

1 S.296

2 Introduced by Senators Sears, Ashe, Flory, Fox, and Snelling

3 Referred to Committee on Institutions

4 Date: January 7, 2014

5 Subject: Crimes and criminal procedures; public defenders; duty of Defender

6 General to investigate inmate death

7 Statement of purpose of bill as introduced: This bill proposes to clarify the
8 Defender General's duty to investigate issues related to the health, safety, and
9 welfare of inmates in correctional facilities and the role of other government
10 agencies in assisting with this responsibility.

11 An act relating to the Defender General's duty to investigate issues related
12 to the health, safety, and welfare of inmates in correctional facilities

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1. 13 V.S.A. § 5259 is added to read:~~

15 § 5259. DUTY TO INVESTIGATE

16 (a) The Defender General shall investigate issues related to the health,
17 safety, and welfare of inmates in correctional facilities and shall receive the
18 cooperation of all State agencies in carrying out this duty. Issues that require
19 an investigation by the Defender General shall, at a minimum, include:

20 (1) the death of an inmate:

- 1 ~~(2) a suicide attempt that results in a critical incident report;~~
- 2 (3) a critical incident that results in injury to an inmate from an assault,
3 use of force, or accident in a correctional facility that requires more than
4 24 hours of emergency hospitalization; and
- 5 (4) a critical incident that negatively impacts the health, safety, or
6 welfare of an inmate, the conditions of confinement, or the adequacy of care
7 provided to inmates.
- 8 (b) When an incident enumerated in subdivisions (a)(1)–(4) of this section
9 occurs, the Department of Corrections shall immediately notify the Defender
10 General and shall provide reasonable unaccompanied access to the correctional
11 facility and inmates. The Defender General is authorized to speak with any
12 relevant personnel from the Department of Corrections and other State
13 agencies subject to the individual’s constitutional rights and to legitimate law
14 enforcement concerns regarding preservation of a criminal investigation,
15 if any.
- 16 (c) In order to investigate incidents properly, the Defender General shall be
17 given broad access to records concerning the incident and any inmates
18 involved in the incident. In response to a request for records from the
19 Defender General, the Commissioner of Corrections shall provide the records
20 promptly and no subpoena or public records request shall be required. Records
21 ~~subject to this section include video or audio recordings.~~

1 ~~(d) The Defender General is authorized to protect the confidentiality of~~
2 ~~sources in the course of an investigation pursuant to this section. Work~~
3 ~~product generated in the course of representation of a client that contains~~
4 ~~confidential communication between an inmate and the Defender General shall~~
5 ~~not be discoverable and records of communications between inmates and the~~
6 ~~Defender General may be redacted.~~

7 (e) Where appropriate, the Defender General shall report to the Department
8 of Corrections and the Joint Committee on Corrections Oversight identifying
9 any concerns and suggested policy changes that arise from an incident that
10 resulted in an investigation.

11 Sec. 2. EFFECTIVE DATE

12 ~~This act shall take effect on passage.~~

Sec. 1. 13 V.S.A. § 5259 is added to read:

§ 5259. DUTY TO INVESTIGATE

(a) The Defender General shall investigate issues related to the health, safety, and welfare of inmates in correctional facilities and shall receive the cooperation of all State agencies in carrying out this duty. Issues that require an investigation by the Defender General shall, at a minimum, include:

(1) the death of an inmate;

(2) a suicide attempt that requires more than 24 hours of emergency hospitalization; and

(3) a critical incident that results in injury to an inmate from an assault, use of force, or accident in a correctional facility that requires more than 24 hours of emergency hospitalization.

(b)(1) When an incident enumerated in subdivisions (a)(1)–(3) of this section occurs, the Department of Corrections shall notify the Defender General as soon as reasonably practicable.

(2) The Commissioner shall report weekly to the Defender General regarding any critical incident that negatively impacts the health, safety, or welfare of an inmate, the conditions of confinement, or the adequacy of care provided to inmates.

(c) In carrying out the duties under this section, the Defender General:

(1) Shall be given reasonable unaccompanied access to the correctional facility and inmates and is authorized to speak with any relevant personnel from the Department of Corrections and other State agencies subject to the individual's constitutional rights and to legitimate law enforcement concerns regarding preservation of a criminal investigation, if any.

(2) Shall be given broad access to records concerning the incident and any inmates involved in the incident. In response to a request for records from the Defender General, the Commissioner of Corrections shall provide the records promptly and no subpoena or public records request shall be required. Records subject to this section include video or audio recordings.

(d) The Defender General is authorized to protect the confidentiality of sources in the course of an investigation pursuant to this section. Work product generated in the course of representation of a client that contains confidential communication between an inmate and the Defender General shall not be discoverable and records of communications between inmates and the Defender General may be redacted.

(e) Where appropriate, the Defender General shall report to the Department of Corrections and the Joint Committee on Corrections Oversight identifying any concerns and suggested policy changes that arise from an incident that resulted in an investigation.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.