

Thank you for inviting us to submit written testimony regarding S.89 and the proposal to construct a new forensic facility.

Disability Rights Vermont is the Protection and Advocacy agency for the State of Vermont. The Protection and Advocacy system was established in 1975, after horrific treatment of people with disabilities, at the infamous facility named Willowbrook, was exposed by the media. Protection and Advocacy agencies across the country are tasked and funded to investigate abuse, neglect, and rights violations impacting individuals with disabilities, and seek remedies for those individuals. Where possible, Protection and Advocacy agencies also advocate for systemic changes to prevent future harm to disabled members of our communities.

Given our mandate, we want to comment on State Bill 89, a bill relating to establishing a forensic facility, and to inform our law-making body of the reasons why we are not in support of enacting S.89.

In Accordance with Act 57 section 6, the Vermont Department of Mental Health delivered a preliminary report, by the Forensic Care Working Group, on Jan 15th, 2023. This report was provided, in the absence of three mandated reports, and outlined the difficulties in fulfilling the mandate before them. A final report is still anticipated. The report discusses that the very complex issues before the Forensic Group provided many areas of disagreement and that a large scale consensus could not be reached. In reality, the Forensic Care Working Group was not successful in providing any of the three mandated reports required by Act 57 section 6. However, the preliminary report, submitted a year past the first deadline still claims to be “a resource for the legislature as it moves forward this session in discussions around a potential forensic system of care.”¹ One of the Group’s recommendations is for a “forensic facility”, that is intended to be a treatment facility for a specific population of criminal defendants, with severe mental illness, amounting to criminal insanity or incapacity to stand trial, who present a significant risk of harm to self or others. The establishment of the forensic facility is the purpose of S.89. At this time, there is incomplete reporting on the gaps in our current system, or opportunities to improve public safety and

¹ The Forensic Working Group Report, Vermont Department of Mental Health, pg 4, January 15, 2023

address the treatment needs for individuals incompetent to stand trial, or who are adjudicated not guilty by reason of insanity, or consider the importance of victims' rights in the forensic care process, or any of the other objectives outlined in Act 57 Section 6(b)(1)(A-H). The data has not been presented, the solutions deserve additional examination by the Forensic Care Working Group, and a final report which will hopefully contain this important information is anticipated to be completed this year. For this reason, we believe that enacting S.89 during this legislative session is pre-mature. More work needs to be done.

By enacting S.89 we run the risk of segregating individuals with disabilities, who are deemed a risk to the public, and creating a jail-like environment, and not a least restrictive and therapeutic one. The integration mandate of the Americans with Disabilities Act, and more particularized by the U.S. Supreme Court in *L.C. v. Olmstead*, requires that individuals must be treated in the least restrictive settings. Moreover, Vermont has declared,

“Vermont's mental health system shall provide a coordinated continuum of care by the Departments of Mental Health and of Corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with a mental condition or psychiatric disability receive care in the most integrated and least restrictive settings available. 18 V.S.A. §7251(3).”

There is a potential danger in creating a special forensic facility for this specific population of people with disabilities, namely that they might not receive the fair and equal treatment that they should receive in already established facilities. Individuals who cannot be involuntarily committed, but who are a danger to themselves or others, are already being treated in existing facilities. The creation of a separate facility to treat individuals who have been determined to not be criminally liable for the conduct for which they were accused, could in effect be considered punitive, not only for the crimes for which they have not and cannot be convicted, but for their disability that they cannot control. The individuals that will be staying at the proposed forensic facility are not prisoners nor convicts and should not be treated as such. We are not convinced that the due process rights of the potential occupants of a forensic facility will be protected and preserved in this process. Furthermore, we believe that creating a facility like this has the

potential to feed into the stigma that people with disabilities, particularly those with mental illness, are dangerous and must be locked up, rather than helped and treated as needed.

Additionally, we are concerned about the resource commitment to the proposed forensic facility. It is our belief that those beds and funds would better be used in improving existing facilities, patient services, and therapeutic enrichment. The proposed forensic facility will pull resources from already underfunded programs and facilities. The authors of S.89 have not justified the need for this forensic facility, or separation of these proposed nine beds, within an already existing facility. The authors of S.89 provide no explanation for how resources will be re-appropriated without having a negative impact on services already in existence, or any assurances that it will not become another underfunded mandate. What we do know is the following:

- 1) This population of individuals already have a place to go in existing facilities;
- 2) Existing facilities have patients or residents that could be in the community but are stuck in more restrictive institutional settings due to a lack of adequate community services;
- 3) Vermont and its residents are in crisis, with the need for community-based services and supports being paramount; and
- 4) Funding services and service providers in communities, as opposed to institutions, is the most fiscally responsible thing to do.

We need to focus our funding to strengthen the systems and services that already exist.

For the reasons now stated, Disability Rights Vermont is opposed to the enactment of S.89.