

MEMORANDUM

To: House Committee on Human Services
House Committee on Health Care

From: Megan Tierney-Ward, Interim Commissioner

Date: April 18, 2024

Re: S.192, an Act relating to forensic facility admissions criteria and processes

This memo represents the position of the Department of Disabilities, Aging, & Independent Living (DAIL) on S.192, an act relating to forensic facility admissions criteria and processes, and addresses concerns of the House Human Services Committee.

Over the last two years, DAIL, and the Department of Mental Health (DMH) have worked diligently, in partnership with legal, clinical, policy, advocacy, and legislative experts, to critically evaluate the need for a forensic program in Vermont. That work culminated in an Act No. 27 (2023) working group and a [report to the legislature](#) in December 2023. More than half of the fifteen (15) working group members concluded that there exists a need for a forensic program to serve people with mental illness and Intellectual Disabilities (ID). Not only does DAIL align with the working group's position, but DAIL also believes that withholding the option of a stabilizing, therapeutic forensic program for a small number of Vermonters with ID who come through the Act 248 door under the specific circumstances described in S.192, creates an injustice to those individuals being served and to the public.

Committee Concerns:

1. Legal Concerns: Concern was raised in the House Committee on Human Services regarding the legal authority of the State to provide services in a secure setting. To be clear, Act 248 is established law that authorizes the State to provide services in a secure community-based setting. However, when a person on Act 248 is released to the community without adequate wrap-around programming, and then commits a new crime, they could be held in a Department of Corrections (DOC) facility pending a new competency evaluation for the new crime. In this situation, a forensic program would offer a therapeutic, stabilizing setting as an alternative to a DOC facility for those under Act 248 who have committed a new crime. This is the scenario referred to by Dr. Pat Frawley in [testimony on April 17, 2024](#).

2. Parity – Concern that Home and Community-Based Services are Underfunded: DAIL’s budget for Developmental Services serves over 3500 people in home and community-based services with a \$300M budget. Each year DAIL requests caseload funds to address new and increased services. In SFY25 alone, DAIL’s budget included \$11M caseload increase, including \$2M for public safety. Investing in a small therapeutic forensic program for an estimated 2 participants at any given time will not detract from DAIL’s HCBS programming. To the contrary, DAIL believes a therapeutic, stabilizing forensic program will only enhance the individual’s wellbeing and likelihood of success in their Act 248 community-based plan.
3. Concern of potential overuse: Vermonters with ID, who are alleged to have committed a violent crime, found by the court not competent to stand trial, and committed to the custody of the DAIL commissioner under Act 248, for whom an appropriate secure community-based program is not available, must be offered a place to stabilize in a non-hospital, non-correctional setting. Otherwise, they are going to be released without services to meet their unique needs, putting themselves and others at risk, or will commit a new crime, landing them back in a DOC facility. The estimated need presented in testimony at Senate Health & Welfare and House Human Services, is based on the actual, real experience of both DMH and DAIL, which have worked with people who do not have a community-based option that can meet their unique needs and assure the safety of the public. DAIL is confident S.192, as passed by the Senate, will assure that a forensic program will be the least restrictive option available to the individual at that point in time and, in fact, DAIL would be legally obligated to ensure that is the case, as mandated by the *Olmstead* decision. A forensic program will also alleviate pressure (programmatic and financial) on DOC, which is not adequately resourced to be able to successfully serve a person in Act 248 with complex needs.
4. Concern about serving people with mental illness (MI) and Intellectual Disability (ID) in the same building: Testimony from clinical experts Dr. Pat Frawley on [January 25, 2024](#), and Mary-Graham McDowell, MS, on [February 7, 2024](#), in Senate Health & Welfare, considered this question and have no immediate concerns about serving people with ID and MI under the same roof. In fact, many people who come into Act 248 have co-occurring MI and ID. That simply means that, regardless of their diagnosis, people coming into a forensic program will benefit from the therapeutic, stabilizing services offered, along with customized programming for each person. DAIL expects to partner with experts in the development of the forensic program to be sure individuals with ID are receiving the best programming possible.

On behalf of Vermonters, DAIL respectfully requests that the House Human Services and House Health Care Committees maintain the option of a forensic program for the narrow group of people with ID as defined in the Senate version of S.192. Doing so would not only ensure a greater means of public safety, but also ensure equity to people with Intellectual Disabilities, providing them with the opportunity to receive temporary, stabilizing services so they can live their best lives in the least restrictive setting possible.