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November 14, 2023

Honorable Jay D. Livingstone, Chair
Joint Committee on Children, Families and Persons with Disabilities
State House Room 146
24 Beacon Street
Boston, MA 02133

Honorable Robyn K. Kennedy, Chair
Joint Committee on Children, Families and Persons with Disabilities
State House Room 507
24 Beacon Street
Boston, MA 02133

Testimony submitted via JointCommittee.Children&Families@malegislature.gov

Dear Chair Livingstone, Chair Kennedy, and Honorable Committee Members:

Re: Testimony in support of H.180, An act regarding the use of aversive therapy

On behalf of the Massachusetts Association for Mental Health (MAMH), I write in support of H.180, An act regarding the use of aversive therapy, heard by the Committee on Children, Families and Persons with Disabilities on November 13, 2023.

Formed over a century ago, MAMH is dedicated to promoting mental health and well-being, while preventing behavioral health conditions and associated disability. We are committed to advancing prevention, early intervention, effective treatment, and research for people of all ages. We seek to eliminate stigma and discrimination and advance full inclusion in all aspects of community life. This includes discrimination affecting not only people with behavioral health conditions, but also people who face unequal burdens and barriers to the protections and benefits of citizenship due to their race, ethnicity, gender identity, or disability status. MAMH has a demonstrated track record of furthering its mission by convening stakeholders across the behavioral health and public health communities; disseminating emerging knowledge; and providing subject matter expertise to inform public policy, service delivery, and payment methodologies.

H. 180 would prohibit use of electric shocks on people with disabilities

H.180 would prohibit programs and facilities funded, operated, licensed, or approved by a state agency to administer “to any person with a physical, intellectual, or developmental disability any procedure which causes obvious signs of physical pain, including, but not limited to, hitting, pinching, and electric shock for the purposes of changing the behavior of the person.”¹ This is an important start. However, there are categories of persons being treated at JRC who do not have a physical, intellectual, or developmental disability, but are nonetheless at risk of a treatment plan which includes electric shocks. For example, JRC has administered the GED on people with mental health conditions and people at risk of committing sexual offenses. For this reason, we urge the Committee to amend the bill to prohibit the use of painful aversives as treatment for any person with a mental health disability or any person believed to be at heightened risk of committing sexual offenses.

Aversive methods have been abandoned by nearly all clinicians, except those at the Judge Rotenberg Center

These punitive approaches have been discredited as a means to address behaviors of persons with disabilities. While punishment may work to block behavior in the moment, research is clear that this approach does nothing to build safe alternative behaviors independent of that response. Instead, overwhelming research and experience prove that redirection, positive reinforcement, and other supports and interventions produce lasting change.

Unfortunately, the Judge Rotenberg Center (JRC) in Canton willfully ignores the research and continues to promote and use powerful electric shocks, administered through its GED device, as a means to address problem behavior. It is the only program in the world that uses this device.²

Electric shock is torture, inflicting physical and mental harm

JRC’s use of electric shock via the GED is not therapeutic, but it is painful and cruel. Two United Nations’ Special Rapporteurs on Torture have called JRC’s use of electric shock “torture.”³ The

¹ The bill also prohibits the use of physical contact or punishment if such action would be prohibited by law if used on a non-disabled person. Additionally, programs may not deny a person with a physical, intellectual, or developmental disability reasonable sleep, food, shelter, bedding, bathroom facilities, or any other aspect of a humane existence.

² To learn more about JRC’s use of aversives, the “Judge Rotenberg Center Living Archive,” a comprehensive, diverse, and dizzying array of material at <https://autistichoya.net/judge-rotenberg-center/#testimony>. We also highly recommend this recent paper analyzing the built space of the JRC: <https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/36535/CDS00029.pdf?sequence=1&isAllowed=y>. MAMH staff have visited JRC and agree with the insightful observations and conclusions in this paper.

³ The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines the term torture to mean “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted...for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” The United States has ratified the convention against torture. United Nations, Convention Against Torture and Other Cruel, Inhuman or

shocks, which last two seconds each, are sufficiently strong as to cause red spots or blisters to the skin. As one psychologist who visited JRC on behalf of the New York State (NYS) Education Department described it this way: "...The level of shock is unbelievable, very painful No other class of citizen in the United States could be subjected to this. You could not do this to a convicted felon."⁴

The use of electric shock to manage behavior inflicts not only physical harm, but mental harm as well. Such shocks create stress, fear, and hopelessness – not only for those subject to the shocks, but also for those other residents who witness them.

JRC's population is not so different than that of other therapeutic programs

JRC clinicians have testified in the past that they must resort to the GED device because the population of students and adults they serve are so extraordinary and compromised that they cannot be treated successfully by any means other than the use of electric shocks, except perhaps through sedation and restraint. We reject JRC's claim as there is no group of people, however disabled, for whom the use of torturous shock is acceptable. While at one time JRC's population was people with serious developmental disabilities, the clientele has now shifted to other categories of people, including a large number of youth referred through juvenile criminal legal systems in Massachusetts and other states.⁵ In fact, Boston 25 News reported in September 2023 that the Massachusetts Department of Children and Families had nine children placed at JRC (although not subject to the GED).⁶ The report further indicated that JRC was, at that time, using the GED on 53 adults.⁷ While JRC told the reporters that "[c]hildren do not live in residences or share classrooms with those who are authorized to receive the treatment,"

Degrading Treatment or Punishment (adopted Dec. 10, 1984), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>. The UN Convention on the Rights of Person with Disabilities (CRPD) also prohibits torture. Article 15 provides "No [person with a disability] shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The United States has signed but not ratified the CRPD. United Nations, Convention on the Rights of Persons with Disabilities (adopted Dec. 12, 2006), <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

⁴ Laurie Ahern & Eric Rosenthal, Mental Disability Rights International, Torture Not Treatment: Electric Shock and Long-Term Restraint in the United States on Children and Adults with Disabilities at the Judge Rotenberg Center (2010), <https://www.driadvocacy.org/sites/default/files/2023-10/USReportandUrgentAppeal.pdf> at 1.

⁵ Shain M. Neumeier & Lydia X. Z. Brown, Torture in the Name of Treatment: The Mission to Stop the Shocks in the Age of Deinstitutionalization (Nov. 2019), https://link.springer.com/chapter/10.1007/978-981-13-8437-0_14.

⁶ Kerry Kavanaugh & Marina Villeneuve, 25 Investigates: DCF Placing Kids at Controversial Judge Rotenberg Center, Boston 25 News (Sept. 21, 2023), <https://www.boston25news.com/news/local/25-investigates-dcf-placing-kids-controversial-judge-rotenberg-center/XLPTRG5715C6VIN75G4OQ7PTME/>. The report stated that "the use of the pain-causing shocks is prohibited for kids in state care," *id.*, but did not indicate the source of that prohibition. Regulations of the state Department of Early Education and Care (DEEC), which licenses group living environments for children, provide that licensees may only conduct treatment that involves infliction of physical or mental pain or discomfort or that involves the use of a particular extraordinary treatment model (such as aversive treatment) if granted a variance by DEEC prior to implementation. 606 CMR 3.06(11)(b), (c).

⁷ *Id.*

the program declined to directly respond to the question of whether children ever witness anyone being shocked by the devices.⁸

JRC uses electric shock on a wide range of behaviors not, as they profess, only on the most serious ones

JRC's claim that it treats only the most serious behaviors with the GED is not believable. The NYS Education Department has documented that JRC employs general use of aversives for behaviors that are not aggressive, dangerous to health or destructive. Behaviors that may result in being shocked include swearing, screaming, and refusing to follow directions.⁹ Instead, JRC is using painful physical punishment to shape behavior in people with disabilities, practicing out of the bounds of professional standards and human decency.

Professional consensus opposes the use of aversives and supports positive behavior supports

Today there is professional consensus opposing the types of aversive interventions used by JRC. The overwhelming sentiment of clinicians who use therapies based on the science of learning and behavior is that the GED is an unacceptable way to address problematic behaviors. NeuroClastic, an autistic-led nonprofit, recently surveyed professionals working in the field of behavior analysis to elicit their views on the use of the GED at JRC. An overwhelming majority of respondents opposed JRC's use of the GED.¹⁰

Similarly, prominent national professional associations oppose the use of electrical stimulation. The American Academy of Pediatrics, American Association on Intellectual and Developmental Disabilities, National Association of State Directors of Developmental Disabilities Services, National Association of State Directors of Special Education, International Association for the Scientific Study of Intellectual and Developmental Disabilities, National Association for the Dually Diagnosed, and Massachusetts Chapter of the American Academy of Pediatrics filed an *amici* brief in the Supreme Judicial Court urging reversal of a trial court order allowing JRC to continue to use the GED. They reported that physicians, researchers, clinicians, disability professionals, and service providers recognize that electric shock should not be used. They also showed that research and literature confirm that electric stimulation devices create unreasonable and substantial risks of injury; there is no credible evidence of

⁸ *Id.*

⁹ [Cynthia McFadden, Kevin Monahan, & Adiel Kaplan](https://www.nbcnews.com/health/health-care/decades-long-fight-over-electric-shock-treatment-led-fda-ban-n1265546), A Decades-long Fight Over an Electric Shock Treatment Led to an FDA Ban. But The Fight Is Far From Over, NBC News (Apr. 28, 2021), <https://www.nbcnews.com/health/health-care/decades-long-fight-over-electric-shock-treatment-led-fda-ban-n1265546> (Rico Torres, held at JRC between ages 8 and 18 (from approximately 2005-2015), had a treatment plan allowing staff to shock him for “threatening to hit another student or for running away, swearing or screaming, refusing to follow directions or ‘inappropriate urination,’ ... One employee, he said, used to shock him in his sleep. ‘Because I didn’t wake up, she shocked me,’ ... ‘Then I ended up peeing the bed, so she shocked me again.’”); see also New York State Education Department, Observations and Findings of Out-of-State Program Visitation Judge Rotenberg Educational Center (June 9, 2006), <https://autistichoya.files.wordpress.com/2014/05/nysed-2006-report.pdf> at 13-15 (shocks administered for nagging, swearing, and failing to maintain a neat appearance).

¹⁰ 900 ABA Professionals Have Weighed in on the Use of Electroshock at Judge Rotenberg Center (Aug. 26, 2021), <https://neuroclastic.com/900-aba-professionals-have-weighed-in-on-the-use-of-electroshock-at-judge-rotenberg-center/>.

long-term benefit of electric shock; and substantial evidence demonstrates that the risks of electrical stimulation are unreasonable given state-of-the art treatment alternatives.¹¹

As the national organizations said in their brief, there is now a consensus of professional opinion that positive behavior supports (PBS) can effectively treat people with challenging behaviors. Numerous studies have established the effectiveness of PBS, even when punishment has failed. As Dr. Gary LaVigna, Clinical Director of the Institute for Applied Behavior Analysis in Los Angeles, has testified in proceedings regarding JRC, “PBS has reached the point where it is the generally accepted standard of care in the relevant treatment community.”¹²

Massachusetts has many therapeutic alternatives to aversives

Across the country and across the world, people with serious disabilities, including those persons with serious self-injurious behaviors, receive rehabilitative care in residential programs and from community providers. This care does not have to involve over-medication or restraint as JRC often claims.¹³

Massachusetts has many excellent programs for people with disabilities who have serious behavior challenges. Examples of such educational programs include Melmark New England in Andover and New England Center for Children in Southborough. A more complete list can be

¹¹ Brief for Amici Curiae American Academy of Pediatrics *et al.*, Judge Rotenberg Center, Inc. v. Commissioner of Department of Developmental Services, No. SJC-13298 (Mass. Sup. J. Ct. Apr. 12, 2023), https://www.ma-appellatecourts.org/pdf/SJC-13298/SJC-13298_40_Amicus_American_Academy_of_Pediatrics_and_Others_Brief.pdf.

¹² Defendants’ Memorandum of Law in Support of Motion under Probate and Family Court Rule 60 and Mass. R. Civ. P. 60(b)(5) to Vacate Consent Decree, *Judge Rotenberg Center, Inc. v. Commissioners of DDS and DEEC* (Mass. Probate and Family Court. Feb. 14, 2013), <https://www.clearinghouse.net/chDocs/public/ID-MA-0002-0025.pdf>.

¹³ See, e.g., Letter from NYS Office for People with Developmental Disabilities to JRC Families (Sept. 26, 2013) (indicating that NYS has identified providers in NYS that “serve individuals with challenging behaviors that are very similar to those of your family members and serve them successfully,” and addressing concerns with medication, noting that medication “does not impair a person’s ability to function”), <https://autistichoya.files.wordpress.com/2016/04/jrc-ny-opwdd-letter-from-ny-to-jrc-parents-130926.pdf>; FDA, Banned Devices; Electrical Stimulation Devices for Self-Injurious or Aggressive Behavior (Mar. 6, 2020), (FDA statement in support of its final rule banning electrical stimulation devices for self-injurious behavior (SIB) or aggressive behavior (AB) catalogues state of the art of treatments for such behaviors), <https://www.federalregister.gov/documents/2020/03/06/2020-04328/banned-devices-electrical-stimulation-devices-for-self-injurious-or-aggressive-behavior> at Section E (State of the Art for the Treatment of SIB and AB); Brief of Amicus Curiae American Academy of Pediatrics *et al.*, *Judge Rotenberg Educational Center, Inc. v. U.S. Food and Drug Administration & Luis Aponte et al v. U.S. Food and Drug Administration* (U.S. Ct. of Appeals for D.C. Jan. 22, 2021), , <https://autistichoya.files.wordpress.com/2021/05/jrc-v.-fda-brief-of-amici-curiae-jan-2021.pdf> (discussing professional literature supporting the efficacy of positive behavioral supports); Judge Rotenberg Center: A History of Torture, 4 Things You Should Know about the Judge Rotenberg Center (JRC), <https://adapt.org/jrc/>; see also Christina Bosch, Time to End Public Funding of Judge Rotenberg Center, *Commonwealth Magazine* (Apr. 20, 2021), <https://commonwealthmagazine.org/education/time-to-end-public-funding-of-judge-rotenberg-center/> (since the 1990s, taxpayers have funded federal research and development of evidence-based practices in special education).

found in the Massachusetts Association of Approved Special Education (MAAPS) [directory of schools](#).

In light of the Supreme Judicial Court's recent decision, legislative action is necessary to address the use of electric shock aversives in Massachusetts

It has recently become clear that legal reform in the form of legislative action is the only viable form of remedy at the state level to the use of electric shock aversives.¹⁴ In September 2023, the Supreme Judicial Court declined to terminate a 36-year-old consent decree that protects JRC's operation and limits the authority of the Department of Development Services (DDS) to exercise its regulatory authority over JRC's use of electric skin shock. Reviewing a trial court record that was developed in 2016, the Court cited DDS's efforts to use the regulatory process to limit the use of the GED as one basis for declining to remove the consent decree. The Court noted "that the Legislature has repeatedly declined to ban" the use of skin shock. While it acknowledged the wide professional and medical support for banning the GED, the Court affirmed the trial court's finding that DDS has failed in 2016 to prove that skin shock is outside the standard of care. Ultimately, the Court said that if DDS desires relief from the consent decree: "it must either wait for a legislative solution, provide more robust evidence that electric skin shock is outside the standard of care than the record it relied upon in 2016, or establish an ongoing record of good faith regulatory conduct toward JRC."¹⁵ In our view, DDS has already provided strong evidence that skin shock is outside the standard of care – that evidence was robust in 2016 and is even more compelling now. As the SJC acknowledged, DDS has not been found to have acted in bad faith in its relationship with JRC in many years. The best and most viable way to protect people with disabilities at JRC from the terrible use of the GED is for the Legislature to act.

For all the above reasons, I respectfully request that you amend H.180 as proposed above and report it favorably out of Committee. If MAMH can provide any additional information, please do not hesitate to contact me.

¹⁴ While there is the possibility of future action at the federal level, it would be unwise to defer state action given the uncertainty of the outcome and the long timeline for such a process. A decision by the U.S. Food and Drug Administration to prohibit the use of the GED device was overturned by three justices of the U.S. Court of Appeals for the District of Columbia in July 2021. *Judge Rotenberg Center, Inc. v. U.S. Food and Drug Administration*, No. 20-1087, 2021 U.S. App. LEXIS 18001 (U.S. Ct. of Appeals for D.C. July 6, 2021), [https://www.cadc.uscourts.gov/internet/opinions.nsf/C32A7577ED02127D8525870A00555511/\\$file/20-1087-1905079.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/C32A7577ED02127D8525870A00555511/$file/20-1087-1905079.pdf). The FDA asked for the full Court to review the decision. However, in December 2021, the D.C. Court of Appeals declined a request for a rehearing en banc. Autistic Self Advocacy Network (ASAN), ASAN Statement on DC Circuit's Denial of Rehearing in Judge Rotenberg Center Case (Dec. 6, 2021), <https://autisticadvocacy.org/2021/12/asan-statement-on-dc-circuits-denial-of-rehearing-in-judge-rotenberg-center-case/>. In December 2022, through a provision in omnibus legislation, Congress authorized the FDA to again take action regarding the GED device. ASAN, Congress Has Supported the FDA's Right to #StopTheShock (Dec. 23, 2022), <https://autisticadvocacy.org/2022/12/congress-has-supported-the-fdas-right-to-stoptheshock/>. Advocates are now asking the FDA to reissue their ban. ASAN, A Letter Urging the Reissue of the FDA's Ban on Electrical Stimulation Devices (May 4, 2023), <https://autisticadvocacy.org/2023/05/a-letter-urging-the-reissue-of-the-fdas-ban-on-electrical-stimulation-devices/>.

¹⁵ *Id.* at 69.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Danna Mauch".

Danna Mauch, Ph.D.
President and CEO

c: Rep. Danielle Gregoire