

*Report to*

*Representative William Lippert*  
*and*  
*Representative Michael Marcotte*  
*on*

*Individuals with*

*Developmental Disabilities*

*Who Pose a Public Safety Risk*

*Agency of Human Services*  
*Department of Disabilities, Aging and Independent Living*

*Joan K. Senecal, Commissioner*

*February 2010*

# **REPORT ON INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES WHO POSE A PUBLIC SAFETY RISK**

## **EXECUTIVE SUMMARY**

Vermont, through its laws and policies, has chosen to support individuals with some types of <sup>1</sup>developmental disabilities who pose a public safety risk to live in Vermont communities. Throughout this report, these individuals will be referred to as “the Public Safety Group”. In Vermont’s model, public safety is acknowledged as a shared responsibility of the community, developmental disabilities services agencies, the legislature, the executive branch, law enforcement, the courts, and the individual.

This report confirms that Vermont’s approach is practical in terms of public safety, and is reasonably cost effective. The legal tools which are in place are generally effective. Vermont supervises and supports 194 adults in this Public Safety Group, through its home and community based developmental disabilities service system. The community agencies which support the Public Safety Group generally provide good treatment while respecting individual rights and protecting public safety for those who meet the eligibility criteria. Meanwhile, services for many offenders with disabilities who are not eligible for Developmental Disabilities Services (DDS) are lacking, and often result in unnecessary incarceration.

In approaching this subject, it is important to acknowledge that the DDS system cannot completely prevent crimes by citizens with developmental disabilities, just as the Department of Corrections (DOC) and law enforcement cannot prevent all crimes committed by the population at large.

This report is the result of the hard work of a Study Group convened by the Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL), at the request of Representative William Lippert, Chair of the House Judiciary Committee, and Representative Michael Marcotte from Coventry. The Study Group has recommended a series of practical and cost effective steps which are important for maintaining and strengthening Vermont’s system of supervision and supports of the Public Safety Group. The recommendations, which reflect the general sense of the committee, but understandably not every member, are as follows:

- Competency evaluations for individuals suspected of having a developmental disability should include a current evaluation by a

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<sup>1</sup> Vermont’s Act 174 defines Developmental Disabilities as: “...a severe, chronic disability of a person that is manifested before the person reaches the age of 18 and results in: (a) mental retardation, autism or pervasive developmental disorder; and (b) deficits in adaptive behavior at least two standard deviations below the mean for a normative comparison group.”

psychologist skilled in assessing individuals with DD. (See Part II and Appendix B.)

- Some Act 248 (Vermont's civil commitment law for people with mental retardation) commitments should be for a defined period, rather than indefinite. DAIL should draft guidelines for defined commitment periods for some offenders and share the guidelines with District and Family Court judges. (See Part III)
- Additional review processes should be adopted for individuals in the Public Safety Group who are under guardianship and in a restrictive program if they are not under Act 248 or Department of Corrections supervision; however, the Study Group has not formulated a definite recommendation (See Part IVA).
- The State should adopt the best available risk and criminogenic needs assessment tools and protocols for individuals receiving developmental disabilities services who pose a public safety risk, and these should be used by all Designated Agencies and Specialized Services Agencies, as well as criminal justice programs, to ensure that these individuals do not remain in treatment or in restrictive settings longer than necessary and there should be periodic reviews of all individuals who are in restrictive 24-hour programs. (See Part IV C.)
- Vermont's service models are effective, but services are stretched thin and are fragile due to fiscal limitations and other factors. (See Part IVD.) Designated Agencies' potential civil liability for any offense committed by a person with a developmental disability is a challenge to sustainability, affects the flexibility and costs of services, and is a barrier to expansion of the Developmental Disabilities Service system for individuals who pose a public safety risk. Liability concerns are real and must be taken seriously. However, the problem is complex and requires further consideration. (See Part IVE.)
- The stability and continued availability of shared living homes, which provide supervision for sex offenders with DD, will be jeopardized with the posting of information on the Internet Sex Offender Registry. Vermont law should be changed to exempt street addresses for individuals who receive 24/7 residential support through a Developmental Disabilities Service agency from Internet posting. (See Part IVF and Appendix C.)
- Many offenders who do not meet eligibility criteria for Developmental Disabilities Services, but who have serious impairments, end up in jail. Some of these individuals could stay out of jail or be released into the community under supervision and live productive lives if they had assistance with housing, employment, and/or case management. The

Study Committee understands that this is not the time to seek any funding for services for these individuals, but agreed that at some time in the future it would be prudent to establish a source of funding to support individuals who fall outside the categorical eligibility parameters of Vermont Developmental Disabilities Services and comprehensive mental health services, and should be limited to individuals who meet the federal, rather than the state definition of DD. (See Part V.)

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## PREFACE

During the 2009 Legislative Session, Rep. Lippert, Chair of the House Judiciary Committee, and Rep. Marcotte of Coventry posed a series of questions to the Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL) about individuals who meet the State definition of developmental disabilities and pose a public safety risk (Public Safety Group). The Commissioner agreed to convene a study group on the subject to get a broad perspective on the questions posed.<sup>2</sup> This report represents the findings and conclusions of that study. The purpose of the report is to inform legislative and programmatic development.

Members of the Study Group were:

Allin, Heather	DAIL
Appel, Robert	Vermont Human Rights Commission
Crowley, Karen	Department for Children and Families
Falk, Gail	DAIL
Forbes, Jim	Department for Children and Families
Grims, Eric	Executive Director, Northeast Kingdom Human Services, Inc.
Harritt, Susan	Assistant Attorney General
Koen, Mary	Department of Corrections
Mairs, Greg	Community Associates, Counseling Service of Addison Co.
Myka, Jennifer	Staff Attorney, DAIL
O'Riordan, Kevin	Sterling Area Services, Inc.
Peebles, David	Department of Corrections
Prine, Barbara	Disability Law Project, Vermont Legal Aid
Seibert, Dawn	Prisoners Rights Office, VT Office of the Defender General
Tessler, Julie	VT Council of Developmental and Mental Health Services
Waller, Marlys	VT Council of Developmental and Mental Health Services

Much of this report was written by Gail Falk, J.D., based upon input from the Study Group. Final editorial changes were made by other staff at the Agency of Human Services.

This report is a sequel to the 2001 Report to the Legislature on Offenders with Developmental Disabilities. Many, though not all recommendations of that report, have been implemented in the past nine years. In the ensuing nine years, the skill and depth of services for offenders with DD have grown, and our knowledge about best practices has grown as well. In some places this report refers back to data in the 2001 report, which can be found at [www.dail.vermont.gov](http://www.dail.vermont.gov).

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<sup>2</sup> The Commissioner's letter undertaking to convene a Study Group and reflecting the questions to be addressed can be found at Appendix A.

## ***I. What are Developmental Disabilities?***

Developmental disabilities (DD) are severe impairments that start at birth or in childhood. These impairments affect a person's ability to learn and process information. People with DD have difficulty learning and performing daily life skills.

**Developmental disability** is a broad term with many legal and professional definitions. The term typically includes mental retardation and autism spectrum disorders and the Department of Education's term "learning impairment". The term "intellectual disability" is also used.

Developmental disabilities have many causes. The most common are genetic disorders (such as Down Syndrome), prenatal exposures and birth injuries (such as umbilical cord accidents and fetal alcohol syndrome), autism, childhood illness or metabolic disease (such as meningitis and phenylketonuria), and traumatic brain injury (TBI) incurred before age 18.

The term developmental disability has different meanings in different laws. In Vermont law, the term developmental disability includes the terms **mental retardation** and **pervasive developmental disorder** (also referred to as autism). Vermont's Developmental Disabilities Act of 1996 (18 V.S.A. §8721 et seq.) uses the term "developmental disability" because many consumers of services objected to being labeled mentally retarded and the definition was broadened .

The **federal definition of developmental disability** is much broader than the Vermont DD Act definition. Here is a summary of the federal definition from the website of the Vermont Developmental Disabilities Council:

*A severe, often lifelong disability that affects people before they reach age 22 and substantially limits functioning ability in three or more life activities such as self-care, receptive and expressive language, learning, mobility, self-direction, independent living, and employability.*

This report uses the definition from Vermont's Developmental Disabilities Act of 1996.

Generally, people with DD have serious difficulty learning how to do things that most people their age are able to learn; however, all people with DD are capable of learning new skills. Some people with DD have physical disabilities; most do not. Some people with DD have psychiatric disabilities; most do not. Some people with DD are funny and fun, patient and caring; some are short-

tempered and impatient. Some are truthful, and some are not; most, like the rest of us, are truthful most of the time but not always.

Some people with DD have great difficulty expressing thoughts and feelings in words; others may have good verbal and social skills but lack cognitive understanding. In general, people with DD have trouble with complex ideas or situations, abstract concepts and with reasoning, analysis, and judgment.

“Mental age” is an outdated concept sometimes used to describe people with DD. People with DD usually develop sexual drives and feelings at the same ages as other individuals; however, they typically have received less information about sex and appropriate sexual behavior and often have trouble picking up and giving subtle social cues.

In general, people with DD in American society face discrimination, stigma, or disadvantage because of their disability. Most adults are reluctant to identify themselves as having mental retardation and resist being given that label.

People with DD almost always receive special education during their school years. The public tends to think that everyone receiving special education has mental retardation or a developmental disability, but this is not correct. Nearly 90 per cent of students in special education have an impairment other than mental retardation, such as specific learning disabilities, attention deficit disorder (ADD), or speech and language impairments.

Developmental disabilities do not **cause** criminal behavior. There is no definitive study that shows that people with DD are either more likely or less likely than others to commit crimes. Most people with DD are law-abiding citizens. A small proportion fall into the category of posing a public safety risk and need to have legal constraints for the protection of society.

## ***II. What Happens Legally if a Person with Developmental Disabilities Commits a Crime?***

Any adult, regardless of diagnosis of developmental disability, may be charged with a crime and arrested. However, it is unconstitutional to put an individual on trial for a crime if the person cannot understand and participate meaningfully in the trial process. A person who cannot understand and participate meaningfully is termed **incompetent to stand trial**.

Some people with DD are competent to stand trial and some are not. Incompetence to stand trial can arise from many disabilities, including mental illness, physical illness or disability, mental retardation, or another cognitive disability. No diagnostic label or IQ score alone proves that a person is competent or incompetent to stand trial.

If a person with DD is found competent to stand trial, he or she will go through the criminal process like any other defendant, pleading guilty or not guilty, being tried or entering a plea, and facing incarceration or probation if convicted. Some people with DD are found to be incompetent to stand trial and then the criminal proceedings against them cease. The individual's case is either dismissed or the State seeks civil commitment under 13 V.S.A. §4823, commonly known as **Act 248** (discussed below). These steps all occur in District Court. If the person is committed under Act 248, the case is then transferred to Family Court.

The crucial step in the criminal process is the **competency evaluation and determination**. Typically, a request to evaluate an individual's competence to stand trial is made by the defense lawyer, usually in the early stages of a criminal prosecution. However, a request for a competency evaluation can be initiated at any stage by the judge, defense attorney, or the state's attorney. The competency evaluation is completed by a **forensic psychiatrist, i.e.** a doctor with special, advanced training in assessing whether a person is competent to stand trial. There are only a few forensic psychiatrists in Vermont.

**The accuracy, consistency and quality of competency evaluations are at the heart of fundamental due process. Recognizing and correctly identifying a person's developmental disabilities is critical to a complete forensic evaluation. In Vermont, forensic evaluations are often based upon old or incomplete psychological reports, or a psychiatrist's impression of the individual's cognitive functioning abilities based upon a brief interview. This can lead to incorrect assumptions about the person's ability as well as the person's eligibility for Developmental Disability Services.**

Competency evaluations for people thought to have DD should have input from a psychologist skilled in assessing individuals with DD. Psychologists are the professionals best trained to assess intellectual functioning and diagnose developmental disabilities. A psychologist's evaluation provides the forensic psychiatrist with better information about the individual's cognitive functioning. While a psychological assessment adds some time and expense to the competency evaluation process, these resources are inconsequential compared with the costs and delays created by forensic evaluations that miss a diagnosis of DD or which incorrectly label a person as having mental retardation. Family Court rules in Vermont already provide the Family Court with the option of appointing either a psychologist or a psychiatrist to do competency evaluations for juveniles. V.R.F.P. 1(i)(2).

- **The Department of Mental Health and DAIL should work together to develop a practical process for incorporating psychological evaluations into the forensic evaluation process for adults.**
- **Further, to ensure this practice is implemented statewide, Title 13 should be amended to require that competency evaluations for individuals thought to have a developmental disability include a current evaluation by a psychologist skilled in assessing individuals with developmental disabilities. See Appendix B for proposed language.**

### ***III. What is Act 248 and How Well Is It Working?***

Act 248 is Vermont's civil commitment law for people with mental retardation who have been found to be a danger to the community and who cannot be sent to prison. Act 248 is located in the Vermont statutes at Title 13, Section 4823 and Title 18, Sections 8839 – 8846. In general, Act 248 works well as a commitment process for individuals with mental retardation who have committed a dangerous act and pose a risk of committing dangerous acts in the future. It works well from the perspective of the individual who poses a public safety risk, the victim, the courts, the public, and the Developmental Disabilities Service system.

Act 248 was adopted in 1987 to address a shortcoming in the law. At that time, Vermont law authorized civil commitment of an individual with mental retardation only if the person was a danger to himself. Thus, when criminal charges were dismissed against an individual found incompetent to stand trial on the basis of mental retardation, the court had no option but to the person go free because there was no system to provide legal supervision for these individuals. If a person did not agree to treatment, she/he could not be held, and the public could not be protected from repeat offenses. Act 248 provided a way for courts to protect the public safety by committing individuals found incompetent to the custody of the Commissioner of DAIL and through that mechanism to community programs which have the legal responsibility to protect public safety.

To be committed under Act 248, a person must:

- have mental retardation, and
- present a danger of harm to others, i.e., be a person who has engaged in ANY of the following:
  - sexual assault
  - lewd and lascivious conduct with a child
  - inflicting or attempting to inflict serious bodily injury upon another person.

Act 248 is limited to people with a diagnosis of mental retardation. Individuals who do not have mental retardation but have other disabilities may be found incompetent to stand trial but they cannot be put under Act 248 jurisdiction.

People can be put under Act 248 jurisdiction only if they have committed one of the acts listed as a “danger of harm to others.” For example, a person who has committed theft or stolen a car cannot be put under Act 248 jurisdiction unless there was some element to the crime that involved inflicting bodily injury.

The court order of commitment places the individual who poses a public safety risk in the custody of the Commissioner of DAIL. DAIL becomes responsible for designating an agency to provide care, custody and habilitation to the person. DAIL generally selects the Designated Agency for the county in which the person lives but may select a different agency if it is better suited to provide the necessary services. DAIL might also select another agency in order to provide a safe distance from the victim or because of intense community hostility.

The Commissioner of DAIL has the authority to determine, for any individual under commitment, the extent of supervision, and the restrictions to which the individual is subjected. If existing restrictions appear insufficient to protect public safety, the Commissioner has the authority to increase the restrictions. The following are examples of restrictions which have been added for the purpose of increasing public safety in individual situations:

- alarms on residential windows and doors
- awake overnight supervision
- requiring the person to move from his own apartment to a staffed residence
- restricting the person's access to settings where children may be present.

DAIL routinely notifies law enforcement officials for the jurisdiction where the individual is living of the address of the individual, and sends law enforcement officials a copy of the court order. Through the therapy process, the individual could disclose his risk to neighbors, co-workers, or family. DAIL may also notify neighbors or employers if there are concerns about public safety. In the event that a person leaves a residence or supervision without permission, the police are authorized to pick the individual up and return him or her to the designated program. There has been excellent cooperation with law enforcement officials in the rare instances when an individual left a program without permission.

Act 248 gives an individual the right to seek judicial review of an order of commitment and requires the Commissioner to initiate an annual judicial review in family court to continue a commitment for more than a year. To continue commitment, the Commissioner must be able to demonstrate that the person is still “dangerous.” In a judicial review, the person is represented by an attorney from Vermont Legal Aid’s Disability Law Project. To date, no court has

ever concluded that a person under Act 248 commitment should be released from commitment if DAIL said that the person was still in need of custody, care and habilitation.<sup>3</sup>

Act 248 gives the court or the Commissioner the authority to discharge a person from custody if the court or the Commissioner believes the person no longer poses a threat to public safety. Some individuals have been discharged from custody on the grounds that they no longer pose a threat to public safety. (See Table 1) The law does not specify how dangerous a person must be to be held, or how safe he or she must be to be released. Current practice of the Commissioner is to seek continued commitment for anyone who poses any significant potential to reoffend. Commitment under Act 248 tends to be long-term.

As of October 2000, there were 15 people on Act 248<sup>4</sup> status. Between October 2000 and November 2009, 29 people were committed to Act 248 and 12 people were discharged. Of the 29 people committed, 11 were new to developmental services and 18 were not (although 3 had been in and out of services). Of the 12 people discharged from Act 248 status, six continue to receive developmental services, three have left the state, two died, and one was found not to have mental retardation.

Table I  
Act 248 – Number Committed and Number Discharged By Year  
Oct. 2000 – Nov. 2009

Calendar Year	Newly Committed	Discharged
2001	2	1
2002	2	1
2003	2	1
2004	2	0
2005	3	2
2006	4	2
2007	6	1
2008	2	1
2009	6	3
Total	29	12

<sup>3</sup> According to Title 18 V.S.A. §8839 “ ‘Person in need of custody, care and habilitation’ means: (A) a mentally retarded person; (b) who presents a danger of harm to others; and (c) for whom appropriate custody, care and habilitation can be provided by the commissioner in a designated program.”

<sup>4</sup> For a Table showing the annual number of individuals committed and discharged between 1990 and 2000, see Report to the General Assembly (2001), p. 9

Table I shows that the number of commitments per year has been fairly steady, except for a bulge between 2006 – 2009, which also coincides with an increase in the number of people committed who were already receiving services (generally resulting from charges brought by staff. Table II shows that 16 people were committed for sexual offenses and 13 were committed for other dangerous behavior.

Table II  
Reason for Act 248 Commitment – October 2000-November 2009

Year	Sexual Offense	Non-Sexual Offense
2001	2	0
2002	0	2
2003	0	2
2004	2	0
2005	3	0
2006	2	2
2007	3	3
2008	2	0
2009	2	4
Total	16	13

The 2001 Report to the Legislature concluded that the public safety record for people under Act 248 jurisdiction was excellent. No person under Act 248 had been charged with a new crime of the type for which he or she was committed and, in fact, only one person under Act 248 had been charged with any new crime (throwing rocks at passing cars).

In the decade January 2000 to December 2009, the number of people under Act 248 jurisdiction doubled and the public safety record was not as exemplary as it was during its first decade of existence. One individual under Act 248 jurisdiction fondled a child, and another escaped from custody and was charged with simple assault. Two re-offenses in a ten-year span is more than we would wish, but it indicates that Act 248 continues to serve to protect public safety.

While the criteria for being placed under Act 248 jurisdiction are clear, the criteria for ending Act 248 supervision are less so. It can be difficult to know when a person should be released. As a result, some individuals remain under Act 248 jurisdiction for years and can lose the motivation to gain skills for independent living if they are looking at commitment with no end in sight.

Act 248 commitments could function more like criminal sentences, with defined terms, to be extended if the state can show the individual is not cooperating or progressing in treatment. This would offer motivation for both staff and consumers to work toward a predicted date of independence. Not all commitments should be for a defined term; a few people are so dangerous that their commitments should be indefinite, but this could be addressed in guidelines. Achieving state-wide consistency would be important in defining terms for Act 248 commitments.

- **DAIL should draft guidelines for defined commitment periods. The guidelines together with the rationale for the guidelines should be shared with District and Family Court judges.**

#### ***IV. Vermont's Service System for Individuals with Developmental Disabilities Who Pose a Public Safety Risk***

**A. Types of Services and Number of Individuals Served.** Vermont closed its large institution for people with DD (Brandon Training School) in 1993. Since that time, the state has operated a community based system of services, including services for the Public Safety Group. Services are provided through a network of 15 non-profit community Developmental Disabilities Service (DDS) agencies (ten Designated Agencies and five Specialized Services Agencies). The State contracts with these agencies to provide needed services, including services for the Public Safety Group.

The Vermont's DDS system is characterized by individualized services adapted to the particular needs and abilities of the person. Residential services are provided through shared living (adult foster care) homes, supported apartments, a few staffed settings, and a few group homes for three to six residents. The average number of people with a developmental disability receiving residential services in a home is 1.2. Individuals in the Public Safety Group live in towns and counties in every part of Vermont. Vermont state law specifically authorizes the location of group homes for individuals with DD in any area zoned for single family residences<sup>5</sup> and the federal Fair Housing Act also protects against discrimination in housing based upon disability.

Over the past twenty-five years, the DD services system has developed the capacity to serve individuals who present with a wide range of risks and offenses. At present, the system provides support to 194 **individuals in the Public Safety Group**. Thirty-two of this group are under Act 248 jurisdiction. The average individual DD services cost for individuals under Act 248 is \$143,437.

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<sup>5</sup> 24 V.S.A., Section 4412.

The crimes committed by these individuals can be grouped in the following categories: sexual offenses, nonsexual violence, domestic assault, arson, larceny, theft, burglary, drug-related offenses and property destruction. Adults served by DD services are supervised under a variety of legal statuses, such as DOC supervision or committed to the custody of the Commissioner of DAIL under Act 248.

Frequently, courts place individuals who have done something dangerous under public guardianship through the Office of Public Guardian (a DAIL program) with the expectation that the guardian will ensure that the person does not re-offend. Youths who have been determined to be a risk to public safety and are “aging out” of Department for Children and Families (DCF) custody are frequently placed under public guardianship with the expectation that the guardian will ensure that the person continues to have 24-hour supervision. This approach works well for young adults who are willing to accept 24-hour supervision. It creates many dilemmas in the case of young adults who are determined to make their own life decisions once they turn 18, and for older adults who feel that they no longer should have to have someone watching them all the time.

There is no specific external review process for individuals under guardianship who are in restrictive programs if they are not under Act 248 or Department of Corrections’ supervision. As a result, some members of the Public Safety Group may remain in treatment or in restrictive settings longer than necessary or effective.

- **Additional review processes should be adopted, but the Study Group did not formulate a definite recommendation. Possibilities include peer interdisciplinary mentoring teams, periodic review of guardianship orders for individuals who are in restrictive 24-hour programs, periodic reviews of funding and eligibility for individuals who receive funding from DAIL’s Developmental Services Public Safety Fund<sup>6</sup>, and outside evaluations for individuals who have been in treatment for more than four years.**

There is a very high proportion of sex offenders among the Public Safety Group.<sup>7</sup> At present, about 70 per cent of the group served by DD services are sex offenders. These individuals are supervised through a variety of legal means, i.e. through the Department of Corrections, Act 248 jurisdiction, Offices

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<sup>6</sup>The term “Public Safety Fund”, is not a separate State fund, but a mechanism that the Department of Disabilities, Aging and Independent Living uses to separate components of the annual appropriation for developmental disabilities caseload.

<sup>7</sup> In this report, the term “sex offender” encompasses a range of sexual offenses from public masturbation to sexual assault.

of Public Guardian. There are 135 sex offenders and their average individual DD waiver budget is \$96,853.

In the past decade, the DD service system has devoted considerable time, resources, and expertise to improving the capacity and skills of DD services providers to supervise sex offenders. Specialized teams in several DD services agencies train case managers to become knowledgeable about supervision of sex offenders and recruit and train employment specialists and residential providers in best practices. There are now therapists in all regions of the state who offer adapted sex offender therapy. Most regions offer Dialectical Behavior Therapy (DBT) adapted for individuals with DD and other anger management and social skills groups. Through a Department of Justice (DOJ) grant, the state developed a *Best Practices Manual for Supervision of Sex Offenders with Developmental Disabilities* and a *Treatment Progress Scale (TIPS-ID)* for assessing an individual's changeable risk factors and providing directions for future treatment. (Available on the DAIL website [www.dail.vermont.gov](http://www.dail.vermont.gov).) The DOJ grant also provided the impetus and resources to initiate a bi-annual survey of sex offenders with DD to provide current information about the characteristics of sex offenders, the treatment received, and the success of the program in protecting public safety.

### ***B. Safety and Treatment Outcomes***

Vermont's Developmental Disabilities Service system generally does a good job of providing the Public Safety Group who qualify for services with good treatment, while protecting public safety, and respecting individual rights.

DAIL has a Community Safety policy which requires state level review of supervision plans for high risk sex offenders with DD. Where needed, community residences are equipped with alarms on doors and windows, and there is a plan of responsibility to ensure the alarms are checked regularly and in working order. In rare cases, a perimeter fence is in place. Community notification of neighbors, employers or social acquaintances occurs where it will contribute to community safety.

DAIL services staff work with Department of Corrections' (DOC) staff when an individual who is receiving DD Services is on probation, parole, or furlough. In these cases, the DOC bears lead responsibility for safety decisions, and DDS staff provide the supports the individual needs because of his developmental disability, such as housing, employment supports, and adapted therapy together with the supervision required by the DOC. DD services staff also work with victim advocates, where available, to ensure that the victim has the information and support that she or he needs.

Among the sex offender group, 66% receive 24-hour, 7-day-a-week supervision, 27% receive supervision less than fulltime, and 7% do not receive staff

supervision. Some sex offender treatment involves increasing an individual's independence over time to determine if they can take on this level of self-regulation. These individuals might still receive case management, clinical support, and might live in a supportive living environment. They are still deemed part of the Public Safety Group because they might still present a risk of reoffending.

The safety outcomes have been good but not perfect. Nearly **nine out of ten** sex offenders under DD services supervision in the period 1993 to 2008 committed **no sexual re-offense**. Most of the re-offenses which occurred (18 out of 24) were non-contact offenses (such as public exposure) and were offenses against staff supervising the individual or someone in the individual's residence.

It is unrealistic to expect that the DD services system can keep the community safe from every person with a developmental disability who commits a crime, just as the Department of Corrections and law enforcement cannot keep the community safe from all crimes committed by the population at large. However, it is certain that, without the treatment and supervision provided by DD services agencies, the re-offense rates for these sex offenders would have been three to four times greater than they were and the seriousness of many of the offenses would have been far greater.

### ***C. Costs and Funding***

In the 2001 Report to the Legislature on Offenders with Developmental Disabilities, one of the recommendations was to earmark funds for this Public Safety Group. That report noted that the entire DD services system had been stressed by meeting the costs of high risk individuals for whom the DD services system was expected to play a correctional function. The report recommended that "the excess funds needed to provide for public safety for these high risk individuals should be provided in earmarked funds, separate from regular DS caseload funds."

This recommendation was implemented in 2004 by including a line item within the DD services budget for new Public Safety caseload. These funds are maintained in a Public Safety Fund, and use of these funds is restricted to individuals who meet criteria as described in the State DD System of Care Plan. This strategy has worked well. As a result,

- ◆ Funding for vulnerable law-abiding individuals with DD and their families is not in competition with funding for the Public Safety Group; and
- ◆ New funding for the Public Safety Group and the cost of services can be tracked on an annual basis.

The Public Safety Fund is used to develop budgets for individuals who are new to the system, for existing members of the Public Safety Group when a new factor creates new and additional risk in their lives or for someone receiving developmental services for whom staff have determined to now have a public safety need. These earmarked funds allow individualized programs and supervision to be developed for individuals entering the system without compromising the safety and treatment for individuals who pose a public safety risk and are already receiving services.

Table III  
Annualized Public Safety Dollars – SFY 2004 through SFY 2010

Fiscal Year	Newly Appropriated PS Caseload	Actual Annualized PS Allocations
2004	\$755,723	\$999,972
2005	493,999	596,317
2006	952,153	902,153
2007	933,611	1,155,137
2008	1,119,987	1,346,958
2009	1,181,304	2,344,670
2010 (July-Dec.)	1,130,450	545,330
	\$6,567,227	\$7,890,537

Expenditures from the Public Safety Fund have been fairly consistent from year to year, taking into account inflationary pressures. Most years the Public Safety expenditures have stayed within the allocated budget. The amount for FY2005 appears lower than the amounts for other years because in FY2005, the Fund was used only to supplement the budgets of the Public Safety Group when they exceeded the average state DD home and community based services amount. SFY2009 was an outlier; in that year there were more than triple the number of new individuals requiring supervision to protect public safety (see Table IV below). This required that the Public Safety Fund be supplemented with \$742,573 from the Equity Fund,<sup>8</sup> thus diminishing the money available to other vulnerable DD individuals and their families. To date, trends in SFY 2010 reflect the patterns of previous years.

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<sup>8</sup> According to the DS System of Care Plan, the Equity Fund is a statewide resource that contains funding returned because a person has died, gone into an institution, left services or not used funding granted during the year from the Equity Fund. The Equity Fund supplements the New Caseload Fund when those resources are insufficient to meet funding priorities. The purpose of the Equity Fund is to ensure that funding already appropriated, but no longer needed, is reassigned to individuals who meet funding priorities.

Between July 2004 and December 2009, Public Safety funds were distributed to 57 “new” individuals and 107 “existing” consumers. “New” individuals are people who have not previously received funding for DD services home and community based services. They are typically juveniles aging out of DCF custody, individuals committed to DAIL’s custody under Act 248, individuals maxing out of a correctional sentence, individuals moving into Vermont from another state, and youths placed under public guardianship for dangerous behavior. “Existing” individuals may be people who had public safety funding for limited services (such as, employment or respite) and now need funding for supervision and/or treatment because their supervision or treatment needs have increased.

Table IV  
Public Safety Fund -- “New” and “Existing”

Fiscal Year	New	Existing
2005	7	19
2006	8	16
2007	7	20
2008	8	20
2009	22	20
2010 (to date)	5	12
Total	57	107

In recent years, about half the individuals who received funding through the Public Safety Fund had committed a sexual offense and about half were considered to be dangerous because of public safety issues other than sexual offenses.

In SFY 2009, the average per person expenditure from the Public Safety Fund (including both new and existing consumers) was **\$58,617**. In contrast, the average per person new funding for the same year for all other DD services consumers (from the categories of New Caseload, Equity Funds, and High School Graduate funds) was **\$28,115**.

Public Safety funding, like all other DD services home and community-based services funding, is granted to an individual, and continues to fund supports and services for that individual on an ongoing basis unless and until the person’s needs or service costs decrease, or the person leaves services.

A DAIL cost analysis of the total costs for the Public Safety Group in SFY2009 yielded an average per person cost of \$99,690. This cost includes infrastructure costs, and annual cost of living costs. This number is an average and reflects the combined budgets of a few individuals whose budgets are less than \$5,000 per year and others, whose budgets exceed \$200,000.00 per year.

These costs are not out of line with national costs for comparable programs. Civil commitment costs in other states, which retain sex offenders without disabilities in incarceration after their sentence expires, exceed \$100,000 per person. Institutions for individuals with DD in other states show annual costs of \$188,732.<sup>9</sup> Costs for individuals in the Public Safety Group who were held at the Vermont State Hospital for forensic evaluations or for lack of community placement exceed \$400,000 GF annually. When comparing the costs of DD services to the costs of incarceration, it is important to remember that DD services are funded by Medicaid and, therefore, receive a federal match through the Global Commitment waiver (the precise ratio varies from year to year) and so the costs to the Vermont taxpayer for offenders served by the DD system are actually comparable to the costs of incarceration; all general fund. (see Table V below).

Table V  
Comparison of Costs

Adults incarcerated in a Vermont prison	\$51,000
Adults receiving DD home and community based services 2008	\$53,798
<b>Vermont adult Public Safety Group</b>	<b>\$99,690</b>
Projected annual cost of Brandon Training School (2008)	\$283,470
National average annual cost of institutions for DD (2008)	\$188,732
National sexual predator civil commitment costs (2007)	\$100,000

Liability pressures felt by the DD services agencies may be contributing to the high costs of services. This issue is addressed in a separate section.

Some individuals may be getting more treatment or a higher level of supervision than they need, thus driving up costs. Standardized risk and criminogenic needs assessment tools exist for sex offenders and individuals who are violent and have developmental disabilities, but these tools are not routinely used by DD services agencies in the state. More effective and uniform utilization review of for the Public Safety Group could result in better use of funds and adherence to the service principle of “no more/no less” than what is needed.

- **The state should adopt the best available risk and needs assessment tools and protocols for the Public Safety Group in Developmental Disabilities Services, and these should be used by all DD services agencies. In addition, there should be periodic reviews of all individuals who are in restrictive 24-hour programs.**

#### ***D. Pressures on Developmental Disabilities Services***

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<sup>9</sup> Braddock et al., The State of the States in Developmental Disabilities (2008)

While by all measures providing good supervision and treatment, Vermont's services for the Public Safety Group are stressed, stretched thin, and feel fragile.

A survey of DD services agencies last year revealed a troubling number of individuals whose placements were considered unstable or unsafe. Agencies identified 71 individuals who were, in one way or another, stressing the capacity of the agency. The stresses expressed themselves in a number of ways: excessive costs, requests for out-of-state placements, use of the Vermont State Hospital or other psychiatric hospitals for crisis stabilization, use of statewide crisis beds, fear of community notification, undue pressure on services to others served by the agency, and, in some cases, a concern that public safety might not be adequately protected. As a result of the survey, DAIL modified its policy on community notification, thus reducing the number in the Public Safety Group classified as having unmet needs to 52. Some unmet needs that were identified were: individuals whose behavior is so dangerous that they exceed program capacity; individuals for whom we do not have effective treatment approaches (such as PDD, complex mental illness, borderline personality disorder) and who remain dangerous; and individuals whose services are and remain costly or very challenging to agencies over an extended period because of their dangerousness.

To remain secure and cost effective, the following areas need attention:

- **Crisis Bed.** One or more crisis beds earmarked for the Public Safety Group is essential to the security of the overall system. For several years, DAIL contracted for a crisis bed for offenders in the Northeast Kingdom. The resource was heavily used and provided an invaluable layer of back-up to the Designated Agencies and Specialized Services Agencies. The bed closed in June 2009, and no other DD services agency has been willing to open a new bed, largely because of concerns about community reactions and liability.
- **Funding mechanisms for high risk/high needs individuals.** The vast majority of the Public Safety Group are served at or near the average per-person cost of \$99,690; however, a few individuals require extraordinary staffing to keep them and staff safe. DAIL's DD System of Care funding guidelines limit expenditures for an individual to \$200,000 per year,<sup>10</sup> and, when an agency must spend more, it is at risk for incurring a loss, which then must come from funds designated to serve other at risk consumers.
- **Additional capacity for hard-to-serve members of the Public Safety Group.** Certain individuals are particularly hard to serve in any setting. They may have complex psychiatric needs, they may be highly resistant to

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<sup>10</sup> Exceptions to this policy are made by the Commissioner in extremely rare cases.

supervision, they may try to elope, they may be highly assaultive to staff and to peers, or they may be extremely emotionally volatile. These characteristics may make it difficult to supervise these individuals in a shared living home or a group home. It may be difficult to retain staff to work with them. When these characteristics are combined with risk to the public, agencies may feel overwhelmed. In the past two decades, a few agencies have stepped forward to take on these exceptionally challenging individuals, but, at present, no agencies feel able to accept hard-to-serve individuals from another region because of concerns about budget, liability, and community reaction.

Some have suggested a small secure facility to house a group of these uniquely hard-to-serve individuals, but it is unlikely that grouping the most hard-to-serve individuals together in a single location would be beneficial or cost-effective. The individuals who are the hardest to serve are difficult and dangerous in *unique* ways. To assemble the combination of treatment and staffing resources to meet the differing needs of the individuals in a single location, while keeping the individuals safe from one another, would almost certainly exceed the costs of our current individually-tailored services. A figure less than, but close, to the current costs of Vermont State Hospital (\$400,000 General Fund per person per year) are a probable benchmark for the per resident annual operating costs of such a facility. Further, if it were deemed by federal authorities to be an incarceration facility, it would not qualify for Medicaid funding.

Vermont may wish to provide incentives for a current agency to extend its capacity for these hard-to-serve individuals, or it may wish to develop a new service program with a particular mission of serving extraordinarily high-risk individuals with developmental disabilities.

- **Reliable funding.** The budget pressures of the past two years have had a discouraging effect upon DD services agencies. They are less willing to take on new challenges, and to develop new capacity, because of the uncertainty of funding. No agency wishes to be left with the responsibility for supervising a dangerous offender without the resources to do so.

### ***E. Liability of Developmental Disabilities Service Providers***

Nearly all individuals in the Public Safety Group supervised by DD services agencies are under state custody. If determined to be competent, they would ordinarily be under DOC supervision until their sentence ended. Most are under Act 248, public guardianship, and/or DOC supervision, yet the private nonprofit agencies that provide services to them do not get the protection of the state's sovereign immunity. The agencies worry that they will be left with the

liability and public relations risks if something goes wrong, even if the agency has followed procedures for best practice and risk management.

They worry about the effect of a lawsuit on their agency's funds, and also upon their hard-earned community reputations.<sup>11</sup> Anxious about their exposure if an individual they serve commits a new offense, they are hesitant to accept high risk individuals from other regions even though they might have the resources to serve them. Sometimes there is insistence on 24-hour supervision for offenders who have the skills to spend time alone, even though the individual may score at low risk to reoffend on standard risk assessment measures.

The Designated Agencies' potential liability for any offense committed by a person with a developmental disability is a challenge to sustainability and a barrier to expansion of the DD services system for people who pose a public safety risk. Designated Agencies' concerns about liability create a tendency to be overly restrictive, thereby increasing the costs for supports and supervision.

- **Liability concerns are real, but the problem is complex. The issue warrants additional serious study.**

### ***F. Internet Registry Posting of Developmental Disabilities Service Consumers' Street Addresses***

The new requirements enacted by the Legislature during the 2009 session require posting the pictures and street addresses of many more sex offenders on the Internet registry. These requirements have created a new challenge to agencies that serve these individuals. Many high risk individuals are securely housed in the homes of Vermont caregivers. These homes have security measures, such as window and door alarms, and have been reviewed by DAIL's Public Safety Specialist to ensure that supervision is in place to protect community safety. DAIL requires a written community safety plan for each high risk individual, and these plans specify neighborhood or individual disclosure when this step will contribute to public safety.

The effect of posting an offender's street address on the registry is also to post the caregiver's home address on the registry. Many caregivers have made it clear that they would cease providing supervision to an offender if it meant posting their home address on the internet registry. No added community protection will result from the street addresses of these closely supervised homes on the registry as disclosure is already occurring when the interests of safety require it.

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<sup>11</sup> At least two agencies have experienced losses due to lawsuits filed during the last few years, related to offenders.

The stability of supervision homes for sex offenders will be jeopardized when their pictures and street addresses are posted on the Internet Sex Offender Registry.

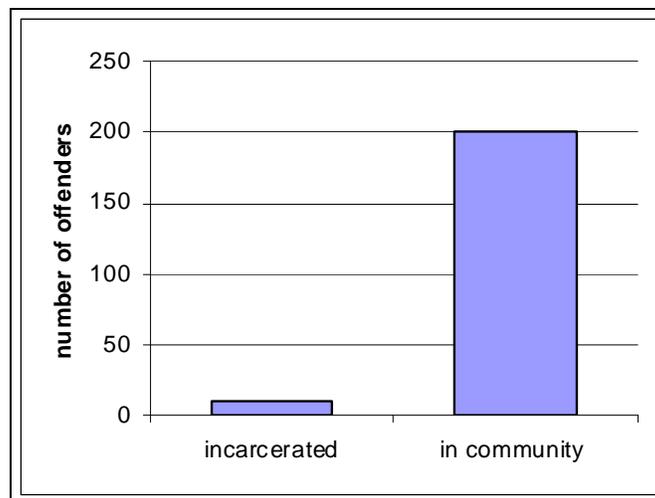
- **Vermont law should be changed to exempt street addresses of individuals who receive support through a DD services agency from Internet posting. (see proposed language in Appendix C)**

## ***V. Developmental Disabilities and Incarceration***

Very few individuals who pose a public safety risk and who meet the state DD Act<sup>12</sup> definition of developmental disability are incarcerated in Vermont. Over the past two decades, the number of prisoners with mental retardation has remained steady or decreased. Periodic surveys by the Department of Corrections and state DD services staff have consistently come up with a number between 5 and 12 (12 in 1992, 6 in 1998, 8 in 2000.) Currently, an estimated 10 offenders eligible for DD services are incarcerated (seven identified, three unknown).

One hundred and ninety four adults who pose a public safety risk are under legal supervision (DOC, Act 248, private guardian, public guardian) receive DD services supervision. Of the individuals eligible for those services, nearly all are being supported in the community; however, when other definitions of disability are used, the numbers look quite different.

**Chart 3**  
**Location of DDS-eligible Individuals Who Pose a Public Safety Risk**



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<sup>12</sup> See Part One.

As described in Part I, the federal definition of developmental disability is much broader than the Vermont DD Act definition. The federal definition includes many disabilities in addition to mental retardation and autism. Prevalence estimates for developmental disabilities vary widely. A 2007 Legislative report which examined the practicalities of extending transitional services to youths who have a functional disability estimated that the number of Vermont children and youth who meet the federal definition of developmental disability is between 43 per cent and 85 per cent greater than the number who meet the state definition of developmental disability. If we assume conservatively that two percent of the prison population meet the federal definition of developmental disability that would mean that 45 inmates of Vermont prisons are likely to have a developmental disability by the federal definition. (2274 x .02)

Vermont has a bifurcated response to individuals with developmental disabilities who pose a public safety risk. Those who are eligible for DD services generally receive them and generally receive good supports which prevent incarceration and protect the community; however, those who are not eligible for DD services typically get few, if any, supports.

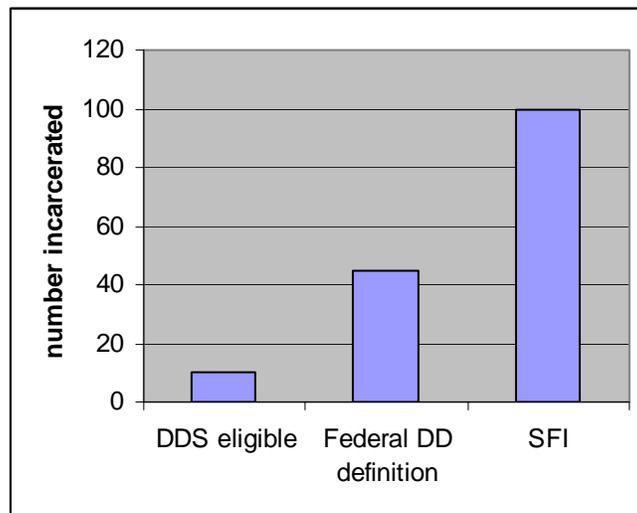
Using a still broader definition, the Department of Corrections estimates that 4.3 per cent of inmates have a Serious Functional Impairment (SFI). This term was made a part of Vermont's statutory language when the Legislature enacted S. 2 in 2009, as Act 26. This statute defines SFI as follows:

*“Serious functional impairment” means:*  
*(A) a substantial disorder of thought, mood, perception, orientation, or memory, any of as diagnosed by a qualified mental health professional, which grossly substantially impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or (B) a developmental disability, traumatic brain injury or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impairs the ability to function in the correctional setting.*

The definition of SFI includes traumatic brain injury, drug and alcohol-induced dementias, age-related dementias, stroke, mental illnesses, and many other impairments which do not meet anyone's definition of developmental disability, yet these individuals typically have similar needs for support and accommodations to individuals with developmental disabilities. They often have the same needs for housing, employment and community supports to prevent incarceration, or to achieve successful reintegration following incarceration. Meeting the needs of the SFI population is beyond the scope of

this report except to note the discrepancy in the manner in which Vermont responds to the needs of its citizens with disabilities. The Agency of Human Services' (AHS) Criminal Justice Core Team is focused on better identifying and serving offenders or persons at risk of becoming offenders who have a serious functional impairment. This group is directed to provide on-going quarterly reports to the Legislature's Corrections Oversight Committee.

**Chart 4**  
**Vermont Incarcerated population (State DDS eligible, federal DD definition, SFI)**



Many individuals with DD and other serious functional impairments could stay out of jail or be released to the community with supervision if they had assistance with housing, employment and/or case management. It would be too expensive to extend DD service eligibility to all Vermonters who might benefit from it, but it is important to consider what initial steps would help meet the needs of this underserved population. Federal Medicaid Assistance Payment (FMAP) could be available for case management and other services for individuals who meet the federal DD definition.

The Study Group is well aware of the fiscal realities facing our state and has made this recommendation with the understanding that it should be held for a point in the future when Vermont's economic situation is not so bleak.

**At a point in the future, establish funding to support individuals who fall outside the categorical eligibility parameters of Vermont Developmental Disabilities services and comprehensive mental health services and limit those services to individuals who meet the federal, rather than the state definition of DD. (See Part V)**

## **VI. Conclusion**

Vermont, through its laws and policies, has chosen to support individuals with developmental disabilities who pose a public safety risk to live in Vermont communities. In Vermont's model, public safety is acknowledged as a shared responsibility of the community, developmental services agencies, the Legislature, the executive branch, law enforcement, the courts, and the individual.

This report confirms that this approach is practical in terms of public safety, and is reasonably cost effective. The legal tools which are in place are generally effective. The community agencies which support the Public Safety Group with developmental disabilities generally provide good treatment while respecting individual rights and protecting public safety for those who meet the eligibility criteria. The service models are effective, but these services are stretched thin and are fragile due to budgetary and other factors. Meanwhile, the State lacks services for other offenders with disabilities, who are not eligible for DD services which sometimes results in unnecessary and prolonged incarceration.

## Appendix A



AGENCY OF HUMAN SERVICES

DEPARTMENT OF DISABILITIES, AGING AND INDEPENDENT LIVING

Commissioner's Office  
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April 21, 2009

Rep. William Lippert  
Rep. Michael Marcotte  
House of Representatives  
Statehouse  
Montpelier, VT 05633

Dear Rep. Lippert and Rep. Marcotte:

This letter is in response to your request for a written statement concerning my verbal promise to convene a study group to examine issues around the group of people with developmental disabilities that we refer to as "Public Safety" consumers. This group has two categories: (1) persons committed to the custody of the Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL) because they have been found unable to stand trial and the court has found that they are in need of custody, care and habilitation (Act 248); and (2) individuals who have not been adjudicated, but because of their known history, present a public safety risk, e.g. history of arson, sexual abuse, or violence.

We have been discussing this subject with the developmental services providers (Designated Agencies - DAs and Specialized Services Agencies - SSAs) for nearly a year and agree that now is the time for a more focused approach. The developmental services providers are currently serving approximately 195 offenders at an average cost of \$100,000/person.

I will convene a group that will work over the summer and, if necessary, into the fall to examine the areas listed below and develop specific recommendations to address this unique population. We have initially identified the following organizations that will be invited to participate: DAIL; Developmental Services providers, including Northeast Kingdom Human Services; Department of Corrections; Disability Law Project; Office of the Defender General; Office of the Attorney General; and the Department for Children and Families. Undoubtedly others will come to mind as we flesh out the agenda for the study.

The group will be convened to, at a minimum, examine and make recommendations concerning the following areas of interest:

Disability and Aging Services  
Licensing and Protection

Blind and Visually Impaired  
Vocational Rehabilitation

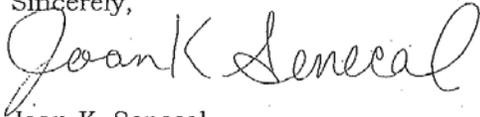
J. Senecal to Rep. Lippert and Rep. Marcotte  
Developmental Services Public Safety Study  
April 21, 2009  
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- Policy, provision of services, treatment and community safety for individuals with developmental disabilities who present a public safety risk because of violent and/or sexual offenses;
- The appropriateness of the current community developmental disability services system as the vehicle for providing services to this population in a community setting;
- The effects of serving this population on funding and the availability of services for the much larger population of consumers with developmental disabilities who do not present a public safety risk and the subsequent effects on the System of Care Plan for persons with developmental disabilities;
- The current Act 248 statute for the purpose of determining whether changes are needed to address the additions of sanctions for non-compliance and alternative programs where appropriate;
- The efficacy of a small, secure residential facility to serve offenders who cannot safely be served in a community setting;
- The possible need for guidelines for serving adjudicated juveniles who turn 18, pose a danger to the public and present for services at local developmental services agencies;
- Legal and liability concerns of serving this population in community settings and the effects on other mandated service populations;
- Possible alternatives to the State's, Designated Agencies' and Specialized Services Agencies' response to individuals who pose a public safety risk and who refuse treatment and services appropriate for addressing public safety concerns; and
- The role or potential role of the Department of Corrections.

We will present the recommendations from this workgroup in a written report to you both no later than December 31, 2009.

I would be glad to discuss these ideas with you if you have any questions or suggestions to improve the proposal.

Sincerely,



Joan K. Senecal  
Commissioner

## **Appendix B**

### **Title 13, V.S.A.**

#### **§ 4816. Scope of examination; report; evidence**

(a) Examinations provided for in the preceding section shall have reference to:

(1) Mental competency of the person examined to stand trial for the alleged offense;

(2) Sanity of the person examined at the time of the alleged offense.

(b) A competency evaluation for an individual thought to have a developmental disability shall include a current evaluation by a psychologist skilled in assessing individuals with developmental disabilities

(c) As soon as practicable after the examination has been completed, the examining psychiatrist and psychologist, if applicable, shall prepare a report containing findings in regard to each of the matters listed in subsection (a). The report shall be transmitted to the court issuing the order for examination, and copies of the report sent to the state's attorney, and to the respondent's attorney if the respondent is represented by counsel.

(d) No statement made in the course of the examination by the person examined, whether or not he has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial and the opinion therein shall be conclusive on the issue if agreed to by the parties and if found by the court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the state's expense, or, if called by the court, at the court's expense.

## **Appendix C**

Proposed amendment to 13 V.S.A. Section 5411a. Electronic Posting of the Sex Offender Registry:

The following language shall be added to this section:

A sex offender's street address shall not be posted electronically if the offender has a developmental disability and receives funding from the Department of Disabilities, Aging and Independent Living (DAIL) for 24-hour supervision and treatment, but such information shall be otherwise available pursuant to section 5411a of this title. If the individual's level of supervision is decreased from 24 hours or if the offender elopes from their residence, the Designated Agency (DA) or Specialized Service Agency (SSA) providing supervision for the offender shall immediately notify the administrator of the sex offender registry and local law enforcement and, thereafter, this subdivision shall cease to apply to that offender. Failure by the DA or SSA to notify the administrator of the sex offender registry and local law enforcement of a decrease in 24-hour supervision or elopement by the offender, shall result in administrative action by DAIL. This subsection shall apply only to sex offenders subject to constant supervision and who reside in a residence that is equipped with alarms.