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To: Honorable Members of the Vermont Senate Judiciary Committee
From: Jennifer Poehlmann, JD
Executive Director, Vermont Center for Crime Victim Services
RE: S.91: An act relating to competency to stand trial and insanity as a defense
Date: March 21, 2023

I am writing on behalf of the Center from Crime Victim Services in support of S.91, specifically Section 7, which ensures that meaningful consideration is given to the adoption of a Competency Restoration Program here in Vermont.

The Center certainly understands the challenge of the task that plays out regularly in our communities: balancing the needs of the individual with the need to account for community and victim safety and voice. Several recent violent, high-profile cases over the past few years have played a significant role in highlighting the shortcomings of our current system, particularly as mental health challenges for individuals in Vermont continue to grow, putting pressure on limited resources for those who cause harm and those who experience harm.

Victims and survivors frequently reached out to the Center over the years with concerns about cases that have involved serious harm to themselves or to a family member when the case “goes the mental health route”. In these cases, victims have no rights, and they have no advocates. Significantly, the National Crime Victim Law Institute recently conducted a national study of victims/survivors. One of the questions asked was, “Was there one aspect of your process that made a difference in a positive or negative way for you?” Interestingly, what they found was that the number one piece that made a difference in a victim’s experience and supported them toward a path of healing was the feeling that they were “heard”. Simply being heard, not whether they agreed with the outcome – it was the experience of being heard.

The Center raises this finding, as it may be surprising. Victims/survivors are less focused on the outcome and more on the process. Issues relating to competency/incompetency and the reports of victims/survivors directly reflect this piece. As an example, this Committee received



powerful written testimony from Joanne Kortendick, whose sister Kathleen Smith was killed in 2010 by a person who was later found incompetent. He remained in that status for nine years, until he ultimately passed away. Joanne and the rest of Kathleen's family waited in darkness for 9 years, unsure of what was happening and if they were ever going to have a chance to seek justice for their sister. That state of being in limbo for Joanne, and so many other victims, where there is no real information provided about the "when" or the "if", all while trying to grieve, is unimaginable. As Asst. Attorney General David Scherr testified at the time S.3/Act 57 was debated in 2021:

"The interest of justice weighs heavily in favor of finality and reducing unnecessary trial delay. Victims of serious crimes, and their relatives, can suffer real additional harm when they must wait for a trial without any closure, and without any certainty or even estimate about when a trial may occur. The trial itself can be a traumatizing experience, and survivors should not be unnecessarily subjected to an uncertain and potentially emotionally fraught wait for a trial whose date is unknown."

Moreover, while understandably defendants have a constitutional right to a speedy trial, here in Vermont, as in other states, victims have a statutory right to a speedy trial under 13 VSA §5312. As noted in this Body during previous testimony, the longer a delay in trial, the less reliable the evidence may become, this includes victim/witness testimony. National Public Radio did an entire segment a couple of years ago focused on the impact of delayed proceedings, noting that the impacts go beyond the individuals charged; there are equally significant ramifications for victims and communities. Unfortunately for victims, the failure to restore, or make efforts to restore, a defendant's competency is a barrier to justice and a barrier to healing.

Therefore, the intention in Section 7 of S.91 to consider the development of a competency restoration program here in Vermont is an important step toward considering other approaches in this area and exploring success and models in other states. Certainly, as we know from testimony, there is no fail-safe approach, but we owe it to our communities and our victims/survivors of violent crime to try. Victims and survivors deserve a chance to be heard whenever possible.

Our **one specific suggestion relative to Section 7** is the language seems to create a rather closed approach to considering this option and making recommendations. Our **recommendation is that language is included that directs DMH and DAIL to engage and**



consult with relevant stakeholders. Our belief is that this will result in a more robust proposal, identifying potential areas of agreement and compromise, even while there will understandably not be complete consensus.

Thank you for taking the time to consider the needs of victims and survivors in these complex proceedings.

