

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2016

Bill Number: H.858 Name of Bill: An act relating to miscellaneous criminal procedure amendments

Agency/Dept: AHS/Corrections Author of Bill Review: Dale Crook/Kurt Kuehl

Date of Bill Review: May 23, 2016 Related Bills and Key Players _____

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill addresses the issues of: 1) the definition of “human trafficking”; 2) co-payments by and reimbursement ordered from defendants who receive representation by the Defender General; 2a) the effective date of an expungement order; 2b) the effective date of an order to seal; 3) the definition of operating under the influence with death or serious injury resulting; 4) the date when the Department of Public Safety shall electronically post information about sex offenders; 5) a cause of action for damages against the State for individuals wrongfully convicted of crimes; 6) the designation of individuals whom may assert a cause of action for damages against the State for wrongful conviction; 7) the criminal penalties attached to selling or dispensing marijuana or hashish; and, 8) requiring the Joint Legislative Justice Oversight Committee to study how criminal defendants are awarded credit for time served and whether offenders are in the custody of or supervised by the Department of Corrections when their names are posted on the Internet Sex Offender Registry.

2. Is there a need for this bill? *Please explain why or why not.*

Section 1: This section appears to be a clerical correction to the citation of the federal statute upon which the Vermont statute defining “human trafficking” is based. This amendment is needed to provide a definition for the Vermont state crime of “human trafficking”.

Section 2: This section would permit defendants to obtain counsel from the Defender General regardless of their ability to first pay the associated co-payment. The DOC lacks sufficient information to determine whether this amendment is necessary.

Sections 2a and 2b: These sections clarify that expungement orders and orders to seal are effective immediately. The DOC lacks sufficient information to determine whether this amendment is necessary.

Section 3: This section appears to be a clerical correction to the citation of the statute criminalizing operating under the influence with death or serious bodily injury resulting. This amendment is needed so that the crime is accurately identified as a “listed crimes” in 13 V.S.A. § 5301.

Section 4: This section clarifies that the Department of Public Safety shall electronically post on the internet information about qualifying sex offenders upon their release from confinement or at the time of their

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sentencing if they were not subject to confinement. Although the DOC is not affected by this amendment, it appears needed to ensure that the information about qualifying sex offenders is posted on the internet when they are not subject to confinement.

Section 5: This section does not substantively change the affected statute; it only affects drafting conventions/matters of form. The DOC is not affected by this amendment, but cannot identify any basis to oppose it.

Section 6: This section clarifies that the statutes creating a cause of action for money damages against the State for wrongful conviction applies only to individuals exonerated on or after July 1, 2007. The DOC is unaffected by this statute and does not recommend support for or opposition to it.

Section 7: This section increases the quantity of marijuana and hashish sold or dispensed that may be punished as a misdemeanor. If enacted, this section is unlikely to have a significant impact on the DOC. Therefore, the DOC does not recommend support for or opposition to it.

Section 8: This section requires the Justice Oversight Committee to study the manner in which criminal defendants are awarded credit for time served and whether sex offenders are in the custody or under supervision of the DOC when their names are posted on the internet. The study about how credit for time served is awarded is needed because of conflicting court opinions about the manner in which the DOC should perform the calculation.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

It is expected that there will be minimal fiscal implication for the DOC from this bill. The likely fiscal implications will arise from staff time necessary to gather and provide information to the Justice Oversight Committee for the studies. The DOC does not expect that the staff time required to do so will be substantial. The DOC has not identified any programmatic implications of this bill.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

Section 2 may result in the Defender General providing counsel to defendants, but not receiving all or portions of the co-payments due it from the defendants. As such, the Defender General may be opposed to this provision.

Section 5 may operate to limit the number of individuals who can sue the State for damages for wrongful conviction. As such, the Attorney General's Office may have fewer lawsuits to defend and the State may have less damages to pay.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

N/A

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? N/A

6.2 Who else is likely to oppose the proposal and why? N/A

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7. **Rationale for recommendation:** *The bill is likely to have minimal fiscal or programmatic impacts on the DOC or other State agencies/departments; it makes necessary changes to correct inaccurate statutory citations; it requires the Justice Oversight Committee to study the manner in which credit for time served is calculated which has been a long-standing and continuing burden on the DOC because of frequently-changing and conflicting judicial decisions.*
8. **Specific modifications that would be needed to recommend support of this bill:** N/A.
9. **Will this bill create a new board or commission AND/OR add or remove appointees to an existing one? If so, which one and how many?** No

Secretary/Commissioner has reviewed this document: _____ **Date:** _____