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SENT VIA EMAIL

April 16, 2019

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

Re: S.105 Act 248 Proposed Amendments

Dear Representative Grad:

I am writing to express support for proposed amendments to S.105 regarding Care for Persons with Intellectual Disabilities, otherwise known as Act 248. The proposed amendments pertain specifically to 18 V.S.A. Chapter 206, Subchapter 3 at §8840 and §8845 regarding both initial commitment under Act 248 (§8840), and judicial review of the continued need for commitment under Act 248 (§8845).

The Disability Law Project (DLP) is a special project within Vermont Legal Aid and provides legal representation to Vermonters with disabilities in an array of civil legal and administrative proceedings. As part of its work, and pursuant to Vermont Legal Aid's grant from the State to provide legal representation to indigent Vermonters, the DLP is regularly appointed to represent individuals under Act 248 commitment in the annual judicial review of their continued need for commitment. The DLP represents approximately 23 individuals each year in Act 248 judicial reviews.

I wholeheartedly support the proposed amendments as they pertain to which division of the Superior Court has jurisdiction over Act 248 initial commitment and annual reviews.

The proposed amendment to 18 V.S.A. §8845(b), regarding *jurisdiction for annual judicial review* of commitment under Act 248, cures an existing inconsistency between 4 V.S.A. §33(a)(13), which vests jurisdiction for proceedings filed pursuant to 18 V.S.A. Chapter 206 in the Family Division, and 18 V.S.A. §8845(b) which vests jurisdiction for annual judicial review in the Criminal Division. The practice has been for these annual reviews to be heard in the Family Division, and I am not aware of any strong opposition to this practice. It seems prudent to amend the statute to cure the inconsistency and codify current practice.

The proposed amendment to 18 V.S.A. §8840 regarding *jurisdiction for the initial application* for commitment, likewise cures an inconsistency between the above-cited provisions of Title 4 and Title 18. However, to the best of my knowledge, the practice as to where the initial

application for commitment is filed varies across the state. In some units it is filed in the Criminal Division and in some units it is filed in the Family Division. The DLP is not involved in the original commitment proceeding, so I do we have an informed opinion as to which Division is better suited to have jurisdiction in initial application proceedings. Nonetheless, it again seems prudent to amend the statute to cure the existing inconsistency both in statute and in practice.

We believe there are many problems with the current Act 248 statute and we have been in intermittent conversation with DAIL over several years on possible revisions to the Act 248 statute (including the problem presented by incorporation of references to a repealed statute). We would like to work with DAIL over the coming months to address these issues and come up with a comprehensive legislative proposal to make Act 248 a more workable statute, with the goal of having a proposal ready for the next legislative session. In the meantime, I fully support the proposed amendments to cure current inconsistencies regarding jurisdiction in Act 248 initial commitments and annual judicial reviews.

I would be happy to discuss these matters with the committee at any time.

Thank you for your courtesy in this regard.

Sincerely,



Nancy Breiden
Project Director

Cc: Mike Bailey
Honorable Brian Grearson
Ben Chater, Esq.
Wendy Morgan