

Overview of Existing SFI Laws & Timeline of Recent Legislative Activity

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I. Overview of Existing Laws Related to the SFI Designation

Title 28, Chapter 11: Supervision of Adult Inmates at the Correctional Facilities

Relevant Portions of *Subchapter 1: Commitment, Transfer, and Discharge*

§ 701a (Segregation of inmates with a serious functional impairment)

The Commissioner of Corrections must adopt rules regarding the classification, treatment, and segregation of inmates with a SFI. The length of stay in segregation shall not:

- Exceed 15 days if the inmate is segregated for disciplinary reasons
- Exceed 30 days if segregation is requested by the inmate or for some other reason; successive 30-day periods are allowed with certain processes

The DoC shall submit monthly reports to the Corrections Oversight Committee regarding each inmate in segregation, whether the inmate has a SFI, and whether there have been any self-harm or suicide attempts by inmates with SFI.

28 V.S.A. § 702(b) (Transfer between facilities of the department)

The Commissioner is authorized to transfer a person under arrest and charged with an offense. If a person has manifested a mental illness requiring treatment, the Commissioner is authorized to initiate transfer proceedings pursuant to 28 V.S.A. § 703.

28 V.S.A. § 703 (Transfer to the department of mental health)

When a transfer from DoC to DMH occurs, the individual shall be under the supervision of the CMH, except that time shall be computed as part of the individual's sentence.

28 V.S.A. § 704 (Disposition when person recovers)

When the CMH determines a person whose sentence has not expired no longer needs to be under DMH's supervision, the CMH shall return the individual to the custody of the Commissioner of Corrections.

28 V.S.A. § 705 (Hospitalization upon expiration of sentence)

When CMH determines a person requires further treatment after the expiration of the individual's maximum sentence, the CMH shall petition the criminal division of the superior court for recommitment of the inmate to the custody of the CMH.

*Subchapter 6: Services for Inmates with Serious Mental Illness*28 V.S.A. § 905 (Legislative Intent)

It is the intent of the General Assembly that the serious functional impairment designation apply solely to individuals residing in a correctional facility and not to individuals reentering the community after incarceration.

28 V.S.A. § 906 (Definitions)

“Serious functional impairment” means:

- disorder of thought, mood, perception, orientation, or memory as diagnosed by a qualified mental health professional, which substantially impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life and which substantially impairs the ability to function within the correctional setting; or
- a developmental disability, traumatic brain injury or other organic brain disorder, or various forms of dementia or other neurological disorders, as diagnosed by a qualified mental health professional, which substantially impairs the ability to function in the correctional setting.

28 V.S.A. § 907 (Mental health service for inmates; powers and responsibilities of commissioner)

The Commissioner of Corrections shall administer a program of trauma-informed mental health services for inmates, including:

- Within 24 hours of admittance to a correctional facility, inmates shall be screened for SFI
- A mental health professional must evaluate inmates in a timely and reasonable fashion (including a review of medical/psychiatric records) when an inmate has a history of mental illness, has received community rehabilitation and treatment services in the past, or shows mental illness/SFI symptoms
- Inmates determined to have a mental illness/SFI shall have a mental health provider develop and implement an individual treatment plan, in accordance with best practices
- Inmates shall have access to follow-up evaluations, crisis intervention, crisis beds, residential care, clinical services provided to the general corrections population, services provided in special needs units, and discharge planning services
- Procedures to identify inmates who have not received appropriate services
- Training for medical and corrections staff to identify and address inmates with a mental illness/SFI

28 V.S.A. § 908 (Access to mental health services; notice)

The Commissioner of Corrections shall ensure that inmates receive notice of available mental health services and the manner in which those services are available to inmates.

II. Timeline of Recent Legislative Activity Related SFI Designation

2012

2012 Acts and Resolves No. 87:

An act relating to the mental health needs of the corrections population

- This act requires the Secretary of Human Services to establish work group to assess and improve the delivery of services to inmates with SFI in a correctional facility, collect information regarding individuals with a mental illness or disorder, and evaluate correctional officers' training as it relates to working with individuals with disabilities.

Act 87 Report to the General Assembly

As a result of the assessment completed pursuant to the 2012 Acts and Resolves No.87, the Secretary of Human Services proposes the following recommendations:

- Create greater consistency throughout DoC in assessing and identifying members of the SFI population
- Clarify how the SFI designation is removed
- Ensure that DoC officers provide appropriate services for individuals designated as having SFI or mental illness/disorder
- Analyze the recidivism rate of the SFI population
- Analyze rates of Disciplinary Reports and time spent segregated from the general population among members of the SFI population
- Review whether individuals are being incarcerated who would have been sent to a treatment facility in the past Enhance coordination of services upon departure from DoC facilities
- Further explore the following topics: alternatives to incarceration for women with an SFI designation, enhancing capacity for treatment within correctional facilities, determine appropriate screening for individuals with a traumatic brain injury (TBI), assess the benefits of employing integrated treatment courts, and assess the needs/ benefits of the sequential intercept model

2013

2013 Acts and Resolves No. 33:

An act relating to community supports for persons with serious functional impairment

- This act establishes a legislative study committee to examine the needs of persons, regardless of whether they are in the custody of the Commissioner of Corrections, with mental and functional impairments or developmental disorders so severe that they cannot live in the community without substantial supports and who have been charged with, or have been identified as being at risk of committing a criminal offense that renders them a threat to public safety, their own physical safety, or both.
- This act directs the committee to consider appropriate treatments and services for this population, practices for reducing recidivism rate, manners of protecting legal rights,

approaches for managing the public safety risks posed by this population, and approaches used by other states to serve comparable populations.

Act 33 Report to the General Assembly

A selection of the Committee's recommendations (full report on HCI website):

- Passage of a legislative amendment specifying that use of an SFI designation end once an inmate leaves a correctional facility;
- Use of assessment tools measuring functional ability and impairments in addition to clinical diagnoses and level of risk during reentry planning for individuals with an SFI designation to better support successful reentry;
- Adoption of validated, evidence-based risk assessment tools that include both static and dynamic factors for use consistently across the Agency of Human Services to assess public safety and criminogenic risk among members of the designated population;
- Exploration of ways to uniformly implement the treatment court programs statewide;
- Training for all Vermont law enforcement officers in recognizing and responding to mental health issues;
- Assessment of the designated agencies to ensure that all counties are equipped with appropriately trained staff and risk management tools to provide the appropriate, necessary, and effective services to members of the designated population living in the community; and
- Continuation of ongoing discussions on the appropriate number of secure residential recovery beds in the State and the judicial route for placement in such a facility.

2014

2014 Acts and Resolves No. 123:

An act relating to the definition of serious functional impairment

This act specifies that it is the intent of the General Assembly for the correctional designation "serious functional impairment" to apply only to individuals residing in a correctional facility and not to individuals reentering the community after incarceration.

2016

The Joint Legislative Justice Oversight Committee requested the formation of the Commission on Offenders with Mental Illness. The Commission recommended the following strategies, including one specifically pertaining to the SFI designation:

- Enhancing community resources commensurate with the demands the correctional/ judicial system places on the community system of care to support persons being released from incarceration;
- Increased investment in physical facilities and human resources for enhanced therapeutic opportunities
- Legislation designed to better ensure that persons requiring involuntary treatment or evaluation are transferred out of a corrections or law enforcement track

- Completion of DOC's work to adopt credible SFI screening criteria and recalibration of the SFI designation to better align with segregation, re-entry protocols, etc.
- Craft legislation encouraging greater use of the Community Justice Centers to avoid incarceration of offenders with mental illness, TBI, and developmental disabilities