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Hal Cohen, Secretary

December 15, 2016

The Honorable Richard Sears, Chair
The Honorable Alice Emmons, Vice-Chair
Joint Legislative Justice Oversight Committee
General Assembly
State of Vermont
115 State Street
Montpelier, VT 05633

Re: Commission on Offenders with Mental Illness

Dear Chairpersons Sears and Emmons:

In our previous report on November 15, we shared with you a compilation of 54 recommendations relating to the incarceration, treatment and re-entry of offenders with mental illness that had been advanced by individual members of the Commission during its several substantive sessions. Since that time, we have canvassed the Commission to determine whether we could report consensus as to any one or more of the proposals.

The Commission has identified five strategies as deserving the most attention in the coming legislative session. Following our description of those five agreed-upon "priorities," we organize topically – and consistent with the specific questions posed by the Justice Oversight Committee in its September 1, 2016 correspondence -- the disparate recommendations and suggestions made by individual members of the Commission. Not all of these individual recommendations garnered consensus support, and a number of them remain the subject of significant disagreement as to their efficacy or appropriateness. Nonetheless, despite the lack of consensus as to this longer list of recommendations, we believe that our sharing those with you may help focus the work of the Justice Oversight Committee and the Legislature in the 2017-18 session.

I. Principal Strategies Identified by the Commission to Address the Treatment of Offenders with Mental Illnesses

The following five strategies received the broadest endorsement. The first two – enhancing community resources and supporting the expansion and reconfiguration of our physical facilities – are identified here as enjoying the most support from the Commission as a whole. The remaining three – legislative approaches to appropriately diverting mentally ill persons to treatment outside of the corrections and law enforcement environments, better calibrating the definitions and uses of our definitions of the "SFI" (serious functional impairment) designation, and increasing the use of alternative resources such as Community Justice Center (CJCs) and treatment courts – comprised a secondary band of priorities receiving substantial support from the Commission.

A. *Enhancing Community Resources*

The Commission engaged over several sessions in significant discussion related to the necessity of enhancing community resources commensurate with the demands the correctional/judicial system places on our community system of care to support persons being released from incarceration. An important threshold issue is the public safety role that community providers are not infrequently asked to assume while also robustly respecting voluntary treatment decisions and choices. The State and providers at times face significant difficulties designing treatment environments that not only appropriately honor the choice and freewill of the participants but address community safety needs. It is a challenging dichotomy that at times exposes the limits of our community system of care. There was consensus that funding for community supports – in the form of increased reimbursement rates and expansion of Designated Agency capacity, robust funding of peer support agencies, group homes, supported housing and employment services, and the increased use of resources such as police social workers and mobile crisis mental health workers – is necessary to achieve the dual goals of providing appropriate treatment and support for offenders and preserving the safety of our communities.

The Commission also considered the need to develop additional clinical supports on both ends of the Corrections spectrum. Enhancing, on the front end, the State's clinical resources -- by expanding, for example, the use of telemedicine and by increasing the number of medical professionals qualified to make clinical assessments of the mental health of offenders -- was seen as a way to minimize having released persons at risk of committing additional offenses while awaiting competency examinations, reducing the length of stays of incarcerated persons later determined to be incompetent, and assisting the court system and prosecutors to make fair and timely determinations of the need for medical interventions. On the back end, increased case management supports for SFI-released offenders was seen as important to the reduction of recidivism.

B. *Increased Investment in Corrections and Community Facility Infrastructure*

The limitations of the current Department of Corrections physical plant restricts its ability to expand or replicate existing therapeutic and assessment units, such as the *Bravo Unit* at the Southern State Correctional Facility. While some members of the Commission advocated entirely "de-commissioning" pure segregation units, such as Southern State's *Alpha Unit*, there was consensus that increasing the Department's ability to house more inmates in therapeutic-styled environments is an important objective. This will require some capital investment, in financing new construction or internal redesign of existing facility. The impending conclusion of the Department of Correction's facilities study should inform this work. The Commission also saw important non-bricks-and-mortar solutions – such as the need to increase investment in human resources (including psychiatrists and other mental health professionals) within corrections facilities dedicated to the treatment, support and reintegration planning for inmates with mental illness.

The Commission recognized the parallel and complementary need for the expansion of therapeutic (non-Corrections) residential treatment capacity and the Committee will likely see in the coming session a concrete proposal, advanced by the Department of Mental Health, for the construction of an additional therapeutic residential facility. The Commission generally supports an increase in facility capacity, to include expansion of community-based transitional housing options.

C. *Legislation Designed to Better Ensure that Persons Requiring Inpatient Treatment or Evaluation are Transferred Out of a Corrections or Law Enforcement Track*

Beyond discussion of general strategies to effect the diversion of offenders from the criminal justice system into treatment, there was support for the consideration of legislation that would prohibit entirely the placement of persons requiring inpatient treatment or evaluation in a Corrections setting. The Commission appreciates, however, current limitations on the State's ability to house such persons in non-Corrections settings pending evaluation and, as expressed above, recommends the commitment of resources to building physical and human resource capacity.

Another proposal that enjoyed broad Commission support was a legislative change that would statutorily mandate that, upon a finding that a criminal defendant is not competent to stand trial, cases be transferred for further proceedings from the Criminal Division into Family Division. Those proceedings, as proposed, would be conducted by counsel from the Mental Health Division of the Attorney General's Office and the Mental Health Law Project, given those lawyers' familiarity with the mental health laws and the available treatment alternatives, and their presumptive ability to help our courts fashion appropriate resolutions.

D. *Calibrating the Application and Uses of the SFI Designation within a Corrections Setting*

More than the need to refine the existing statutory definitions of the terms "serious functional impairment" and "mental condition or psychiatric disability or disorder," the Commission saw two pressing needs: first, the completion of the Department of Correction's work on the adoption of credible SFI screening criteria (to include the implementation of quality assurance measures to provide greater confidence in the consistent application of the criteria and to better ensure the reliability of SFI-related data); and, second, the fashioning of more calibrated uses of the SFI designation to better align segregation, care and re-entry protocols, to improve data collection, and to more effectively inform the removal of SFI-designations.

A related proposal receiving wide support was a statutory revision of the legal definition of "segregation" as it applies to the SFI population to better permit internal DOC placements consistent with current best practices (e.g., permitting housing at the *Bravo Unit* and the infirmary without statutory limits imposed on true segregated housing), and to define permitted temporary uses of booking facilities to hold inmates consistent with their personal safety and health needs in instances in which transfer to other dorms of segregated housing is contra-indicated.

E. *Criminal Justice Centers and Treatment Courts*

The Commission recognizes the contributions of Community Justice Centers and several of Commission members advocated strongly that funding for CJCs not only be increased but that legislation be fashioned encouraging greater uses of the CJC reparative process and the development of other mechanisms to avoid entirely the incarceration of offenders with mental illness, traumatic brain injury and developmental disabilities. While there was considerable discussion regarding the expansion of the use of Mental Health Courts and the introduction of re-entry courts similar to those in use by the federal

courts, the Commission recognized clearly the need for more data and further study of the ability of these models effectively to reduce recidivism and to better inmate/community outcomes.

II. The Commission's Responses to this Committee's Questions Set Out in its Correspondence of September 1, 2016

As was recounted in the Commission's November 15 report, during its five substantive sessions the Commission systematically took up the seven broad questions posed to it by the Justice Oversight Committee. The questions presented prompted expansive discussion, a fair exchange of competing views and, as indicated above, the development of some significant level of agreement as to the relative priority of overarching system needs. Still, the discussions did not result in full consensus as to how best to resolve or address the specific issues presented by the Justice Oversight Committee.[1]

In light of this, the Commission in its most recent session decided that it would likely be of most use to the Justice Oversight Committee for the Commission to identify the options and recommendations advanced by individual members of the Commission towards addressing the specific issues presented by you for resolution. Accordingly, the Commission outlines below, without specific comment or endorsement, the various recommendations made by individual members of the Commission during its sessions directed to the Justice Oversight Committee's questions.

The recommendations outlined below, categorized by the subjects identified in your September 1, 2016 letter, reflects in most concrete form the result of the discussions of the Commission relating to the precise tasks assigned from the Justice Oversight Committee. Without belaboring the point previously made, the identification of any recommendation simply signifies that the suggestion was advanced by one or more members of the Commission at a meeting. Inclusion of a proposal below neither implies that full discussion occurred or that consensus was reached as to the appropriateness of the suggestion made. In fact, as has been noted before, there was disagreement among members as to a number of the items listed and the inclusion of any recommendation should not be read as suggesting that the measure is legally required by state or by federal law or is in fact presently attainable or appropriate.

A. Gathering Information Regarding the incarcerated population with mental illness and other conditions that may require specialized intervention.

- Address perceived quality assurance issues relating to DOC data with respect to the use of segregation.
- Enhance data to better determine whether and, if so, why, SFI inmates are experiencing delayed releases compared to non-disabled peers.
- Study and attempt to quantify the cost savings that can be achieved by diverting unnecessary incarcerations or reducing recidivism and re-incarcerations.
- Continue study of best practices employed in other states.

[1] Detailed minutes of the meetings of the Commission have been prepared and will be made available to the Justice Oversight Committee on request.

B. *Steps that Can Be Taken to Prepare People with Mental Illness for Re-entry*

Potential Agency Initiatives

- Expand the use of COSA and peer support teams with respect to our SFI-reentry population.
- Provide appropriate training of COSA volunteers working in these programs.
- Increase the number of DOC re-entry coordinators from 4 to 6
- Explore increased availability and resourcing of stepdown services and the use of more non-institutional settings, such as halfway houses.
- Consider the costs and feasibility of expanding DAIL and DMH (CRT) program eligibility criteria.
- Increase funding of non-categorical case management services.
- Increase reimbursement rates for, and to expand capacity of, DA's, peer support agencies, group homes, supported housing and employment services.
- Effect systems changes necessary to maintain an inmate's Medicaid enrollment during incarceration.
- Develop additional funding for involvement by Designated Agencies and Area Agencies on Aging in assessment and case planning so as to enhance re-entry case strategies.
- Explore the feasibility of increasing non-categorical case management funding to allow for enhanced case management supports for SFI individuals upon release.
- Expand training of field service staff within various AHS Departments, as well as enhance in-facility training of Corrections staff, to support offenders with mental illnesses or disabilities to succeed with re-entry into the community.
- Enhance funding for Pathways to Housing so as to allow a greater number of released offenders -- and particularly those with more complex needs -- to obtain wraparound support services.
- Find additional opportunities for supported employment and potentially re-instate a Vocational Rehabilitation pilot program to address job supports for released offenders.
- Conduct a feasibility study into specialized housing options, to include a forensic unit at DOC, community based residential programs for released offenders and the use / conversion of at least 10 beds at one or more long term care facilities (i.e., at a nursing homes) to provide more voluntary and non-secure transitional housing.
- Increase use of Designated Agency support within DOC facilities to assist in pre-release transition planning.

C. *Identifying how to divert more people with mental illnesses, severe developmental disabilities, and traumatic brain injuries away from the correctional system in a manner that is consistent with public safety, ensures appropriate community supports to the offender, and reduces admissions to correctional facilities.*

Potential Agency Initiatives

- Provide better clarity around the public's expectations as to the roles of the State and community providers relative to care and safety and address gaps between those expectations and existing capacity.
- Enhance community resources (police social workers and mobile crisis mental health workers) that can help avoid unnecessary incarcerations.
- Expand – *provided* that their use is demonstrated by data demonstrating their efficacy with respect to the reduction of recidivism and enhancement of effective treatments – the use of mental health and re-entry courts in the State.
- Explore sentencing alternatives used in other states to address treatment and reintegration issues.
- Find opportunities for increased uses of Criminal Justice Centers to identify candidates for the use of restorative justice alternatives.

Legislation

- As addressed above, consider approaches that would reduce the incidence of persons with likely mental illness, TBI or developmental disabilities being held in DOC facilities.
- Study possible legislative approaches towards the encouragement of the use of diversion/reparative board alternatives to incarceration and the decriminalization of non-violent offenses where little risks exist to public safety.
- As addressed above, consider legislation mandating that, upon a finding that a criminal defendant is not competent to stand trial, hospitalization and treatment hearings be transferred into Family Division, conducted by counsel from the Mental Health Division of the Attorney General's Office and the Mental Health Law Project.
- Devise strategies to develop additional professional clinical supports necessary to provide timely assessments and evaluations of mental competency evaluations, to include the potential use of additional clinical personnel (e.g., psychologists) to perform competency evaluations.

D. ***Identifying how to shorten the length of stay for people with mental illnesses, severe developmental disabilities, and traumatic brain injuries once incarcerated, while also providing sufficient reentry planning and reducing recidivism.***

Potential Agency Initiatives

- Expand use of therapeutic settings (*Bravo Unit*) while decreasing use of isolation settings (*Alpha Unit*).
- Consider additional opportunities or expanded criteria for compassionate releases where supported by available resources to accommodate the releases.
- Explore proposals being advanced to construct additional secured therapeutic facilities.
- Explore increased provision of stepdown services and the use of more non-institutional settings, such as halfway houses.

E. ***Identifying how best to finance the housing and treatment of offenders with mental illnesses, severe developmental disabilities, and traumatic brain injuries, including: identifying the cost of employing and training staff of mental health care providers; and identifying initial start-up costs and increase in annual budget.***

- Explore the possibility of securing expanded Medicaid funding relating to targeted case management as well as for Medicaid Administrative Claiming.
- Study and attempt to quantify the cost savings – to include through reductions of harms and public safety risks to Vermont communities -- that can be achieved by diverting unnecessary incarcerations or reducing recidivism and re-incarcerations.

F. ***Developing best practices for identifying and meeting the needs of Vermonters with mental illnesses, severe developmental disabilities, and traumatic brain injuries who are incarcerated or detained in the correctional system.***

Potential Agency Initiatives

- Enhance TBI screening tools.
- Conclude the current work on development of a SFI screening tool that will result in more consistent application and be subject to quality assurance criteria.
- Development of criteria for placement of an inmate in *Alpha Unit*.
- Continue study of best practices employed in other states.
- Expand use of therapeutic settings (*Bravo Unit*) while decreasing use of isolation settings
  (*Alpha Unit*).
- Review and evaluate current SFI reentry processes and, as necessary, change protocols.
- Consider the appropriateness of additional "cultural" training to improve conditions of confinement for SFI population.
- Conduct a feasibility study into specialized housing options, to include a forensic unit at DOC, community-based residential programs for released offenders and the use / conversion of at least 10 beds at one or more long term care facilities (i.e., at nursing homes) to provide more voluntary and non-secure transitional housing.
- Increase staffing resources in correctional facilities and improve efforts towards recruitment, training and retention of needed professionals.

Legislation

- Consider legislation requiring that prior to any placement of a prisoner in segregated circumstances a licensed mental health professional affirm that the person will not experience increased symptoms or suffering due to an underlying mental health condition and is not currently dangerous to self or others due to mental illness, or if they are, assure they obtain the treatment currently provided by Title 18 for people meeting those criteria.
- Increased funding to rebuild/build new treatment units within DOC (like the *Bravo Unit*), and eliminate/retask the *Alpha Unit* in SSCF.

- As previously proposed, consider legislation requiring that hospitalization and treatment hearings for persons found not to be competent be transferred into Family Division, and that counsel be assigned by the Mental Health Division of the Attorney General's Office and the Mental Health Law Project.

G. Consider whether serious functional impairment as defined in subdivision 906a of Title 28 should be amended to encompass individuals with any developmental disability, TBI or clinical diagnosis of mental illness.

- Develop more refined population definitions – such as those for SFI and "serious mental illness" – and tailor their actual uses in DOC facilities to better align segregation, care and re-entry protocols and to permit the collection of more relevant data
- Re-define the term "segregation," legislatively, to better identify higher risk settings (to avoid inclusion of therapeutic settings such as use of the *Bravo Unit* or the infirmary).

III. Conclusion

On behalf of the Commission, I would like to thank the Justice Oversight Committee for prompting what turned out to be an open, frank and respectful exchange between our diverse members as to issues of substantial importance to the people of the State of Vermont. We look forward to working with the Legislature in the coming session and to better inform you with respect to the issues you have identified as requiring attention. The Commission stands ready to supplement its report to you in any way the Justice Oversight Committee deems useful.

Sincerely,

Paul Dragon
for

Hal Cohen
Secretary
Agency of Human Services