

1 S.179

2 Introduced by Senator Benning

3 Referred to Committee on Judiciary

4 Date: January 3, 2018

5 Subject: Probation and parole; community justice centers

6 Statement of purpose of bill as introduced: This bill proposes to clarify how  
7 community justice centers receive cases, specify how volunteers are screened  
8 prior to service on restorative justice panels and reentry programs, and make  
9 various technical updates to the statutes governing community justice centers.

10 ~~An act relating to community justice centers~~

*An act relating to offender and inmate records*

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

12 ~~Sec. 1. 24 V.S.A. § 1964 is amended to read:~~

13 § 964. STRUCTURE OF THE COMMUNITY JUSTICE BOARDS;

14 CONFIDENTIALITY OF CERTAIN RESTORATIVE JUSTICE

15 MEETINGS

16 (a) Each community justice center:

17 (1) shall have an advisory board or board of directors comprising at  
18 least 51 percent citizen volunteers;

19 (2) may use a variety of community-based restorative justice

20 ~~approaches, including restorative justice panels, group conferencing, or~~

1 mediation; and

2 (3) shall include programs to resolve disputes, address the needs of  
3 victims, address the wrongdoing of the offender, and promote the  
4 rehabilitation of youthful and adult offenders.

5 (b) Meetings of restorative justice panels and meetings to conduct  
6 restorative justice group conferencing or mediation shall not be subject to the  
7 Vermont Open Meeting Law, 1 V.S.A. chapter 5, subchapter 2.

8 Sec. 2. 24 V.S.A. § 1965 is amended to read:

9 § 1965. ~~DUTIES~~ SCOPE OF WORK OF THE COMMUNITY JUSTICE

10 CENTERS

11 Each community justice center:

12 (1) shall work in close coordination with State agencies, law  
13 enforcement agencies, State's Attorneys, social service providers, victim  
14 advocacy organizations, and other community resources in administering the  
15 programs defined in subdivision 1964(a)(3) of this title;

16 (2) shall, in collaboration with State and local agencies, provide training  
17 on the approaches to restorative justice process to citizen volunteers to enable  
18 their participation in the local community justice center;

19 (3) may address ~~quality of life~~ quality-of-life issues in the community it  
20 serves by providing informational and educational resources to the

21 community; and

1 ~~(4) may apply for funding from private foundations, other governmental~~  
2 sources, or other sources; and

3 (5) may receive cases referred by:

4 (A) local law enforcement prior to filing a charge; or

5 (B) the State's Attorney after filing a charge, prior to adjudication.

6 Sec. 3. 24 V.S.A. § 1966 is amended to read:

7 § 1966. COMMUNITY JUSTICE CENTERS' RELATIONSHIP WITH  
8 STATE GOVERNMENT ENTITIES

9 (a) Support from the Agency of Human Services. The Agency of Human  
10 Services shall provide to the community justice centers the information,  
11 analysis, and technical support that the community justice centers, in  
12 collaboration with the Agency of Human Services, determine are necessary to  
13 further ~~their~~ the Agency's policy of restorative justice.

14 (b) Funding from the Agency of Human Services. The Agency of Human  
15 Services may provide funding and authorize community justice centers to  
16 participate in the implementation of ~~State~~ restorative programs related to  
17 juvenile and criminal offenses.

18 (c) Access to information. Community justice center employees and  
19 volunteers participating in State-funded programs shall have access to  
20 information, analysis, and technical support as necessary to carry out their  
21 ~~duties within the program in accordance with State and federal confidentiality~~

1 ~~statutes and policies. Victim information that is not part of the public record~~

2 shall not be released without the victim's consent.

3 (d) Liability.

4 (1) For the purposes of defining liability, community justice center  
5 volunteers participating in programs funded by the Agency of Human Services  
6 pursuant to subsection (b) of this section shall be considered volunteers of ~~that~~  
7 agency the Agency.

8 (2) In all other cases, ~~the State and the~~ municipality, or any other entity  
9 operating a State-funded community justice center shall each be liable for the  
10 acts and omissions of employees operating within the scope of their  
11 employment.

12 Sec. 4. 28 V.S.A. § 910 is amended to read:

13 § 910. RESTORATIVE JUSTICE PROGRAM

14 This chapter establishes a program of restorative justice for use with  
15 offenders required to participate in such a program as a condition of a sentence  
16 of probation ~~or as ordered for civil contempt of a child support order under~~  
17 ~~15 V.S.A. § 603~~. The ~~Program~~ program shall be carried out by community  
18 ~~reparative boards~~ justice centers under the supervision of the Commissioner, as  
19 provided by this chapter.

20 Sec. 5. 28 V.S.A. § 910a is amended to read:

21 ~~§ 910a. REPARATIVE BOARDS RESTORATIVE JUSTICE PANELS;~~

REENTRY, FUNCTIONS

(a) ~~The Commissioner~~ Each community justice center shall establish reparative boards restorative justice panels and appoint to them members of the community with the advice and recommendation of local nonprofit organizations or municipal entities in the localities concerned. The Commissioner shall appoint each board member to a term of one to three years, may reappoint a member to consecutive terms, and may remove a member for good cause. The local probation and parole office and the volunteer services coordinator together shall screen the volunteer prior to the volunteer's commencing service on a restorative justice panel.

(b) ~~Each board shall elect its chair from its membership. A chair may serve for no more than one year uninterrupted. All meetings of a board shall comply with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2, consistent with probationer confidentiality requirements of this title, and as may be imposed by the court. Each community justice center shall establish a reentry program to address the local needs of the individual probation and parole office. The programs may include navigation services, circles of support and accountability (CoSAs), or other community-based resource and referral services. The community justice center shall appoint to the programs members of the community with the advice and recommendation of local nonprofit organizations or municipal entities. The local probation and parole~~

1 ~~office and the volunteer services coordinator together shall screen volunteers~~  
2 prior to the volunteer commencing service in the program.

3 (c) ~~Each board shall adopt bylaws approved by the Commissioner. Such~~  
4 ~~bylaws may authorize each board to establish panels to conduct reparative~~  
5 ~~board activities. [Repealed.]~~

6 (d) Each board restorative justice panel or reentry CoSA shall conduct its  
7 meetings in a manner that promotes safe interactions among an offender,  
8 victim or victims, and community members, and shall:

9 (1) In collaboration with ~~the Department~~ community organizations,  
10 municipalities, the courts, and other entities of the criminal justice system,  
11 implement the ~~Restorative Justice Program~~ restorative justice program of  
12 seeking to obtain offender accountability, repair harm and compensate a victim  
13 or victims and the community, increase an offender's awareness of the effect  
14 of his or her behavior on a victim or victims and the community, and identify  
15 ways to help ~~an offender comply~~ offenders' compliance with the law.

16 (2) Educate the public about, and promote community support for, the  
17 ~~Restorative Justice Program~~ restorative justice program.

18 (e) Each board community justice center shall have access to the central  
19 file of any offender required to participate with that board ~~in the Restorative~~  
20 ~~Justice Program~~ panel or reentry program.

21 ~~(f) When engaged in board restorative justice activities, a board panel or~~

1 ~~C. SA member shall be considered a volunteer with regard to any grievance or~~  
2 other matter governed by 3 V.S.A. § 1101.

3 Sec. 6. EFFECTIVE DATE

4 ~~This act shall take effect on passage.~~

~~Sec. 1. 24 V.S.A. § 1964 is amended to read:~~

~~§ 1964. STRUCTURE OF THE COMMUNITY JUSTICE BOARDS;  
CONFIDENTIALITY OF CERTAIN RESTORATIVE JUSTICE  
MEETINGS~~

~~(a) Each community justice center:~~

~~(1) shall have an advisory board or board of directors comprising at least 51 percent citizen volunteers;~~

~~(2) may use a variety of community-based restorative justice approaches, including restorative justice panels, group conferencing, or mediation; and~~

~~(3) shall include programs to resolve disputes, address the needs of victims, address the wrongdoing of the offender, and promote the rehabilitation of youthful and adult offenders.~~

~~(b) Meetings of restorative justice panels and meetings to conduct restorative justice group conferencing or mediation shall not be subject to the Vermont Open Meeting Law, 1 V.S.A. chapter 5, subchapter 2.~~

~~Sec. 2. 24 V.S.A. § 1965 is amended to read:~~

~~§ 1965. DUTIES SCOPE OF WORK OF THE COMMUNITY JUSTICE  
CENTERS~~

~~Each community justice center:~~

~~(1) shall work in close coordination with State agencies, law enforcement agencies, State's Attorneys, social service providers, victim advocacy organizations, and other community resources in administering the programs defined in subdivision 1964(a)(3) of this title;~~

~~(2) shall, in collaboration with State and local agencies, provide training on the approaches to restorative justice process to citizen volunteers to enable their participation in the local community justice center;~~

~~(3) may address quality-of-life quality-of-life issues in the community it serves by providing informational and educational resources to the~~

~~community; and~~  
~~(4) may apply for funding from private foundations, other governmental sources, or other sources; and~~

~~(5) may receive cases referred by:~~

~~(A) local or State law enforcement prior to filing a charge;~~

~~(B) the State's Attorney prior to filing a charge; or~~

~~(C) the court as a part of a sentence or a term of a suspended sentence.~~

~~Sec. 3. 24 V.S.A. § 1966 is amended to read:~~

~~§ 1966. COMMUNITY JUSTICE CENTERS' RELATIONSHIP WITH STATE GOVERNMENT ENTITIES~~

~~(a) Support from the Agency of Human Services. The Agency of Human Services shall provide to the community justice centers the information, analysis, and technical support that the community justice centers, in collaboration with the Agency of Human Services, determine are necessary to further ~~their~~ the Agency's policy of restorative justice.~~

~~(b) Funding from the Agency of Human Services. The Agency of Human Services may provide funding and authorize community justice centers to participate in the implementation of State restorative programs related to juvenile ~~and~~, criminal, and civil offenses.~~

~~(c) Access to information. Community justice center employees and volunteers participating in State-funded programs shall have access to information, analysis, and technical support as necessary to carry out their duties within the program in accordance with State and federal confidentiality statutes and policies. Victim information that is not part of the public record shall not be released without the victim's consent.~~

~~(d) Liability.~~

~~(1) For the purposes of defining liability, community justice center volunteers participating in programs funded by the Agency of Human Services pursuant to subsection (b) of this section shall be considered volunteers of ~~that agency~~ the Agency.~~

~~(2) In all other cases, the State ~~and the~~, municipality, or any other entity operating a State-funded community justice center shall each be liable for the acts and omissions of employees operating within the scope of their employment.~~

~~Sec. 4. 28 V.S.A. § 910 is amended to read:~~



~~§ 910. RESTORATIVE JUSTICE PROGRAM~~

~~This chapter establishes a program of restorative justice for use with offenders required to participate in such a program as a condition of a sentence of probation or as ordered for civil contempt of a child support order under 15 V.S.A. § 603. The Program program shall be carried out by community reparative boards justice centers under the supervision of the Commissioner, as provided by this chapter.~~

~~Sec. 5. 28 V.S.A. § 910a is amended to read:~~

~~§ 910a. REPARATIVE BOARDS RESTORATIVE JUSTICE PANELS;  
REENTRY FUNCTIONS~~

~~(a) The Commissioner Each community justice center shall establish reparative boards restorative justice panels and appoint to them members of the community with the advice and recommendation of local nonprofit organizations or municipal entities in the localities concerned. The Commissioner shall appoint each board member to a term of one to three years, may reappoint a member to consecutive terms, and may remove a member for good cause. The local probation and parole office and the volunteer services coordinator together shall screen the volunteer prior to the volunteer's commencing service on a restorative justice panel.~~

~~(b) Each board shall elect its chair from its membership. A chair may serve for no more than one year uninterrupted. All meetings of a board shall comply with open meeting law requirements of 1 V.S.A. chapter 5, subchapter 2, consistent with probationer confidentiality requirements of this title, and as may be imposed by the court. Each community justice center shall establish a reentry program to address the local needs of the individual probation and parole office. The programs may include navigation services, circles of support and accountability (CoSAs), or other community-based resource and referral services. The community justice center shall appoint to the programs members of the community with the advice and recommendation of local nonprofit organizations or municipal entities. The local probation and parole office and the volunteer services coordinator together shall screen volunteers prior to the volunteer commencing service in the program.~~

~~(c) Each board shall adopt bylaws approved by the Commissioner. Such bylaws may authorize each board to establish panels to conduct reparative board activities. [Repealed.]~~

~~(d) Each board restorative justice panel or reentry CoSA shall conduct its meetings in a manner that promotes safe interactions among an offender, victim or victims, and community members, and shall:~~

~~(1) In collaboration with the Department community organizations,~~

~~municipalities, the courts, and other entities of the criminal justice system, implement the Restorative Justice Program restorative justice program of seeking to obtain offender accountability, repair harm and compensate a victim or victims and the community, increase an offender's awareness of the effect of his or her behavior on a victim or victims and the community, and identify ways to help ~~an offender~~ comply offenders' compliance with the law.~~

~~(2) Educate the public about, and promote community support for, the Restorative Justice Program restorative justice program.~~

~~(e) Each ~~board~~ community justice center shall have access to the central file of any offender required to participate with that ~~board in the Restorative Justice Program~~ panel or reentry program.~~

~~(f) When engaged in ~~board~~ restorative justice activities, a ~~board panel or CoSA~~ member shall be considered a volunteer with regard to any grievance or other matter governed by 3 V.S.A. § 1101.~~

~~Sec. 6. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

~~Sec. 1. 28 V.S.A. § 107 is amended to read:~~

~~§ 107. OFFENDER AND INMATE RECORDS; CONFIDENTIALITY;  
EXCEPTIONS; CORRECTIONS~~

~~(a)(1) The Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 defining what are "offender and inmate records," as that phrase is produced or acquired by the Department.~~

~~(2) As used in this section, the phrase "offender and inmate records" means the records defined under the rule required under subdivision (1) of this subsection.~~

~~(b) Offender and inmate records ~~maintained by the Department~~ are exempt from public inspection and copying under the Public Records Act and shall be kept confidential, except that the Department:~~

~~(1) Shall release or permit inspection of such records if required under federal or State law, including 42 U.S.C. §§ 10805 and 10806 (Protection and Advocacy Systems).~~

~~(2) Shall release or permit inspection of such records pursuant to a court order for good cause shown or, in the case of an offender or inmate seeking records relating to him or her in litigation, in accordance with discovery rules.~~

(3) ~~Shall release or permit inspection of such records to a State or federal prosecutor as part of a criminal investigation pursuant to a court order issued ex parte if the court finds that the records may be relevant to the investigation. The information in the records may be used for any lawful purpose but shall not otherwise be made public.~~

(4) ~~Shall release or permit inspection of such records to the Department for Children and Families for the purpose of child protection, unless otherwise prohibited by law.~~

(5) ~~Shall release or permit inspection of designated specific categories or types of offender and inmate records to specific persons, or to any person, in accordance with rules a rule that the Commissioner shall adopt pursuant to 3 V.S.A. chapter 25, provided that the Commissioner shall redact any information that may compromise the safety of any person, or that is required by law to be redacted, prior to releasing or permitting inspection of such records under the rules rule. The Commissioner shall authorize release or inspection of offender and inmate records under these rules rule shall provide for disclosure of a category or type of record in either of the following circumstances:~~

(A) ~~When when the public interest served by disclosure of a record outweighs the privacy, security, or other interest in keeping the record confidential; or~~

(B) ~~To in order to provide an offender or inmate access to offender and inmate records relating to him or her if access is not otherwise guaranteed under this subsection, unless providing such access would reveal information that, unless:~~

~~(i) the category or type of record is confidential or exempt from disclosure under a law other than this section;~~

~~(ii) providing access would unreasonably interfere with the Department's ability to perform its functions, including unreasonable interference due to the staff time or other cost associated with providing a category or type of record; or~~

~~(iii) providing access may compromise the health, safety, security, or rehabilitation of the offender or inmate or of another person.~~

~~(c)(1) The rules may specify circumstances under which the Department Unless otherwise provided in this section or required by law, the rule required under subdivision (b)(5) of this section:~~

(A) shall specify the categories or types of records to be disclosed and to whom they are to be disclosed, and shall not provide for any exceptions to disclosure of records that fall within these categories or types except for redactions required by law;

(B) shall specify which categories or types of records relating to an offender or inmate shall be provided to the offender or inmate as a matter of course and which shall be provided only upon request;

(C) may limit the offender's or inmate's access to include only records produced or acquired in the year preceding the date of the request;

(D) may limit the number of requests by an offender or inmate that will be fulfilled per calendar year, as long as provided that the Department fulfills at least one request two requests by the offender or inmate per calendar year excluding any release of records ordered by a court, and at least one additional request in the same calendar year limited to records not in existence at the time of the original request or not within the scope of the original request. The rules also;

(E) may specify circumstances when the an offender's or inmate's right of access will be limited to an inspection overseen by an agent or employee of the Department;

(F) may provide that the Department has no obligation to provide an offender or inmate a record previously provided if he or she still has access to the record. The rules; and

(G) shall reflect the Department's obligation not to withhold a record in its entirety on the basis that it contains some confidential or exempt content, to redact such content, and to make the redacted record available.

(2) The Department shall provide records available to an offender or inmate under the rule free of charge, except that if the offender or inmate is responsible for the loss or destruction of a record previously provided, the Department may charge him or her for a replacement copy at \$0.01 per page.

(e)(d) Notwithstanding the provisions of 1 V.S.A. chapter 5, subchapter 3 (Public Records Act) that govern the time periods for a public agency to respond to a request for a public record and rights of appeal, the Commissioner shall adopt a rule pursuant to 3 V.S.A. chapter 25 governing response and appeal periods and appeal rights in connection with a request by an offender or inmate to access records relating to him or her maintained by the Department. The rule shall provide for a final exhaustion of administrative appeals no later than 45 days from the Department's receipt of the initial request.

~~(d)(e)~~ *An offender or inmate may request that the Department correct a fact in a record maintained by the Department that is material to his or her rights or status, except for a determination of fact that resulted from a hearing or other proceeding that afforded the offender or inmate notice and opportunity to be heard on the determination. The rule required under subsection ~~(e)(d)~~ of this section shall reference that requests for such corrections are handled in accordance with the Department's grievance process. If the Department issues a final decision denying a request under this subsection, the offender or inmate may appeal the decision to the Civil Division of the Superior Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. The Court shall not set aside the Department's decision unless it is clearly erroneous.*

*Sec. 2. REPEAL*

*In 2016 Acts and Resolves No. 137, Sec. 7, as amended by 2017 Acts and Resolves No. 78, Sec. 10, subsections (b)–(e) and (g) hereby are repealed.*

*Sec. 3. EFFECTIVE DATE; TRANSITION PROVISION*

*(a) This act shall take effect on passage.*

*(b) Prior to the Commissioner of Corrections' (Commissioner) adopting a rule pursuant to the rulemaking mandates of 28 V.S.A. § 107(a) and (b)(5) as amended in Sec. 1 of this act, the Department of Corrections (Department) shall keep confidential "offender and inmate records" as defined in Department policies or directives in effect prior to the effective date of the rule, except that the Department:*

*(1) shall apply the exceptions to the confidentiality of offender and inmate records that exist under 28 V.S.A. § 107(b)(1)–(4);*

*(2) shall apply the exceptions to the confidentiality of offender and inmate records that exist under directives, policies, and practices adopted by the Department prior to the effective date of the rule, and in so doing shall apply the redaction requirements of 28 V.S.A. § 107(b)(5) as amended in Sec. 1 of this act; and*

*(3) may rely upon the limitations on offender and inmate access to records, and the provisions related to charging for copies of such records, in 28 V.S.A. § 107(c)(1)(C)–(F) and (c)(2) as amended in Sec. 1 of this act.*

(c) On or before September 15, 2018, the Commissioner shall prefile rules with the Interagency Committee on Administrative Rules in accordance with the rulemaking requirements of 28 V.S.A. § 107, as amended in Sec. 1 of this act. 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 15, 2018.