



**Disability Law Project**  
177 Western Avenue Suite 1, St Johnsbury, VT 05819  
(802)748-8721 ■ 800-769-6728  
www.vtlawhelp.org ■ Fax: (802)748-4610

To: Senate Committee on Health and Welfare

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

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

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

Thank you for the opportunity to testify on S. 192 on February 1, 2024, as it relates to placing people with intellectual disability in a forensic facility.

The Disability Law Project represents people with intellectual disabilities who have been civilly committed to the custody of the Department of Disabilities, Aging, and Independent Living (DAIL) under Act 248. Each person under DAIL's custody has the right to an annual court review of their continued commitment. 18 V.S.A. § § 8845(c). DAIL conducts an internal review with the person and their treatment team, and files a petition for Judicial review with its report and recommendation. The Court then appoints the Disability Law Project as the person's counsel for that year's annual review.<sup>1</sup> The legislature has funded us to take on these court appointments.

**We oppose placing people with an intellectual disability, who do not require a hospital level of care, in an institution.**

---

<sup>1</sup> Additional information about the judicial review process and orders for continued commitment can be found in the Disability Law Project's [presentation](#) to 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.

The Act 248 commitment orders from the Court typically require that the person live in a setting chosen by the designated agency, have 24/7 supervision, and comply with treatment. The Court places substantial restrictions on the individual's privacy, liberty and autonomy as needed to treat the individual and protect the public. Importantly, this treatment and supervision takes place in a residential setting, such as a staffed apartment or group home, rather than in an institution.

Civil commitment in a supervised, community-based setting allows people with intellectual disabilities to build and practice self-regulation skills needed to protect their own and the public's safety. Since Act 248's inception, DAIL and its designated agencies have successfully provided custody, care, and habilitation to people with intellectual disabilities in community-based settings.

There has been testimony that forensic facility placement for people with an intellectual disability is needed because there are rare instances when a person cannot be served safely in the community. There has also been testimony about the substantial resources it will take to create institutional placements for this very small subset of a very small Act 248 population. **These resources should instead be invested in the designated agencies, so that all people with intellectual disabilities *can* be served safely in a community-based setting rather than an institution.** The designated agencies should be given the resources to provide more intensive, higher-level treatment when needed; to hire, train and retain skilled staff; and, in cases where elopement is a concern, to provide housing with more security features.

We share the concern expressed by others about providing treatment to a person with an intellectual disability in the same locked setting as other individuals who do not have an intellectual disability and who have been adjudicated to be dangerous.

**We are gravely concerned that if people with intellectual disability are placed in a forensic facility, they will become ‘stuck’ there for an extended period of time, unable to transfer to their least restrictive environment.**

S. 192, at page 6, defines a forensic facility as being a placement for a person with an intellectual disability for an “extended period of time.” DAIL has asserted that the purpose of the forensic facility placement would be to stabilize the person so they can be discharged to a less restrictive, community-based placement. Dr. Frawley testified that discharge planning with the designated agency should start from the day the person is admitted to the facility. There is a disconnect between this proposed, limited use of the forensic facility beds for people with intellectual disability, and the bill’s language defining forensic facility placement as being for an extended period of time.

S. 192 denies people with intellectual disability the due process that is, appropriately, given to people with mental illness facing forensic facility placement. For people with mental illness, S. 192 limits the initial order of placement in a forensic facility to 90 days. If the state seeks to continue treating the individual in the forensic facility, the Commissioner must ask the Court for an extension. (S.192, pages 12-13). Yet S. 192 does not place any time limit on how long a person with intellectual disability may be placed in a forensic facility.

Once an individual with an intellectual disability is placed in a forensic facility, S. 192 does not give them any right or process to challenge whether their continued placement in the facility is needed, or whether they should be discharged to a community-based placement for their Act 248 commitment. If the criminal division initially places a person with an intellectual disability in a forensic facility, no court will review the commitment order until a year later, when the family division does its annual review of Act 248 commitment itself – and not the person’s placement while under commitment. Pages 24-26 of S. 192, on Judicial Review of Act 248 Commitment, do not address forensic facility placement or discharge. There is nothing in the bill that would allow a person to challenge

whether they need to remain institutionalized in a forensic facility, or whether they should be in a community-based Act 248 placement.

Currently, people on Act 248 are not all having their commitment reviewed on an annual basis. There are 29 people on Act 248, but in 2023, the Disability Law Project was assigned as counsel in 17 annual review cases, and in 2022 we were appointed to represent 14 people with intellectual disability in annual court reviews. Last year, we represented a client who had been committed to DAIL's custody under Act 248 in November of 2020 – DAIL's first petition to the court for his 'annual' review was in August 2023. No person on Act 248 should experience delays in court review, but regular court review becomes even more critical if the person with an intellectual disability is in an institutional setting.

The workforce shortage and the housing crisis increase the risk that people with an intellectual disability may get stuck in an institution that is not their least restrictive setting, if there is simply no community-based placement available. There is a critical shortage of staff to provide direct care to people with intellectual disabilities, and the facility would compete with the designated agencies when hiring direct care staff.

If Titles 13 and 18 are changed to permit placement of people with intellectual disability in a forensic facility – which we oppose – such changes should:

- Not define forensic facility placement for people with intellectual disability as placement for an “extended period of time.”
- Require that less restrictive options be tried before considering placement in the facility.
- Require that the Court find that the placement in a forensic facility is the least restrictive environment for the individual.

- Limit initial placement to 90 days.
- If continued treatment in a forensic facility past 90 days is sought, the burden should be on DAHL ask the court for an extension, just as the burden is on the Commissioner of Mental Health to seek an extension under 18 V.S.A. § 7620.
- Court-ordered extensions beyond the initial 90 days should also be limited to 90-day increments, given that the identified purpose is to stabilize the person in preparation for discharge to a community-based setting, and given the historic context of long-term institutionalization of people with an intellectual disability.
- Provide court-appointed counsel for all proceedings on forensic facility placement and extension. Additional funds will need to be allocated to cover the costs of counsel at the additional forensic facility proceedings.
- Provide 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.