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**S.61 – An act relating to offenders with mental illness**

Testimony before the House Committee on the Judiciary

Witness: Asst. Attorney General Jared C. Bianchi on behalf of the Office of the Attorney General

# S.61 – An overview of AGO impact

- § 1 – Transfers to AGO responsibility to represent the State once a defendant has been deemed incompetent or insane.
- § 1 – Expands the population that may be committed to DAIL custody by changing the identified clinical requirement from intellectual disability to developmental disability.
- § 2 – Makes changes consistent with § 1.
- § 7 – Requires the Attorney General to consult with the Secretary of Human Services and to report to Justice Oversight regarding whatever additional resources will be necessary to take on the caseload in the Act.
- § 8 – Sets the date of July 1, 2018 for the AGO to take responsibility for the caseload discussed in sections 1 and 2.

# What kind of cases do Sections 1 & 2 of this bill impact?

- All cases in which a person is charged with a crime but is deemed incompetent to stand trial or insane at the time of the crime due to an intellectual disability or mental illness.
- When a defendant is diagnosed with a mental illness they may be subject to an order of hospitalization or an order of non-hospitalization subject and placed in the custody of DMH.
- When a defendant is diagnosed with an intellectual disability they may be subject to involuntary community based oversight and placed in the custody of DAIL.
- These cases can differ in significant ways.

# S.61 – Proposed modifications

- The current draft should be modified by reverting to the original language requiring a diagnosis of intellectual disability (§ 1 at 13 VSA §§ 4820(a)(2), 4820(c)).
  - Developmental Disability (DD) is a general label for some of the DSM-5 Neurodevelopmental Disorders (Intellectual Disability (ID) and Autism-Spectrum Disorder (ASD)) which are eligible for Medicaid supports. Intellectual Disability (ID) is the specific disorder where a person has an assessed IQ at 70 or below and has assessed adaptive deficits that are significant enough to require system supports for a person to be able to function at a normative level. Adaptive deficits include hygiene, social, communication, etc. life function type efforts and are typically assessed via a tool like the Adaptive Behavior Assessment System (ABAS) battery of tests.
  - BOTTOM LINE: ID is a DD, but DD is more than just ID. The change to Developmental Disability in the law would alter status quo and substantially expand the population served under Act 248 as well as its budgetary impact.
  - AHS supports this recommendation.

# S.61 – Proposed modifications, cont.

- The current draft should be modified by clarifying that counsel for the respondent should be appointed from the appropriate division of Vermont Legal Aid, not just from the Mental Health Law Project (MHLP) (§ 1 at 13 VSA § 4820(c)).
  - As a general matter it is our experience that MHLP serves individuals with a mental health diagnosis who might be subject to DMH custody or oversight while VLA's Disability Law Project generally represents persons with an ID diagnosis who might be subject to DAIL custody or oversight.
  - VLA supports this recommendation.

# S.61 – Proposed modifications, cont.

- The current draft should be modified by including a clear statement that after the General Assembly has received and considered the report identified in § 7, necessary funding will be appropriated (§ 7(2)).
  - The AGO, and especially its Human Services Division, currently experience high and increasing case-loads. The added responsibilities created by S.61 cannot be successfully absorbed into existing budget and workflow.

# Resources

- S.61 shifts new responsibilities to AGO
- The reporting required by § 7 will be critical
- Additional resources will need to be identified in order for AGO to meet the July 1, 2018 effective date
- At a high level we expect at least 200 – 250 cases to move to AGO as a result of S.61
- Necessary resources are likely to include at least one additional FTE, if not more, as well as the costs associated with conducting the hearings
- Hearing costs may include assessments and independent psychiatric examination to determine level of care need, which will impact DMH as well
- AGO supports the requirement that the office report to Justice Oversight by October 1, 2017 regarding resource implications

- AGO can support S.61 with amendment and so long as appropriate resources can be identified.
  
- Questions?