

# Senate Calendar

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FRIDAY, MARCH 17, 2017

SENATE CONVENES AT: 11:30 A.M.

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**ACTION CALENDAR**

**NEW BUSINESS**

**Third Reading**

**S. 4.**

An act relating to publicly accessible meetings of an accountable care organization's governing body.

**Committee Bill for Second Reading**

**Favorable**

**S. 112.**

An act relating to creating the Spousal Support and Maintenance Task Force.

**By the Committee on Judiciary (Senator White for the Committee.)**

**Reported favorably by Senator Sears for the Committee on Appropriations.**

(Committee vote: 6-0-1)

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 22.**

An act relating to increased penalties for possession, sale, and dispensation of fentanyl.

**Reported favorably with recommendation of amendment by Senator Sears for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 18 V.S.A. § 4233a is added to read:

§ 4233a. FENTANYL

(a) Possession.

(1) A person knowingly and unlawfully possessing fentanyl shall be imprisoned not more than two years or fined not more than \$10,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing fentanyl shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling fentanyl shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of four milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 10 years or fined not more than \$250,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing fentanyl in an amount consisting of 20 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl shall be imprisoned not more than 20 years or fined not more than \$1,000,000.00, or both.

(4) In lieu of a charge under this subsection, but in addition to any other penalties provided by law, a person knowingly and unlawfully selling or dispensing any regulated drug containing a detectable amount of fentanyl shall be imprisoned not more than five years or fined not more than \$250,000.00, or both.

(c) Trafficking. A person knowingly and unlawfully possessing fentanyl in an amount consisting of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl with the intent to sell or dispense the fentanyl shall be imprisoned not more than 30 years or fined not more than \$1,000,000.00, or both. There shall be a permissive inference that a person who possesses fentanyl in an amount of 70 milligrams or more of one or more preparations, compounds, mixtures, or substances containing fentanyl intends to sell or dispense the fentanyl. The amount of possessed fentanyl under this subsection to sustain a charge of conspiracy under 13 V.S.A. § 1404 shall be not less than 70 milligrams in the aggregate.

(d) Transportation into the State. In addition to any other penalties provided by law, a person knowingly and unlawfully transporting more than 20 milligrams of fentanyl into Vermont with the intent to sell or dispense the fentanyl shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

Sec. 2. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be

imprisoned not more than one year or fined not more than \$2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(4) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 10,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, shall be imprisoned not more than three years or fined not more than \$75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant, or narcotic drug, other than fentanyl, cocaine, or heroin, shall be imprisoned not more than five years or fined not more than \$25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 100 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 10 years or fined not more than \$100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than fentanyl, heroin, or cocaine, consisting of 1,000 times a benchmark unlawful dosage or its equivalent as determined by the ~~board of health~~ Board of Health by rule shall be imprisoned not more than 20 years or fined not more than \$500,000.00, or both.

Sec. 3. 13 V.S.A. § 1404 is amended to read:

#### § 1404. CONSPIRACY

(a) A person is guilty of conspiracy if, with the purpose that an offense listed in subsection (c) of this section be committed, that person agrees with one or more persons to commit or cause the commission of that offense, and at

least two of the co-conspirators are persons who are neither law enforcement officials acting in official capacity nor persons acting in cooperation with a law enforcement official.

(b) No person shall be convicted of conspiracy unless a substantial overt act in furtherance of the conspiracy is alleged and proved to have been done by the defendant or by a co-conspirator, other than a law enforcement official acting in an official capacity or a person acting in cooperation with a law enforcement official, and subsequent to the defendant's entrance into the conspiracy. Speech alone may not constitute an overt act.

(c) This section applies only to a conspiracy to commit or cause the commission of one or more of the following offenses:

- (1) murder in the first or second degree;
- (2) arson under sections 501-504 and 506 of this title;
- (3) sexual exploitation of children under sections 2822, 2823, and 2824 of this title;
- (4) receiving stolen property under sections 2561-2564 of this title; or
- (5) an offense involving the sale, delivery, manufacture, or cultivation of a regulated drug or an offense under:
  - (A) 18 V.S.A. § 4230(c), relating to trafficking in marijuana;
  - (B) 18 V.S.A. § 4231(c), relating to trafficking in cocaine;
  - (C) 18 V.S.A. § 4233(c), relating to trafficking in heroin;
  - (D) 18 V.S.A. § 4234(b)(3), relating to unlawful selling or dispensing of a depressant, stimulant, or narcotic drug, other than heroin or cocaine; or
  - (E) 18 V.S.A. § 4234a(c), relating to trafficking in methamphetamine; or
  - (F) 18 V.S.A. § 4233a(c), relating to trafficking in fentanyl.

Sec. 4. 18 V.S.A. § 4234b is amended to read:

§ 4234b. EPHEDRINE AND PSEUDOEPHEDRINE

\* \* \*

(c) Electronic registry system.

(1)(A) Retail establishments shall use an electronic registry system to record the sale of products made pursuant to subsection (b) of this section. The electronic registry system shall have the capacity to block a sale of nonprescription drug products containing ephedrine base, pseudoephedrine base, or phenylpropanolamine base that would result in a purchaser exceeding

the lawful daily or monthly amount. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm to his or her person or to another person if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(B) The electronic registry system shall be available free of charge to the State of Vermont, retail establishments, and local law enforcement agencies.

(C) The electronic registry system shall operate in real time to enable communication among in-state users and users of similar systems in neighboring states.

(D) The State shall use the National Precursor Log Exchange (NPLEx) online portal or its equivalent to host Vermont's electronic registry system.

(2)(A) Prior to completing a sale under subsection (b) of this section, a retail establishment shall require the person purchasing the drug product to present a current, valid government-issued identification document. The retail establishment shall record in the electronic registry system:

(i) the name and address of the purchaser;

(ii) the name of the drug product and quantity of ephedrine, pseudoephedrine, and phenylpropanolamine base sold in grams;

(iii) the date and time of purchase;

(iv) the form of identification presented, the issuing government entity, and the corresponding identification number; and

(v) the name of the person selling or furnishing the drug product.

(B)(i) If the retail establishment experiences an electronic or mechanical failure of the electronic registry system and is unable to comply with the electronic recording requirement, the retail establishment shall maintain a written log or an alternative electronic record-keeping mechanism until the retail establishment is able to comply fully with this subsection (c).

(ii) If the region of the State where the retail establishment is located does not have broadband Internet access, the retail establishment shall maintain a written log or an alternative electronic recordkeeping mechanism until broadband Internet access becomes accessible in that region. At that time, the retail establishment shall come into compliance with this subsection (c).

(C) A retail establishment shall maintain all records of drug product purchases made pursuant to this subsection (c) for a minimum of two years.

(3) A retail establishment shall display a sign at the register provided by NPLEx or its equivalent to notify purchasers of drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine base that:

(A) the purchase of the drug product or products shall result in the purchaser's identity being listed on a national database; and

(B) the purchaser has the right to request the transaction number for any purchase that was denied pursuant to this subsection (c).

(4) Except as provided in subdivision (5) of this subsection (c), a person or retail establishment that violates this subsection shall:

(A) for a first violation be assessed a civil penalty of not more than \$100.00; and

(B) for a second or subsequent violation be assessed a civil penalty of not more than \$500.00.

(d) This section shall not apply to a manufacturer ~~which~~ that has obtained an exemption from the Attorney General of the United States under Section 711(d) of the federal Combat Methamphetamine Epidemic Act of 2005.

(e) As used in this section:

(1) "Distributor" means a person, other than a manufacturer or wholesaler, who sells, delivers, transfers, or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product.

(2) "Knowingly" means having actual knowledge of the relevant facts.

(3) "Manufacturer" means a person who produces, compounds, packages, or in any manner initially prepares a drug product for sale or use.

(4) "Wholesaler" means a person, other than a manufacturer, who sells, transfers, or in any manner furnishes a drug product to any other person for the purpose of being resold.

## Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2017.

(Committee vote: 5-0-0)

**S. 61.**

An act relating to offenders with mental illness.

**Reported favorably with recommendation of amendment by Senator White for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

(a) The court before which a person is tried or is to be tried for a criminal offense shall hold a hearing for the purpose of determining whether the person should be committed to the custody of the Commissioner of Mental Health or, as provided in 18 V.S.A. chapter 206, to the Commissioner of Disabilities, Aging, and Independent Living, if the person is charged on information, complaint, or indictment with the offense and:

(1) is reported by the examining psychiatrist following examination pursuant to sections 4814–4816 of this title to have been insane at the time of the alleged offense;

(2) is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental illness, ~~intellectual~~ developmental disability, or traumatic brain injury;

(3) is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court; or

(4) upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense.

(b) A person subject to a hearing under subsection (a) of this section may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

(c) For a person who is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to mental illness or developmental disability, the court shall appoint counsel from the Mental Health Law Project to represent the person who is the subject of the proceedings and from the Office of the Attorney General to represent the State in the proceedings.

Sec. 2. 13 V.S.A. § 4821 is amended to read:

§ 4821. NOTICE OF HEARING; PROCEDURES

The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the Commissioner of Mental Health or the

Commissioner of Disabilities, Aging, and Independent Living, and the ~~State's Attorney or other prosecuting officer representing~~ counsel appointed pursuant to subsection 4820(c) of this title to represent the State in the case, shall be given notice of the time and place of a hearing under 4820 of this title. Procedures for hearings for persons who are mentally ill shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons who are intellectually disabled or have a traumatic brain injury shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

Sec. 3. 28 V.S.A. § 3 is amended to read:

### § 3. GENERAL DEFINITIONS

As used in this title:

\* \* \*

(12) Despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population that may or may not include placement in a single occupancy cell and that is used for disciplinary, administrative, or other reasons, but shall not mean confinement to an infirmary or a residential treatment setting for purposes of evaluation, treatment, or provision of services.

Sec. 4. 28 V.S.A. § 701a(b) is amended to read:

~~(b) For purposes of this title, and despite other names this concept has been given in the past or may be given in the future, "segregation" means a form of separation from the general population which may or may not include placement in a single occupancy cell and which is used for disciplinary, administrative, or other reasons~~ As used in this section, "segregation" shall have the same meaning as in subdivision 3(12) of this title.

Sec. 5. 28 V.S.A. § 907 is amended to read:

### § 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The Commissioner shall administer a program of trauma-informed mental health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1)(A) Within 24 hours of admittance to a correctional facility, all inmates shall be screened for any signs of mental illness, mental condition or, psychiatric disability or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental disabilities home and ~~community based~~ community-

based services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(B) Every inmate who is identified as a result of screening by a mental health professional as requiring inpatient evaluation, treatment, or services shall, within 24 hours of the screening, be referred for such treatment, evaluation, or services in a setting appropriate to the clinical needs of the inmate.

\* \* \*

Sec. 6. 28 V.S.A. § 907 is amended to read:

§ 907. MENTAL HEALTH SERVICE FOR INMATES; POWERS AND RESPONSIBILITIES OF COMMISSIONER

The Commissioner shall administer a program of trauma-informed mental health services ~~which that~~ shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:

(1)(A) Within 24 hours of admittance to a correctional facility, all inmates shall be screened for any signs of mental illness, mental condition, psychiatric disability or disorder, or serious functional impairment. If as a result of the screening it is determined that the inmate is receiving services under the developmental disabilities home and ~~community-based~~ community-based services waiver or is currently receiving community rehabilitation and treatment services, he or she will automatically be designated as having a serious functional impairment.

(B) Every inmate who is identified as a result of screening by a mental health professional as requiring inpatient evaluation, treatment, or services shall, within 24 ~~48~~ hours of the screening, be ~~referred for~~ provided with such treatment, evaluation, or services in a setting appropriate to the clinical needs of the inmate.

\* \* \*

Sec. 7. AGENCY OF HUMAN SERVICES; OFFICE OF THE ATTORNEY GENERAL; REPORT TO JUSTICE OVERSIGHT COMMITTEE

On or before October 15, 2017:

(1) the Secretary of Human Services shall report to the Justice Oversight Committee on how best to provide mental health treatment and services to offenders in the custody of the Department of Corrections, including recommendations on whether those services should be provided by a classified State employee working within the Agency of Human Services, by designated

agencies, or by other professionals contracted for professional mental health care services within the Department; and

(2) the Attorney General, in consultation with the Secretary of Human Services, shall report to the Justice Oversight Committee on the resources necessary for the State to comply with the requirements set forth in 13 V.S.A. § 4820(c).

Sec. 8. LEGISLATIVE INTENT; DEPARTMENT OF CORRECTIONS;  
USE OF SEGREGATION

It is the intent of the General Assembly that the Department of Corrections continue to house inmates in the least restrictive setting necessary to ensure their own safety as well as the safety of staff and other inmates, and to use segregation only in instances when it serves a specific disciplinary or administrative purpose, pursuant to 28 V.S.A. § 3, and to ensure that inmates designated as seriously functionally impaired or inmates with a serious mental illness receive the support and rehabilitative services they need.

Sec. 9. DEPARTMENT OF CORRECTIONS; DEPARTMENT OF  
MENTAL HEALTH; FORENSIC MENTAL HEALTH CENTER;  
MEMORANDUM OF UNDERSTANDING FOR PROVISION OF  
MENTAL HEALTH SERVICES; REPORT TO JOINT  
LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE

On or before July 1, 2017, the Department of Corrections shall:

(1) in accordance with the principles set forth in 18 V.S.A. § 7251, and in consultation with the Department of Health and the designated agencies, develop a plan to create or establish access to a forensic mental health center on or before January 2, 2018 to provide comprehensive assessment, evaluation, and treatment for detainees and inmates with mental illness, while preventing inappropriate segregation;

(2) jointly with the Department of Mental Health, execute a memorandum of understanding to coordinate the provision of mental health treatment and services to inmates and detainees prior to January 2, 2018; and

(3) together with the Department of Mental Health, report on the status of the memorandum of understanding and the forensic mental health center plan to the Joint Legislative Justice Oversight Committee.

Sec. 10. EFFECTIVE DATES

(a) This section and Sec. 9 (Department of Corrections; Department of Mental Health; forensic mental health center; memorandum of understanding for provision of mental health services; report to Joint Legislative Justice Oversight Committee) shall take effect on passage.

(b) Secs. 3 (general definitions), 4 (28 V.S.A. § 701a(b)), 5 (mental health service for inmates; powers and responsibilities of commissioner), 7 (Agency of Human Services; Office of the Attorney General Report to Justice Oversight Committee), and 8 (legislative intent, Department of Corrections; use of segregation) shall take effect on July 1, 2017.

(c) Sec. 6 (mental health service for inmates; powers and responsibilities of Commissioner) shall take effect on January 2, 2018.

(d) Secs. 1 (hearing regarding commitment) and 2 (notice of hearing; procedures) shall take effect on July 1, 2018.

(Committee vote: 5-0-0)

### **CONCURRENT RESOLUTIONS FOR ACTION**

**H.C.R. 66-75** (For text of Resolutions, see Addendum to House Calendar for March 16, 2017)

### **CONFIRMATIONS**

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Julia Moore of Middlesex – Secretary, Agency of Natural Resources (term 1/5/17 - 2/28/17) - By Sen. Pearson for the Committee on Natural Resources and Energy. (3/15/17)

Julia Moore of Middlesex – Secretary, Agency of Natural Resources (term 3/1/17 - 2/28/19) - By Sen. Pearson for the Committee on Natural Resources and Energy. (3/15/17)

Louis Porter of Adamant – Commissioner, Department of Fish and Wildlife (term 1/5/17 – 2/28/17) – By Sen. Rodgers for the Committee on Natural Resources and Energy. (3/15/17)

Louis Porter of Adamant – Commissioner, Department of Fish and Wildlife (term 3/1/17 – 2/28/19) – By Sen. Rodgers for the Committee on Natural Resources and Energy. (3/15/17)

## NOTICE OF JOINT ASSEMBLY

**March 23, 2017 - 4:00 P.M.** - House Chamber - Retention of a Chief Justice and three Associate Justices of the Supreme Court and ten Superior Court Judges.

### FOR INFORMATION ONLY

#### CROSS OVER DATES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate/House** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance/Ways and Means, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 17, 2017**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate/House** bills referred pursuant to Senate Rule 31 or House Rule 35(a) to the Committees on Appropriations and Finance/Ways and Means must be reported out by the last of those committees on or before **Friday, March 24, 2017**, and filed with the Secretary/Clerk so they may be placed on the Calendar for Notice the next legislative day.

**Note:** The Senate will not act on bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

**Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Fee and Tax Bills).**