

S.89, an act relating to establishing a forensic facility

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[S.89](#) was introduced in the Senate in mid-February of this year. If passed, it will establish a forensic facility in Vermont.

In 2021, the Vermont Legislature passed [Act 57 of 2021](#) requiring the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living to study a series of issues concerning a gap in our current system of care – how do we best provide treatment and assure public safety for the small number of Vermonters charged with the most serious crimes who are experiencing mental health or substance use issues, or have intellectual disabilities? Over a period of 18 months a workgroup, comprising a multitude of stakeholders, studied this issue but, unfortunately, were unable to reach consensus on a path forward. The Vermont Developmental Disabilities Council was included in the list of stakeholders statutorily required to participate in the Forensic Workgroup under Act 57. S.89 is the result of the administration taking the feedback the workgroup did get and putting forward the best possible proposal given that input.

A forensic facility is a secure setting in which people involved with the criminal justice system receive therapeutic treatment. This facility would be located in Berlin and would be nine beds within the existing Vermont Psychiatric Care Hospital building, operated by the Department of Mental Health. This nine-bed wing would be licensed as its own facility, a Therapeutic Community Residence, or TCR, in accordance with the rules adopted and enforced by DAIL's licensing agency. Rarely, it could be used to care for persons under Act 248 supervision.

[“Act 248”](#) refers to a Vermont law, passed in 1987. When a person with an Intellectual Disability commits a crime and is found by the criminal court not competent to stand trial, the court may commit the person to the custody of the DAIL Commissioner under an Act 248 order, **BUT ONLY AFTER** conducting a hearing at which the individual has legal representation and finding: 1) that the person presents a danger of harm to others (i.e., the person is alleged to have inflicted or attempted to inflict serious bodily injury to another or is alleged to have committed sexual assault or lewd or lascivious conduct with a child); **AND** 2) that appropriate custody, care, and habilitation can be provided by the DAIL Commissioner in a designated program.

There are presently 27 Vermonters under Act 248 supervision. The vast majority of individuals under an Act 248 court order are served successfully in the community. The majority reside in staffed living.

There are, however, rare occasions when a person under Act 248 supervision cannot be safely served in the community. If the individual meets a hospital level of care, they can be served in a secure inpatient mental health facility. If they do not meet this hospital level of care and require clinical stabilization for co-occurring conditions in a secure setting, however, we do not presently have that level of care which is needed for them to be successfully supported in the community.

The lack of a facility setting has, on rare occasion, resulted in repeated elopements, the commission of additional crimes causing harm to others, and the re-arrest, charge and detention of those individuals in a correctional facility. A few individuals have repeatedly assaulted and caused injury to their staff. These actions have made those staff unwilling to continue to serve these individuals and have presented challenges in identifying new staff interested in taking on this work. As a result, due to the unavailability of staff within our current system of care to work with these violent individuals, who require 24/7, 2:1 or 3:1 staffing, the State has been left with no option but to pay exorbitant rates to contract staff, many of whom lack the expertise of staff within our system of care to best serve the needs of these most challenging individuals. Finally, at times there is also a very real risk to the person under Act 248 of being harmed by a community member, who is reacting to an assault by the person under Act 248. We would much rather serve people in a therapeutic facility than in a correctional facility setting, and we would much rather people not get hurt. Currently, there is a person under Act 248 who was recently arrested for new violent crimes, and this person is in a correctional facility because we do not have a secure therapeutic setting in which they can be stabilized.

The forensic facility under S.89 will be an important resource for the rare occasion when a person cannot be safely served in the community. If S.89 becomes law, there will be multiple safeguards and levels of due process to ensure that Vermonters who require that level of care are served in the community when it is safe to do so. DAILE is required under federal law, such as the Americans with Disabilities Act and the *Olmstead* decision, as well as under Vermont law, to serve individuals in the least restrictive setting. We would use evidence based risk assessment tools and clinical input to guide admission recommendations. We want all Vermonters – including those under Act 248 supervision – to be part of their communities. This forensic facility would be an additional option to ensure that all Vermonters are able to be served in a setting appropriate to meet their needs and which protects the community at large.