

ACT 248

WHAT DOES ACT 248 DO?

Act 248 authorizes a District Court to commit a person with mental retardation who is dangerous to others to the custody of the Commissioner of the Department of Disabilities, Aging, and Independent Living (DAIL).

WHY WAS ACT 248 ENACTED?

Act 248 was adopted in 1987 to address a hole in the law. At the time, Vermont law authorized civil commitment of an individual with mental retardation only if the person was a danger to himself. Thus, when criminal charges were dismissed against an individual found incompetent to stand trial on the basis of mental retardation, the court had no option but to let him go free. If the person did not agree to treatment, he could not be held, and the public could not be protected from repeat offenses. ACT 248 provided a way for courts to protect public safety by committing individuals found incompetent to community programs which have the legal responsibility to protect public safety.

ARE THERE ANY QUALIFICATIONS ON THE SCOPE OF ACT 248?

Yes. To be committed under Act 248, a person must:

- Have mental retardation
 - significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test
 - concurrent deficits or impairments in present adaptive functioning
 - onset before 18 years
- Present a danger of harm to others, i.e., be a person who has engaged in any of the following:
 - Sexual assault
 - Lewd and lascivious conduct with a child
 - Inflicting or attempting to inflict serious bodily injury upon another person

WHO STARTS AN ACT 248 PETITION?

Typically, an Act 248 petition is started by the state's attorney in the county where the dangerous act occurred. Next the court orders the Commissioner of DAIL to have the person evaluated. If a sexual offense is involved, DAIL requests an evaluation of the person that includes:

- A psychological assessment to determine whether the person has mental retardation.
- A psychosexual evaluation to determine whether the person presents a danger of harm to others and to assess the nature of the risk.
- Recommendations for custody, care, and habilitation of the person.

WHAT HAPPENS IF A PERSON IS COMMITTED UNDER ACT 248?

The Commissioner will designate a community developmental services agency to serve the individual. As a practical matter, the selection of an agency is done by the Division of Disability and Aging Services staff.

A Guardianship Services Specialist (GSS) is assigned. The GSS functions as the Commissioner's designee. S/he works with the agency to design an appropriate program for the person. A typical program for a person under Act 248 provides 24-hour-a-day supervision and

- Residential support
- Arms-length or eyes-on supervision when the person is outside his/her home
- Education and day activities
- Employment support and supervision
- Respite
- Individual therapy as needed
- Group therapy as needed (alcohol treatment, sex offender therapy, anger management)
- Psychiatric and other medical services
- Family training and support
- A case manager who ties it together

ARE THE RIGHTS AND STATUS OF A PERSON UNDER ACT 248 DIFFERENT FROM THOSE OF OTHER PERSONS SERVED BY DEVELOPMENTAL SERVICES AGENCIES?

Yes. The person may not refuse restrictions or a placement designed to protect the public or specific vulnerable people. If restrictions appear to be insufficient to protect public safety, the Commissioner has the authority to increase the restrictions. Examples of restrictions which have been added for the purpose of protecting public safety in individual situations are:

- Alarms on windows and doors
- Awake overnight supervision
- Restricting the person's access to settings where children may be present
- GPS tracking bracelets

If the person leaves the program, the police may be called and are authorized to pick up the person and return the person to the program.

WHAT RECOURSE EXISTS IF THE PERSON REFUSES TO COOPERATE IN TREATMENT?

The possibilities of recourse include:

- Redesigning the program
- Change of residence
- More intensive therapy or supervision
- More restrictions to protect public safety

Sending the person to jail is not an option, unless the offender is arrested for a new crime.

IS ACT 248 A LIFE SENTENCE?

Time will tell. It shouldn't be. The law explicitly provides for an annual judicial review of whether the person is still "in need of custody, care, and habilitation."