

# Forensic Facilities and Act 248

## A Victim's Perspective

S.89 Forensic Working Group

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# Introduction

**Having both been victims in the Vermont Criminal Justice System as it has intersected with the Mental Health System in Vermont we are most interested in looking into reforms in those systems and how they interact so that others do not experience some of the problems and obstacles that we have experienced.**

**We should emphasize that we do not look at this from a punitive point of view and that these reforms/changes/improvements be implemented in a manner so as not to violate the constitutional rights of the accused.**

## S.89 A Victim's Perspective

**No reason why Act 248 individuals should be excluded from placement in a forensic facility.**

**From a dangerousness perspective from both victim's and the public there is NO DIFFERENCE between an individual with an intellectual disability and one with a mental health diagnosis.**

# S.89 What We Have Heard

## There IS a gap for Act 248 Individuals

### Vermont Care Partners:

- Certain individuals under Act 248 exhibit extremely challenging behaviors including aggravated assault with a deadly weapon and multiple elopements from community programs.
- Over the last 11 months 3 of those individuals presented to the Emergency Department over 84 times.
- Housing in hotels is costly and there is no reasonable way to monitor the individual's coming and goings.



# S.89 A Victim's Perspective

## Community Example



# S.89 What We Have Heard

There IS a gap for Act 248 Individuals

## Vermont Department of Corrections:

- Often these individuals end up in Corrections as the only alternative.
- The Vermont DOC reported that it faces challenges in meeting the wide-ranging treatment needs of individuals with ID.
- Corrections facilities are not well designed as trauma-informed institutions. Individuals with ID are vulnerable and at greater risk of harm.

# S.89 What We Have Heard

There IS a gap for Act 248 Individuals

## Vermont Crisis Intervention Network:

- Indicated its system is no longer working and that something different needs to be done.
- Pat Frawley felt that a forensic unit could be designed to be sensitive to those with Intellectual Disability who present an extreme risk of harm
- Individuals that were placed there would receive psychiatric, psychological, nursing and medical care at a level that exceeds what is available in the VCIN crisis beds. These individuals end up in Corrections as the only alternative.

# S.89 What We Have Heard

There IS a gap for Act 248 Individuals

Hilary Ward, licensed clinician and social worker felt that there were unmet needs for those with Development Disabilities that a Forensic Facility could address- including

- 24/7 observation
- consistency in approach
- a secure facility

She remarked that it is currently difficult to intervene in the community as regards safety.



# Victim's Rights Statute

**Victim's interests under the Victim Rights statute are consistent with Defendant's Constitutional right to a speedy trial.**

**Chapter 165 of Title 13, Section 5312.**

**“(a) The prosecutor’s office shall make every effort to inform a victim of a listed crime of any pending motion that may substantially delay any deposition, change of plea, trial, sentencing hearing, or resolution hearing. The prosecutor shall inform the court of how the victim was notified and the victim’s position on the motion, if any. In the event the victim was not notified, the prosecutor shall inform the court why notification did not take place.**

**(b) If a victim of a listed crime objects to a delay, the court shall consider the victim’s objection.”**



# S.89 A Victim's Perspective

## Kelly's Lived Experience



# S.89 A Victim's Perspective

## Victim's interest in Restoration of Competency

### S.89 and S.91

Together with its companion bill S 91 which could

- Establish a restoration of competency program in Vermont

Placement in a forensic facility where a treatment program could include restoration of competency potentially resulting in the accused standing trial for the offense.

Materials were presented to the group indicating successes in restoring competency with 248 individuals

# S.89 A Victim's Perspective

## Victim's interest in Restoration of Competency

### S.89 and S.91 Together

Victims would like to see a treatment program established in the forensic facility that

- Includes competency restoration
- Provide more information to victims about how things were progressing with the accused.



# S.89 A Victim's Perspective

## Joanne's Lived Experience



# S.89 A Victim's Perspective

**S.89 contains a directive for this Committee to develop legislation and in doing so to refer to earlier drafts of the Act discussed in GA in 2023. The following are provisions in those earlier drafts which would be beneficial from a victim's perspective:**

**Previous versions of S.89 included the creation of a Human Services Community Safety Panel which is to consider dangerousness as one factor in recommending the placement of an individual in a forensic facility. Dangerous factors are to include:**

**“(D) the position of the parties to the criminal case as well as that of the victim as defined in subdivision 5301 (4) of this title.”- 13 V.S.A. section 4821 (c) (2) (D)**

# S.89 A Victim's Perspective

Previous version of S.89 also included provisions for discharge from a forensic facility once individuals have been placed including;

**“The Commissioner shall provide notice at least ten days prior to discharging the person from a forensic facility to either the State’s Attorney of the County where the prosecution originated or to the Office of the Attorney General if that office prosecuted the case”.-18 V.S.A. section 7618 (c) (1)**

# S.89 A Victim's Perspective

**“When the State’s Attorney of the Attorney General receives notification- the respective office shall provide notice of action to any victim of the offense for which the person has been charged.” 18 V.S.A. section 7618(c)(2)**

**If the Commissioner issues a notice of discharge from the forensic facility, the State’s Attorney of the County where the prosecution originated or the Office of the Attorney General if that office prosecuted the case, the victim, or a combination thereof, may request a hearing on the discharge.- 18 V.S.A. section 7618 (c)(3)**

**Once discharge hearing has been requested: “The State’s Attorney, or the Attorney General’s Office, and the victim shall be permitted to appear and be heard on whether the person shall be discharged from a forensic facility.” 18 V.S.A. section 7618 (c)(3)**



## S.89 A Victim's Perspective

From a dangerousness perspective for both victim's and the public there is NO DIFFERENCE between an individual with an intellectual disability and one with a mental health issue.

Victims would like to see a treatment program established in the forensic facility that would include competency restoration and provide more information to victims about how things were progressing with the accused.



Questions?