

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Corrections and Institutions to which was referred
3 Senate Bill No. 61 entitled “An act relating to offenders with mental illness”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 4820(5) is added to read:

8 (5) When a person who is found to be incompetent to stand trial
9 pursuant to subdivision (2) of this section, the court shall appoint counsel from
10 Vermont Legal Aid to represent the person who is the subject of the
11 proceedings and from the Office of the Attorney General to represent the State
12 in the proceedings.

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

14 § 4821. NOTICE OF HEARING; PROCEDURES

15 The person who is the subject of the proceedings, his or her attorney, the
16 legal guardian, if any, the Commissioner of Mental Health or the
17 Commissioner of Disabilities, Aging, and Independent Living, and the State's
18 ~~Attorney or other prosecuting officer representing~~ counsel appointed pursuant
19 to subsection 4820(5) of this title to represent the State in the case, shall be
20 given notice of the time and place of a hearing under section 4820 of this title.
21 Procedures for hearings for persons with a mental illness shall be as provided

1 in 18 V.S.A. chapter 181. Procedures for hearings for persons with an
2 intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter
3 3.

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

5 § 3. GENERAL DEFINITIONS

6 As used in this title:

7 * * *

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

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

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

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

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

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

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

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

21 * * *

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

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

4 * * *

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

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

18 * * *

19 Sec. 7. AGENCY OF HUMAN SERVICES; OFFICE OF THE ATTORNEY
20 GENERAL; REPORT TO STANDING COMMITTEES

21 On or before January 18, 2018:

1 (1) the Secretary of Human Services shall report to the House and
2 Senate Committees on Judiciary, the House Committee on Corrections and
3 Institutions, the Senate Committee on Health and Welfare, and the House
4 Committee on Health Care on how best to provide mental health treatment and
5 services to offenders in the custody of the Department of Corrections,
6 including recommendations on whether those services should be provided by a
7 classified State employee working within the Agency of Human Services, by
8 designated agencies, or by other professionals contracted for professional
9 mental health care services within the Department; and

10 (2) the Secretary of Human Services, in consultation with the Attorney
11 General, shall report to the House and Senate Committees on Judiciary and the
12 House and Senate Committees on Appropriations on the resources necessary to
13 comply with the requirements set forth in 13 V.S.A. § 4820(c). The
14 Committees on Appropriations shall consider the report during their FY 2019
15 budget deliberations in determining the appropriate funding for the State to
16 meet the requirements of 13 V.S.A. § 4820(c).

17 Sec. 8. LEGISLATIVE INTENT; DEPARTMENT OF CORRECTIONS;

18 USE OF SEGREGATION

19 It is the intent of the General Assembly that the Department of Corrections
20 continue to house inmates in the least restrictive setting necessary to ensure
21 their own safety as well as the safety of staff and other inmates, and to use

1 segregation only in instances when it serves a specific disciplinary or
2 administrative purpose, pursuant to 28 V.S.A. § 3, and to ensure that inmates
3 designated as seriously functionally impaired or inmates with a serious mental
4 illness receive the support and rehabilitative services they need.

5 **Sec. 9.** DEPARTMENT OF CORRECTIONS; DEPARTMENT OF
6 MENTAL HEALTH; FORENSIC MENTAL HEALTH CENTER;
7 MEMORANDUM OF UNDERSTANDING FOR PROVISION OF
8 MENTAL HEALTH SERVICES; REPORT

9 (a) On or before January 18, 2018, the Department of Corrections shall:

10 (1) in consultation with the Department of Mental Health and the
11 designated agencies, and in accordance with the principles set forth in
12 18 V.S.A. § 7251, develop a plan to create or establish access to a forensic
13 mental health center that shall, on or before July 1, 2019, provide
14 comprehensive assessment, evaluation, and treatment for detainees and
15 inmates with mental illness, while preventing inappropriate segregation; and

16 (2) together with the Department of Mental Health, jointly report on the
17 plan identified in subdivision (1) of this subsection to the House and Senate
18 Committees on Judiciary, the House Committee on Corrections and
19 Institutions, the House Committee on Health Care, and the Senate Committee
20 on Health and Welfare.

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

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

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

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

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

1 Sec. 7. EFFECTIVE DATE; TRANSITION PROVISION

2 (a) This act shall take effect on passage.

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

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

18 (d)(1) On August 30, 2016, to implement the rulemaking requirements of
19 28 V.S.A. § 107, the Commissioner prefiled a proposed rule entitled
20 “inmate/offender records and access to information” with the Interagency
21 Committee on Administrative Rules. The Commissioner filed the proposed

1 rule, as corrected, with the Secretary of State on October 13, 2016 and the final
2 proposed rule, as revised, with the Legislative Committee on Administrative
3 Rules (LCAR) on January 31, 2017. After reviewing and receiving testimony
4 on the final proposed rule, as revised, the House Committee on Corrections
5 and Institutions found that it was not consistent with legislative intent because
6 the rule would potentially cause significant costs and disruptions to the
7 Department.

8 (2) The Commissioner shall:

9 (A) withdraw the proposed final rule filed with LCAR on January 31,
10 2017; and

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

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

17 (e) The General Assembly intends that, in either of the following situations,
18 28 V.S.A. § 107 shall be interpreted not to require the Department to provide
19 an inmate or offender a copy of records:

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

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

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

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

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

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

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

18 (g) On or before January 15, 2018, the Commissioner shall submit a copy
19 of the redrafted rules to the House Committee on Corrections and Institutions
20 and to the Senate Committee on Institutions. On or before July 1, 2018, the

1 Commissioner shall prefile the redrafted rules, as may be revised, with the
2 Interagency Committee on Administrative Rules.

3 Sec. 11. EFFECTIVE DATES

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

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

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

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

17
18
19 (Committee vote: _____)

1

2

Representative _____

3

FOR THE COMMITTEE