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Hon. Sen. Nader Hashim
Chairperson, Senate Judiciary Committee
Vermont General Assembly
115 State St., Montpelier, VT 05633

Re: S.193, Draft 4.1

Dear Chairperson Hashim:

With this letter I am providing comments on behalf of the State of Vermont Department of State's Attorneys and Sheriffs with respect to draft 4.1 of S.193. The State's Attorneys and Sheriffs in each county support this bill and appreciate the work that this Committee has done this session.

We are supportive of the bill's passage. We do see opportunities for enhanced clarity in the text. We offer the suggestions below in the event that these changes can be accomplished now without delaying the advancement of the bill. Your committee has been involved in the crafting of the language thus far and so addressing these comments with you now benefits from that context. While none of our recommendations necessarily require that the bill cease advancement until they are addressed, we did want to give this Committee the opportunity to advance improved language.

Our comments address two topics within draft 4.1: (1) the burden for commitment under § 4819a; and (2) the process applicable to persons who may be not competent to stand trial but who are not foreseeably restorable to competency.

1. Burden of proof.

We have previously offered testimony in support of the structure used by the federal government and other states whereby the burden to show suitability for release is on the individual seeking release. We continue to believe this is the best approach and that there is additional benefit from aligning Vermont's practice with that of other jurisdictions. Your committee has graciously permitted us to be heard on that topic already, and we are not requesting additional time from the Committee to discuss it further. This draft 4.1 makes other

changes to the process set forth in the bill. Because the burden is being shifted to the State within the context of other modifications in the bill, we continue to support its passage.

2. The process applicable to those not competent and unlikely to be restored.

In our comments to draft 1.1 we proposed the following language (at page 2 line 5 of draft 1.1):

If the court finds by clear and convincing evidence that the person cannot be restored to competency, the person shall be subject to commitment pursuant to Section 4819a and all procedures therein shall apply.

We proposed this language because it complies with U.S. Supreme Court decisions concerning due process following a determination that a person may not be restorable to competency. We again propose that this language be inserted on page 2, beginning at line 10, in lieu of the yellow highlighted text. We suggest that the newly added text be deleted from page 2 line 10 through page 3 line 4 and from page 3 line 19 through page 4 line 16.

The language we propose deleting is not sufficiently clear. The one sentence of text we have proposed accomplishes the intention of the many lines of language we suggest deleting and does so with greater clarity. We make this suggestion due to concerns about clarity and consistency, and not due to any perceived benefit or detriment to any participant in the process envisioned by the bill.

If these changes can be accomplished without delaying movement of the bill, we ask that they be considered. If not we hope that the bill will be advanced while we continue this discussion in the latter stages of the legislative process.

Thank you again for the time and consideration you have given to S.193. As always, SAS remains available to further discuss these comments or to otherwise assist the Committee in addressing any questions you may have.

Sincerely,

/s/Jared Bianchi

Jared Bianchi
Deputy State's Attorney