



Disability Law Project

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To: Senate Committee on Health and Welfare

From: Disability Law Project, Vermont Legal Aid
Susan Garcia Nofi, Staff Attorney

Re: Draft 7.1 of S.192 - An act relating to forensic facility admissions criteria and processes

Date: February 20, 2024

Chair Lyons and Members of the Senate Health and Welfare Committee,

Thank you for the opportunity to offer additional testimony regarding S. 192. Vermont Legal Aid's Disability Law Project remains opposed to placing people with intellectual disability in a forensic facility. These additional comments relate to changes or proposed changes to S. 192 that have been considered since its introduction.

Human Services Community Safety Panel and role of Vermont Legal Aid or an Ombudsman

There has been discussion as to whether the panel created by S.192 should be comprised only of agency Commissioners, or whether the panel should include representation from outside the Agency of Human Services, such as Vermont Legal Aid or Disability Rights Vermont. It is not necessary to establish a panel for the administration's internal decision-making about whether to seek forensic placement for an individual committed to the Commissioner's custody. If a panel is established, it would not be appropriate to have a representative from Vermont Legal Aid serve on the panel. Sitting on the panel that recommends forensic

facility placement would conflict with VLA's role as counsel for clients opposing such placement.

The [Department of Mental Health's proposed substitute language for this section](#), in subsection (d), provides that notice of the administration's decision to seek forensic facility placement should be given to the appropriate ombudsman. This raises a separate but very important issue – having an ombudsman for individuals with intellectual disability who are placed in the forensic facility. There were many things the working group members could not reach consensus on, but working group members voted unanimously that there needs to be “robust Protection and Advocacy (P&A) system-level access to services in the forensic facility.” (See [Report of the Working Group on Policies Pertaining to Individuals with Intellectual Disability Who Are Criminal-Justice Involved In accordance with Act No. 27 \(2023\), Sec. 6](#), at page 4).

As stated in [our prior testimony](#) on S. 192, there must be robust Protection & Advocacy System Access to the forensic facility. Additional funds will need to be allocated to cover the costs of these independent monitoring and investigation functions. There is a critical need for the independent oversight of an ombudsman for individuals placed in a forensic facility.

Orders placing an individual with an intellectual disability in the forensic facility should be limited to 90 days. If DAIL determines a placement of more than 90 days is needed, the burden should be on DAIL to apply to the court for an extension.

Draft 7.1, on pages 20-21, provides that an order placing a person with intellectual disability in a forensic facility should not be longer than the underlying commitment order – which can be up to one year. Thus, the initial order placing a person with intellectual disability in a forensic facility may be for up to one year. This differs from the mental health counterpart of S.192, which limits the initial order placing a person in the forensic facility to 90 days. See Draft 7 at page 7, lines 3-9.

The [Report of the Working Group on Policies Pertaining to Individuals with Intellectual Disability Who Are Criminal-Justice Involved In accordance with Act No. 27 \(2023\), Sec. 6](#) states, on page 28:

§ 8845(b)(2)(C): To avoid disparate treatment and ensure consistency with existing processes applicable to individuals committed to the custody of the Commissioner of Mental Health (see 18 V.S.A. chapter 181), **DAIL recommends that an initial order placing an individual with an intellectual disability in the forensic facility be for a period of 90 days from the hearing.** If, prior to the expiration of this order, the Commissioner believes and asserts that continued placement in the forensic facility is required, and the Family Division agrees, the court shall order continued placement in the facility for up to one (1) year.

(Emphasis added).

Draft 7.1, on page 21 would allow the person under commitment to initiate court proceedings to review their commitment at any time after 90 days. This places the burden entirely on the person with an intellectual disability to file in family court if they remain in the forensic facility beyond 90 days. With the annual judicial review of commitment, Vermont Legal Aid is only appointed as counsel after DAIL files the petition for annual review in court. It is extremely rare for an individual with an intellectual disability and limited capacity to initiate court proceedings on their own. To ensure adequate due process the burden to seek court review of forensic facility placement after 90 days should be on DAIL.

[Vermont Care Partners has recommended](#) that “A forensic facility should be used only for **short-term** stabilization and treatment” (emphasis added); and “Robust oversight and procedures are in place to ensure no one stays in an institutional setting for longer than clinically and ethically necessary.”

Given that the clinical need identified is for short-term stabilization, orders placing an individual with intellectual disability in a forensic facility should be limited to terms of 90 days. The burden should be on DAIL to seek an additional order if it determines the forensic facility is needed for more than short term treatment.