

February 6, 2020

Rep. Thomas Stevens, Chair  
House Committee on General, Housing and Military Affairs  
Vermont House of Representatives  
Vermont State House  
115 State Street  
Montpelier, Vermont 05633

Re: H.783 (An act relating to recovery residences)

Dear Chairperson Stevens and Members of the Committee:

Thank you for allowing me to offer this written testimony on H.783, an act relating to recovery residences.

Recovery residences (also known as sober houses) are an important part of the recovery journey for many Vermonters. For this reason, I am a strong supporter of recovery residences and appreciate legislative efforts to expand and improve recovery residences in Vermont. As executive director of Vermonters for Criminal Justice Reform (VCJR) and as director of the Howard Center Safe Recovery program for 17 years prior, I have also observed that recovery residences sometimes put vulnerable people in harm's way by:

**Discriminating against people who use prescription medications, including medications used to treat opioid use disorder, in ways that put people at risk.**

Some recovery residences currently discriminate by denying entry, removing or terminating tenants based on use of prescription medications (including treatments for ADD/ADHD, anxiety and depression). Discrimination is especially common in relation to use of buprenorphine and related medications used in the treatment of opioid use disorder. This is true even though such discrimination is unlawful under federal statutes and often puts people at risk of serious injury or death.

**Responding to use of non-prescribed buprenorphine in ways that put people at risk.**

Some recovery residences currently respond to non-prescribed use of buprenorphine by denying entry, removing or terminating tenants. This is true even though these responses are contrary to best practice and often put vulnerable people at risk of serious injury or death.

**Responding to a recurrence in the use of alcohol or other drugs in ways that put people at risk.**

Some recovery residences currently respond to a relapse/recurrence in the use of alcohol or other drugs by subjecting tenants to sudden discharge to unsafe settings like homelessness or incarceration. This is true even though this kind of sudden eviction from a recovery residence is currently unlawful under state landlord-tenant law and often puts people at risk of serious injury or death.

People who use drugs are stigmatized, especially those who have already been marginalized. This distorts how our society views harm to people who use drugs. Harm is too often tolerated and too often knowingly or even intentionally inflicted. Many people who use drugs are vulnerable and disempowered. Their legal rights are often systematically disregarded. When this happens, most have no effective recourse. For example, most recovery residences in Vermont currently routinely evict tenants without complying with eviction statutes. And some recovery residences routinely discriminate based on participation in medication-assisted treatment in violation of federal law. Yet tenants in Vermont recovery residences have been almost universally unable to effectively assert the important legal rights and protections they currently should enjoy under existing law.

In this context, it is very important that policy makers move cautiously in eliminating important legal protections and take concrete steps to ensure the safety of citizens who are often already particularly vulnerable due to poverty, housing insecurity, trauma history, mental health disorders, substance use disorders, criminal justice system involvement and marginalization based on race and other characteristics.

Recovery residence leaders say they discharge people who experience a recurrence to protect the other tenants. This is a legitimate concern. Yet tenants who experience a recurrence are particularly vulnerable and have legitimate safety concerns as well.

Under H.783 as introduced and in recent drafts, tenants in recovery residences would be substantially excluded from the legal protections afforded most other tenants facing removal or eviction. **Exclusion from court-supervised eviction processes that protect other tenants from sudden removal or eviction from the safety and sanctity of their homes will put vulnerable tenants at risk. Such an exclusion should not be implemented unless tenants living in recovery residences are provided with unambiguous and effective protections that are specifically designed to keep them safe.** H.783 should ensure:

1. The decision to live in a recovery residence is voluntary, and the state will not punish or incarcerate an individual based on recovery residence status including in response to removal or termination
2. Recovery residences fully comply with non-discrimination laws particularly as related to medications used to treat mental health and substance use disorders
3. Tenants in recovery residences are afforded substantial due process protections and the means to effectively assert their rights, especially as related to drug testing and removal or termination related to a relapse/recurrence associated with a substance use disorder
4. Recovery residences have a legal duty of care to tenants and are required to make a good faith effort to retain tenants or transition them to other safe housing, especially in the context of removal or termination associated with a recurrence
5. Certified/exempt recovery residences demonstrate the capacity to re-stabilize tenants who experience a recurrence while living in a recovery residence without subjecting tenants to termination, homelessness or incarceration
6. Certified recovery residences adopt new policies and practices that more responsibly and effectively respond to non-prescribed use of buprenorphine and relapse/recurrence

VCJR supports conditioning any exemption from court-supervised eviction processes on a showing by a recovery residence seeking certification/exemption that they have the capacity to re-stabilize tenants who experience relapse in the community and agree that they will not subject tenants to sudden discharge to homelessness, incarceration or other unsafe settings. At a minimum, we recommend that the legislature task the Vermont Agency of Human Services with building that capacity in the community statewide within the next two years. Please note, the Senate Justice Reinvestment bill calls on the Vermont Department of Corrections to establish “evidence-based norms and expectations for contracts and certifications for sober and recovery housing providers, including allowing for use of medications and restricting evictions due to relapse.” VCJR strongly urges that H.783 broaden this mandate to include the Vermont Department of Health and the full range of recovery residences.

VCJR is particularly concerned with individuals who are both under the supervision of the Vermont Department of Corrections and tenants in recovery residences. Many such tenants find themselves caught up in the “sober house to prison pipeline.” Under current sober housing practices, even a brief recurrence commonly results in discharge from the recovery residence. Probation, parole and furlough officers often respond to discharge from a recovery residence with incarceration. They cite violations of conditions or lack of an approved residence, and often justify the response by claiming that there is no other safe option. Many who would otherwise be eligible for release spend 6-12 months unnecessarily and expensively incarcerated while they reapply to recovery residences. Former Corrections Commissioner Mike Touchette cited the sober house to prison pipeline as a serious challenge for already overcrowded Vermont prisons, calling it “the biggest gap,” and supported creation of a community-based solution that avoids discharge from recovery residences. Touchette said that people who relapse while living in recovery residences should generally be re-stabilized in the community and maintained in or returned to recovery residences, not incarcerated. National experts invited to make recommendations under the Justice Reinvestment process have also cited repeated cycling between sober houses and correctional facilities as a significant concern in need of immediate attention.

Sudden discharge from a recovery residence upon relapse/recurrence is very dangerous. Sudden discharge often unnecessarily destabilizes vulnerable people including in terms of housing, employment, mental health, parenting and recovery. Sudden discharge often increases the severity of a recurrence and significantly delays a return to sobriety. For example, a one-time use of marijuana that could have been safely addressed without any interruption in residence can easily result in months of heroin/fentanyl use if a tenant is subjected to sudden discharge and left with no ready option but to sleep on the couch of a drug-using friend. Some recovery residences currently discharge people for minor rule violations, on mere suspicion of use or based on the results of a drug test that records presence of a substance used days or weeks before. People are often discharged even though they are not currently intoxicated and a brief return to use has already ended. Such practices are often unfair, unnecessarily punitive and dangerous.

Although difficult to contemplate, it remains vitally important to understand that people who experience sudden discharge from recovery residences in Vermont currently experience a long list of preventable horrors including homelessness, rape, sex trafficking, termination of parental rights, transmission of HIV and hepatitis C, incarceration and fatal overdose. The stakes could not be higher.

For these reasons, VCJR recommends that H.783 should explicitly provide:

- A recovery residence may be certified and deemed eligible for exemption from court-supervised eviction processes only if the recovery residence:
  - Acknowledges a legal duty of care to tenants including tenants who experience relapse/recurrence
  - Acknowledges that residents in a recovery residence are tenants (note that in most cases rent is charged), the recovery residence is their home, they are not homeless, they have a legitimate right to stay in their home except in the most extreme circumstances, and even in those extreme circumstances the recovery residence has a responsibility to actively work to help them avoid becoming homeless or incarcerated
  - Acts in good faith to continuously support recovery and maximize conditions of safety, including during a period of relapse/recurrence (responding to relapse with removal/discharge alone is not enough)
  - Demonstrates the capacity to re-stabilize tenants who experience a recurrence in the recovery residence or in another community setting without subjecting tenants to termination, homelessness or incarceration

- Uses best efforts to ensure that a tenant has continuous access to safe housing including during a period of relapse/recurrence (the tenant is re-stabilized in the recovery residence or temporarily transitioned to another safe community setting for re-stabilization prior to a return to the recovery residence)
- Uses best efforts to retain the tenant and avoid terminating the tenancy based on relapse/recurrence (which is a normal part of recovery for most people)
- Does not remove or terminate based on mere suspicion of use but instead only based on a lab-confirmed drug test
- Does not remove a tenant except for acute intoxication or ongoing use, and then only temporarily for re-stabilization prior to a return to the recovery residence
- Does not terminate a tenant except in extreme cases after every effort has been made to support re-stabilization and retention --and even then, every effort must be made to ensure a transition to other safe housing
- Does not discriminate based on use of any prescribed medication including buprenorphine and other medications used to treat opioid use disorder
- Does not respond to non-prescribed use of buprenorphine by denying entry, removing or terminating tenants but instead provides continuous access to safe housing while actively facilitating a transition to prescribed buprenorphine

Because H.783 includes provisions that limit tenant access to court-supervised eviction protections, VCJR considers a provision guiding recovery residences in how to appropriately respond to use of non-prescribed buprenorphine as essential. Without this protection, these vulnerable tenants will be forced to choose between a survival medication that reduces risk of death by over 50 percent and safe housing. Many will be subjected to dangerous sudden discharge to unsafe settings with no effective recourse. Proposed language (previously submitted) is as follows:

- (C) In the event that a resident or prospective resident is or has been using buprenorphine or related compounds without a prescription, or at levels above those prescribed, the recovery residence:
- (i) shall provide support of the resident to obtain a prescription for medication-assisted treatment, and
  - (ii) shall not subject the resident to denial of entry, temporary removal, or termination as long as the resident takes reasonable steps to obtain a prescription.

Please note, this proposed language does not ask the legislature to consider whether possession of personal use amounts of non-prescribed buprenorphine should be criminalized (the subject of H.162). The proposed language does not purport to modify or eliminate criminal penalties in any way. It does not express approval or disapproval of non-prescribed use of buprenorphine. And it does not require that recovery residences condone, ignore, encourage or prolong the behavior. It accepts that such possession is currently unlawful and instead asks the legislature to consider the safest, most responsible and most effective response when a recovery residence encounters unlawful use of non-prescribed buprenorphine by a vulnerable citizen living with opioid use disorder. Recovery residences are not agents of criminal law enforcement and adopting that role would constitute a conflict of interest. Their role is to support recovery. The proposed language directs recovery residences to promptly address the behavior in a responsible manner designed to maximize conditions of safety and actively support recovery.

Currently, some recovery residences respond to use of non-prescribed buprenorphine with a denial of entry or sudden discharge to unsafe settings. This practice puts people at extreme risk of harm, delays access to prescribed buprenorphine, increases risk of relapse to heroin/fentanyl and delays recovery. Under the definition of a recovery residence included in H.783, a recovery residence provides residents with “assistance accessing support

services and community resources available to persons recovering from substance use disorder.” This is the appropriate role for a recovery residence in this context. Recovery residences should promptly link people to the Hub and Spokes system of care. H.783 should explicitly require this response because the stakes are high, the risk is great, and many recovery residences are not currently following best practice.

As described above, the buprenorphine language proposed for H.783 addresses a different concern than H.162. Importantly, H.162 would not resolve the concerns addressed in the proposed language for H.783, even if H.162 eventually becomes law. Testimony relating to the important role non-prescribed buprenorphine plays in saving lives is probably not necessary to understand that recovery residences who encounter people using non-prescribed buprenorphine should respond by actively supporting people in promptly transitioning to prescribed buprenorphine. But for those with an interest, a one-page buprenorphine fact sheet is attached.

Vermont has an opportunity with H.783 to create the best and most effective sober housing system in the country. This will require not just more recovery residences but also recovery residences that embrace new approaches that continuously support recovery and maximize conditions of safety, especially when tenants need it most. VCJR looks forward to championing a revised version of H.783 that more comprehensively addresses the needs of both recovery residences and tenants.

Thank you for your efforts!

Sincerely,



Tom Dalton, MA, JD, LADC, Executive Director  
VermonTERS for Criminal Justice Reform  
(802) 355-1685  
tom@vcjr.org

## About the Survival Medication: Buprenorphine

The problem in a nutshell:

- Vermont is experiencing an opioid disaster and many people are dying
- There is a medication (buprenorphine) that cuts mortality by half or more
- Under the current model, less than half of those who need the medication actually get it

Here in Vermont, hundreds of people have died because they did not have effective access to the medication that could have saved them. Many leave behind grieving children and families who will never fully recover from their loss. **Use of buprenorphine by people living with opioid use disorder reduces risk and is protective.**

Key Facts:

- Buprenorphine is a medication shown to effectively treat opioid use disorder (as lived experience has shown and a growing body of academic research confirms, this is true of both prescribed and non-prescribed buprenorphine)
- Buprenorphine is unlikely to cause overdose and instead tends to dramatically reduce overdose risk
- Vermont is nationally recognized for our Hub and Spokes treatment network –but even under the model many point to as the best in the country, only a fraction of those who would benefit actually gain access to drug treatment medications
- Access to buprenorphine
  - Saves lives
  - Protects children and families
  - Reduces crime
  - Saves taxpayers money
- Buprenorphine works with or without a prescription
- Buprenorphine works with or without counseling or monitoring
- Buprenorphine replaces heroin/fentanyl dramatically reducing risk and saving lives
- Non-prescribed buprenorphine provides an important safety net for people living with opioid use disorder who otherwise would not have access to the medication they need to survive
- Non-prescribed buprenorphine provides a documented pathway to treatment/recovery
- Studies show use of non-prescribed buprenorphine is:
  - associated with an inability to access prescribed buprenorphine
  - commonly used for recovery reasons
  - rarely used primarily for any potential euphoric effect
  - often used to self-medicate symptoms of withdrawal
  - often used for self-help treatment of an opioid use disorder
  - positively associated with increased interest in treatment
  - positively associated with future success in treatment

**H.162:** Possession of buprenorphine without a prescription was effectively decriminalized in Chittenden County, Vermont in June 2018. Overdose deaths dropped by half in Chittenden County, even as overdose deaths doubled in some other Vermont counties and increased slightly overall statewide. H.162 will extend this life-saving policy statewide by removing criminal penalties for possession of personal use amounts of this important survival medication.