To: Senate Judiciary Committee
From: Jordan Souder, Policy Advocate, ACLU-VT
Re: S.193 – an act relating to establishing a forensic facility for certain criminal involved persons.
Date: 3/9/2026

ACLU Vermont

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Introduction:

On behalf of the ACLU of Vermont, I would like to raise some concerns we have with S.193 - an act relating to establishing a forensic facility for certain criminal justice involved persons. We recognize the need Vermont has for establishing a forensic facility and have been monitoring the various amendments that have been made to this bill. While we appreciate some of the changes made to S.193, as currently drafted, it still raises some serious constitutional concerns that we hope the Senate Judiciary Committee will continue to address.

Department of Corrections

One area of concern that we have regarding S.193 is housing the forensic facility within the Department of Corrections (DOC). As the committee has already heard from the Defender General 's Office and other witnesses, it is unconstitutional to incarcerate someone who is deemed not competent to stand trial or someone who was found not guilty by reason of insanity. Therefore, the function of the forensic facility must be solely for the evaluation and treatment of people involved in the legal system and not be akin to a carceral setting. Therefore, placing the forensic facility under the responsibility of the DOC jeopardizes S.193's constitutionality.

Regardless of the services provided or the location of the facility, the individuals within this program would be under the direct supervision of the Commissioner of the DOC who would wield tremendous control over the lives of the individual. This is best demonstrated on page 3, subsection (f)1, which authorizes the Commissioner to immediately return the person to the forensic facility when they have reason to believe that the person is again incompetent and the person's continued release would create a substantial risk of bodily injury to another person. This, it could be strongly argued, is a functional equivalent of incarceration.

Further, it calls into question the quality of care that the DOC would be able to provide within the forensic facility. We have heard, on numerous occasions, DOC testify as to their severe staff shortages and how they are operating at over capacity with an increasing detention population. As a result, they are struggling

to provide vital services to people already under their custody. Adding the additional responsibility of operating and maintaining a forensic facility to an already strained system could result in individuals receiving suboptimal care and unnecessarily lengthy commitments. While the DOC has testified in support of S.193, they have also acknowledged that they currently do not have the infrastructure to support this initiative and would require additional resources to make it a reality.

We recommend that, rather than placing the forensic facility under the supervision of the DOC, this committee consider supporting community service provider's ability to create and operate a secure forensic facility. Alternatively, we recommend adding mechanisms for additional oversight of DOC's operations to monitor things like conditions, quality of care, and general procedures relating to the forensic facility.

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Not Guilty By Reason of Insanity Section

Another area of concern is with § 4819a. Forensic Facility Placement for Persons Acquitted of Certain Crimes. Under this section, a person charged with an offense punishable by a life sentence and found not guilty by reason of insanity *at the time of the offense* shall be committed to the forensic facility. Under the plain language of this section, if a person was found not guilty by reason of insanity at the time of the offense but had since regained their mental faculties before or during the course of the trial, that person would still need to be admitted to the forensic facility, despite not needing their services. This would be an unnecessary deprivation of liberty that would be both a waste of state resources as well as a potential constitutional violation. We do not believe this was the intent of the committee.

To alleviate these constitutional concerns, we recommend amending the language of S.193 to ensure that those who do not require the services of the forensic facility be exempt from being automatically committed there.

Shifting the Burden

We want to take a moment to thank this committee for amending S.193 to place the burden on the state's attorney to prove that a person is not competent or non-compliant with court orders under Sec. 1. 13 V.S.A. § 4815 (f)(2) and § 4819 (f) respectively. This was a major point of concern under previous versions of this bill where the burden was on the individual to prove these things. This would have unconstitutionally abdicated the state's responsibility to prove its case and unfairly placed the burden on an individual who may have diminished capacity to

participate in proceedings. By shifting the burden of proof back on the state, the committee is placing S.193 on surer constitutional footing.

Conclusion:

Thank you for taking the time to seriously consider these issues. S.193 raises serious concerns that, if left unaddressed, could lead to unnecessarily lengthy detentions and call into question important constitutional safeguards. While we are not opposed to the intent behind S.193 in establishing a forensic facility in Vermont, we believe that this problem would be better solved by investing in community-oriented solutions rather than placing the facility under an already overworked and understaffed department. We hope the committee will continue working to address these concerns and ensure that Vermont is providing the best level of care for this demographic while honoring and defending our constitutional rights.

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