

No. 264 AN ACT RELATING TO THE CREATION OF AN ADVISORY BOARD AND STATE AND LOCAL INTERAGENCY TEAMS TO ASSIST IN THE PROVISION OF CARE FOR CHILDREN AND ADOLESCENTS WITH SEVERE EMOTIONAL DISTURBANCES.

With revision stipulated in H.706 as passed by House and Senate in April, 1990.

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

Sec. 1. PURPOSE

This act is intended to develop and implement a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, residential, mental health and other treatment services in accordance with an individual plan. The commissioners of mental health, of education, and of social and rehabilitation services shall coordinate the provision of services in accordance with an individual plan. The act establishes a means by which to improve the delivery of services by determining who is in charge of the services, by clarifying the administrative process by which they are to be available, and to mandate participation in the process by the three departments.

The receipt of services or benefits under this act is not intended to be conditioned upon placement of a child in the legal custody, protective supervision or protection of the department of social and rehabilitation services.

Sec. 2. 3 V.S.A. chapter 2 is added to read:

CHAPTER 2

§ 31. DEFINITIONS

As used in this chapter:

(1) "Child with a disability" means a child who either is eligible for early essential education or special education under a state or federal law, or who is a child or adolescent with a severe emotional disturbance.

(2) "Coordinated service plan" means a written addendum to each service plan developed by an individual agency for a child or adolescent with severe emotional disturbances which shall be developed when the child has needs that require services from more than one agency. The coordinated services plan shall be designed to meet the needs of the child within his or her family or in an out-of-home placement, and in the school and the community. The coordinated services plan shall:

(A) be based upon an appropriate assessment of the individual needs of the child;

- (B) identify service needs of the child;
 - (C) identify services which are currently being provided;
 - (D) identify public or private agencies that currently provide each needed service, and how each needed service is funded;
 - (E) if any service need is not being met, include an explanation of why the service is not being provided, including lack of funds or the fact that service is not available.
 - (F) delineate case management responsibilities;
 - (G) include a reintegration plan when an out-of-home placement is made or recommended; and
 - (H) be developed with the opportunity for participation from parents, a guardian or a surrogate parent appointed pursuant to PL 94-142.
- (3) "Child or adolescent with a severe emotional disturbance" means a person who:
- (A) exhibits a behavioral, emotional, or social impairment that disrupts his or her academic or developmental progress or family or interpersonal relationships;
 - (B) has impaired functioning that has continued for at least one year or has an impairment of short duration and high severity;
 - (C) is under 18 years of age, or is under 22 years of age and eligible for special education under state or federal law; and
 - (D) falls into one or more of the following categories, whether or not he or she is diagnosed with other serious disorders such as mental retardation, severe neurological dysfunction or sensory impairments:
 - (i) Children and adolescents who exhibit seriously impaired contact with reality and severely impaired social, academic and self-care functioning whose thinking is frequently confused, whose behavior may be grossly inappropriate and bizarre and whose emotional reactions are frequently inappropriate to the situation.
 - (ii) Children and adolescents who are classified as management or conduct disorder because they manifest long-term behavior problems including developmentally inappropriate inattention, hyperactivity, impulsiveness,

aggressiveness, anti-social acts, refusal to accept limits, suicidal behavior or substance abuse.

- (iii) Children and adolescents who suffer serious discomfort from anxiety, depression, irrational fears and concerns whose symptoms may be exhibited as serious eating and sleeping disturbances, extreme sadness of suicidal proportion, maladaptive dependence on parents, persistent refusal to attend school or avoidance of nonfamilial social contact.

§ 32. STATE INTERAGENCY TEAM

- (a) A state interagency team is created and shall consist of eight members:
 - (1) the director of the division responsible for special education for the department of education;
 - (2) the department of education's consultant for children and adolescents with a severe emotional disturbance;
 - (3) the director of the division responsible for mental health services for the department of mental health;
 - (4) the children's program specialist for the division responsible for mental health services for the department of mental health;
 - (5) the director of the division responsible for social services for the department of social and rehabilitation services;
 - (6) the placement consultant for the division responsible for the division responsible for social services for the department of social and rehabilitation services;
 - (7) a representative of the secretary of the agency of human services;
 - (8) a parent of a child or adolescent with a severe emotional disturbance. Such parent shall receive compensation in accordance with the provisions of section 1010 of Title 32, and such compensation shall be paid for by the agency of human services.
- (b) The state interagency team shall have the following powers and duties:
 - (1) submit an annual report to the commissioners of mental health, social and rehabilitation services and education on the status of programs for children

and adolescents with a severe emotional disturbance which shall include a system of care plan. The system of care plan shall identify the characteristics and number of children and adolescents with a severe emotional disturbance in need of services, describe the educational, residential, mental health or other services needed, describe the programs and resources currently available, recommend a plan to meet the needs of such children and adolescents, and recommend priorities for the continuation or development of programs and resources;

- (2) ensure that local interagency teams are established by January 1, 1989;
- (3) develop and coordinate the provision of services to children and adolescents with a severe emotional disturbance;
- (4) make recommendations to the local interagency team for resolution of any case of a child or adolescent with a severe emotional disturbance referred by a local interagency team under section 33(f) of this chapter; and
- (5) recommend to the secretary of the agency of human services and to the commissioners of the departments of education, mental health, and social and rehabilitation services any fiscal policy, or programmatic change at the local, regional, or state level necessary to enhance the state system of care for children and adolescents with a severe emotional disturbance and their families.

§ 33. LOCAL INTERAGENCY TEAMS

- (a) There shall be at least one local interagency team for each administrative district established by the department of social and rehabilitation services whose permanent membership shall include:
 - (1) the person from the designated community mental health agency for that district responsible for coordinating children's services;
 - (2) the person managing the district office of the department of social and rehabilitation services for that district;
 - (3) a special education administrator from a school district in that district;
 - (4) a person designated by the secretary of the agency of human services;
 - (5) a parent of a child or adolescent with a severe emotional disturbance. Such parent shall receive compensation in accordance with the provisions of

section 1010 of Title 32, and such compensation shall be paid for by the agency of human services.

- (b) In addition to the permanent members, the local interagency team reviewing the case of a child or adolescent shall include as ad hoc members the special education administrator of the school district serving the child or adolescent and the parents of the child or adolescent. The local interagency team may appoint on an ad hoc basis other persons determined to be necessary for the effectiveness of the team.
- (c) The local interagency team shall appoint one of its permanent members to be chair. If the local interagency team cannot agree on a chair, one will be appointed by the state interagency team.
- (d) A referral may be made by a local agency, service provider, or parent concerning a child or adolescent with a severe emotional disturbance when agreement cannot be reached with respect to the provision of appropriate services for the child or adolescent. When a referral is made, the local interagency team shall:
 - (1) make recommendations concerning the following matters upon which agreement cannot be reached: assessment of the child, coordinated service planning and the provision of services for the child or adolescent;
 - (2) review the coordinated services plan for the child or adolescent and amend the plan if necessary.
- (e) The local interagency team may meet at the request of any agency or parent to serve as a forum for consideration of general issues relating to implementation of the provisions of this chapter.
- (f) After all attempts have been made without success to resolve any matter considered under subsections (d) or (e) of this section the matter shall be referred to the state interagency team.
- (g) The local interagency team annually shall inform all local agencies and service providers for children and adolescents with severe emotional disturbances of the provisions of this chapter and any implementing rules or procedures.

§ 34. ADVISORY BOARD

- (a) An advisory board is created to advise the commissioners of mental health, social and rehabilitation services and education on children and adolescents with a severe emotional disturbance and their families.

- (b) The advisory board shall also advise such commissioners on the development of the system of care plan described in section 35 (c) of this chapter.
- (c) The state interagency team shall recommend to the governor a list of potential board members. The governor shall appoint from said list three parents of children or adolescents with a severe emotional disturbance, three advocates from organizations working on behalf of children and adolescents with a severe emotional disturbance, and three professionals in related fields or service providing agencies.
- (d) All members of the board shall serve for a term of three years, beginning from April 1 of the year of appointment or until their successors are appointed. For the purpose of implementing this section, the governor shall initially appoint one-third of the members to one-year terms, one-third to two-year terms, and one-third to three-year terms. As the initial terms expire, the new appointees shall be appointed to fill three-year terms.
- (e) The board shall elect its own chair from among its membership. The board shall meet annually at the call of the chair, and other meetings may be called by the chair at such times and places as he or she may determine to be necessary.
- (f) The members of the board who are employees of the state shall receive no additional compensation for their services, but actual and necessary expenses shall be allowed state employees and shall be charged to their departments. The members of the board who are not employees of the state shall receive compensation in accordance with the provisions of section 1010 of Title 32, and such compensation shall be paid for by the agency of human services.

§ 35. COORDINATED SYSTEM OF CARE

- (a) Services provided by or through the departments of mental health, social and rehabilitation services and education to children and adolescents with a severe emotional disturbance shall be pursuant to a coordinated services plan, developed in accordance with the provisions of this chapter.

Nothing in the provisions of this chapter shall be construed to grant an entitlement to any child or adolescent with a severe emotional disturbance to receive any educational, residential, mental health or other service until and unless the general assembly further provides that such children and adolescents or any subgroup thereof are so entitled.

(b) The state board of education and the departments of mental health and social and rehabilitation services shall jointly adopt rules by January 1, 1991 implementing the provisions of this chapter. Such rules shall:

(1) provide guidelines for local interagency teams for development of procedures, with public participation, relating to:

(A) referral, assessment, development, annual review and revision of coordinated services plans, and time frames for these activities;

(B) fixing responsibility for case management; and

(C) notice to parents and guardians and other agencies.

Local interagency teams shall submit procedures developed in accordance with the rules adopted under this subdivision to the advisory board for review and comment. Thereafter, the proposed procedures shall be submitted to the commissioners, who shall approve the procedures if all the elements of these subdivisions are satisfied.

(2) protect the rights for children and adolescents and their parents and guardians concerning consent and confidentiality;

(3) ensure that matters unresolved after state interagency team review are subject to procedures for notice, hearing and decisions of contested cases consistent with the provisions of chapter 25 of Title 3.

(c) The commissioners of mental health, social and rehabilitation services and education shall jointly submit to the general assembly a report on the status of programs for children and adolescents with a severe emotional disturbance which shall include a system of care plan. The report shall be submitted together with the general appropriation bill provided for by section 701 of Title 32. The system of care plan shall identify the characteristics and number of children and adolescents with a severe emotional disturbance in need of appropriate services, describe the educational, residential, mental health or other treatment services needed, describe currently available programs and resources, recommend a plan to meet the needs of such children, recommend priorities for the continuation or development of programs and resources, and make an assessment of the success of such programs.

(d) The secretary of human services and the commissioner of education shall report to the general assembly by January 15, 1991 with their recommendations concerning the coordination and provision of adequate and appropriate services to all children

with disabilities. The report shall identify the characteristics and number of children with disabilities in need of services, describe the educational, residential, mental health, or other services needed, describe currently available programs and resources, recommend a plan to meet the needs of children with disabilities, and recommend priorities for the continuation or development of programs and resources.

- (e) Nothing contained in this chapter shall be construed to diminish the rights of children with disabilities, their parents, guardians or surrogate parents under federal or state law including but not limited to confidentiality, consent for services and evaluation, and parental involvement.
- (f) Nothing contained in this chapter shall entitle children and adolescents with a severe emotional disturbance to special education services unless they are otherwise eligible for such services under state or federal law.

* Revision note: The provisions of this chapter as enacted by 1987, No. 264 (Adj. Sess.), § 2, were originally designated as sections 20-24. However,⁸ in order to avoid conflict with sections 20 and 21 of this title as previously enacted by 1987, Nos. 200 (Adj. Sess.) and 257 (Adj. Sess.), and for purposes of conformity with the classification system of V.S.A., sections 20-24 of this chapter, as enacted, were redesignated as sections 31-35.

Legislative intent. 1987, No. 264 (Adj. Sess.), § 1, provided:

"This act is intended to develop and implement a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, residential, mental health and other treatment services in accordance with an individual plan. The commissioners of mental health, of education, and of social and rehabilitation services shall coordinate the provision of services in accordance with an individual plan. The act establishes a means by which to improve the delivery of services by determining who is in charge of the services, by clarifying the administrative process by which they are to be available, and to mandate participation in the process by the three departments.

"The receipt of services or benefits under this act is not intended to be conditioned upon placement of a child in the legal custody, protective supervision or protection of the department of social and rehabilitation services."

Filing of initial administrative rules. Pursuant to 1987, No. 264 (Adj. Sess.), § 16, the initial rules provided for in subsec. (b) of this section shall be filed under 3V.S.A. § 18, provided that the report submitted pursuant to subsec. (c) of this section shall include, in addition to the information required under that subsection, comprehensive and accurate information identifying all children with severe emotional disturbances, whether and to what extent such children have not received appropriate services, the characteristics and number of such children who have not received services, why such children have not received services, and alternatives and recommendations concerning how to ensure that all children with severe emotional disturbances will receive appropriate services and the resources necessary to provide

those services.

Sec. 3. 16 V.S.A. § 212(13) is added to read:

(13) Ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the departments of mental health and social and rehabilitation services in accordance with the provisions of chapter 2 of Title 3.

Sec. 4. 16 V.S.A. § 910 is added to read:

§ 910. COORDINATION OF SERVICES TO CHILDREN AND
ADOLESCENTS WITH A SEVERE EMOTIONAL DISTURBANCE

Each town, city, interstate, incorporated, unified or union school district shall cooperate with the departments of mental health, social and rehabilitation services and education in coordinating educational services to children and adolescents with a severe emotional disturbance, in accordance with the provisions of chapter 2 of Title 3.

Sec. 5. 16 V.S.A. § 2943 is amended to read:

§ 2943. COMMISSIONER OF EDUCATION FOR HANDICAPPED CHILDREN; POWERS

The commissioner of education by virtue of his office, shall be commissioner of education for handicapped children, and, as such commissioner shall superintend matters relating to the essential early education and special education of handicapped children and, in coordination with the departments of mental health and social and rehabilitation services, shall ensure that appropriate educational services are provided to children and adolescents with a severe emotional disturbance in accordance with the provisions of chapter 2 of Title 3 and may accept gifts, grants or other donations to carry out the purposes of this chapter.

Sec. 6. 18 V.S.A. § 7101(25) is added to read:

(25) "Children and adolescents with a severe emotional disturbance" means those persons defined as such under 3 V.S.A. 20(3).

Sec. 7. 18 V.S.A. § 7202 is amended to read:

§ 7202. COORDINATION

The department shall be responsible for coordinating efforts of all agencies and services, government and private, directed towards the control, reduction and prevention of those problems involving mental retardation, mental illness and, in coordination with the departments of social and rehabilitation services and education, severe emotional disturbance.

Sec. 8. 18 V.S.A. § 7401(14) and (15) are amended to read:

(14) plan and coordinate the development of community services which are needed to assist mentally ill, mentally retarded persons and children and adolescents with a severe emotional disturbance to become as financially and socially independent as possible. These services shall consist of residential, rehabilitative, vocational, day treatment, inpatient, outpatient and emergency services, as well as client assessment, prevention, family and individual support services and such other services as may be required by federal law or regulations;

(15) contract with community mental health centers to assure that individuals who are mentally ill, mentally retarded or children and adolescents with a severe emotional disturbance can receive information, referral and assistance in obtaining those community services which they need and to which they are lawfully entitled;

Sec. 9. 18 V.S.A. § 7401 (17) is added to read:

(17) ensure the provision of services to children and adolescents with a severe emotional disturbance in coordination with the commissioners of education and social and rehabilitation services in accordance with the provisions of chapter 2 of Title 3.

Sec. 10. 18 V.S.A. § 8901 is amended to read:

§ 8901. PURPOSE

The purpose of this chapter is to expand community mental health services; to encourage participation in such a program by persons in local communities; to obtain better understanding of the need for community mental health-mental retardation services; to authorize funding for the program by state aid, local financial support and direct payment by clients who have the ability to pay and to provide services to mentally ill persons, mentally retarded persons and children or adolescents with a severe emotional disturbance.

Sec. 11. 18 V.S.A. § 8907 (b) is amended to read:

(b) Within the limits of available resources, each designated community mental health agency shall plan, develop and provide or otherwise arrange for those community mental health-mental retardation services that are not assigned by law to the exclusive jurisdiction of another agency and which are needed by and not otherwise available to mentally ill, mentally retarded persons or children and adolescents with a severe emotional disturbance in accordance with the provisions of chapter 2 of Title 3 who reside within the geographic area served by the agency.

Sec. 12. 18 V.S.A. § 8909 (b) is amended to read:

(b) The board shall direct the development of the local community services plan and shall consult with the commissioner, with consumers, with other organizations representing mentally ill, mentally retarded persons and children and adolescents with a severe emotional disturbance and with other governmental or private agencies that provide community services to the clients served by the mental health agency to determine the needs of the community for mental health-mental retardation services, and the priority need for service. The plan shall encourage utilization of existing agencies, professional personnel and public funds at both state and local levels in order to improve the effectiveness of mental health and mental retardation services and to prevent unnecessary duplication of expenditures.

Sec. 13. 18 V.S.A. § 8911(a) is amended to read:

(a) If the commissioner after discussion with the board of a community mental health agency determines that the local community services plan required by section 8908 of this chapter is inadequate to meet the needs of mentally ill, mentally retarded persons or children and adolescents with a severe emotional disturbance in accordance with the provisions of chapter 2 of Title 3 in the area served by a mental health agency or that an agency has, for reasons other than lack of resources, failed or refused to implement an otherwise adequate plan, he shall take one or more of the following steps:

- (1) offer technical assistance to the agency;
- (2) actively seek out and designate another agency to provide the needed services;
- (3) directly provide or arrange the needed services if it appears that the services will not otherwise be available within a reasonable period of time. The remedies specified in this subsection shall be in addition to any other rights and remedies which are available to the commissioner under state or federal law.

Sec. 14. 18 V.S.A. § 8912 is amended to read:

§ 8912. CONTRACTS WITH NON-DESIGNATED AGENCIES

The commissioner may enter into agreements with local community mental health agencies or with any public or private agency for the purpose of establishing specialized services which are needed by mentally ill *[or]*, mentally retarded persons or children and adolescents with a severe emotional disturbance and are not available from designated community mental health agencies.

Sec. 15. 33 V.S.A. § 2594 (e) is added to read:

(e) The commissioner shall ensure the provision of services to children or adolescents with a severe emotional disturbance in coordination with the commissioners of education and mental health in accordance with the provisions of chapter 2 of Title 3.

Sec. 16. ADOPTION OF RULES

The initial rules provided for in section 24(b) of Title 3 shall be filed under section 838 of Title 3 no later than April 1, 1989.

Sec. 17. SUNSET

Section 23 of chapter 2 of Title 3 is repealed on January 15, 1992.

Sec. 18. TRANSITORY PROVISIONS

The report submitted pursuant to the provisions of 3 V.S.A.

24(c) in January, 1989 shall include, in addition to the information required under that subsection, information comprehensively and accurately identifying all children and adolescents with a severe emotional disturbance, whether and to what extent any such children and adolescents have not received appropriate services, the characteristics and number of such children who have not received appropriate services. Said report shall also include alternatives and recommendations concerning how to ensure that all such children and adolescents will receive appropriate services and the resources necessary to fund such services.

Sec. 19. STUDY AND REPORT

The Legislative Council, with the cooperation and assistance of the department of social and rehabilitation services, shall conduct a study of the use of and need for group homes for children, adolescents and mentally ill adults served by or through departments within the agency of human services or the department of education. The study shall survey residential care practices in other states and within Vermont for serving the populations concerned, the appropriate size of group homes for such populations and associated cost considerations. The study shall review the relationship between zoning laws and practices and the development of group homes, including questions associated with locating group homes in residential districts. The Legislative Council shall submit to the general assembly a report of the results of its study by January 15, 1989.

Approved: June 17, 1988.