

Journal of the Senate

THURSDAY, MARCH 10, 2016

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Joan Javier-Duval of Montpelier.

Message from the House No. 30

A message was received from the House of Representatives by Mr. Jeremy Weiss, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 458. An act relating to automatic voter registration through motor vehicle driver's license applications.

H. 507. An act relating to eligibility for economic development in impaired waters of the State.

H. 577. An act relating to voter approval of electricity purchases by municipalities and electric cooperatives.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolutions originating in the Senate of the following titles:

J.R.S. 43. Joint resolution providing for a Joint Assembly to vote on the retention of four Superior Judges.

J.R.S. 44. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

The Governor has informed the House that on March 8, 2016, he approved and signed a bill originating in the House of the following title:

H. 611. An act relating to fiscal year 2016 budget adjustments.

The Governor has informed the House that on March 9, 2016, he approved and signed a bill originating in the House of the following title:

H. 187. An act relating to absence from work for health care and safety.

Bill Referred to Committee on Appropriations

S. 189.

Senate bill of the following title, appearing on the Calendar for notice and carrying an appropriation or requiring the expenditure of funds, under the rule was referred to the Committee on Appropriations:

An act relating to foster parents' rights and protections.

Joint Resolution Placed on Calendar

J.R.S. 45.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Committee on Institutions,

J.R.S. 45. Joint resolution relating to the transfer of two-State-owned parcels of land to the Town of Duxbury.

Whereas, 10 V.S.A. § 2606(b) authorizes the Commissioner of Forests, Parks and Recreation to exchange or lease certain lands with the approval of the General Assembly, and

Whereas, the General Assembly considers the following actions to be in the best interest of the State of Vermont, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the General Assembly authorizes the Commissioner of Forests, Parks and Recreation to convey a 137-acre portion of Camel's Hump State Park and an adjacent 32.3-acre State-owned parcel known as the "Father Logue's Camp," both located in the Town of Duxbury, to the Town of Duxbury for use as a municipal forest, *and be it further*

Resolved: That the Town of Duxbury shall use these two parcels only for forestry, conservation, and recreation purposes, *and be it further*

Resolved: That to ensure these purposes are upheld, the Department shall convey a conservation easement encumbering these parcels to the Duxbury Land Trust, *and be it further*

Resolved: That in consideration of the public benefits associated with these transactions, these parcels shall be transferred to the Town at no cost, *and be it further*

Resolved: That these transactions are conditioned on the Town of Duxbury assuming all associated costs, including legal, survey, and permitting that may be necessary to complete these transactions, *and be it further*

Resolved: That the Secretary of State be directed to send a copy of this resolution to the Commissioner of Forests, Parks and Recreation, to the Duxbury Town Clerk, and to the Duxbury Land Trust.

Thereupon, in the discretion of the President, under Rule 51, the joint resolution was placed on the Calendar for notice the next legislative day.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 458.

An act relating to automatic voter registration through motor vehicle driver's license applications.

To the Committee on Government Operations.

H. 507.

An act relating to eligibility for economic development in impaired waters of the State.

To the Committee on Natural Resources & Energy.

H. 577.

An act relating to voter approval of electricity purchases by municipalities and electric cooperatives.

To the Committee on Finance.

Bills Passed

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

S. 123. An act relating to standardized procedures for permits and approvals issued by the Department of Environmental Conservation.

S. 214. An act relating to transfer of Exchange plan administration to health insurance carriers.

Bills Amended; Third Readings Ordered

S. 40.

Senator Pollina, for the Committee on Health & Welfare, to which was referred Senate bill entitled:

An act relating to the creation of a Vulnerable Adult Fatality Review Team.

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

Sec. 1. 33 V.S.A. chapter 69, subchapter 3 is added to read:

Subchapter 3. Vermont Vulnerable Adult Fatality Review Team

§ 6961. VERMONT VULNERABLE ADULT FATALITY REVIEW TEAM ESTABLISHED

(a) Creation. There is created a Vermont Vulnerable Adult Fatality Review Team (Team) within the Office of the Attorney General for the following purposes:

(1) to examine select cases of abuse- and neglect-related fatalities and preventable deaths of vulnerable adults in Vermont;

(2) to identify system gaps and risk factors associated with those deaths;

(3) to educate the public, service providers, and policymakers about abuse- and neglect-related fatalities and preventable deaths of vulnerable adults and strategies for intervention; and

(4) to recommend legislation, rules, policies, procedures, practices, training, and coordination of services to promote interagency collaboration and to improve systemic responses to the abuse and neglect of vulnerable adults.

(b)(1) Membership. The Team shall comprise the following members:

(A) the Attorney General or designee;

(B) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(C) the Commissioner of Public Safety or designee;

(D) the Chief Medical Examiner or designee;

(E) the Assistant Director for Adult Protective Services in the Department of Disabilities, Aging, and Independent Living or designee;

(F) the Adult Services Division Director in the Department of Disabilities, Aging, and Independent Living or designee;

(G) the Director of the Vermont Office of Emergency Medical Services and Injury Prevention or designee;

(H) the State Long-Term Care Ombudsman;

(I) a representative of victim services, appointed by the Executive Director of the Vermont Center for Crime Victim Services;

(J) the Director of the Center on Aging at the University of Vermont, or a gerontologist or geriatrician appointed by the Director;

(K) the Director of Disability Rights Vermont or designee;

(L) a hospital representative, appointed by the Vermont Association of Hospitals and Health Systems;

(M) a long-term care facility representative, appointed by the Vermont Health Care Association; and

(N) a home health agency representative, appointed jointly by the Vermont Association of Home Health Agencies and designated home health agencies that are not members of the Vermont Association of Home Health Agencies.

(2) The members of the Team specified in subdivision (1) of this subsection shall serve two-year terms. Any vacancy on the Team shall be filled in the same manner as the original appointment. The replacement member shall serve for the remainder of the unexpired term.

(c) Meetings.

(1) The Attorney General or designee shall call the first meeting of the Team to occur on or before September 30, 2016.

(2) The Team shall select a chair and vice chair from among its members at the first meeting, and annually thereafter. The Vice Chair shall also serve as Secretary.

(3) The Team shall meet at such times as may reasonably be necessary to carry out its duties, but at least once in each calendar quarter.

§ 6962. POWERS AND DUTIES; REPORTS

(a) The Team shall develop and implement policies to ensure that the deaths of vulnerable adults in Vermont are reviewed using uniform procedures established by the Team.

(b)(1) The Team may review the death of any person who meets the definition of a vulnerable adult in subdivision 6902(14) of this title and:

(A) who was the subject of an adult protective services investigation; or

(B) whose death came under the jurisdiction of, or was investigated by, the Office of the Chief Medical Examiner.

(2) The Team shall not initiate the review of the death of a vulnerable adult until the conclusion of any adult protective services or law enforcement investigation, criminal prosecution, or civil action.

(3) The review shall not impose unreasonable burdens on health care providers for production of information, records, or other materials. The Team shall first seek to obtain information, records, and other materials from State agencies or that were generated in the course of an investigation by the Adult Protective Services Division, the Office of the Chief Medical Examiner, or law enforcement.

(4) The Team shall establish criteria for selecting specific fatalities for review to ensure the analysis of fatalities occurring in both institutional and home- and community-based settings.

(c)(1) Beginning in 2018, the Team shall submit an annual report to the General Assembly on or before January 15.

(2) The annual report shall:

(A) summarize the Team's activities for the preceding year;

(B) identify any changes to the Team's uniform procedures;

(C) identify system gaps and risk factors associated with deaths reviewed by the Team;

(D) recommend changes in statute, rule, policy, procedure, practice, training, or coordination of services that would decrease the number of preventable deaths in Vermont's vulnerable adult population; and

(E) assess the effectiveness of the Team's activities.

§ 6963. CONFIDENTIALITY

(a) The Team's proceedings and records are confidential and exempt from public inspection and copying under the Public Records Act, and shall not be released. Such information shall not be subject to subpoena or discovery or be admissible in any civil or criminal proceedings; provided, however, that nothing in this subsection shall be construed to limit or restrict the right to discover or use in any civil or criminal proceedings anything that is available from another source and entirely independent of the Team's review. The Team shall not use information, records, or data that it obtains or generates for purposes other than those described in this subchapter.

(b) The Team's conclusions and recommendations may be disclosed, but shall not identify or allow for the identification of any person or entity.

(c) Meetings of the Team are confidential and shall be exempt from the Vermont Open Meeting Law. The Secretary of the Team shall maintain any records, including meeting minutes, generated by the team.

(d) Team members and persons invited to assist the Team shall not reveal information, records, discussions, and opinions disclosed in connection with

the Team's work, and shall execute a sworn statement to honor the confidentiality of such information, records, discussions, and opinions. The Chair of the Team shall be responsible for obtaining and maintaining confidentiality agreements.

§ 6964. ACCESS TO INFORMATION AND RECORDS

(a) In any case subject to review by the Team, and upon written request by the Chair of the Team, any person who possesses information or records that are necessary and relevant to Team review shall as soon as practicable provide the Team with the information and records.

(b) The Team shall not have access to the proceedings, reports, and records of peer review committees as defined in 26 V.S.A. § 1441.

(c) Persons disclosing or providing information or records upon the Team's request are not criminally or civilly liable for disclosing or providing information or records in compliance with this section.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2016.

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.

S. 116.

Senator Flory, for the Committee on Institutions, to which was referred Senate bill entitled:

An act relating to rights of offenders in the custody of the Department of Corrections.

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

Sec. 1. 28 V.S.A. § 857 is added to read:

§ 857. ADMINISTRATIVE SEGREGATION; PROCEDURAL REQUIREMENTS

(a) Except in emergency circumstances as described in subsection (b) of this section, before an inmate is placed in administrative segregation, regardless of whether that inmate has been designated as having a serious functional impairment under section 906 of this title, the inmate is entitled to a hearing pursuant to subsection 852(b) of this title.

(b) In the event of an emergency situation and at the discretion of the Commissioner, an inmate may be placed in administrative segregation prior to receiving a hearing as described in subsection 852(b) of this title.

Sec. 2. 28 V.S.A. § 204 is amended to read:

§ 204. SUBMISSION OF WRITTEN REPORT; PROTECTION OF RECORDS

* * *

(d)(1) ~~Any~~ Except as provided in subdivision (2), any presentence report, pre-parole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, ~~except that:~~

(2)(A) the The court or Board ~~may in its discretion~~ shall permit the inspection of the report, ~~or parts thereof~~ redacted of information that may compromise the safety or confidentiality of any person, by the State's Attorney, and by the defendant or inmate, or his or her attorney, or: and

(B) the court or Board may in its discretion permit the inspection of the report or parts thereof by other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

(3) Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

* * *

Sec. 3. 28 V.S.A. § 601 is amended to read:

§ 601. POWERS AND RESPONSIBILITIES OF THE SUPERVISING OFFICER OF EACH CORRECTIONAL FACILITY

The supervising officer of each facility shall be responsible for the efficient and humane maintenance and operation and for the security of the facility, subject to the supervisory authority conferred by law upon the Commissioner. Each supervising officer is charged with the following powers and responsibilities:

* * *

(10) To establish and maintain, in accordance with such rules and regulations as are established by the Commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be

indicated by the rules and regulations of the Department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown ~~and shall not be accessible to inmates at the facility.~~ Information that may compromise the safety or confidentiality of any person shall be redacted from a file prior to inspection by an inmate. Except as otherwise provided by law, the contents of an inmate's file may be inspected, pursuant to a court order issued ex parte, by a ~~state~~ State or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

Sec. 4. 28 V.S.A. § 602 is added to read:

§ 602. RIGHT OF AN INDIVIDUAL TO ACCESS RECORDS

(a) At the request of any person in the custody or under the supervision of the Department, the Department shall provide records maintained by the Department concerning that person if that person is:

(1) a party in a case in any division of the Superior Court in which the Department is also a party; or

(2) a defendant in a hearing before the Parole Board in which revocation of parole is a possible outcome.

(b) Nothing in this title concerning the confidentiality of the Department's records shall be construed as limiting a person's right to access records about himself or herself, except as specified in subsections (c) and (d) of this section.

(c) The Department shall redact any information compromising the safety or confidentiality of any person prior to providing the record to a person under this section.

(d) The Department may seek a court order limiting disclosure of records. The order may be granted only if the court finds clear and convincing evidence that disclosure of records would create a substantial and identifiable risk to public safety.

(e) As used in this section, "records" means records stored in any form, physical or electronic.

Sec. 5. 13 V.S.A. § 5233 is amended to read:

§ 5233. EXTENT OF SERVICES

(a) A needy person who is entitled to be represented by an attorney under section 5231 of this title is entitled:

* * *

(3) To be represented in any other postconviction proceeding which may have more than a minimal effect on the length or conditions of detention where the attorney considers:

(A) the claims, defenses, and other legal contentions to be warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(B) the allegations and other factual contentions to have evidentiary support, or likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

* * *

Sec. 6. EFFECTIVE DATE

This act shall take effect on passage.

Senator Benning, for the Committee on Judiciary, to which the bill was referred, reported that it has considered the same and recommends that the bill be amended as recommended by the Committee on Institutions with the following amended thereto:

By striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 456 is added to read:

§ 456. PAROLE BOARD INDEPENDENCE

(a) The Parole Board shall be an independent and impartial body.

(b) The Parole Board shall not be counseled or represented by any attorney who, at the same time, has:

(1) an attorney-client relationship with the Department of Corrections; or

(2) an attorney-client relationship with an offender who has a hearing pending before the Board.

Sec. 2. 28 V.S.A. § 857 is added to read:

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(a) Except in emergency circumstances as described in subsection (b) of this section, before an inmate is placed in administrative segregation, regardless of whether that inmate has been designated as having a serious functional impairment under section 906 of this title, the inmate is entitled to a hearing pursuant to subsection 852(b) of this title.

(b) In the event of an emergency situation and at the discretion of the Commissioner, an inmate may be placed in administrative segregation prior to receiving a hearing as described in subsection 852(b) of this title.

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(d)(1) Any Except as provided in subdivision (2) of this subsection, any presentence report, pre-parole report, or supervision history prepared by any employee of the Department in the discharge of the employee's official duty, except as provided in subdivision 204a(b)(5) and section 205 of this title, is privileged and shall not be disclosed to anyone outside the Department other than the judge or the Parole Board, except that:

(2)(A) the The court or Board may in its discretion shall permit the inspection of the report, or parts thereof redacted of information that may compromise the safety or confidentiality of any person, by the State's Attorney, and by the defendant or inmate, or his or her attorney, or; and

(B) the court or Board may, in its discretion, permit the inspection of the report or parts thereof by other persons having a proper interest therein, whenever the best interest or welfare of the defendant or inmate makes that action desirable or helpful.

(3) Nothing in this section shall prohibit the Department for Children and Families from accessing the supervision history of probationers or parolees for the purpose of child protection.

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(10) To establish and maintain, in accordance with such rules and regulations as are established by the Commissioner, a central file at the facility containing an individual file for each inmate. Except as otherwise may be

indicated by the rules and regulations of the Department, the content of the file of an inmate shall be confidential and shall not be subject to public inspection except by court order for good cause shown ~~and shall not be accessible to inmates at the facility.~~ Information that may compromise the safety or confidentiality of any person shall be redacted from a file prior to inspection by an inmate. Except as otherwise provided by law, the contents of an inmate's file may be inspected, pursuant to a court order issued ex parte, by a ~~state~~ State or federal prosecutor as part of a criminal investigation if the court finds that the records may be relevant to the investigation. The information in the files may be used for any lawful purpose but shall not otherwise be made public.

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(1) a party in a case in any division of the Superior Court in which the Department is also a party; or

(2) a defendant in a hearing before the Parole Board in which revocation of parole is a possible outcome.

(b) Nothing in this title concerning the confidentiality of the Department's records shall be construed as limiting a person's right to access records about him- or herself, except as specified in subsections (c) and (d) of this section.

(c) The Department shall redact any information compromising the safety or confidentiality of any person prior to providing the record to a person under this section.

(d) The Department may seek a court order limiting disclosure of records. The order may be granted only if the court finds by a preponderance of the evidence that disclosure of records would create a substantial and identifiable risk to public safety.

(e) As used in this section, "records" means records stored in any form, physical or electronic.

Sec. 6. 13 V.S.A. § 5233 is amended to read:

§ 5233. EXTENT OF SERVICES

(a) A needy person who is entitled to be represented by an attorney under section 5231 of this title is entitled:

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(A) the claims, defenses, and other legal contentions to be warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

(B) the allegations and other factual contentions to have evidentiary support, or likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

* * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

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

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

Thereupon, third reading of the bill was ordered.

Message from the House No. 31

A message was received from the House of Representatives by Ms. Melissa Kucserik, its First Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 829. An act relating to water quality on small farms.

In the passage of which the concurrence of the Senate is requested.

Adjournment

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