

MEMORANDUM

TO: Senate Committee on Health and Welfare

FROM: Jacquelyn Prue, Public Safety Specialist, Act 248 Commissioner's Representative,
Department of Disabilities, Aging, and Independent Living (DAIL) JP

RE: S.192; **DAIL's Clinical Perspective on Proposal to Require Judicial Review of
Initial Orders of Commitment After 90 Days**

DATE: February 12, 2024

Vermont's Act 248 civil commitment process places individuals with intellectual disabilities who have been found incompetent to stand trial on charges of a qualifying crime and are considered to be a danger to the public in the custody of the Commissioner of Disabilities, Aging, and Independent Living. The Department of Disabilities, Aging, and Independent Living contracts with Designated Agencies across Vermont and provides those agencies with funding to develop safe programming to meet the needs of the individuals and protect the community. These programs are oftentimes located in rural areas and are designed to provide the person with individualized programming to meet their needs and the need for community safety. Most designated programs are equipped with technology and safety mechanisms to ensure safety for the individual, the staff supporting them, and the community.

Individuals civilly committed under Act 248 have been alleged to have committed violent and/or sexual crimes and have been deemed incompetent to stand trial on those charges. These individuals oftentimes have co-occurring diagnoses that may have contributed to their offending behavior patterns or index crime. These individuals require specialized support by staff with extensive training and expertise in Developmental Services Public Safety best practices. Some individuals may have two or three staff supporting them at a time when accessing higher risk areas of the community, when there is increased risk for triggers across environments, or anticipation of a possible trigger by the individual's target population in a specific environment.

Vermont has worked to provide these individuals with community-based programming in the least restrictive way possible. Throughout time, Vermont has worked to make improvements to this system and the delivery of services and methods of supervision. Presently, individuals with an active Act 248 status are able to interact with their communities in ways that are meaningful to them, participate in

public events, have employment at places, and in fields, that interest them, and engage in treatment for their violent and sexual offenses.

Offender risk assessment tools that are most commonly used for violent and sexual offenders include the Sexual Offender Treatment Intervention Progress Scale (SOTIPS) and the Violent Offender Treatment Intervention Progress Scale (VOTIPS), which are designed to capture information and data related to progress, risk, skill building, and application of skills in 6-month intervals across environments. Depending on the individual's designated program assessment schedule, when performing an Act 248 review annually, the treatment team will be able to review at least one assessment measuring the individual's progress, risk factor categories, and needs.

In supporting offenders within the population of individuals with an Intellectual Disability it is known that their full-scale IQ likely will not change over time. In terms of timelines for program development and treatment modalities, following a stabilization period of approximately six months, it takes time for a treatment team to work with an individual to identify their criminogenic needs for treatment in a therapeutic setting and find a treatment modality that aligns with the criminogenic and clinical needs of the individual. Working to identify problematic behavior after a period of stabilization also takes time, with the length of time depending on the individual and their needs. Once problematic behaviors have been identified, the treatment team will need time to work with the individual to develop and integrate strategies and support methods to modify the problematic behavior with appropriate supports. It can take several years for these interventions to collectively work to reduce the individual's violent and/ or sexual risk levels and to effect positive change in their behavioral presentation. As such, it can be difficult to showcase data that indicate authentic progress, risk reduction, and clinical presentation change over the course of one year.

While these risk factors are being addressed through the mechanisms of the designated program and the treatment modalities that are being used, the risk of harm to the community remains high and is actively monitored by the individual's treatment team.

Considering the above, performing Act 248 reviews more frequently than on an annual basis would likely result in reviews that would reflect very little meaningful data that represented the individual's progress. Rather, performing the reviews on an annual basis allows the individual's treatment team to reflect on progress made and skills developed in an authentic form, in which the treatment team can articulate how the individual engaged in therapy and skill building over the past year and can report on whether the individual has been able to demonstrate that they have learned skills, how often have they utilized the skills, how often they practice them, and if they have used the skills when needed to reduce their risk to re-offend or maintain emotional regulation.