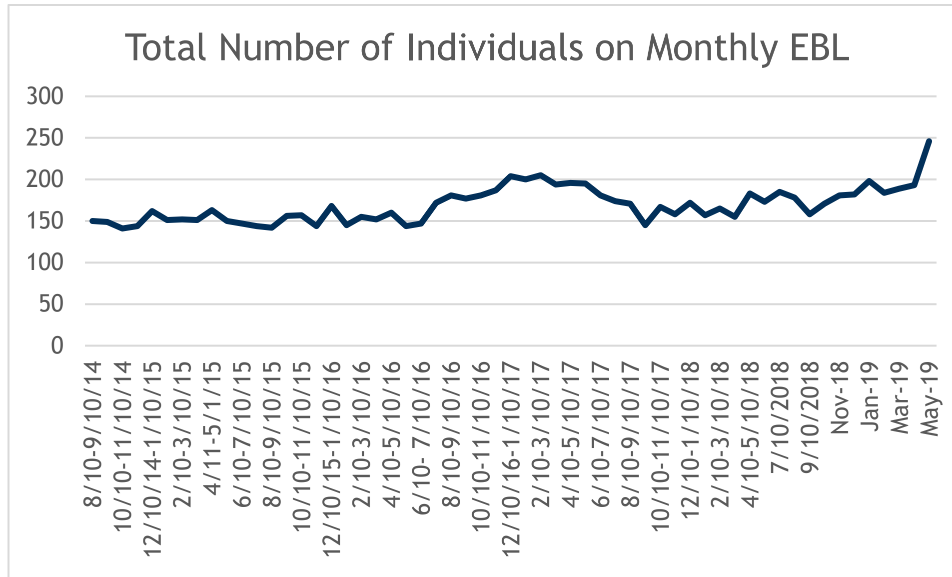
A State of Stagnation

Prepared by the disAbility Law Center of Virginia, July 16, 2019

246 Psychiatrically-Stable People are Trapped in Virginia's State Hospitals

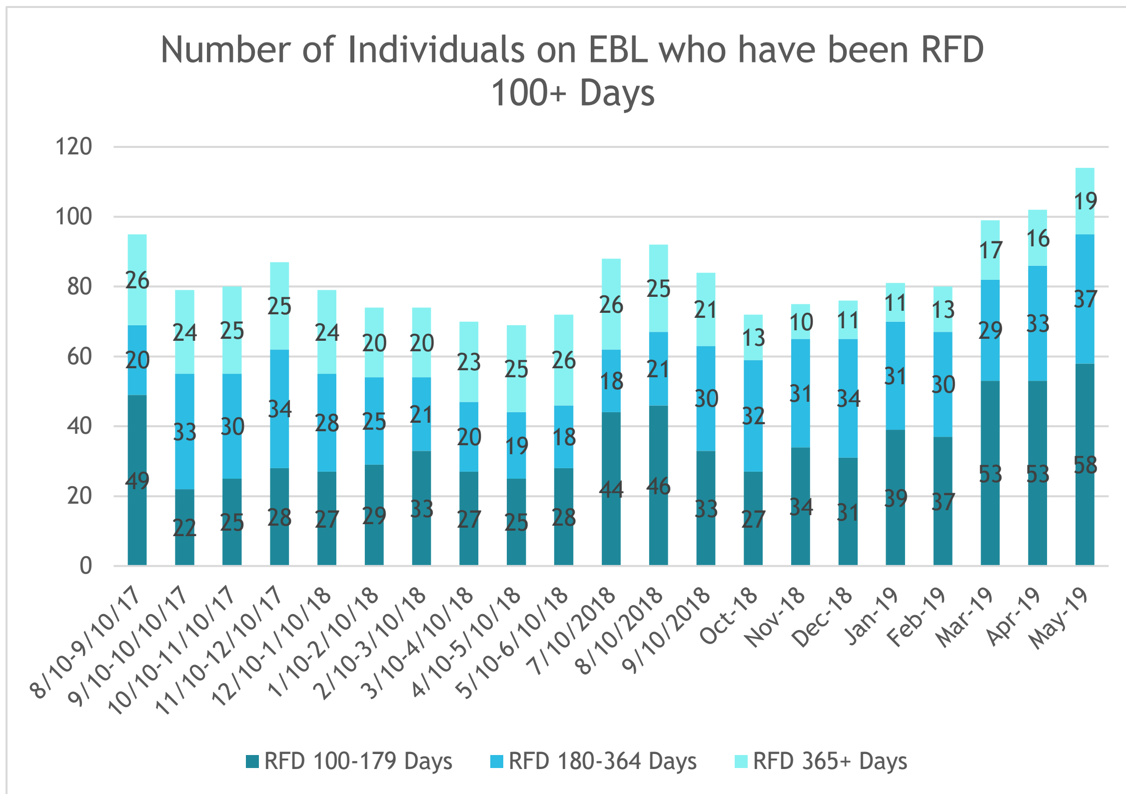
In May 2019 (the most recent data available), the Department of Behavioral Health and Developmental Services (DBHDS) reported that there were 246 patients in their care who were facing "Extraordinary Barriers to Discharge." DBHDS tracks these individuals on a monthly list known as the Extraordinary Barriers to Discharge List (EBL).

- Each of these individuals were found by their clinicians to be Ready for Discharge (RFD) back to the community, and have been waiting for discharge for two weeks or more.
- In order to be determined ready for discharge, a clinician must find an individual to be psychiatrically stable and posing no safety threat to themselves or the community. Therefore, each of these individuals no longer require inpatient services.
- Keeping individuals in a restrictive setting, such as a DBHDS facility, when they do not require inpatient care is unnecessary and violates the individual's human rights. More importantly, holding someone who is not a danger to themselves or others is both unconstitutional under federal law and illegal under state law.



- As of the May 31, 2019 EBL, 17.97% of <u>all</u> residents at reporting facilities were on the EBL[1].
    - This is the highest number and proportion of individuals on the EBL in the 5 years dLCV has been tracking the issue.
- The average time an individual on the EBL waits for discharge is 139 days—over 4 months. This does not include the number of days the individual spent in the hospital before they were RFD.
    - The number of individuals on the EBL who have been RFD for over 100 days reached a new high of 114 individuals.
- At the same time, State Hospitals are coping with incredibly high bed utilization, to the extent that, in July, the DBHDS Commissioner issued guidance indicating that the State Hospitals would likely be at or over capacity during the 4th of July weekend. The implication from the Commissioner's guidance is that State Hospitals lack needed beds.
- If DBHDS made a concerted effort to discharge RFD individuals in their custody in a timely fashion, they would suddenly find themselves with hundreds of available beds.

[1] DBHDS provides EBL data from all State Hospitals serving adults. This does not include data from the Commonwealth Center for Children and Adolescents, Hiram Davis Medical Center, or the Virginia Center for Behavioral Rehabilitation.



The State Hospitals are a dangerous place to get stuck.

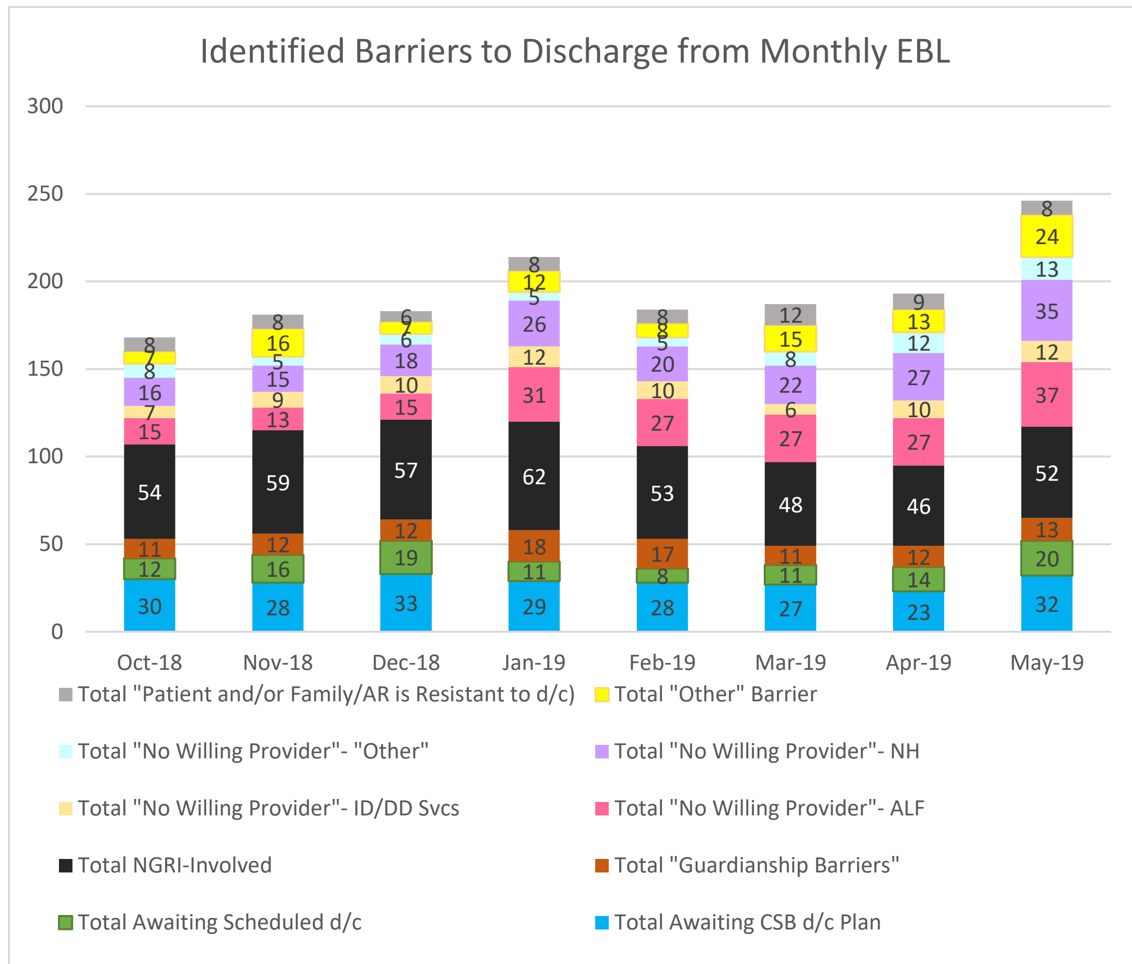
- In 2018 and 2019, dLCV published reports on the increasing number of individuals dying at State Hospitals.
  - DBHDS responded to these reports, in part, by citing rising admissions across the Commonwealth.
- Many of the State Hospitals are dangerously understaffed. Most notably, Eastern State Hospital, the largest State Hospital in Virginia, reported that well over half of their nursing and physician positions were vacant in May 2019.
- DBHDS facilities clearly do not have the staff, equipment, or expertise to care for many of these admissions, a large number of which have extreme medical needs or developmental disabilities.

These dangers are magnified for individuals with intellectual and developmental disabilities (DD).

- Individuals with DD who are kept in State Hospitals risk extreme trauma and are frequently subjected to peer-on-peer violence, all while being managed by facilities that cannot possibly "cure" them, as there is no cure for DD.
- Doctors at the State Hospitals appear to simply "handle" DD patients by mechanically and chemically restraining them and calling it Treatment.
- Facilities like Central State Hospital have taken steps to partner with community experts like REACH to give their staff a basic education in working with DD patients. REACH's outreach efforts are admirable, but their crisis services are still woefully underfunded, understaffed, and under-publicized. So many responsibilities are hung upon the mantle of REACH that they cannot possibly act as an effective crisis system. If DBHDS streamlined and gave more resources to REACH, it could effectively meet one of its objectives of diverting DD admissions from State Hospitals.

A Lack of Community Capacity

- dLCV and DBHDS agree that it is the community that lacks the capacity to support individuals with mental health crises—not the facilities. Sadly, this means DBHDS is forcing hundreds of people to wait at State Hospitals for an uncertain discharge because of an inadequate community provider system.
    - When an individual is hospitalized, the support systems that had previously failed them in the community are not any better equipped to meet their needs when they come out of the hospital. This failure perpetuates cycles of re-hospitalization which, in turn, fosters a misbelief among social workers and clinicians that individuals require a more restrictive setting.
    - Evidence-based programs demonstrate that individuals can thrive in the community with a properly-funded support system.
- In October 2018, DBHDS began including each individual's primary barrier to discharge on the EBL. While the most common barrier to discharge is involvement with the courts following a "Not Guilty By Reason of Insanity" acquittal (NGRI), there are a significant number of individuals stuck in state custody due to unengaged Community Service Boards (CSBs) and discriminatory admissions practices at Nursing and Assisted Living Facilities.



- Nursing Homes and Assisted Living facilities have discretion to reject an individual with mental illness. There appears to be no consequences for underperforming or unwilling providers. Without accountability, these providers essentially force facilities to unconstitutionally and illegally hold individuals after they become stable.
- It is unclear to what extent DBHDS has been promoting and supporting more independent community options, such as Permanent Supportive Housing.

The Failure of CSBs

- CSBs contract through DBHDS to provide mental health, DD, and substance abuse services to localities across the Commonwealth.
- CSBs are an integral part of the State Hospital discharge planning process, as they identify community supports and services and ensure they are in place prior to discharge. Not all CSBs are efficiently or effectively participating in discharge planning.
- DBHDS mandates CSB's Scope of Services and Responsibilities through performance contracts. A CSB's failure to ensure safe and timely discharge of individuals into the community is a clear breach of its performance contract.
- The onus is on DBHDS to monitor and enforce the performance contracts, as they hold the purse-strings. Despite this responsibility, dLCV is unaware of any efforts by DBHDS to hold CSBs accountable for their underperformance or non-performance.

The Crisis *is* the System.

- Many in the media have suggested that the solution to bed shortages in Virginia is to create more bed availability in the State Hospital system. However, creating a greater number of Hospital beds would be a short-sighted, costly, and dangerous solution.
- Before the "bed-of-last-resort" legislation took effect in 2014, the State Hospitals were not reaching and exceeding capacity on a regular basis, as they are today. The legislation did not create more people with mental illness. Instead, the Commonwealth simply created legislation and an institutionalization structure that will fill beds no matter how many there are.
- If DBHDS could discharge the individuals waiting on the EBL, there would not be a bed shortage. By investing in building better community mental health systems, DBHDS could divert many hospitalizations from occurring in the first place, and ensure that those hospitalizations that are truly necessary do not last longer than needed.
- Instead of paying to hospitalize more people, Virginia must invest in the community mental health system to make sure people are served in the least restrictive setting.
- With many hospitals facing the extreme staffing shortages discussed above, adding more beds would create more danger. Data from DBHDS strongly suggests that patients are dying in DBHDS' care, at least in part, due to a lack of staff and resources.