



**Disability Law Project**

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To: House Committee on Human Services  
From: Disability Law Project, Vermont Legal Aid  
Susan Garcia Nofi, Staff Attorney  
Re: S.192 - An Act Relating to Forensic Facility Admissions Criteria and  
Processes  
Date: April 10, 2024

Thank you for the opportunity to speak about S. 192 today, as it relates to placing people with an intellectual disability in a forensic facility.

The Disability Law Project represents people with an intellectual disability who have been found incompetent to stand trial and are committed to the custody of the Department of Disabilities, Aging, and Independent Living (DAIL) under Act 248. DAIL places the person in a community-based setting for treatment and supervision. S. 192 would allow DAIL to seek a court order placing the person with intellectual disability in a forensic facility.

Each person in DAIL's custody has the right to an annual Court review as to whether their Act 248 commitment should continue. DAIL files in court to ask the Court to review the commitment, and it gives the Court a report and its recommendation. The Court then appoints the Disability Law Project as the person's attorney for that year's annual review hearing. The Legislature has funded us to take on these court appointments.

Although both current law and S.192 give the civilly committed person the right to seek review themselves, it is rare for people on Act 248 to petition the Court for review on their own, outside of the DAIL-initiated review that is supposed to occur annually. The language requiring periodic, automatic Court review of commitment, to be initiated by DAIL, is appropriate. The burden should

not be on the person with an intellectual disability to affirmatively seek review of their commitment.

**We oppose placing people with an intellectual disability, who do not require a hospital level of care, in an institution.**

The Act 248 commitment orders from the Court typically require that the person live in a setting chosen by the designated agency, have 24/7 supervision, and comply with treatment. The Court places substantial restrictions on the individual's privacy, liberty and autonomy as needed to treat the individual and protect the public. Importantly, this treatment and supervision takes place in a residential setting, such as a staffed apartment or group home, rather than in an institution.

Civil commitment in a supervised, community-based setting allows people with intellectual disabilities to build therapeutic relationships with providers in their community, and practice self-regulation skills needed to protect their own and the public's safety. Since Act 248's inception, DAIL and its designated agencies have successfully provided custody, care, and habilitation to people with intellectual disabilities in community-based settings.

It will take substantial state resources to build and operate a forensic facility that will serve some very small subset of a very small Act 248 population<sup>1</sup>. **Vermont should instead invest these resources in the designated agencies so they can continue to serve all people with intellectual disabilities safely in a community-based setting rather than an institution.** The designated agencies should be given the resources to provide more intensive, higher-level treatment when needed; to hire, train and retain skilled staff; and, in cases where elopement is a concern, to provide housing with more security features.

We are gravely concerned that if people with intellectual disability are placed in a forensic facility, they will become 'stuck' there for an extended period due to lack of a more appropriate placement. The workforce shortage

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<sup>1</sup> As of September 18, 2023, there were 28 people committed to DAIL's custody under Act 248.

and the housing crisis increase the risk that people with an intellectual disability may remain in an institution if there is simply no community-based placement available to which they can be discharged. There is a critical shortage of staff to provide direct care to people with intellectual disabilities, and the facility would compete with the designated agencies when hiring direct care staff.

**Forensic facility discharge procedures for people with intellectual disability should be the same as the discharge procedures for people with mental illness.**

If S.192 is enacted – which we oppose – the discharge procedures for people with intellectual disability should mirror the discharge procedures for people with mental illness. This is needed to balance victims’ right to be heard and the person with an intellectual disability’s right to confidentiality of their health information.

S.192 provides that at least 10 days before a person with mental illness is discharged from a forensic facility, the Commissioner must notify the State’s Attorney, who will notify the victim. The victim then has the right to submit a victim impact statement to Court in writing. (S.192 as passed by the Senate, pages 8-9).

If the pending discharge is for a person with an intellectual disability, S.192 also provides for notice to the State’s Attorney, who will notify the victim. However, the bill otherwise treats discharge of a person with an intellectual disability differently. It gives the victim the right to “file a position with the court as an interested person” and to request a hearing on whether the pending discharge is appropriate. (S.192 as passed by the Senate, pages 29-31).

It would be inappropriate for the victim to participate in a discharge hearing as an interested person. That hearing would necessarily involve protected health information about the person’s treatment. We support victims’ right to notice and to be heard. However, this should take the form of a victim impact statement for the Court to consider. The procedures for discharge from a forensic facility

should be the same whether the person being discharged has an intellectual disability or a mental illness.

Finally, we object to S. 192 because it does not provide for any independent monitoring of the proposed forensic facility. The working group members voted unanimously in support of robust protection and advocacy (P&A) system-level access to services in the forensic facility. If Vermont were to build and operate a forensic facility – which we oppose – P&A access is critical. Resources would need to be allocated to cover the cost of those monitoring and investigation functions.