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*Agency of Human  
Services*

SENT VIA EMAIL

April 17, 2019

Representative Maxine Grad, Chair  
House Committee on Judiciary  
115 State Street  
Montpelier, Vermont 05633-5301

**Re: Commissioner's Support for Proposed Amendments to Act 248**

Dear Representative Grad:

I write to express my support for the proposed amendments to 18 V.S.A. Chapter 206, subchapter 3: "Judicial Proceedings; Persons with an Intellectual Disability who Present a Danger of Harm to Others," also known as Act 248. Just before I completed this letter, I received a copy of Nancy Breiden's letter to you in support of these same amendments. The Department for Disabilities, Aging & Independent Living (DAIL) and the Disability Law Project are aligned in our support for the main objectives of the proposed amendments.

DAIL agrees that any judicial review of a person's commitment to my custody under Act 248 should be conducted by the Family Division of the Superior Court. As indicated by Ms. Breiden, the amendments as proposed would both cure an inconsistency currently present in our statutes and bring the letter of the law into conformity with longstanding practice. 4 V.S.A. § 33(a)(13) indicates that the Family Division has exclusive jurisdiction over proceedings brought under Chapter 206 of Title 18, and I believe this is an appropriate choice of jurisdiction. Sections 8840 and 8845 of Title 18 should be amended to comport with this jurisdictional provision in Title 4. More importantly, as a practical matter, the Family Division already handles the vast majority of these proceedings.

I would like to offer one point of clarification, however. Ms. Breiden suggested that the amendments as proposed would vest the Family Division with exclusive jurisdiction to handle both initial commitment proceedings under Act 248 and proceedings connected with annual reviews of these commitments. Currently, I believe most hearings on initial Act 248 commitment are handled by the Criminal Division. For the following reasons, I do not believe the proposed amendments would change this.

Section 4820 of Title 13 provides that the Criminal Division shall hold a commitment hearing for anyone deemed not competent to stand trial. Section 4821 of Title 13 states that DAIL is entitled to notice of these hearings, and it also requires that "[p]rocedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3." 13 V.S.A. § 4821. Thus, Title 13 appears to obligate the Criminal Division to hold initial commitment hearings for individuals deemed not competent to stand trial due to intellectual disability.

I do not believe the proposed amendments would run contrary to these provisions of Title 13, however, because I do not believe 18 V.S.A. § 8840 governs initial commitment hearings under Act 248. 18 V.S.A. § 8840, by its own terms, only governs proceedings brought under Title 18, Chapter 206, subchapter 3. As you may know, the

former (repealed) civil commitment statutes related to the Brandon Training School were also housed under Chapter 206 of Title 18, and Section 8840 applied equally in that context. But the only proceedings that are currently “brought under” Title 18, Chapter 206, subchapter 3 are those related to petitions for judicial review of Act 248 status under 18 V.S.A. § 8845. The authority to seek initial commitment to my custody under Act 248 stems solely from 13 V.S.A. §§ 4820-21, not from Title 18.

I do believe that the Criminal Division should retain exclusive jurisdiction to issue initial commitment orders under Act 248. To be eligible for Act 248 supervision, it must be proven that an individual “has inflicted or attempted to inflict serious bodily injury to another or has committed an act that would constitute a sexual assault or lewd or lascivious conduct with a child.” 18 V.S.A. § 8839(1). *See* 18 V.S.A. §§ 8843(c), 8839(3)(B). At the initial commitment stage, the Criminal Division has the most familiarity with the factual allegations underlying the criminal charges. Therefore, I believe the Criminal Division is in the best position to determine whether the person’s conduct satisfied this initial legal threshold for Act 248 supervision.

I do agree with Ms. Breiden that our Act 248 statutes could benefit from a more wholesale overhaul. The explicit and implicit references to the repealed civil commitment statutes that still remain are a good demonstration of this need. DAIL remains willing to collaborate with the Disability Law Project, other stakeholders, and your Committee in the future in order to engage in a thoughtful and holistic process of brainstorming and legislative drafting to achieve this end.

For now, however, DAIL wholeheartedly supports the proposed amendments as drafted.

Thank you for your time. Please don’t hesitate to contact me if you have any questions or would like to discuss further.

Sincerely,

Monica Hutt  
Commissioner  
Department for Disabilities, Aging &  
Independent Living

Cc: Mike Bailey  
Honorable Brian Grearson  
Nancy Breiden  
Wendy Morgan  
Office of the Vermont Attorney General