

No. 78. An act relating to offenders with mental illness, inmate records, and inmate services.

(S.61)

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

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.

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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.

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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.

Date Governor signed bill: June 13, 2017