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April 19, 2017

The Honorable Maxine Grad, Chair  
House Judiciary Committee  
Vermont General Assembly  
State Street  
Montpelier, Vermont

RE: S. 61- An Act Related to Offenders with Mental Illness

Dear Chair Grad and Members of the Committee:

Thank you for the opportunity to comment on this bill. As you may be aware, the Human Rights Commission has been working on issues related to offenders with mental illness, both individual cases filed with the Commission alleging violations of the Vermont Fair Housing and Public Accommodations Act (VFHPAA) and through the Commission on Offenders with Mental Illness that was established by the Joint Legislative Justice Oversight Committee this past fall.

The Commission is deeply concerned about this issue, particularly the placement of Delayed Placement Persons (DPPs)(persons in a correctional facility awaiting a psychiatric bed) and the general use and over-use of segregation for offenders with mental illness. This bill addresses primarily the former so I am focusing most of my comments on that issue.

For the record, we support the appointment of the Mental Health Law Project (MHLP) and the Attorney General's Office to represent individuals in the criminal justice system in all commitment proceeding. MHLP has both great expertise in this area and an understanding of the mental health system.

We also support the change in definition of segregation to make it clear that therapeutic settings or the infirmary are not segregation when used for the purpose of evaluation, treatment or the provision of services. This change will allow for greater flexibility in the provision of treatment services within a correctional facility.

The bulk of my remarks are directed to Sections 5-10 of the bill.

Section 5- The DOC is currently required to screen inmates for signs of mental health issues and to automatically designate some as SFI. The new language

requires that any inmate identified as requiring inpatient evaluation shall be referred for such services. This is what DOC is already doing. It is not working.

For a variety of reasons, as staff at the Southern State Correctional Facility (SSCF) informed members of the Senate Judiciary Committee when they visited the facility on February 22, 2017, it is virtually impossible to get these individuals into psychiatric beds due to a number of limitations including federal funding, safety concerns, voluntary vs. involuntary, etc.

Up until very recently, the result was that the Alpha Unit at SSCF was at full capacity much of the time with ten or more men held in segregation due to the lack of either a psychiatric bed or the ability to manage the inmate's mental health. Women with mental health needs are held in Chittenden Regional Correctional Facility (CCRF) under similar circumstances.

The federal Americans with Disabilities Act (ADA) and the VFHPAA require that individuals with disabilities be served in the most integrated setting appropriate to their needs. 9 V.S.A. §4502(c)(2). An individual with mental illness who is identified as needing a hospital level of care, would under appropriate circumstances, be served in a psychiatric hospital not a correctional facility. There is no comparison between the nature of the treatment in these two institutions.

DPPs who are sent to a correctional facility due to lack of a hospital bed (and often inability to post bail), are frequently in an acute state at time of arrival at the correctional facility. Correctional Officers (COs) are trained to maintain order and preserve the safety of the institution. They are not trained to deal with people in an acute psychotic state who are often incapable of complying with orders, etc. This leads to inmates being pepper-sprayed or subjected to other uses of physical force which are contraindicated from a psychiatric standpoint.

Such inmates also frequently end up in segregation because they are or are perceived to be a danger to themselves or others or at risk of harm from other inmates. Segregation of a person with mental illness exacerbates the inmate's mental illness and can lead to self-harm, suicide, etc. In addition, COs either do not understand or choose to ignore that some inappropriate behaviors are related to mental illness, not to choice/personal responsibility. This can lead to disciplinary rule violations that then justify continued segregation of the inmate.

In contrast to a prison setting, an individual admitted to a psychiatric hospital would not be subjected to physical restraint, would not be separated from others for more than very brief periods, if at all, and would receive treatment for their mental illness. The individuals working with patients in a psychiatric hospital are trained technicians and orderlies who are able to deal with the presented behaviors without resorting to force or violence.

Section 6- For these reasons, HRC supports the requirement that DOC provide not just refer the inmate for appropriate evaluation, treatment and services. As stated above, referrals don't work. Unless and until DOC is required to provide, it will continue to hold individuals in highly inappropriate and psychiatrically contraindicated conditions.

Section 9- Department of Corrections will not be able to provide what is necessary as currently configured and staffed. Given the difficulties of getting inmates into

traditional psychiatric beds even when beds are otherwise available, the HRC supports the creation of a DOC forensic unit that would provide a comparable milieu for those who remain in a correctional facility but who need hospitalization. This will require an appropriation when the underlying work is completed to determine how best to do this. The Department of Mental Health has requested clarification about what the legislature intends with regard to this unit. My suggestion is that DOC and DMH examine the possibilities and come back to the Joint Oversight Committee as provided in the legislation to report on the various options and the cost of each. Because the staffing of such a unit is sporadic, thought and attention should be given to having staff in the forensic unit who are trained mental health technicians as well as traditional COs so that they can be used in other units when there are no in-patient inmates.

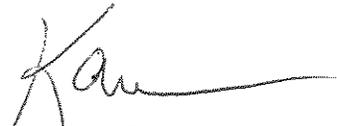
In the past, DOC and DMH coordinated to move inmates who needed a higher level of care. The requirement for DOC and DMH to work towards an MOU and the creation of the forensic unit are important first steps in addressing this important issue.

An expert on the effects of segregation on offenders with mental illness, Dr. Stuart Grassian, opined in an article on the subject that a state correctional facility in another State:

When pressed to provide services as a result of the settlement not only did the unit discover that it was able to provide those services, but moreover discovered that the custodial and security needs of these inmates dramatically decreased when their behavioral disturbances were framed as psychiatric problems rather than as a security issue.

Thank you again for the opportunity. I look forward to working with the Legislature and DOC and DMH to address these important issues for offenders with mental illness.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karen', with a long horizontal flourish extending to the right.

Karen L. Richards  
Executive Director and Legal Counsel