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February 16, 2017

The Honorable Richard Sears, Chair
Senate Judiciary Committee
Vermont General Assembly
Statehouse
Montpelier, Vermont

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

Dear Senator Sears 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 Sec. 5 of the bill—which is the requirement that any inmate identified as requiring inpatient evaluation, treatment or service shall be provided with such services.

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 has been 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 most likely 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 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.

For these reasons, HRC supports a requirement for appropriate evaluation, treatment and services for these individuals. It is difficult to see, however, how the Department of Corrections will be able to provide what is necessary as currently configured and staffed. The HRC would support a DOC plan of action to either 1) immediately move someone identified as in need of a hospital level of care to a psychiatric bed (or the emergency department in a hospital) and/or 2) for DOC to provide a comparable milieu for those who remain in a correctional facility while awaiting a bed.

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."

Finally, I would like to address the effective date provisions. I am a little confused by the wording but believe that Section 5 regarding provision of service to these individuals would be delayed until July 1, 2018. This is an unacceptable delay. This situation has reached crisis proportions and while it is reasonable that DOC will need

some time to implement this change, there are immediate steps that could be taken to address it in the shorter term even if fully implementation will take more time. We cannot continue to kick this can down the road.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen", followed by a long horizontal flourish.

Karen L. Richards
Executive Director and Legal Counsel