbing because a

significant fraction of that period occurred during the coronavirus pandemic, which has led to reduced levels of hospitalization.

It is our strong recommendation that the State begin to take the legislative mandate seriously and take action to reduce, rather than increase, the use of involuntary medications in Vermont.

1. Please identify your direct involvement with any individuals involuntarily medicated under Act 114 between July 1, 2019 – June 30, 2020.

The Mental Health Law Project was appointed by the Family Division of the Superior Court to represent the respondents in all of these cases. To my knowledge there were no cases in which the respondent was either represented by outside counsel or pro se.¹

2. Are you aware of any problems encountered in the implementation of this process?

The court process set forth in statute for involuntary medication cases imposes scheduling limitations that interfere with the patients' ability to defend themselves. Coupled with the retirement of one of the psychiatrists we relied on for many years to perform independent psychiatric examinations and the limitations on access to our clients and on trial practice brought about by the pandemic it has been difficult for patients' counsel to adequately prepare for trial and present a strong defense. We look forward to the day when the emergency has passed, and we can resume normal trial court operations.

3. What worked well regarding the process?

Act 114, and the availability of skilled counsel to represent the patients in the State's custody, is the only mechanism available to either prevent unjustified use of involuntary medications or to restrict the State psychiatrists from administering medications or doses that would likely be harmful to the patients. Consistent with previous years, in 2020 a large number of the involuntary medication cases filed resulted in a denial by the court, a dismissal by the State, or an order from the court limiting the medications sought or the method of administration; in other cases the State after hearing from our independent psychiatrist or from the patient's court-appointed counsel, agrees to exclude a requested medication or reduce the requested dose.

In every one of these cases, if the hospital had had its way, free of judicial review and an effective defense, the patient would have been forcibly

¹ Since the Vermont Supreme Court's decision in *In re G.G.*, 2017 VT 10, the trial courts have been constrained to deny the right of self-representation to patients involved in involuntary mental health proceedings.

medicated, but the court process allowed the patient to successfully defend against what was determined to be an unwarranted or excessive intrusion.

4. What did not work well regarding the process?

We believe the law is working as intended. However, it is hard to single out certain practices as not working “well”, given that the entire practice of nonemergency involuntary medication is such a serious assault on the personal autonomy of the patient.

5. In your opinion was the outcome beneficial?

In the cases in which the court either denied or limited the involuntary medication order the outcome was decidedly beneficial because it supported the patients’ right to direct their own treatment or to ensure that they would not be subjected to harmful treatment,

It is much more difficult to say that an order for involuntary medication was beneficial. The entire process of involuntary medication undermines the opportunity for patients to develop mutually respectful relationships with their treatment providers: the message of the involuntary medication process is that the patient’s wishes are of no concern to the mental health system, and that the system exists not to help patients but to do things to them. By so quickly moving to forced medication, by treating it as a first rather than a last resort, the State has abandoned any effort to establish a trusting relationship with the patient in favor of simply overpowering them through the court process.

It is well established that the great majority of patients who receive antipsychotic medications eventually discontinue their use, either because of intolerable side effects, inefficacy, or other unacceptable results. This means that every case of involuntary medication must be viewed as no more than a temporary solution. Unless the State can demonstrate that there are significant and long-lasting benefits to involuntary medication, it is difficult to see how the temporary benefits that involuntary medication may provide outweigh the cost to patient self-determination and autonomy in any regime of forced treatment

In addition, a growing body of evidence demonstrates that in the long run, keeping patients on psychotropic medications does not result in improved functional outcomes. Pursuing forced treatment is a choice by the mental health system to favor immediate convenience over the long-term good of the patient. We continue to believe, along with Disability Rights Vermont, that Vermont needs a study of the long-term outcomes of people who are subjected to forced medication.

Finally, as I noted above, the State has chosen to rely more and more heavily on forced medication. This dramatic increase demonstrates that the

Department has abandoned the policy of pursuing voluntary treatment and has chosen to pursue forced medication as its predominant method of treatment. I would urge the Department to take the legislative policy seriously and work to reduce coercion in every component of the mental health system

6. Do you have any changes to recommend in the law or procedures? If so, what are they?

Involuntary medication is an affront to the human dignity and natural autonomy of persons in the State's custody, and it should be used only as a last resort. As written and as applied, the current statute makes it unreasonably difficult for a patient to present an effective defense. Eliminating the provision of 18 V.S.A. § 7625(a) that requires hearings to be held in seven days would be a positive change. The changes in the law adopted as a part of Act 192 have generally made the situation worse by forcing the courts to schedule both involuntary medication and initial commitment cases unreasonably quickly. These provisions should be repealed. In addition, the State should adopt restrictions on the use of long-acting involuntary medications as a standard and routine treatment modality.

Fundamentally, though, the most important change in the practices of Vermont's mental health system is that the Department, and the entire mental health system, should begin to take seriously the idea that people have rights, that the things that the system does to people in the name of helping them are often painful and devastating, and do more harm than good, and that the people the Department is established to serve are human beings who deserve to have their rights and wishes respected.

Thank you for your attention to these comments. I hope that you take them seriously and that they result in an improvement in patient care and respect for patients' rights.

Very truly yours,

/s/ John J. McCullough III

John J. McCullough III
Project Director