

Journal of the Senate

THURSDAY, MARCH 22, 2012

The Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Reverend Rebecca Clark of Montpelier.

Rules Suspended; Bill Committed

On motion of Senator Cummings, the Committee on Finance was relieved of further consideration of Senate bill entitled:

S. 137. An act relating to workers' compensation and unemployment compensation.

Thereupon, pending entry of the bill on the calendar for notice the next legislative day, Senator Cummings moved that Senate Rule 49 be suspended in order to commit the bill to the Committee on Judiciary with the report of the Committee on Economic Development, Housing and General Affairs *intact*,

Which was agreed to.

Bill Amended; Third Reading Ordered

S. 115.

Senator Snelling, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to malpractice claims against public defender contract attorneys.

Reported recommending 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. § 5241 is added to read:

§ 5241. INEFFECTIVE ASSISTANCE CLAIM

No action shall be brought for professional negligence against a criminal defense attorney under contract with or providing ad hoc legal services for the office of the defender general unless the plaintiff has first successfully prevailed in a claim for post-conviction relief based upon ineffective assistance of counsel in the same or a substantially related matter. Failure to prevail in a

claim for post-conviction relief based upon ineffective assistance of counsel under contract with or providing ad hoc legal services for the office of the defender general shall bar any claim against the attorney based upon the attorney's representation in the same or a substantially related matter.

After passage, the title of the bill is to be amended to read:

An act relating to ineffective assistance claims against assigned counsel.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, the recommendation of amendment was agreed to, and third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 138.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to the record keeping of search warrants.

Reported recommending that the bill be by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. Vermont Rules of Criminal Procedure, Rule 41 is amended to read:

RULE 41. SEARCH AND SEIZURE

* * *

(h) Record keeping. Upon the filing of a warrant and affidavit, the clerk of the court shall assign a standardized warrant identification number to the warrant and enter the warrant, its identifying details, and subsequent activity into a warrant log and standardized database maintained by the court. The warrant log and database shall be such as to permit monitoring of timely execution of warrants issued and timely filing of return and inventory following a search. A return shall be required for every warrant issued.

Sec. 2. 7 V.S.A. § 61 is amended to read:

§ 61. RESTRICTIONS; EXCEPTIONS

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits by a person in his or her private dwelling, unless to an habitual drunkard, or unless

such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided the same is delivered and removed from the vendor's premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the liquor control board as hereinafter provided, nor to the furnishing of such beverages or spirits by the Vermont criminal justice training council to drinking subjects during DUI enforcement courses of instruction at the Vermont police academy.

Sec. 3. 13 V.S.A. § 7031 is amended to read:

§ 7031. FORM OF SENTENCES; MAXIMUM AND MINIMUM TERMS

(a) When a respondent is sentenced to any term of imprisonment, other than for life, the court imposing the sentence shall not fix the term of imprisonment, unless such term is definitely fixed by statute, but shall establish a maximum and may establish a minimum term for which such respondent may be held in imprisonment. The maximum term shall not be more than the longest term fixed by law for the offense of which the respondent is convicted and the minimum term shall be not less than the shortest term fixed by law for such offense. If the court suspends a portion of said sentence, the unsuspended portion of such sentence shall be the minimum term of sentence solely for the purpose of any reductions of term for good behavior as provided for in 28 V.S.A. § 811. A sentence shall not be considered fixed as long as the maximum and minimum terms are not identical.

(b) The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which the person is received at the correctional facility for service of the sentence. The court shall give the person credit toward service of his or her sentence for any days spent in custody ~~in connection with the offense for which sentence was imposed~~ as follows:

(1) The period of credit shall include all days served from the date of arraignment or the date of the earliest detention for the offense, whichever occurs first, and ending on the date of the sentencing. Only a single credit shall be awarded in cases of consecutive sentences, and no credit for one period of time shall be applied to a later period.

(2) In sentencing a violation of probation, the court shall give the person credit for any days spent in custody from the time the violation is filed or the person is detained on the violation, whichever occurs first, until the violation is sentenced. In a case in which probation is revoked and the person

is ordered to serve the underlying sentence, the person shall receive credit for all time previously served in connection with the offense.

(c) If any such person is committed to a jail or other place of detention to await transportation to the place at which his or her sentence is to be served, his or her sentence shall commence to run from the date on which he or she is received at such jail or such place of detention.

(d) A person who receives a zero minimum sentence for a conviction of a nonviolent misdemeanor or nonviolent felony as defined in 28 V.S.A. § 301 shall begin to serve the sentence in the community immediately, unless the person is serving a prior sentence at such time.

Sec. 4. 13 V.S.A. § 7032(c) is amended to read:

(c) In all cases where multiple or additional sentences have been or are imposed, the term or terms of imprisonment under those sentences shall be determined in accordance with the following definitions.

(1) When terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(2) When terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms. No person shall serve more time on consecutive minimum sentences than the sum of the minimum terms, regardless of whether the sentences are imposed on the same or different dates. If a person serves a minimum term, and subsequently incurs another criminal charge, the time the person spends in custody awaiting disposition of the new charge shall count toward the minimum term of the new sentence, if one is imposed. This subdivision shall not require the department of corrections to release a person from incarceration to community supervision at the person's minimum term.

Sec. 5. 18 V.S.A. § 4216 is amended to read:

§ 4216. AUTHORIZED POSSESSION BY INDIVIDUALS

(a) A person to whom or for whose use any regulated drug has been prescribed, sold or dispensed, and the owner of any animal for which any such drug has been prescribed, sold or dispensed, may lawfully possess the same on the condition that such drug was prescribed, sold or dispensed by a physician, dentist, pharmacist, or veterinarian licensed under this chapter or under the laws of another state or country wherein such person has his or her practice, ~~and further that all,~~

(b)(1) Except as otherwise provided in subdivision (2) of this subsection, all amounts of the drug are shall be retained in the lawful container in which it was delivered to him the patient by the person selling or dispensing the same, provided however, that for the purposes of this section an amount of regulated drugs of not more than two days' individual prescribed dosage may be possessed by a patient for his personal use.

(2) A patient may possess an amount of regulated drugs of not more than seven days' individual prescribed dosage, for personal use, which shall not be required to be retained in its lawful container.

Sec. 6. 18 V.S.A. § 4230(b)(2) is amended to read:

(2) A person knowingly and unlawfully selling or dispensing marijuana in an amount consisting of one or more preparations, compounds, mixtures, or substances, of an aggregate weight of ~~one-half ounce~~ two ounces or more containing any marijuana shall be imprisoned not more than five years or fined not more than \$100,000.00, or both.

Sec. 7. 28 V.S.A. § 808a(a) is amended to read:

(a) An offender may be sentenced to serve a term of imprisonment, but placed by a court on treatment furlough with recommendation of the department to participate in such programs administered by the department in the community that reduce the offender's risk to reoffend or that provide reparation to the community in the form of supervised work activities.

Sec. 8. FEASIBILITY STUDY FOR A STATEWIDE ONLINE SENTENCING TOOL

(a) The general assembly established the Nonviolent Misdemeanor Review Committee (committee) in No. 41 of the Acts of 2011, an act relating to effective strategies to reduce criminal recidivism, to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses. In its report, the committee expressed concern regarding "the varying degrees of justice meted out by the different counties in Vermont," and concluded that "any efforts to reduce recidivism and increase alternatives to incarceration must foster statewide equity in treatment of those charged or convicted with a criminal offense."

(b) The committee believes that judicial discretion is the cornerstone of sentencing in Vermont courts, and sentencing is at its best when the decision-makers have accurate and timely information about the offender, the offenses, and the options available for sentencing.

(c) Evidence-based practice research suggests that sentencing of criminal defendants should be based on the seriousness of the offense, risk, and

probability of recidivism. Criminal sentencing that is based on these three principles is more likely to protect the public, reduce recidivism, and reduce costs than sentencing practices that are based on anecdotal experience.

(d) The committee took testimony on a new sentencing tool developed by the Missouri Sentencing Advisory Commission which employs these principles, and which is available electronically to judges, attorneys, and other people involved in Missouri's criminal justice system. According to the commission, the "goal of the system is to ensure sentencing that is fair, protects the public, uses corrections resources wisely, and reduces sentence disparity."

(e) There is created a sentencing task force for the purpose of conducting a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The task force shall comprise the following members:

(1) A member of the committee on judiciary appointed by the committee on committees.

(2) A member of the committee on judiciary appointed the speaker of the house.

(3) A judge appointed by the chief justice of the Vermont supreme court.

(4) The commissioner of corrections.

(5) A state's attorney appointed by the executive committee of the department of state's attorneys and sheriffs.

(6) The defender general.

(f) The Vermont Center for Justice Research, the state's Criminal Justice Statistical Analysis Center, has been involved with the analysis of criminal sentencing data in Vermont for the past 20 years. At the direction of the task force, the center shall undertake the statistical analysis necessary to develop the policy decisions required for the sentencing matrixes which are the foundation of the project. The pilot analysis shall focus on five to ten felony or misdemeanor crimes prosecuted in Vermont during a two-year period. The center shall evaluate the availability and quality of data which would be required to generate sentencing information similar to those used in the Missouri model.

(g) The task force shall report the sentencing information for the crimes selected for the feasibility study along with a report with recommendations

regarding the feasibility of a Vermont online sentencing tool to the senate and house committees on judiciary by March 15, 2013.

Sec. 9. Sec. 4 of No. 41 of the Acts of 2011 is amended to read:

Sec. 4. NONVIOLENT MISDEMEANOR SENTENCE REVIEW COMMITTEE

(a) Creation of committee. There is created a nonviolent misdemeanor sentence review committee to propose alternatives to incarceration for nonviolent, low-risk misdemeanor offenses and to study whether records produced by public agencies in the course of the detection and investigation of crime should be open to public inspection or confidential.

* * *

(c) Powers and duties.

* * *

(2) The committee shall study whether records produced by public agencies in the course of the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by law enforcement, should be open to public inspection or confidential. The committee's study shall include:

(A) A determination of which records dealing with the detection and investigation of a crime should be public records and which records should be confidential.

(B) Consideration of the need to balance public safety and privacy when determining which criminal investigation records should be public and which records should be confidential.

(C) Legislation to implement the policy recommended by the committee.

~~(2)~~(3) The committee shall consult with stakeholders while engaging in its mission, including the following:

(A) The secretary of human services or designee.

(B) The secretary of state or designee.

(C) The executive director of the American Civil Liberties Union of Vermont or designee.

(D) A representative of the Vermont Press Association.

(E) The defender general or designee.

(F) The attorney general or designee.

(G) The executive director of the Vermont association of chiefs of police or designee.

(H) The executive director of the Vermont Bar Association or designee.

(I) A representative from the department of public safety.

(J) The executive director of the state's attorneys and sheriffs' association or designee.

(K) A member of the supreme court public access to court records advisory rules committee appointed by the chief justice.

(L) The executive director of the Vermont Center for Crime Victims Services or designee.

~~(3)~~(4) For purposes of its study of these issues, the committee shall have the legal and administrative assistance of the office of legislative council and the department of corrections.

(d) Report. ~~By December 1, 2011, the~~ The committee shall report annually to the general assembly on its findings and any recommendations for legislative action.

(e) Number of meetings; term of committee; reimbursement. The committee may meet no more than ~~five~~ seven times annually and shall cease to exist on January 1, ~~2012~~ 2014.

* * *

Sec. 10. APPROPRIATION

The amount of \$33,600.00 is appropriated from the general fund to the Vermont Center for Justice Research in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont.

After passage, the title of the bill is to be amended to read:

An act relating to calculation of criminal sentences and record keeping for search warrants.

And that when so amended the bill ought to pass.

Senator Sears, for the Committee on Appropriations, to which the bill was referred, reported as follows:

First: In Sec. 8, by adding a new subsection (h) to read as follows:

(h) The secretary of administration shall seek sources of grants and funding in fiscal year 2013 for the purpose of aiding the sentencing task force with a feasibility study to determine whether a set of sentencing data based on the seriousness of the offense, risk, and probability of recidivism can be developed and implemented in Vermont. The cost is currently estimated to be \$33,600.00.

Second: By striking out Sec. 10 in its entirety.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment of the Committee on Judiciary was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Judiciary, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

- S. 93.** An act relating to labeling maple products.
- S. 114.** An act relating to the size of accessory dwelling units.
- S. 211.** An act relating to securing propane tanks in natural disasters.

Bill Amended; Bill Passed

S. 215.

Senate bill entitled:

An act relating to evaluating net costs of government purchasing.

Was taken up.

Thereupon, pending third reading of the bill, Senator Hartwell on behalf of the Committee on Institutions moved to amend the bill in Sec. 2, after the words "government operations" by inserting the following: and on natural resources and energy, the house committee on corrections and institutions, and the senate committee on institutions

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Passed

Senate bill of the following title was read the third time and passed:

S. 252. An act relating to the repeal or revision of reporting requirements.

**Report of Committee of Conference Accepted and Adopted on the Part of
the Senate**

H. 630.

Senator Ayer, for the Committee of Conference, submitted the following report:

To the Senate and House of Representatives:

The Committee of Conference to which were referred the disagreeing votes of the two Houses upon House bill entitled:

An act relating to reforming Vermont's mental health system.

Respectfully reports that it has met and considered the same and recommends that the Senate recede from its proposal of amendment and that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

(a) It is the intent of the general assembly to strengthen Vermont's existing mental health care system by offering a continuum of community and peer services, as well as a range of acute inpatient beds throughout the state. This system of care shall be designed to provide flexible and recovery-oriented treatment opportunities and to ensure that the mental health needs of Vermonters are served.

(b) It is also the intent of the general assembly that the agency of human services fully integrate all mental health services with all substance abuse, public health, and health care reform initiatives, consistent with the goals of parity.

Sec. 1a. 18 V.S.A. chapter 174 is added to read:

CHAPTER 174. MENTAL HEALTH SYSTEM OF CARE

§ 7251. PRINCIPLES FOR MENTAL HEALTH CARE REFORM

The general assembly adopts the following principles as a framework for reforming the mental health care system in Vermont:

(1) The state of Vermont shall meet the needs of individuals with mental health conditions, including the needs of individuals in the custody of the

commissioner of corrections, and the state's mental health system shall reflect excellence, best practices, and the highest standards of care.

(2) Long-term planning shall look beyond the foreseeable future and present needs of the mental health community. Programs shall be designed to be responsive to changes over time in levels and types of needs, service delivery practices, and sources of funding.

(3) Vermont's mental health system shall provide a coordinated continuum of care by the departments of mental health and of corrections, designated hospitals, designated agencies, and community and peer partners to ensure that individuals with mental health conditions receive care in the most integrated and least restrictive settings available. Individuals' treatment choices shall be honored to the extent possible.

(4) The mental health system shall be integrated into the overall health care system.

(5) Vermont's mental health system shall be geographically and financially accessible. Resources shall be distributed based on demographics and geography to increase the likelihood of treatment as close to the patient's home as possible. All ranges of services shall be available to individuals who need them, regardless of individuals' ability to pay.

(6) The state's mental health system shall ensure that the legal rights of individuals with mental health conditions are protected.

(7) Oversight and accountability shall be built into all aspects of the mental health system.

(8) Vermont's mental health system shall be adequately funded and financially sustainable to the same degree as other health services.

(9) Individuals with a mental health condition who are in the custody of the commissioner of mental health and who receive treatment in an acute inpatient hospital, intensive residential recovery facility, or a secure residential facility shall be afforded at least the same rights and protections as those individuals cared for at the former Vermont State Hospital.

§ 7252. DEFINITIONS

As used in this chapter:

(1) "Adult outpatient services" means flexible services responsive to individuals' preferences, needs, and values that are necessary to stabilize, restore, or improve the level of social functioning and well-being of individuals with mental health conditions, including individual and group

treatment, medication management, psychosocial rehabilitation, and case management services.

(2) “Designated agency” means a designated community mental health and developmental disability agency as described in subsection 8907(a) of this title.

(3) “Designated area” means the counties, cities, or towns identified by the department of mental health that are served by a designated agency.

(4) “Enhanced programming” means targeted, structured, and specific intensive mental health treatment and psychosocial rehabilitation services for individuals in individualized or group settings.

(5) “Intensive residential recovery facility” means a licensed program under contract with the department of mental health that provides a safe, therapeutic, recovery-oriented residential environment to care for individuals with one or more mental health conditions who need intensive clinical interventions to facilitate recovery in anticipation of returning to the community. This facility shall be for individuals not in need of acute inpatient care and for whom the facility is the least restrictive and most integrated setting.

(6) “Mobile support team” means professional and peer support providers who are able to respond to an individual where he or she is located during a crisis situation.

(7) “Noncategorical case management” means service planning and support activities provided for adults by a qualified mental health provider, regardless of program eligibility criteria or insurance limitations.

(8) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provide high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(9) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

(10) “Peer” means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(11) “Peer services” means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

(12) “Psychosocial rehabilitation” means a range of social, educational, occupational, behavioral, and cognitive interventions for increasing the role performance and enhancing the recovery of individuals with serious mental illness, including services that foster long-term recovery and self-sufficiency.

(13) “Recovery-oriented” means a system or services that emphasize the process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

(14) “Serious bodily injury” means the same as in section 1912 of this title.

(15) “Warm line” means a nonemergency telephone response line operated by trained peers for the purpose of active listening and assistance with problem-solving for persons in need of such support.

§ 7253. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

The commissioner of mental health, in consultation with health care providers as defined in section 9432 of this title, including designated hospitals, designated agencies, individuals with mental health conditions, and other stakeholders, shall design and implement a clinical resource management system that ensures the highest quality of care and facilitates long-term, sustained recovery for individuals in the custody of the commissioner.

(1) For the purpose of coordinating the movement of individuals across the continuum of care to the most appropriate services, the clinical resource management system shall:

(A) ensure that all individuals in the care and custody of the commissioner receive the highest quality and least restrictive care necessary;

(B) develop a process for receiving direct patient input on treatment opportunities and the location of services;

(C) use state-employed clinical resource management coordinators to work collaboratively with community partners, including designated agencies, hospitals, individuals with mental health conditions, and peer groups, to ensure access to services for individuals in need. Clinical resource management coordinators or their designees shall be available 24 hours a day, seven days a week to assist emergency service clinicians in the field to access necessary services;

(D) use an electronic, web-based bed board to track in real time the availability of bed resources across the continuum of care;

(E) use specific level-of-care descriptions, including admission, continuing stay, and discharge criteria, and a mechanism for ongoing assessment of service needs at all levels of care;

(F) specify protocols for medical clearance, bed location, transportation, information sharing, census management, and discharge or transition planning;

(G) coordinate transportation resources so that individuals may access the least restrictive mode of transport consistent with safety needs;

(H) ensure that to the extent patients' protected health information pertaining to any identifiable person that is otherwise confidential by state or federal law is used within the clinical resource management system, the health information exchange privacy standards and protocols as described in subsection 9351(e) of this title shall be followed;

(I) review the options for the use of ambulance transport, with security as needed, as the least restrictive mode of transport consistent with safety needs required pursuant to section 7511 of this title; and

(J) ensure that individuals under the custody of the commissioner being served in designated hospitals, intensive residential recovery facilities, and the secure residential recovery facility shall have access to a mental health patient representative. The patient representative shall advocate for patients and shall also foster communication between patients and health care providers. The department of mental health shall contract with an independent, peer-run organization to staff the full-time equivalent of a patient representative.

(2) For the purpose of maintaining the integrity and effectiveness of the clinical resource management system, the department of mental health shall:

(A) require a designated team of clinical staff to review the treatment received and clinical progress made by individuals within the commissioner's custody;

(B) coordinate care across the mental and physical health care systems as well as ensure coordination within the agency of human services, particularly the department of corrections, the department of health's alcohol and drug abuse programs, and the department of disabilities, aging, and independent living;

(C) coordinate service delivery with Vermont's Blueprint for Health and health care reform initiatives, including the health information exchange as defined in section 9352 of this title and the health benefit exchange as defined in 33 V.S.A. § 1803;

(D) use quality indicators, manageable data requirements, and quality improvement processes to monitor, evaluate, and continually improve the outcomes for individuals and the performance of the clinical resource management system;

(E) actively engage stakeholders and providers in oversight processes; and

(F) provide mechanisms for dispute resolution.

§ 7254. INTEGRATION OF THE TREATMENT FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND PHYSICAL HEALTH

(a) The director of health care reform and the commissioners of mental health, of health, and of Vermont health access and the Green Mountain Care board or designees shall ensure that the redesign of the mental health delivery system established in this act is an integral component of the health care reform efforts established in 3 V.S.A. § 2222a. Specifically, the director, commissioners, and board shall confer on planning efforts necessary to ensure that the following initiatives are coordinated and advanced:

(1) any health information technology projects;

(2) the integration of health insurance benefits in the Vermont health benefit exchange to the extent feasible under federal law;

(3) the integration of coverage under Green Mountain Care;

(4) the Blueprint for Health;

(5) the reformation of payment systems for health services to the extent allowable under federal law or under federal waivers; and

(6) other initiatives as necessary.

(b) The department of banking, insurance, securities, and health care administration shall ensure that private payers are educated about their obligation to reimburse providers for less restrictive and less expensive alternatives to hospitalization.

§ 7255. SYSTEM OF CARE

The commissioner of mental health shall coordinate a geographically diverse system and continuum of mental health care throughout the state that shall include at least the following:

(1) comprehensive and coordinated community services, including prevention, to serve children, families, and adults at all stages of mental illness;

(2) peer services, which may include:

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- (A) a warm line;
 - (B) peer-provided transportation services;
 - (C) peer-supported crisis services; and
 - (D) peer-supported hospital diversion services;
- (3) alternative treatment options for individuals seeking to avoid or reduce reliance on medications;
 - (4) recovery-oriented housing programs;
 - (5) intensive residential recovery facilities;
 - (6) appropriate and adequate psychiatric inpatient capacity for voluntary patients;
 - (7) appropriate and adequate psychiatric inpatient capacity for involuntary inpatient treatment services, including patients receiving treatment through court order from a civil or criminal court; and
 - (8) a secure residential recovery facility.

§ 7256. REPORTING REQUIREMENTS

Notwithstanding 2 V.S.A. § 20(d), the department of mental health shall report annually on or before January 15 to the senate committee on health and welfare and the house committee on human services regarding the extent to which individuals with mental health conditions receive care in the most integrated and least restrictive setting available. The report shall address:

- (1) Utilization of services across the continuum of mental health services;
- (2) Adequacy of the capacity at each level of care across the continuum of mental health services;
- (3) Individual experience of care and satisfaction;
- (4) Individual recovery in terms of clinical, social, and legal outcomes; and
- (5) Performance of the state's mental health system of care as compared to nationally recognized standards of excellence.

§ 7257. REPORTABLE ADVERSE EVENTS

An acute inpatient hospital, an intensive residential recovery facility, a designated agency, or a secure residential facility shall report to the department of mental health instances of death or serious bodily injury to individuals with a mental health condition in the custody of the commissioner.

§ 7258. REVIEW OF ADVERSE COMMUNITY EVENTS

The department of mental health shall establish a system that ensures the comprehensive review of a death or serious bodily injury occurring outside an acute inpatient hospital when the individual causing or victimized by the death or serious bodily injury is in the custody of the commissioner or had been in the custody of the commissioner within six months of the event. The department shall review each event for the purpose of determining whether the death or serious bodily injury was the result of inappropriate or inadequate services within the mental health system and, if so, how the failure shall be remedied.

Sec. 2. DELETED

Sec. 3. DELETED

Sec. 4. DELETED

Sec. 5. DELETED

Sec. 6. PEER SERVICES

The commissioner of mental health is authorized to contract for new peer services and to expand existing programs managed by peers that provide support to individuals living with or recovering from mental illness. Peer services shall be aimed at helping individuals with mental illness achieve recovery through improved physical and mental health, increased social and community connections and supports, and the avoidance of mental health crises and psychiatric hospitalizations. The commissioner of mental health shall:

(1) Establish a warm line or warm lines accessible statewide which shall be staffed at all times to ensure that individuals with a mental health condition have access to peer support;

(2) Establish new peer services focused on reducing the need for inpatient services;

(3) Improve the quality, infrastructure, and workforce development of peer services; and

(4) Develop peer-run transportation services.

Sec. 7. COMMUNITY SERVICES

To improve existing community services and to create new opportunities for community treatment, the commissioner of mental health is authorized to:

(1) Improve emergency responses, mobile support teams, noncategorical case management, adult outpatient services, and alternative residential opportunities at designated agencies.

(A) Each designated agency shall provide the scope and category of services most responsive to the needs of designated areas, as determined by the commissioner of mental health.

(B) Designated agencies shall work collaboratively with law enforcement officials, corrections, local hospitals, the department of disabilities, aging, and independent living, and peers to integrate services and expand treatment opportunities for individuals living with or recovering from mental illness.

(2) Contract for at least four additional short-term crisis beds in designated agencies for the purpose of preventing or diverting individuals from hospitalization when clinically appropriate and for the purpose of increasing regional access to crisis beds.

(3) Contract for a voluntary five-bed residence for individuals seeking to avoid or reduce reliance on medication or having an initial episode of psychosis. The residence shall be peer supported and noncoercive, and treatment shall be focused on a nontraditional, interpersonal, and psychosocial approach, with minimal use of psychotropic medications to facilitate recovery in individuals seeking an alternative to traditional hospitalization.

(4) Provide housing subsidies to individuals living with or recovering from mental illness for the purpose of fostering stable and appropriate living conditions. If necessary to achieve successful housing outcomes, housing subsidies may be provided without an agreement to accept certain services as a condition of assistance. The department of mental health shall ensure that housing subsidies are monitored and managed in coordination with other relevant community services and supports.

Sec. 8. INTENSIVE RESIDENTIAL RECOVERY FACILITIES

(a) To support the development of intensive residential recovery facilities, the commissioner of mental health is authorized to contract for:

(1) Fifteen beds located in northwestern Vermont;

(2) Eight beds located in southeastern Vermont; and

(3) Eight beds located in either central or southwestern Vermont or both.

(b) Notwithstanding 18 V.S.A. § 9435(b), all facilities contracted for under subsection (a) of this section shall be subject to the certificate of approval process, which shall take into consideration the recommendations of a panel of

stakeholders appointed by the commissioner to review each proposal and conduct a public hearing.

Sec. 9. INPATIENT HOSPITAL BEDS

(a) To replace the services provided at the Vermont State Hospital, the department of mental health shall oversee the delivery of emergency examination and involuntary inpatient treatment services at four acute inpatient hospitals throughout the state:

(1) The department of mental health shall enter into contracts that meet the requirements of subdivision (2) of this subsection with a hospital in southeastern Vermont and a hospital in southwestern Vermont for the establishment of a 14-bed unit and a six-bed unit, respectively, contingent upon receipt by the hospitals of certificates of need pursuant to 18 V.S.A. chapter 221, subchapter 5. Certificate of need applications for the 14-bed unit and the six-bed unit, whether prepared jointly by a hospital and the department or solely by a hospital, shall be reviewed by the commissioner of mental health prior to a certificate of need approval to ensure the architectural and program proposals meet industry standards for quality of care and emotional and physical safety standards and otherwise protect patients' rights.

(2) Initial contract terms for the 14-bed unit and the six-bed unit shall require participation in the no refusal system for four years and until the facility has recouped its initial investment. Contracts referenced in subdivision (1) of this subsection shall apply to participating hospitals, notwithstanding their status as designated hospitals, and shall contain the following requirements:

(A) Funding shall be based on the ability to treat patients with high acuity levels;

(B) Units shall be managed as part of a statewide no refusal system;

(C) Reimbursement by the state shall cover reasonable actual costs for enhanced programming and staffing in accordance with Sec. 33b of this act;

(D) Units shall be managed to ensure access to peer supports;

(E) Participating hospitals shall maintain a stakeholder advisory group with nonexclusionary membership to ensure high quality and appropriate levels of care;

(F) The department shall be solely responsible for responding to requests for records concerning the implementation of this contract between the department and the hospital. The hospital and its employees shall cooperate and provide reasonable assistance to the department in producing

records that are within the custody of the hospital that are responsive to records requests and that are not confidential by law; and

(G) The state shall retain the option to renew the contract upon expiration of the initial four-year term.

(b)(1)(A) The department of buildings and general services, with broad involvement from the department of mental health and stakeholders, shall design a 25-bed hospital owned and operated by the state in central Vermont and proximate to an existing hospital. Applying the most expeditious methodology possible, the department of buildings and general services shall supervise the construction of the hospital with an expressed goal of completing the project in 24 months. The operations of the hospital shall be under the jurisdiction of the commissioner of mental health.

(B)(i) The general assembly finds that the Centers for Medicare and Medicaid Services (CMS) advised the state of Vermont on March 14, 2012 that:

(I) any newly constructed hospital owned and operated by the state that exceeds 16 beds will be eligible to receive federal matching funds for services rendered at the hospital under the state's current Global Commitment waiver, which is set to expire on December 31, 2013.

(II) although CMS was unable to provide a definitive answer as to whether a new hospital owned and operated by the state with 25 beds would be eligible for federal matching funds after December 31, 2013, the state will be able to cease use of nine beds at that time and amend the hospital's license from 25 beds to 16 beds if the Global Commitment waiver is not renewed or extended and a new waiver is not granted under similar terms and conditions.

(ii) In the event the hospital owned and operated by the state loses or is no longer eligible for federal matching funds after December 31, 2013, the commissioner of mental health shall cease use of nine beds within the time frame set by CMS and reduce the hospital's license from 25 to 16 beds. At that time, the commissioner of mental health shall begin planning for an orderly transition to a 16-bed hospital that shall proceed in a manner that protects the health, safety, and integrity of individuals treated at the state owned and operated hospital. The commissioner's transition plan shall ensure the nine-bed deficit in acute inpatient beds be addressed by expanding acute inpatient capacity elsewhere in the state if necessary and that the nine decommissioned beds in the state owned and operated hospital be repurposed in a manner that does not jeopardize federal matching funds for the remaining 16 beds. If the loss or denial of federal matching funds occurs while the general assembly is in session, the commissioner shall notify and seek approval of the transition plan from the senate committees on health and

welfare and on institutions and the house committees on human services and on corrections and institutions before proceeding with the transition plan. If the loss or denial of federal matching funds occurs while the general assembly is not in session, the commissioner shall notify and seek approval of the transition plan from a special committee composed of members of the joint fiscal committee and the chairs and vice chairs of the senate committees on health and welfare and on institutions and the house committees on human services and on corrections and institutions before proceeding with the transition plan. The special committee shall be entitled to per diem and expenses as provided in 32 V.S.A. § 1010.

(2) To foster coordination between the judiciary and mental health systems, the hospital owned and operated by the state shall contain:

(A) adequate capacity to accept individuals receiving a court order of hospitalization pursuant to 18 V.S.A. chapter 181; and

(B) a private room used and outfitted for the purpose of judicial proceedings.

(3) The commissioner of buildings and general services may purchase, lease for a period of up to 99 years plus any contracted for renewal options, or enter into a lease-purchase agreement for property in central Vermont for the purpose described in this subsection.

(4) The commissioner of buildings and general services shall inform the chairs and vice chairs of the senate committee on institutions and house committee on corrections and institutions prior to entering into an agreement pursuant to subdivision (3) of this subsection, upon substantial completion of a design pursuant to this section, prior to the commencement of construction, and when any other substantial step is taken in furtherance of this section.

(c)(1) The commissioner is authorized to contract for seven to 12 involuntary acute inpatient beds at Fletcher Allen Health Care until the hospital owned and operated by the state described in subsection (b) of this section is operational, to cover the increased cost of care; and

(2)(A) If a viable setting is identified by the commissioner and licensed by the department of health, the commissioner is authorized to provide acute inpatient services at a temporary hospital and shall discontinue services at that hospital when the hospital owned and operated by the state described in subsection (b) of this section is operational. The department shall pursue Medicare and Medicaid certification for any such temporary hospital.

(B) If the temporary hospital identified under subdivision (2)(A) of this subsection (c) is located in Morrisville, acute inpatient services shall be discontinued at the facility when the hospital owned and operated by the state

described in subsection (b) of this section is operational, but no later than September 1, 2015. At that time, the temporary hospital shall revert to prior permitted uses. The temporary hospital shall be initially licensed for eight acute inpatient beds. Before an expansion of the number of beds at the temporary Morrisville hospital may occur, the department shall confer with the host community to seek permission for such expansion.

(d) To the extent amounts of potential funding from various sources are not clear upon passage of this act, the legislative intent for funding the capital costs of this section to the extent practicable is first through insurance funds that may be available for these purposes; second through the Federal Emergency Management Agency (FEMA) funds that may be available for these purposes and any required state match; third, in the case of the 14-bed unit and the six-bed unit, through a rate payment with clearly defined terms of services; and last with state capital or general funds. It is also the intent of the general assembly that, notwithstanding 32 V.S.A. §§ 134 and 135, any capital funds expended for projects described in this act that are reimbursed at a later date by insurance or FEMA shall be reallocated to fund capital projects in a future act relating to capital construction and state bonding.

Sec. 10. SECURE RESIDENTIAL RECOVERY PROGRAM

(a) The commissioner of mental health is authorized to establish and oversee a secure seven-bed residential facility owned and operated by the state for individuals no longer requiring acute inpatient care, but who remain in need of treatment within a secure setting for an extended period of time. The program shall be the least restrictive and most integrated setting for each of the individual residents.

(b) The opening of the facility described in subsection (a) of this section is contingent upon the passage of necessary statutory amendments authorizing judicial orders for commitment to such a facility, which shall parallel or be included in 18 V.S.A. § 7620 (related to applications for continuation of involuntary treatment), and shall include the same level of statutory protections for the legal rights of the residents as provided for individuals at inpatient facilities.

* * * Vermont Employees Retirement System * * *

Sec. 11. 3 V.S.A. § 455 is amended to read:

§ 455. DEFINITIONS

(a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this subchapter shall have the following meanings:

* * *

(28) "Successor in interest" means the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 12. 3 V.S.A. § 459(d)(2)A) is amended to read:

(2)(A) Upon early retirement, a group F member, except facility employees of the department of corrections and department of corrections employees who provide direct security and treatment services to offenders under supervision in the community and Woodside facility employees, shall receive an early retirement allowance which shall be equal to the normal retirement allowance reduced by one-half of one percent for each month the member is under age 62 at the time of early retirement. Group F members who have 20 years of service as facility employees of the department of corrections, as department of corrections employees who provide direct security and treatment services to offenders under supervision in the community or as Woodside facility employees or as Vermont ~~state hospital~~ State Hospital employees, or as employees of its successor in interest, who provide direct patient care shall receive an early retirement allowance which shall be equal to the normal retirement allowance at age 55 without reduction; provided the 20 years of service occurred in one or more of the following capacities as an employee of the department of corrections, Woodside facility~~],~~ or the Vermont ~~state hospital]~~ State Hospital, or its successor in interest: facility employee, community service center employee, or court and reparative service unit employee.

* * * Executive: Human Services * * *

Sec. 13. 3 V.S.A. § 3089 is amended to read:

§ 3089. DEPARTMENT OF MENTAL HEALTH

The department of mental health is created within the agency of human services as the successor to and the continuation of the division of mental health services of the department of health. The department of mental health shall be responsible for the operation of the Vermont ~~state hospital~~ State Hospital, or its successor in interest as defined in subdivision 455(28) of this title.

* * * Crimes and Criminal Procedure: Escape * * *

Sec. 14. 13 V.S.A. § 1501 is amended to read:

§ 1501. ESCAPE AND ATTEMPTS TO ESCAPE

* * *

(b) A person who, while in lawful custody:

* * *

(4) escapes or attempts to escape from the Vermont ~~state hospital~~ State Hospital, or its successor in interest or a participating hospital, when confined by court order pursuant to chapter 157 of ~~Title 13 or chapter 199 of Title 18~~ this title, or when transferred there pursuant to ~~section 28 V.S.A. § 703 of Title 28~~ and while still serving a sentence, shall be imprisoned for not more than five years or fined not more than \$1,000.00, or both.

* * *

(d) As used in this section:

(1) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(2) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

(3) “Successor in interest” shall mean the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

* * * Crimes and Criminal Procedure: Insanity as a Defense * * *

Sec. 15. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

* * *

(b) The order for examination may provide for an examination at any jail or correctional center, or at the state hospital, or at its successor in interest, or at such other place as the court shall determine, after hearing a recommendation by the commissioner of mental health.

* * *

(g)(1) Inpatient examination at the ~~state hospital~~ Vermont State Hospital, or its successor in interest, or a designated hospital. The court shall not order an inpatient examination unless the designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

* * *

(3) An order for inpatient examination shall provide for placement of the defendant in the custody and care of the commissioner of mental health.

(A) If a Vermont ~~state hospital~~ State Hospital psychiatrist, or a psychiatrist of its successor in interest, or a designated hospital psychiatrist determines that the defendant is not in need of inpatient hospitalization prior to admission, the commissioner shall release the defendant pursuant to the terms governing the defendant's release from the commissioner's custody as ordered by the court. The commissioner of mental health shall ensure that all individuals who are determined not to be in need of inpatient hospitalization receive appropriate referrals for outpatient mental health services.

(B) If a Vermont ~~state hospital~~ State Hospital psychiatrist, or a psychiatrist of its successor in interest, or designated hospital psychiatrist determines that the defendant is in need of inpatient hospitalization:

(i) The commissioner shall obtain an appropriate inpatient placement for the defendant at the Vermont ~~state hospital~~ State Hospital, or its successor in interest, or a designated hospital and, based on the defendant's clinical needs, may transfer the defendant between hospitals at any time while the order is in effect. A transfer to a designated hospital outside the no refusal system is subject to acceptance of the patient for admission by that hospital.

(ii) The defendant shall be returned to court for further appearance on the following business day if the defendant is no longer in need of inpatient hospitalization, unless the terms established by the court pursuant to subdivision (2) of this section permit the defendant to be released from custody.

* * *

(i) As used in this section:

(1) "No refusal system" means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(2) “Successor in interest” shall mean the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 15a. 13 V.S.A. § 4822(c) is amended to read:

(c) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section the commissioner of ~~developmental and~~ mental health services shall give notice thereof to the committing court and state’s attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing court issuing the order under that section. In all other cases, when the committing court orders a hearing under subsection (a) of this section or when, in the discretion of the commissioner of ~~developmental and~~ mental health services, a hearing should be held prior to the discharge, the hearing shall be held in the ~~criminal~~ family division of the superior court, ~~Waterbury circuit~~ to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the commissioner, the state’s attorney of the county where the prosecution originated, the committed person and the person’s attorney. Prior to the hearing, the state’s attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

Sec. 16. DELETED

* * * General Provisions (Pertaining to Mental Health) * * *

Sec. 17. 18 V.S.A. § 7101 is amended to read:

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

* * *

(26) “No refusal system” means a system of hospitals and intensive residential recovery facilities under contract with the department of mental health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the commissioner in contract.

(27) “Participating hospital” means a hospital under contract with the department of mental health to participate in the no refusal system.

(28) "Successor in interest" means the mental health hospital owned and operated by the state that provides acute inpatient care and replaces the Vermont State Hospital.

Sec. 18. 18 V.S.A. § 7108 is amended to read:

§ 7108. CANTEENS

The ~~superintendents~~ chief executive officer of the Vermont State Hospital ~~and the Training School, or its successor in interest,~~ may conduct a canteen or commissary, which shall be accessible to patients, ~~students,~~ employees, and visitors of the ~~state hospital and training school~~ Vermont State Hospital, or its successor in interest, at designated hours and shall be operated by employees of the hospital ~~and the school.~~ A revolving fund for this purpose is authorized. The salary of an employee of the hospital ~~or training school~~ shall be charged against the canteen fund. Proceeds from sales may be used for operation of the canteen and the benefit of the patients, ~~students~~ and employees of the hospital ~~or training school~~ under the direction of the ~~superintendents~~ chief executive officer and subject to the approval of the commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the commissioner.

Sec. 19. 18 V.S.A. § 7110 is amended to read:

§ 7110. CERTIFICATION OF MENTAL ILLNESS

A certification of mental illness by a licensed physician required by section 7504 of this title shall be made by a board eligible psychiatrist, a board certified psychiatrist or a resident in psychiatry, under penalty of perjury. In areas of the state where board eligible psychiatrists, board certified psychiatrists or residents in psychiatry are not available to complete admission certifications to the Vermont ~~state hospital~~ State Hospital, or its successor in interest, the commissioner may designate other licensed physicians as appropriate to complete certification for purposes of section 7504 of this title.

* * * The Department of Mental Health * * *

Sec. 20. 18 V.S.A. § 7205 is amended to read:

§ 7205. SUPERVISION OF INSTITUTIONS

(a) The department of mental health shall operate the Vermont State Hospital, or its successor in interest, and shall be responsible for patients receiving involuntary treatment ~~at a hospital designated by the department of mental health.~~

(b) The commissioner of the department of mental health, in consultation with the secretary, shall appoint a chief executive officer of the Vermont State Hospital, or its successor in interest, to oversee the operations of the hospital. The chief executive officer position shall be an exempt position.

Sec. 21. DELETED

Sec. 22. DELETED

* * * The Commissioner of Mental Health * * *

Sec. 23. 18 V.S.A. § 7401 is amended to read:

§ 7401. POWERS AND DUTIES

Except insofar as this part of this title specifically confers certain powers, duties, and functions upon others, the commissioner shall be charged with its administration. The commissioner may:

* * *

(5) supervise the care and treatment of ~~patients at the Retreat in the same manner and with the same authority that he supervises patients at the Vermont State Hospital~~ individuals within his or her custody;

* * *

(16) contract with accredited educational or health care institutions for psychiatric services at the Vermont State Hospital, or its successor in interest;

* * *

* * * Admission Procedures * * *

Sec. 24. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, including escorts within a designated hospital or the Vermont ~~state hospital~~ State Hospital, or its successor in interest, or otherwise being transported under the jurisdiction of the commissioner in any manner which:

(1) prevents physical and psychological trauma;

(2) respects the privacy of the individual; and

(3) represents the least restrictive means necessary for the safety of the patient.

(b) The commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the commissioner's care and custody.

(c) When a professional or law enforcement officer designated pursuant to subsection (b) of this section decides an individual is in need of secure transport with mechanical restraints, the reasons for such determination shall be documented in writing.

* * *

* * * Care and Treatment * * *

Sec. 25. 18 V.S.A. § 7703 is amended to read:

§ 7703. TREATMENT

(a) Outpatient or partial hospitalization shall be preferred to inpatient treatment. Emergency involuntary treatment shall be undertaken only when clearly necessary. Involuntary treatment shall be utilized only if voluntary treatment is not possible.

(b) The department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint.

* * * Transfer of Patients * * *

Sec. 26. 18 V.S.A. § 7901 is amended to read:

§ 7901. INTRASTATE TRANSFERS

The commissioner may authorize the transfer of patients between the Vermont ~~state hospital~~ State Hospital, or its successor in interest, and designated hospitals if the commissioner determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice shall be given to the patient's ~~attorney~~, legal guardian or agent, if any, ~~spouse, parent, or parents, or, if none be known, to any other interested party in that order, and any other person with the consent of the patient.~~ In all such transfers, due consideration shall be given to the relationship of the patient to his or her family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Due consideration shall also be given to the separation of functions and to the divergent purposes of the Vermont ~~state hospital~~ State Hospital, or its successor in interest, and designated hospitals. No patient may be transferred to a correctional institution without the order of a court of competent jurisdiction. No patient may be transferred to a designated hospital outside the

no refusal system unless the head of the hospital or his or her designee first accepts the patient.

* * * Support and Expense * * *

Sec. 27. 18 V.S.A. § 8101(b) is amended to read:

(b) The commissioner shall promulgate, pursuant to 3 V.S.A. chapter 25 of Title 3, regulations which set forth in detail the levels of income, resources, expenses, and family size at which persons are deemed able to pay given amounts for the care and treatment of a patient, and the circumstances, if any, under which the rates of payment so established may be waived or modified. A copy of the payment schedule so promulgated shall be made available in the admissions office ~~and in the office of each supervisor~~ at the ~~state hospital~~ Vermont State Hospital, or its successor in interest.

Sec. 28. 18 V.S.A. § 8105 is amended to read:

§ 8105. COMPUTATION OF CHARGE FOR CARE AND TREATMENT

The charge for the care and treatment of a patient at the Vermont ~~state hospital~~ State Hospital, or its successor in interest, shall be established at least annually by the commissioner. The charge shall reflect the current cost of the care and treatment, including depreciation and overhead, for the Vermont ~~state hospital~~ State Hospital, or its successor in interest. Depreciation shall include but not be limited to costs for the use of the plant and permanent improvements, and overhead shall include but not be limited to costs incurred by other departments and agencies for the operation of the hospital. Accounting principles and practices generally accepted for hospitals shall be followed by the commissioner in establishing the charges.

Sec. 29. 18 V.S.A. § 8010 is amended to read:

§ 8010. VOLUNTARY PATIENTS; DISCHARGE; DETENTION

~~(a) If a voluntary patient gives notice in writing to the head of the hospital of a desire to leave the hospital, he or she shall promptly be released unless he or she agreed in writing at the time of his admission that his or her release could be delayed.~~

~~(b) In that event and if the head of the hospital determines that the patient is a patient in need of further treatment, the head of the hospital may detain the patient for a period not to exceed four days from receipt of the notice to leave. Before expiration of the four day period the head of the hospital shall either release the patient or apply to the family division of the superior court in the unit in which the hospital is located for the involuntary admission of the patient. The patient shall remain in the hospital pending the court's determination of the case.~~

~~(e) If the patient is under 18 years of age, the notice to leave may be given by the patient or his or her attorney or the person who applied for admission, provided the minor consents thereto. [Repealed.]~~

* * * Municipal and County Government * * *

Sec. 29a. 24 V.S.A. § 296 is amended to read:

§ 296. TRANSPORTATION OF PRISONERS AND MENTAL PATIENTS

All commitments to a state correctional facility ~~or state mental institution~~ or to any other place named by the commissioner of corrections, ~~commissioner of mental health~~ or committing court, shall be made by any sheriff, deputy sheriff, state police officer, police officer, or constable in the state, or the commissioner of corrections or his or her authorized agent.

* * * Professions and Occupations: Nursing * * *

Sec. 30. 26 V.S.A. § 1583 is amended to read:

§ 1583. EXCEPTIONS

This chapter does not prohibit:

* * *

~~(6) The work and duties of psychiatric technicians and other care attendants employed in the Vermont state hospital at Waterbury. The agency of human services shall consult with the board regarding standards for the education of the technicians and care attendants.~~

~~(7)~~ The work and duties of attendants in attendant care services programs.

~~(8)~~(7) The practice of any other occupation or profession licensed under the laws of this state.

~~(9)~~(8) The providing of care for the sick in accordance with the tenets of any church or religious denomination by its adherents if the individual does not hold himself or herself out to be a registered nurse, licensed practical nurse, or licensed nursing assistant and does not engage in the practice of nursing as defined in this chapter.

* * * Public Institutions and Corrections: Juveniles * * *

Sec. 31. 28 V.S.A. § 1105 is amended to read:

§ 1105. TRANSFER OF JUVENILES TO STATE HOSPITAL

~~The transfer of any child committed to the custody of the commissioner from a facility of or supported by the department to the state hospital shall be~~

~~conducted pursuant to the same procedures established for the transfer of adult inmates by sections 703-706 of this title. [Repealed.]~~

* * * Regulation of Long-Term Care Facilities * * *

Sec. 32. 33 V.S.A. § 7102 is amended to read:

§ 7102. DEFINITIONS

For the purposes of this chapter:

* * *

(11) “Therapeutic community residence” means a place, however named, ~~excluding a hospital~~ hospitals as defined by statute ~~or the Vermont state hospital~~ which provides, for profit or otherwise, short-term individualized treatment to three or more residents with major life adjustment problems, such as alcoholism, drug abuse, mental illness, or delinquency.

* * *

Sec. 33. REPORTS

(a) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committees on human services and on judiciary on issues and protections relating to decentralizing high intensity inpatient mental health care. The commissioner of mental health shall:

(1) Recommend whether any statutory changes are needed to preserve the rights afforded to patients in the Vermont State Hospital. In so doing, the commissioner shall consider 18 V.S.A. §§ 7705 and 7707, the Vermont Hospital Patient Bill of Rights as provided in 18 V.S.A. § 1852, the settlement order in Doe, et al. v. Miller, et al., docket number S-142-82-Wnc dated May 1984, and other state and federal regulatory and accreditation requirements related to patient rights.

(2) Work with designated hospitals and stakeholders to develop a process to ensure public involvement with policy development relevant to individuals in the care and custody of the commissioner.

(3) Develop consistent definitions and measurement specifications for measures relating to seclusion and restraint and other key indicators, in collaboration with the designated hospitals. The commissioner shall prioritize the use of measures developed by national organizations such as the Joint Commission and the Centers for Medicare and Medicaid Services.

(4) Report on the efficacy of the department of mental health’s housing subsidies program on the status of stable housing.

(b) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committee on human services regarding the department's efforts to date to plan for implementation, quality improvement, and innovation of Vermont's mental health system and how the department recommends that it proceed in its efforts to improve the system. The recommendation shall be based on an assessment of outcome and financial measures focused on at least the following criteria for individuals with a mental health condition:

(1) the development of sufficient capacity for inpatient and community psychiatric services and peer supports across the continuum of care;

(2) the support of individuals in accessing the services nearest to their home;

(3) the reduction in emergency department usage and law enforcement intervention;

(4) the reduction in hospital admissions and length of inpatient stays, including any impact on readmissions;

(5) the implementation of quality assessment tools for evaluation of services at all levels, including those needed to measure the effectiveness of the care management system;

(6) the department's use of current financial data to conduct a fiscal analysis of the capital and annual operating costs associated with the plan as enacted; and

(7) individuals' satisfaction with provided services.

(c) Prior to submitting the reports required by subsections (a) and (b) of this section, the department of mental health shall solicit comments from the department's patient representative described in 18 V.S.A. § 7253, Vermont Legal Aid, and Disability Rights Vermont, and shall append any comments received to the respective report.

(d) On or before January 15, 2013, the department of mental health shall report to the senate committee on health and welfare and the house committee on human services with a plan for streamlining overlapping state and federal reporting requirements for providers in the mental health system, including recommendations for any statutory changes needed to do so.

(e) A special committee consisting of the members of the joint fiscal committee and the chairs and vice chairs of the senate committee on health and welfare and the house committee on human services, in consultation with the commissioner of mental health shall contract with an independent consultant who has expertise in the field of mental health and psychiatric hospital services

to evaluate the structure, services, and financial implications of Vermont's proposed mental health system. The joint fiscal office shall administer the contract for the special committee. The department of mental health shall transfer to the joint fiscal committee one-half the cost of this contract and the joint fiscal committee is authorized to transfer one-half the cost of this contract from the legislative budget to the joint fiscal committee. The independent consultant shall submit a report to the general assembly by December 1, 2012 and shall specifically address:

(1) Whether Vermont's proposed mental health system appropriately serves the needs of individuals with mental health conditions throughout the state and, if any unmet needs are identified, how they may be addressed;

(2) The data and evaluation mechanisms necessary to manage and improve the quality of care and outcomes for individuals in Vermont with a mental health condition.

Sec. 33a. RULEMAKING

On or before September 1, 2012, the commissioner of mental health shall initiate a rulemaking process that establishes standards that meet or exceed and are consistent with standards set by the Centers for Medicare and Medicaid Services and the Joint Commission for the use and reporting of the emergency involuntary procedures of seclusion or restraint on individuals within the custody of the commissioner and that require the personnel performing emergency involuntary procedures to receive training and certification on the use of these procedures. Standards established by rule shall be consistent with the recommendations made pursuant to Sec. 33(a)(1) and (3) of this act.

Sec. 33b. COST-BASED REIMBURSEMENT FOR ACUTE HOSPITAL SERVICES

(a) The department of mental health shall ensure that hospitals are paid reasonable actual costs for providing necessary care to persons who otherwise would have been cared for at the Vermont State Hospital as defined by the department. The department shall contract with a third party with experience in psychiatric hospital care and expenses to conduct a comprehensive fiscal review to determine if the department's cost reimbursement methodology reflects reasonable actual costs.

(b) The department of mental health shall report to the joint fiscal committee regarding the fiscal review described in subsection (a) of this section on or before September 1, 2012.

Sec. 34. TRANSFER OF APPROPRIATIONS

To continue the training program established in Sec. 13 of No. 80 of the Acts of the 2003 Adj. Sess. (2004) (amending Sec. 57 of No. 66 of the Acts of 2003), for assisting selected law enforcement officers during the performance of their duties in their interactions with persons exhibiting mental health conditions, \$20,000.00 of the general funds appropriated to the department of mental health for fiscal year 2012 shall be transferred to the office of the attorney general.

(1) The office of the attorney general, in consultation with the Vermont coalition for disability rights and other organizations, shall implement this training program.

(2) By January 15 of each year and until funds are fully expended, the attorney general shall submit to the secretary of administration and the house and senate committees on appropriations a report summarizing how the funds have been used and how the trainings have progressed.

(3) Unexpended funds shall be carried forward and used for the purpose of this section in future years.

Sec. 34a. Sec. 33 of No. 43 of the Acts of 2009 (amending Sec. 124d(e) of No. 65 of the Acts of 2007) is amended to read:

(e) For purposes of this section, the council shall cease to exist when the development of the alternatives to the Vermont state hospital is completed, but no later than ~~July~~ September 1, 2012 2015.

* * * Fiscal Year 2012 Appropriations * * *

Sec. 35. Sec. B.301 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 14 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

Sec. B.301 Secretary's office - global commitment

Grants	1,080,785,264	1,107,604,567
Total	1,080,785,264	1,107,604,567
Source of funds		
General fund	139,267,121	135,947,833
Special funds	18,630,961	19,052,361
Tobacco fund	36,978,473	36,978,473
State health care resources fund	221,579,040	234,205,524
Catamount fund	23,948,700	25,226,979
Federal funds	639,692,834	655,505,262
Interdepartmental transfers	688,135	688,135
Total	1,080,785,264	1,107,604,567

Sec. 36. Sec. B.314 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 24 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

Sec. B.314 Mental health - mental health

Personal services	5,486,339	5,482,633
Operating expenses	1,117,984	1,040,984
Grants	<u>124,369,250</u>	<u>139,483,645</u>
Total	<u>130,973,573</u>	146,007,262
Source of funds		
General fund	811,295	961,295
Special funds	6,836	6,836
Federal funds	6,555,971	6,552,154
Global Commitment fund	123,579,471	138,466,977
Interdepartmental transfers	<u>20,000</u>	<u>20,000</u>
Total	<u>130,973,573</u>	146,007,262

Sec. 37. Sec. B.315 of No. 63 of the Acts of 2011 (FY12 Big Bill), as amended by Sec. 25 of H.558 of 2012 (FY12 Budget Adjustment) is amended to read:

Sec. B.315 Mental health – Vermont state hospital

Personal services	20,479,188	20,228,969
Operating expenses	2,056,312	1,394,734
Grants	<u>82,335</u>	<u>82,335</u>
Total	<u>22,617,835</u>	21,706,038
Source of funds		
General fund	17,016,067	5,963,977
Special funds	835,486	0
Federal funds	213,564	93,117
Global Commitment fund	4,252,718	15,648,944
Interdepartmental transfers	<u>300,000</u>	<u>0</u>
Total	<u>22,617,835</u>	21,706,038

Sec. 37a. REDUCTION IN FORCE OF VERMONT STATE HOSPITAL EMPLOYEES

(a) Permanent status classified employees who were officially subjected to a reduction in force from their positions with the Vermont State Hospital on or after February 6, 2012, whose reemployment rights have not otherwise terminated and who have not been reemployed with the state during the two-year reduction in force reemployment rights period, shall be granted a continuation of their reduction in force reemployment rights, in accordance with the provisions of the applicable collective bargaining agreement, but

solely to vacant classified bargaining unit positions at any new state-owned and -operated psychiatric hospital which management intends to fill. All other contractual reduction in force reemployment terms and conditions shall apply.

(b) Permanent status classified employees employed by the Vermont State Hospital as of February 6, 2012 who are employed by the state shall, in accordance with the provisions of the applicable collective bargaining agreement, be eligible to receive one mandatory offer of reemployment to any new state-owned and -operated psychiatric hospital, solely to the job classification that they last occupied at the Vermont State Hospital, provided management intends to fill positions within that job classification. An employee who accepts such mandatory offer of reemployment shall be appointed in accordance with the provisions of the applicable collective bargaining agreement. If an employee who accepts a mandatory offer of reemployment fails the associated working test period, he or she shall be separated from employment and granted full reduction in force reemployment rights in accordance with the applicable collective bargaining agreement.

(c)(1) Participating hospitals and designated agencies developing acute inpatient, secure residential, and intensive residential recovery services, as described in Secs. 8–10 of this act, shall provide the department of human resources with a description of the minimum qualifications for those open positions related to the care of individuals with mental health conditions. Participating hospitals and designated agencies shall be encouraged to hire former state employees who meet minimum requirements or have equivalent experience. The department shall use the most effective method to notify former employees of the Vermont State Hospital of these positions.

(2) The general assembly encourages the administration through its contracting process with participating hospitals and designated agencies to provide former employees of the Vermont State Hospital with the opportunity to apply for available positions.

(3) The provisions of this subsection shall not affect any existing collective bargaining agreement.

(d) Subsections (a) and (b) of this section are repealed one year after the opening of any new state-owned and -operated psychiatric hospital.

Sec. 37aa. VERMONT STATE HOSPITAL EMPLOYEE RETIREMENT INCENTIVE

(a) An individual who was employed by the department of mental health as of March 1, 2012, who was employed at the Vermont State Hospital on August 28, 2011, who participates in either the defined benefit or defined contribution plan, and who does not initiate the purchase of any additional

service credit after March 1, 2012 shall be eligible for the retirement incentive outlined in subsection (b) of this section if the individual has:

(1) 30 years of creditable retirement service as of April 13, 2012;

(2) five years of creditable retirement service as of April 13, 2012 and is 62 years of age or older on April 13, 2012; or

(3) 20 years of creditable retirement service as of April 13, 2012 as a facility employee who provides or who has provided direct security and treatment services as provided in 3 V.S.A. § 459(2)(A) and is 55 years of age or older on April 12, 2012.

(b) If the employee applies for retirement on or before April 13, 2012 for a retirement effective on or before May 1, 2012, the employee shall be entitled to payment by the state of at least 80 percent of the cost of the premium for health insurance coverage offered by the state of Vermont to retirees, provided that the employee continues to meet the eligibility requirements for at least seven years following retirement unless the employee elects the premium reduction option under 3 V.S.A. § 479(e) and:

(1) \$750.00 per complete year of service if the employee has five years of creditable service or more and fewer than 15 years of creditable service; or

(2) \$1,000.00 per complete year of service if the employee has 15 years of creditable service or more.

(c) The cash incentive set forth in subsection (b) of this section shall not exceed \$15,000.00 per employee. The employee shall receive the cash portion of the incentive in two equal payments in fiscal years 2013 and 2014. The first payment shall be made within 90 days of the retirement date. The second payment shall be made within 90 days of the one-year anniversary of the retirement date. The retirement incentive shall not be paid from the Vermont state retirement fund, as outlined in 3 V.S.A. § 473.

(d) No employee who receives the incentive set forth in subsection (b) of this section may return to permanent or limited classified service with the state for at least two full fiscal years from the date of his or her retirement unless the secretary of administration expressly approves otherwise. The joint fiscal committee shall be notified of any employee who received the incentive set forth in subsection (b) of this section and returned to state employment within two years.

(e) An employee who receives the incentive set forth in subsection (b) of this section is not entitled to receive any mandatory reemployment rights to a successor state facility and will not be eligible for any rights under Sec. 37a of this act.

(f) The retirement incentive set forth in subsection (b) of this section shall be treated as a severance payment under 21 V.S.A. § 1344(a)(5)(C) and shall be a disqualifying remuneration.

Sec. 37b. LEGISLATIVE INTENT

(a) It is the intent of the general assembly that the department of mental health contract with the Brattleboro Retreat for a 14-bed unit and with Rutland Regional Medical Center for a six-bed facility pursuant to Sec. 9(a) of this act.

(b) It is the understanding of the general assembly that the proposed temporary hospital in Sec. 9(c)(2) of this act, the Brattleboro Retreat, Rutland Regional Medical Center, and an interim secure residential facility are to temporarily meet the immediate needs of the state.

Sec. 38. EFFECTIVE DATES

This act shall take effect on passage, except for Sec. 34 of this act which shall take effect on July 1, 2012.

*CLAIRE D. AYER
ROBERT M. HARTWELL
KEVIN J. MULLIN*

Committee on the part of the Senate

*ANN D. PUGH
SANDY J. HAAS
ALICE M. EMMONS*

Committee on the part of the House

Thereupon, the question, Shall the Senate accept and adopt the report of the Committee of Conference?, was decided in the affirmative on a roll call, Yeas 25, Nays 0.

Senator Brock having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Ashe, Ayer, Benning, Brock, Carris, Cummings, Doyle, Flory, Fox, Galbraith, Giard, Hartwell, Kitchel, Kittell, Lyons, MacDonald, Mazza, McCormack, Mullin, Pollina, Sears, Snelling, Starr, Westman, White.

Those Senators who voted in the negative were: None.

Those Senators absent or not voting were: Baruth, Campbell (presiding), Illuzzi, Miller, Nitka.

Adjournment

On motion of Senator Mazza, the Senate adjourned until eleven o'clock and thirty minutes in the morning.