

Senate Bill 193-Witness Testimony

Chairman LaLonde and Members

I have previously provided written testimony to your committee in support of Senate Bill 193. I know that you are close to the end on this Bill but I have continued to follow the discussion and testimony in all four Committees of the House and wanted to augment that testimony with a few thoughts from a Victim's perspective as to how this Bill has evolved.

As a reminder my interest in this Bill is as a victim's advocate. My sister Kathleen Smith was brutally murdered in Burlington Vermont in 2010. Her killer was adjudged Not Competent to Stand Trial and once transferred from the custody of the Department of Corrections remained in the custody of the Vermont Department of Mental Health until his death 9 years after my sister's murder never having stood trial for her murder.

I have been involved in advocating for reform to occur at the intersection of the Criminal and Mental Health Systems in Vermont since that time. I have testified on a variety of bills since 2019 and served on various committees and work groups separately and together with Jennifer Poehlmann, Director of the Vermont Center for Victims Services and Kelly Carroll, Voices for Vermont Victims.

I have been very impressed with the work of your Committee and the thoughtful way you have approached these issues and in particular those portions of the Bill that are helpful in addressing the concerns of Victims. I am also thankful that you have been able to maintain custody/possession of the Bill for the most part. My concerns are about how the Bill has been derailed in part primarily due to the input of the House Committees on Corrections and Institutions and Human Services.

My biggest concern is the creation of the section on a Feasibility Study which will slow down the progress of providing Competency Restoration to the very narrow population that this Bill was intended to address.

First of all, even the name given to this study gives one pause at what it is truly trying to be achieved. Those who added this provision insist that this is not a further consideration as to whether a Forensic Facility be created in Vermont but rather a plan to move forward. That was what the Interim Plan section which has been removed was intended to address. Whether something is feasible or not implies that there is still a decision to be made as to whether to proceed or not. I have listened to almost a decade of this back and forth and this is a real red flag for me.

Secondly, the language that Corrections continues to insert particularly in the Feasibility Section of the Bill on the limited role of Corrections is constricting the options of what is achievable in Vermont in order to create a forensic facility.

I know that there has been discussion of that issue in your Committee and in the testimony of witnesses before your Committee in particular the testimony of Kim McManus and Dr. Jill Bowen. I only have had time to skim through the Strike All Amendment prepared for the Department of Corrections and being reviewed by that that Committee this afternoon, but it appears that even more language is being proposed about that limited role. Even the intent language that was previously in the section added on Legislative Intent has been added to the Feasibility Study section. Specifically that “the Department of Corrections shall not operate or staff a forensic facility, with the exception that employees of the Department of Corrections may provide security around the outside perimeter of a forensic facility if it is collocated on the grounds of a correctional facility.” As Dr. Bowen testified about repeatedly in all the various Committees- What happens inside the facility is what is important. What matters is the level of individualized approach within the setting.

Another area of concern raised in the proposed amendments is the substitution of the term Mental Health Condition for the term Qualifying Condition because of the obvious limiting nature of that language. It doesn't even cover the narrow population being contemplated in S 193. I know that your Committee and several witnesses have already flagged that as a concern. I noticed in the Strike All Amendment being discussed today that the term Qualifying Condition is now being used again at least in the definitional section for Forensic Facility.

As I stated above, my major concern as a Victim is that Vermont not continue to drag its feet in implementing a Competency Restoration Program while continuing to discuss over and over the same considerations with respect to a Forensic Facility. As Dr. Jill Bowen expressed in her testimony to your Committee on May 7- the fairest action that can be taken through this Bill for victims is Competency Restoration. The years of waiting for my family with no results are a testament to that.

Acknowledging that you have limited control in your Committee with respect to whether or not to include the Feasibility Study section of the Bill- is there any way to revise the Bill to proceed with the Competency Restoration portion while waiting for a decision as to how and when the Forensic Facility will be created? Please take this into consideration if at all possible.

Sincerely,

Joanne Kortendick

cc: Jennifer Poehlmann, Director of the Vermont Center for Crime Victim Services

Kelly Carroll, Voices for Vermont Victims

Dr. Jill Bowen, Commissioner of the Department of Disabilities, Aging and Independent Living