

To: Chair Virginia Lyons

Members of Senate Health and Welfare

From: Joanne Kortendick

Re: S. 192

February 12, 2024

Senators,

I appreciate your hard work on S. 192 and in particular your taking time to listen to the victim's perspective. Because of timing I did not have the opportunity to testify last week and wanted to offer a couple of suggestions with respect to S. 192.

My sister Kathleen Smith was brutally murdered in Burlington Vermont in 2010, Her killer, Jose Pazos died in the custody of the Mental Health system nine years after my sister's death never having stood trial for her murder.

Since that time, I have been involved in advocating for reform to occur at the intersection of the Criminal Justice System and the Mental Health System in Vermont.

I along with Kelly Carroll, who you heard testify last week, served for approximately 18 months on the Working Group created by S. 3 whose charge included making recommendations for the creation of a forensic facility as well as establishing a Competency Restoration program in Vermont. I also participated along with Kelly, through Jennifer Poehlmann, Director of the Vermont Center for Crime Victim Services in the Act 27 (S. 89) Legislative Working Group that provided recommendations concerning the inclusion of persons with Intellectual Disability in the forensic facility created by Act 27. Kelly, Jennifer and I provided recommendations from a victim's perspective in the report submitted to the Legislature per Act 28, S. 91 to study the formation of a Competency Restoration Program in Vermont.

I have followed the process and testimony and provided testimony for all the previously mentioned Bills and have been following the process and testimony for S. 192 in your committee. I appreciate the inclusion of the provisions concerning commitment, continued commitment and discharge recently added by Legislative Counsel to the portion of the Bill pertaining to persons with Intellectual Disability as well as the distinction being made between commitment to DAIL and placement in the forensic facility. As you are aware a good portion of that language was taken from a draft of S. 89 (Act 27) that was introduced in the House Judiciary Committee last session. In particular the language added to the discharge provision in that portion of the Bill which provide notice to victims of a pending discharge as well as the ability to request and participate in a discharge hearing are very beneficial to Victims whose voice is so seldom heard.

What is missing from S. 192 is similar language when an individual who is committed to custody under the Mental Health portion of the Bill is discharged from the facility. That language was included in the House Judiciary version of S. 89 (Act 27) that was used by Legislative Counsel in making the recent revisions to S. 192 in the portion pertaining to persons with Intellectual Disability. That section read as follows:

“18 V.S.A. section 7618 is amended to read: “a (2) (A) when a person has been committed under this subdivision (a)(2) the Commissioner shall provide at least ten days prior to discharging the person, from a forensic facility to either the State’s Attorney of the county where the prosecution originated or the Office of the Attorney General if the office prosecuted the case. (B) When the State’s Attorney or the Attorney General receives notification pursuant to subdivision (A) of the subdivision (a)(2), the respective office shall provide notice of the action to any victim of the offense for which the person has been charged, unless the victim has opted not to receive notice. As used in this subdivision (2), “victim” shall have the same meaning as in 13 V.S.A. section 5301 (4). (C) The State’s Attorney of the county where the prosecution originated or the Office of the Attorney General of that Office prosecuted, the victim, or any combination thereof, may request a discharge hearing to be held within 15 days. Once a hearing is requested it will be held within 10 days and the pending discharge shall be stayed until reviewed by the court. The State’s Attorney or the Attorney General’s Office, and the victim, are entitled to appear to provide their opinion as to whether the person should be discharged from a forensic facility.”

There is no logical reason to include those discharge provisions in the section of the Bill pertaining to those in DAIL custody and not include them in the section of the statute pertaining to those in DMH custody.

As a victim I also very much appreciate the inclusion of the sections added to S. 192 addressing consideration for a Competency Restoration Program in the State of Vermont. I believe if such a program was in place when my sister’s killer was apprehended and eventually committed that the result could have been his standing trial for my sister’s murder.

I appreciate your consideration of my Statement

Joanne Kortendick