

1 S.61

2 Introduced by Senators Sears and Ashe

3 Referred to Committee on Judiciary

4 Date: February 1, 2017

5 Subject: Courts; corrections; mental health

6 Statement of purpose of bill as introduced: This bill proposes to direct courts
7 to appoint specialized mental health counsel to proceedings involving a person
8 found incompetent to stand trial; change the definition of segregation to allow
9 inmates requiring treatment to be kept in treatment settings; and require the
10 Department of Corrections to provide evaluation, treatment, and services to
11 those inmates who require them.

12 ~~An act relating to offenders with mental illness.~~

An act relating to offenders with mental illness, inmate records, and inmate services

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

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

15 § 4820. HEARING REGARDING COMMITMENT

16 (a) The court before which a person is tried or is to be tried for a criminal
17 offense shall hold a hearing for the purpose of determining whether the person
18 should be committed to the custody of the Commissioner of Mental Health or,
19 ~~as provided in 18 V.S.A. chapter 206, to the Commissioner of Disabilities,~~

1 ~~Aging, and Independent Living, if the person is charged on information,~~

2 complaint, or indictment with the offense and:

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

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

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

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

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

16 (c) The court shall appoint counsel from the Mental Health Law Project to
17 represent the person who is the subject of the proceedings and from the
18 Division of Mental Health of the Office of the Attorney General to represent
19 the State in the proceeding.

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

21 ~~§ 4821. NOTICE OF HEARING, PROCEDURES~~

1 ~~The person who is the subject of the proceedings, his or her attorney, the~~
2 legal guardian, if any, the Commissioner of Mental Health or the
3 Commissioner of Disabilities, Aging, and Independent Living, and the State's
4 ~~Attorney or other prosecuting officer representing~~ counsel appointed pursuant
5 to subsection 4820(c) of this title to represent the State in the case, shall be
6 given notice of the time and place of a hearing under 4820 of this title.

7 Procedures for hearings for persons who are mentally ill shall be as provided
8 in 18 V.S.A. chapter 181. Procedures for hearings for persons who are
9 intellectually disabled or have a traumatic brain injury shall be as provided in
10 18 V.S.A. chapter 206, subchapter 1.

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

12 § 3. GENERAL DEFINITIONS

13 As used in this title:

14 * * *

15 (12) "Segregation" means a form of separation from the general
16 population either for administrative or disciplinary purposes, but as used in
17 section 701a of this title, shall not mean confinement to an infirmary or a
18 treatment or therapeutic setting.

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

20 (b) For purposes of As used in this title, ~~and despite other names this~~
21 ~~concept has been given in the past or may be given in the future~~ section,

1 ~~“segregation” means a form of separation from the general population which~~
2 may or may not include placement in a single occupancy cell and which is
3 used for disciplinary, administrative, or other reasons. Segregation shall not
4 mean confinement to an infirmary or treatment or therapeutic setting for
5 purposes of evaluation, treatment, or provision of services.

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

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

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

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

21 ~~(B) Every inmate who is identified as a result of the screening as~~

1 ~~requiring inpatient evaluation, treatment, or services shall be provided with~~
2 ~~such evaluation, treatment, or services.~~

3 * * *

4 Sec. 6. EFFECTIVE DATES

5 This act shall take effect on July 1, 2018, except for this section and Secs. 3
6 (general definitions) and 4 (28 V.S.A. § 701a(b)) which shall take effect on
7 July 1, 2017.

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

~~§ 4820. HEARING REGARDING COMMITMENT~~

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

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

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

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

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

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

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

~~proceedings and from the Office of the Attorney General to represent the State in the proceedings.~~

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

~~§ 4821. NOTICE OF HEARING; PROCEDURES~~

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

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

~~§ 3. GENERAL DEFINITIONS~~

~~As used in this title:~~

~~* * *~~

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

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

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

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

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

~~The Commissioner shall administer a program of trauma-informed mental~~

~~health services which shall be available to all inmates and shall provide adequate staff to support the program. The program shall provide the following services:~~

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

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

~~***~~

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

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

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

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

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

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

~~On or before October 15, 2017:~~

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

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

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

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

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

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

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

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

~~(2) together with the Department of Mental Health, report on the status of the memorandum of understanding and the forensic mental health center plan to the Joint Legislative Justice Oversight Committee.~~

Sec. 10. EFFECTIVE DATES

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

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

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

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

Sec. 1. [Deleted.]

Sec. 2. [Deleted.]

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

§ 3. GENERAL DEFINITIONS

As used in this title:

** * **

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

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

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

have the same meaning as in subdivision 3(12) of this title.

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

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

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

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

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

** * **

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

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

** * **

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

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

treatment, evaluation, or services in a setting appropriate to the clinical needs of the inmate.

* * *

Sec. 7. AGENCY OF HUMAN SERVICES; REPORT TO STANDING COMMITTEES

On or before January 18, 2018, the Secretary of Human Services shall report to the House and Senate Committees on Judiciary, the House Committees on Corrections and Institutions and on Health Care, and the Senate Committee on Health and Welfare on how best to provide mental health treatment and services to inmates and detainees housed in a correctional facility, including recommendations on whether those services should be provided by a classified State employee working within the Agency of Human Services, by designated agencies, or by other professionals contracted for professional mental health care services within the Department.

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

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

Sec. 9. DEPARTMENT OF CORRECTIONS; DEPARTMENT OF MENTAL HEALTH; FORENSIC MENTAL HEALTH CENTER; MEMORANDUM OF UNDERSTANDING FOR MENTAL HEALTH SERVICES; REPORTS

(a)(1) On or before July 1, 2017, the Department of Corrections shall, jointly with the Department of Mental Health, execute a memorandum of understanding regarding mental health services for inmates prior to the establishment of a forensic mental health center as required by subdivision (c) of this section. The memorandum of understanding shall:

(A) establish that when an inmate is identified by the Department of Corrections as requiring a level of care that cannot be adequately provided by the Department of Corrections, then the Department of Mental Health and the Department of Corrections will work together to determine how to augment the inmate's existing treatment plan until the augmented treatment plan is no longer clinically necessary; and

(B) formally outline the role of the Department of Mental Health Care Management Team in facilitating the clinical placement of inmates coming into the custody of the Commissioner of Mental Health pursuant to Title 13 or Title 18 and inmates voluntarily seeking hospitalization who meet inpatient criteria.

(2) On or before July 1, 2017, the Departments shall jointly report on the memorandum of understanding to the Joint Legislative Justice Oversight Committee.

(b) On or before January 18, 2018, the Department of Corrections shall, in consultation with the Department of Mental Health and the designated agencies, and in accordance with the principles set forth in 18 V.S.A. § 7251, develop a plan to create or establish access to a forensic mental health center pursuant to subsection (c) of this section. On or before January 18, 2018, the Departments shall jointly report on the plan to the House and Senate Committees on Judiciary, the House Committee on Corrections and Institutions, the House Committee on Health Care, and the Senate Committee on Health and Welfare.

(c) On or before July 1, 2019, pursuant to the plan set forth in subsection (b) of this section, a forensic mental health center shall be available to provide comprehensive assessment, evaluation, and treatment for detainees and inmates with mental illness, while preventing inappropriate segregation.

Sec. 10. 2016 Acts and Resolves No. 137, Sec. 7 is amended to read:

Sec. 7. EFFECTIVE DATE; TRANSITION PROVISION

(a) This act shall take effect on passage.

(b) Except as provided in subsection (c) of this section, the Commissioner of Corrections may only release or permit inspection of offender or inmate records in reliance upon an exception to the confidentiality of offender and inmate records if the exception is created by law, including an exception created by rule adopted in accordance with the Administrative Procedure Act under the mandate in Sec. 5, 28 V.S.A. § 107(b)(5).

(c) The Department of Corrections may rely upon exceptions to the confidentiality of offender and inmate files under directives adopted by the Department prior to the effective date of this act until the Commissioner adopts rules pursuant to the rulemaking mandates of Sec. 5, 28 V.S.A. § 107(a) and (b)(5). On or before September 1, 2016, the Commissioner shall prefile rules with the Interagency Committee on Administrative Rules in accordance with these mandates. The Commissioner shall update the Joint Legislative Justice Oversight Committee on the status of its efforts to adopt the rules at the Oversight Committee's first meeting on or after September 1, 2016.

(d)(1) On August 30, 2016, to implement the rulemaking requirements of 28 V.S.A. § 107, the Commissioner prefiled a proposed rule entitled “inmate/offender records and access to information” with the Interagency Committee on Administrative Rules. The Commissioner filed the proposed rule, as corrected, with the Secretary of State on October 13, 2016 and the final proposed rule, as revised, with the Legislative Committee on Administrative Rules (LCAR) on January 31, 2017. After reviewing and receiving testimony on the final proposed rule, as revised, the House Committee on Corrections and Institutions found that it was not consistent with legislative intent because the rule would potentially cause significant costs and disruptions to the Department.

(2) The Commissioner shall:

(A) withdraw the proposed final rule filed with LCAR on January 31, 2017; and

(B) redraft the proposed rule so that it reflects legislative intent as described in subsection (e) of this section.

(3) The Department of Corrections may continue to rely upon exceptions to the confidentiality of offender and inmate files under directives adopted by the Department prior to May 26, 2016 until the Commissioner adopts final rules as required under 28 V.S.A. § 107.

(e) The General Assembly intends that, in either of the following situations, 28 V.S.A. § 107 shall be interpreted not to require the Department to provide an inmate or offender a copy of records:

(1) Previously provided by the Department to the inmate or offender, if the inmate or offender has custody of or the right to access the copy.

(2) If the inmate or offender is responsible for the loss or destruction of a previously provided copy. In the case of such loss or destruction, the inmate or offender may—subject to the limitations of 28 V.S.A. § 107—be entitled to a replacement copy, but the Department may charge him or her for the replacement copy in accordance with law.

(f) On or before October 1, 2017, the Commissioner shall:

(1) develop a plan to implement and use modern records management technology and practices in order to minimize the costs of reviewing, redacting, and furnishing such records in accordance with law; and

(2) send to the members of the House Committee on Corrections and Institutions and of the Senate Committee on Institutions a copy of the plan required under subdivision (1) of this subsection, and a written report that:

(A) summarizes the status of the Department's efforts to redraft the rules as required under subsection (d) of this section; and

(B) outlines the implementation steps, expected benefits and costs to the State of Vermont, and time line associated with transitioning to digital delivery of inmate and offender records.

(g) On or before January 15, 2018, the Commissioner shall submit a copy of the redrafted rules to the House Committee on Corrections and Institutions and to the Senate Committee on Institutions. On or before July 1, 2018, the Commissioner shall prefile the redrafted rules, as may be revised, with the Interagency Committee on Administrative Rules.

**Sec. 11. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE;
SUBSTANCE ABUSE RECOVERY SERVICES AT
CORRECTIONAL FACILITIES**

During the 2017 legislative interim, the Joint Legislative Justice Oversight Committee shall evaluate approaches to substance abuse recovery services in correctional facilities for inmates, including the use of medication-assisted therapy. Any resulting legislative recommendations shall be introduced as a bill in the 2018 legislative session.

Sec. 12. EFFECTIVE DATES

(a) This section, Sec. 9 (Department of Corrections; Department of Mental Health; forensic mental health center; memorandum of understanding for provision of mental health services; report to standing committees), and Sec. 10 (2016 Acts and Resolves No. 137, Sec. 7) shall take effect on passage.

(b) Secs. 3 (general definitions), 4 (28 V.S.A. § 701a(b)), 5 (mental health service for inmates; powers and responsibilities of commissioner), 7 (Agency of Human Services; report to standing committees), 8 (legislative intent, Department of Corrections; use of segregation), and 11 (Joint Legislative Justice Oversight; substance abuse recovery services at correctional facilities) shall take effect on July 1, 2017.

(c) Sec. 6 (mental health service for inmates; powers and responsibilities of Commissioner) shall take effect on July 1, 2019.