Senate Bill 193- Witness Testimony

Chairman LaLonde and Members

My name is Joanne Kortendick and I am providing this written testimony in support of Senate Bill 193. This testimony is to follow- up testimony provided by Kelly Carroll to your Committee on Wednesday morning 3/8/2026. The focus will be on suggested amendments to the Bill as passed by the Senate of benefit to victims. Kelly spoke of these at the end of her testimony on Wednesday.

By way of background 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 remained in the custody of the Vermont Mental Health System 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 bills since 2019 and served on various committees separately and together with Jennifer Poehlmann, Director of the Vermont Center for Crime Victim Services and Kelly Carroll, Voices for Vermont Victims.

Before I get into the details of the proposed amendments to S 193, I want to applaud those individuals who supported and drafted this Bill and the efforts of everyone who has brought it this far. I also want to recognize the work your committee has already done on this draft and urge you to move it forward as quickly as possible.

I have listened to almost all of the hearings that were held in the Senate on this Bill and most of those that have already occurred in your Committee and the Committee on Corrections and Institutions. My overall take away is everyone realizes there is this a gap for individuals who don't meet the Hospitalization level of care but have been found Not Competent to Stand Trial or have been adjudged NGRI. This is a public safety issue that needs to be addressed. This is an issue for Victims who are constantly being retraumatized because Vermont has no process for the Restoration of Competency. This is an issue for the individuals themselves who are not receiving those restoration services.

Having followed the various iterations of legislation attempting to address these issues over the years I feel that S. 193 is the closest version to providing a solution that addresses the critical issue of public safety while at the same time giving these individuals a path forward. As Karen Barber indicated to you in her testimony on April 9th, the DOC may not be the best place for these individuals- there is not a perfect solution- but it is a good option for now. There will be time to study the details of the best way of rolling out this solution once the Interim Report is provided on October 1, 2026. Don't let yet another iteration die

on the vine because the solution might be challenged, and all the details have not been wrapped up. How many more families like my family who are facing the trauma of losing a loved in such a horrifying manner will be further traumatized by a broken system?

My suggested amendments:

The main problem is in section 1 of the Bill. As originally written, it did not contemplate the release of individuals that were not able to be restored to competency. When that section was added it paralleled the section on NGRI that required a Court Order releasing those individuals who would not create a substantial risk of bodily injury subject to a prescribed regimen of care. That release being conditioned on compliance with that Order.

It added to section f (1) a requirement that the Commissioner actively monitor compliance with those orders- but it didn't change the language below it re: conditions for return once released if the Commissioner has reason to believe that the person is again incompetent. That only makes sense for those who were released because they were restored to competency but not for ones released because they could not be restored to competency.

Section f (2) then describes the Hearing upon return where the State's Attorney has the burden of establishing by clear and convincing evidence that the person is not competent. Again, that only makes sense for those that are released because they were restored to competency.

For the subset of those released because they could not be restored but would not create a substantial risk of injury- the language in section 3 for those NGRI individuals released because they no longer suffered from a qualifying condition and would not create a substantial risk of bodily injury should apply.

That language requires return when that person is noncompliant with the order of release and which noncompliance would create a risk of bodily injury. In those subset of cases the State's Attorney should have the burden of establishing by a preponderance of the evidence that the person was noncompliant with the Court's order for conditional release and that the noncompliance creates a risk of bodily injury just as they have for the NGRI individuals who are returned to the facility.

Also because section 1 now contemplates a hearing for individuals being returned to the facility – a subsection similar to section (g) of section 3 for NGRI needs to be added to section 1 of the Bill:

"At any hearing under this section, the victim may express the victim's views concerning the offense and preferences for the person's placement and care, and the court may consider the victim' testimony."

Without this added language victims will have no voice in hearings related to those placed in the Forensic Facility who are placed there after being found Not Competent to Stand trial.

When Jared Bianchi testified before your committee, one of the Committee members questioned why this provision was included in the section on NGRI but not in section 1. I understood Jared's reply to be that competency was a judicial standard and therefore victim input might not be appropriate. The piece he was missing on this is there will be hearings for those who are released because they were found not able to be restored to competency but are noncompliant with the court order for their release (which could include a dangerousness component). There is no reason to make a distinction between victim input in those hearings and victim input in NGRI cases for readmittance to the facility because of a failure to comply with conditions of release.

Lastly, I would ask that Section 4 (c under the definition of Forensic Facility relating to release of records be broadened to allow information to be provided to the victims regarding the person placed in the facility. Speaking from personal experience, it is terribly frustrating as a victim to not receive information about the status and circumstance surrounding the accused once they are determined to be Not Competent to Stand Trial. Jared Bianchi was also asked by one of the Committee members about this possibility. Jared suggested that one way to accomplish this could be done by sharing the records with Victim Advocates who could keep the Victims informed.

Thank- you for considering this written testimony in your continued efforts in working on this proposed Bill. I am able to testify remotely (I live in Colorado) should you wish to discuss any of these suggestions. Unfortunately, I will not be available during the week of April 12th as I will be on vacation in a much different time zone. You could send any questions by e-mail and I will do my best to reply.

Sincerely,

Joanne Kortendick

cc: Jennifer Poehlmann, Director of the Vermont Center for Crime Victim Services
Kelly Carroll, Voices for Vermont Victims