

Disability Rights Louisiana Report to the Louisiana Developmental Disabilities Council July 2021

David Wade Correctional Center Case

The David Wade team continues their steadfast commitment to their fight for justice on behalf of prisoners with mental illness in the David Wade Correctional Center. The team has completed an exceptionally time consuming portion of the case that required extensive travel and significant amounts of time spent on the premises of the prison (completing depositions). While we are encouraged in terms of our performance in the case, we do not have any reason to believe that the case will be resolved anytime in the near future. Additionally, DRLA successfully completed our depositions, including deposing the Secretary of LA Department of Corrections. The case now moves into a focus on experts and expert testimony. The most recent general update is that the trial has been set for January of 2022. For more details please refer to the legal director's report.

COVID Related Projects

We have focused the majority of our attention on the over 500 private ICFs which have a census of around 3,500 residents with intellectual and developmental disabilities. We have been successful in pushing more stringent guidance around PPE usage, rationing of care, family awareness and notification, and increased testing. We have also agreed to work with our DD network partner agencies in order to begin to develop a report on what has taken place in the disability community as a result of COVID and what policies might need to be put in place in order to prevent harm in the future. We met, in collaboration with our DD Network partners, with LDH leadership to discuss our concerns about the opening of day hab programs. As a result, LDH did put out a notice strongly encouraging day hab programs to consider closing temporarily following the holidays. We also worked with LDH to strongly encourage the

department to prioritize people with disabilities (especially those residing in congregate settings) in terms of access to vaccination. We are happy to report that residents of ICFs were prioritized to receive vaccinations. We were also very concerned about and advocated for homebound individuals with disabilities (including seniors) that were having great issues with getting access to vaccinations.

Community Living Ombudsman Program (CLOP)

In this program, trained advocates, known as Ombudsmen, advocate for the people with developmental disabilities who live in the over 500 state-licensed, privately run group homes across the state to ensure their rights are protected and they are free from abuse or neglect.

During the shutdown, CLOP adapted and developed new and innovative ways to interact with and monitor group homes and residents, including remotely monitoring community homes, and performing driveway visits when possible to actually visually view the residents. CLOP follows extensive safety protocols to ensure staff/resident safety.

CLOP continues to expand investigations collaboratively with the Attorney General's Medicaid Fraud unit. Recording resident complaints in monthly Complaint Requests/Resolutions with the new LDH reporting protocols (CRRs). CLOP staff was involved in sending administrators guidance on resident property duties and medical consent for vaccines.

CLOP continues to compare the LDH Health Standards surveys with CLOP's own monitoring reports. This comparison routinely demonstrates that the State's Health Standards Unit is under surveying. Upon comparing the data, CLOP will explore, with the Legal Unit, possible remedies, including referring complaints to the AG's Medicaid Fraud Unit.

Since January 1st, CLOP filed 24 formal complaints against group home providers with LDH's Health Standards Unit. The following issues were addressed in these complaints (some complaints contained multiple issues): Neglect of Health (13 complaints); Improper discharge (4 complaints); Physical Assault by another resident (3 complaints); Improper use of restraints/injury from restraints (2 complaints); Issues regarding resident funds (2 complaints); Failure to protect resident from injury (2 complaints); Blocking resident access to telephone (2 complaints); Lack of access to needed medical care (2 complaints); Insufficient staffing (2 complaints); Assault by Staff (1 complaint); Suspicious death (1 complaint); Failure to obtain informed consent (1 complaint); Lack of Individualized Plan of Care (1 complaint); Refusal to allow access to personal property (1 complaint); Failure to provide appropriate behavior plan (1 complaint); Interfering with personal decision making (1 complaint); and Intimidation by staff (1 complaint). Many of those complaints were also sent to the Medicaid Fraud Unit of the Attorney General's office.

Ombudsmen continue to engage professional development and trainings including, Community Advocacy weekly meetings and non-mandatory weekly trainings, the National Disability Rights Network (NDRN) training and weekly CLOP staff meetings. Ombudsmen continue to be successful in getting residents new SUN assessments and several residents have received waiver offers. The Lafayette Ombudsman was asked by the Lafayette Mayor's Council on Disability awareness to train 20 high school students and the members of the Mayor's Youth Council on Disability.

Participation in Task Force on Prevention of Human Degradation and Exploitation of Vulnerable Individuals in Community-Based Residential Settings

Since at least 2019, legislation has been introduced to regulate facilities that are known as "Board and Care Facilities," and often misidentified as group homes. When we began reviewing the legislation in 2019, it was initially unclear exactly what the motivation was for the

legislation. One of the issues with the legislation is that in the forms in which it was introduced in both 2019 and 2020, it could exclude people with a broad range of disabilities from a broad range of rental housing - perhaps most rental housing in the State.

Given the serious issues with the bill, a task force was convened to redraft it in an acceptable manner. DRLA is a member of that task force, and we have taken part in both of its meetings, which occurred in February and March of this year. During these meetings, it became clear that the motivation for introducing the legislation was to address the concerns of residents, who live in a neighborhood in which board and care facilities have proliferated. The task force did not draft new legislation for the 2021 legislative session, but new legislation will likely be introduced in the 2022 session.

Ending Solitary Confinement of Individuals with Serious Mental Illness - House Bill 68

Disability Rights Louisiana worked with the Louisiana Mental Health Coalition and the Louisiana Stop Solitary Coalition (LSSC) to support legislation that would ban the solitary confinement of individuals with Serious Mental Illness. We began working on this issue for this legislative session several months before the session began. The Stop Solitary Coalition was able to secure a sponsor, Representative Landry, to introduce the legislation (HB68).

DRLA testified in favor of the legislation as introduced. However, with the DPS&C opposing it, there was not enough support among committee members to report the bill from the committee. Representative Landry voluntarily deferred the bill, with the intention of perhaps reintroducing it during a possible special session this year or the regular session next year. In the meantime, the LSSC is working to produce acceptable legislation.

House Bill 255 - Banning Abortion and Sterilization of Interdicted Individuals

Under current Louisiana law, an individual who is a curator of another individual who is interdicted may consent to an abortion or sterilization of the interdicted person with prior court authorization. The procedure for this is essentially a rubber stamp, and likely violates the Constitutional rights of the interdicted person. Legislation was introduced to completely ban abortion and sterilization for interdicted individuals. This is also problematic, both medically and Constitutionally.

Working with one of DRLA's attorneys, who has represented a client under the current law, DRLA worked with the bill sponsor and organizations that are opposed to and in support of abortion rights to draft amended language. The intent of the language was to create a process that accounts for the medical necessity of these procedures, protects the civil rights of the interdicted individual, provides legal representation for the interdicted individual, and respects the interdicted individual's wishes. The sponsor was willing to consider our language, but was hesitant to amend legislation that deals with such a complex and sensitive topic in such a short period of time. Instead, he preferred to send the legislation to the Law Commission for review, and likely reintroduce it in a subsequent legislative session. We now have time to work with the sponsor to replace an unconstitutional law with one that will respect the rights of interdicted individuals.

Criminal Penalties for Intentionally Exposing Another to a Sexually Transmitted Disease - House Bill 238

In an attempt to address an issue in her district, a state representative introduced legislation that would create criminal penalties, including fines and incarceration, for individuals who knowingly expose others to sexually transmitted diseases. The issue that drew DRLA's attention to this bill is that the bill as introduced specifically meted out harsher penalties to perpetrators of this new offence if they had been diagnosed with an intellectual disability. Upon reviewing the text of the legislation, it appears that the intent of this provision was possibly to create

enhanced penalties in cases where the *victim* had been diagnosed with an intellectual disability, but bill's language clearly created enhanced penalties for *perpetrators* who had been diagnosed with intellectual disabilities.

We spoke with the Representative, explained our concerns, and followed up in writing with our suggested change to the bill's language - which was to simply remove any mention of individuals with disabilities. When the bill was scheduled to be heard in committee, no amended language had been offered, so we appeared in committee to testify against the legislation. When the bill was taken up, the Representative supplied amended language that we would likely not oppose, but also voluntarily deferred the bill with the intention of working on the language, and reintroducing in next year. We will continue to work with the Representative, and monitor the legislation.

Additional DRLA Activity during the 2020 Legislative Session

HB 79 - Supported. Provides that a patient's preference shall be taken into consideration when selecting a mental health treatment facility.

HB 85 - Supported. Establishes the Steve Carter Literacy Program for eligible students, and defines "eligible student" as a public school student who is in kindergarten or the first, second, or third grade and who reads below grade level or is at risk for reading difficulties according to a literacy screener, a student who is in the fourth or fifth grade and who scored below mastery in English language arts on the state assessment in the prior school year, or a student in these grades recommended by an English teacher. HB 85 gives priority to the lowest performing economically disadvantaged students, and provides for payments of up to \$1000 per student per school year for eligible services intended to improve reading or literacy skills.

HB 170 - Supported. Requires public school governing authorities to report to the state Department of Education data regarding certain groups of students identified as having dyslexia, disaggregated by grade and type of education plan, by September 1st annually.

HB 172 - Supported. Requires the Louisiana Department of Health to ensure that comprehensive Medicaid coverage for dental care is provided to each person of age 21 or older who is enrolled in any Medicaid waiver program for persons with developmental or intellectual disabilities.

HB 228 - Supported. Allows access to restrooms of retail establishments to persons with eligible medical conditions.

HB 251 - Supported. This legislation effectively extends the statute of limitations for reporting certain crimes against individuals with disabilities.

HB 285 - Supported. Provides that a voter shall not remain in a voting machine for longer than six minutes, which is an increase from the existing three-minute time limit. Also provides that if the ballot is lengthy or if it contains complex propositions or constitutional amendments, the appropriate election officials may allocate additional time in an equitable manner.

HB 324 - Supported. Prohibits corporal punishment in public elementary and secondary schools.

HB 397 - Supported. Provides that the Louisiana Department of Health may in its existing public health programs and services educate health care providers on the importance of effective care planning, including treatment options, support and services, long-term care options, advanced directives, and care at every stage of Alzheimer's disease and other dementia diseases to include appropriate counseling.

HB 446 - Supported. Creates the office of the state Americans with Disabilities Act coordinator within the division of administration, and provides that the office shall be administered by an executive director who shall have the title of state ADA coordinator.

HB 455 - Supported. Prohibits an insurer offering long-term care insurance policies from adversely affecting an enrollee's coverage due to the enrollee's refusal to submit to a genetic test or to make genetic testing results available to the insurer, and further prohibits an insurer offering long-term care insurance policies from using collected or acquired genetic information for underwriting purposes.

HB 468 - Supported. Provides that subject to approval by the Centers for Medicare and Medicaid Services, on and after April 1, 2022, the Louisiana Department of Health shall provide postpartum Medicaid coverage to eligible pregnant individuals who qualify under the state's Medicaid plan for one year after the end of their pregnancy.

SB 170 - Supported. Creates the office of human trafficking prevention (OHTP) in the Governor's office for the purpose of coordinating resources of public and private entities engaged in providing assistance to human trafficking victims.

HCR 34 - Supported. Requests that the Louisiana Department of Health study potential means of financing dental care for adult residents of intermediate care facilities for persons with intellectual and developmental disabilities.

HCR 44 - Supported. Authorizes and directs the Louisiana Department of Health to include information on early detection and diagnosis of Alzheimer's disease and other dementia diseases in its existing public health programs and services to educate healthcare providers.

SCR 18 - Requests that the state Department of Education study the feasibility of banning the use of corporal punishment in public schools.

SR 23 - Supported. Establishes a task force to study the desirability and feasibility of implementing a Medicaid managed long-term supports and services system in Louisiana, and to provide the recommended content for a request for proposals for the Medicaid managed long-term supports and services system.