

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 91  
3 entitled “An act relating to competency to stand trial and insanity as a defense”  
4 respectfully reports that it has considered the same and recommends that the  
5 bill be amended by striking out all after the enacting clause and inserting in  
6 lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 4801 is amended to read:

8 § 4801. TEST OF INSANITY IN CRIMINAL CASES

9 (a) The test when used as a defense in criminal cases shall be as follows:

10 (1) A person is not responsible for criminal conduct if at the time of  
11 such conduct as a result of mental disease or defect ~~he or she~~ the person lacks  
12 adequate capacity either to appreciate the criminality of ~~his or her~~ the person’s  
13 conduct or to conform ~~his or her~~ the person’s conduct to the requirements of  
14 law.

15 (2) The terms “mental disease or defect” do not include an abnormality  
16 manifested only by repeated criminal or otherwise anti-social conduct. The  
17 terms “mental disease or defect” ~~shall include~~ includes congenital and  
18 traumatic mental conditions as well as disease.

19 (b) The defendant shall have the burden of proof in establishing insanity as  
20 an affirmative defense by a preponderance of the evidence. The defendant  
21 shall be responsible for hiring the defendant’s own forensic evaluator for the

1 purpose of establishing insanity provided that the State shall pay for the  
2 evaluation of an indigent defendant.

3 Sec. 2. 13 V.S.A. § 4814 is amended to read:

4 § 4814. ORDER FOR EXAMINATION

5 (a) Any court before which a criminal prosecution is pending may order the  
6 Department of Mental Health to have the defendant examined by a psychiatrist  
7 at any time before, during, or after trial, and before final judgment in any of the  
8 following cases:

9 ~~(1) when the defendant enters a plea of not guilty, or when such a plea is~~  
10 ~~entered in the defendant's behalf, and then gives notice of the defendant's~~  
11 ~~intention to rely upon the defense of insanity at the time of the alleged crime,~~  
12 ~~or to introduce expert testimony relating to a mental disease, defect, or other~~  
13 ~~condition bearing upon the issue of whether he or she had the mental state~~  
14 ~~required for the offense charged; [Repealed.]~~

15 (2) when the defendant, the State, or an attorney, guardian, or other  
16 person acting on behalf of the defendant, raises before such court the issue of  
17 whether the defendant is mentally competent to stand trial for the alleged  
18 offense; or

19 ~~(3) when the court believes that there is doubt as to the defendant's~~  
20 ~~sanity at the time of the alleged offense; or [Repealed.]~~

1           (4) when the court believes that there is doubt as to the defendant's  
2 mental competency to be tried for the alleged offense.

3           (b) ~~Such~~ The order may be issued by the court on its own motion, or on  
4 motion of the State, the defendant, or an attorney, guardian, or other person  
5 acting on behalf of the defendant. The examination shall be at the expense of  
6 the moving party, provided that the State shall pay for the competency  
7 evaluation of an indigent defendant whose competency is at issue.

8           (c) An order issued pursuant to this section or Rule 16.1 of the Vermont  
9 Rules of Criminal Procedure shall order the release of all relevant records to  
10 the examiner, including all juvenile and adult court, mental health, and other  
11 health records.

12           (d) Notwithstanding any other provision of law, an examination ordered  
13 pursuant to subsection (a) of this section may be conducted by a doctoral-level  
14 psychologist trained in forensic psychology and licensed under chapter 55 of  
15 Title 26. This subsection shall be repealed on July 1, 2024.

16 Sec. 3. 13 V.S.A. § 4815 is amended to read:

17 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

18 \* \* \*

19           (c) A motion for examination shall be made as soon as practicable after a  
20 party or the court has good faith reason to believe that there are grounds for an  
21 examination. A motion for an examination shall detail the facts indicating

1 incompetency on which the motion is based and shall certify that the motion is  
2 made after the moving party has met with or personally observed the  
3 defendant. An attorney making such a motion shall be subject to the potential  
4 sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

5 (d) Upon the making of a motion for examination, if the court finds  
6 sufficient facts to order an examination, the court shall order a mental health  
7 screening to be completed by a designated mental health professional while the  
8 defendant is still at the court.

9 (e) If the screening cannot be commenced and completed at the courthouse  
10 within two hours from the time of the defendant's appearance before the court,  
11 the court may forgo consideration of the screener's recommendations.

12 (f) The court and parties shall review the recommendation of the designated  
13 mental health professional and consider the facts and circumstances  
14 surrounding the charge and observations of the defendant in court. If the court  
15 finds sufficient facts to order an examination, it may be ordered to be  
16 completed in the least restrictive environment deemed sufficient to complete  
17 the examination, consistent with subsection (a) of this section.

18 \* \* \*

19 (h) ~~Except upon good cause shown, defendants~~ Defendants charged with  
20 misdemeanor offenses who are not in the custody of the Commissioner of  
21 Corrections shall be examined on an outpatient basis for mental competency

1 unless the court makes findings on the record that there is good cause for an  
2 inpatient evaluation. Examinations occurring in the community shall be  
3 conducted at a location within 60 miles of the defendant’s residence or at  
4 another location agreed to by the defendant.

5 \* \* \*

6 Sec. 4. 13 V.S.A. § 4816 is amended to read:

7 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

8 (a) Examinations provided for in section 4815 of this title shall have  
9 reference to ~~one or both of the following:~~

10 ~~(1)~~ mental competency of the person examined to stand trial for the  
11 alleged offense.

12 ~~(2) sanity of the person examined at the time of the alleged offense.~~

13 (b) A competency evaluation for an individual thought to have a  
14 developmental disability shall include a current evaluation by a psychologist  
15 skilled in assessing individuals with developmental disabilities.

16 (c)~~(1)~~ As soon as practicable after the examination has been completed, the  
17 examining psychiatrist or, if applicable under subsection (b) of this section, ~~the~~  
18 ~~psychiatrist and~~ the psychologist shall prepare a report containing findings in  
19 regard to the applicable provisions of subsection (a) of this section. The report  
20 shall be transmitted to the court issuing the order for examination, and copies  
21 of the report sent to the State’s Attorney, to the respondent, to the respondent’s

1 attorney if the respondent is represented by counsel, to the Commissioner of  
2 Mental Health, and, if applicable, to the Department of Disabilities, Aging, and  
3 Independent Living.

4 ~~(2) If the court orders examination of both the person's competency to~~  
5 ~~stand trial and the person's sanity at the time of the alleged offense, those~~  
6 ~~opinions shall be presented in separate reports and addressed separately by the~~  
7 ~~court. In such cases, the examination of the person's sanity shall only be~~  
8 ~~undertaken if the psychiatrist or, if applicable under subsection (b) of this~~  
9 ~~section, the psychiatrist and the psychologist are able to form the opinion that~~  
10 ~~the person is competent to stand trial, unless the defendant requests that the~~  
11 ~~examinations occur concurrently. If the evaluation of the defendant's sanity at~~  
12 ~~the time of the alleged offense does not occur until the defendant is deemed~~  
13 ~~competent to stand trial, the psychiatrist or, if applicable under subsection (b)~~  
14 ~~of this section, the psychiatrist and the psychologist shall make a reasonable~~  
15 ~~effort to collect and preserve any evidence necessary to form an opinion as to~~  
16 ~~sanity if the person regains competence.~~

17 (d) No statement made in the course of the examination by the person  
18 examined, whether or not ~~he or she~~ the person has consented to the  
19 examination, shall be admitted as evidence in any criminal proceeding for the  
20 purpose of proving the commission of a criminal offense or for the purpose of  
21 impeaching testimony of the person examined.

1 (e) The relevant portion of a psychiatrist's report shall be admitted into  
2 evidence as an exhibit on the issue of the person's mental competency to stand  
3 trial and the opinion shall be conclusive on the issue if agreed to by the parties  
4 and if found by the court to be relevant and probative on the issue.

5 (f) Introduction of a report under subsection (d) of this section shall not  
6 preclude either party or the court from calling the psychiatrist who wrote the  
7 report as a witness or from calling witnesses or introducing other relevant  
8 evidence. Any witness called by either party on the issue of the defendant's  
9 competency shall be at the State's expense, or, if called by the court, at the  
10 court's expense.

11 Sec. 5. 13 V.S.A. § 4817 is amended to read:

12 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

13 (a) A defendant shall be presumed to be competent and shall have the  
14 burden of proving incompetency by a preponderance of the evidence.

15 (b) A person shall not be tried for a criminal offense if ~~he or she~~ the person  
16 is found incompetent to stand trial by a preponderance of the evidence.

17 ~~(b)~~(c) If a person indicted, complained, or informed against for an alleged  
18 criminal offense, an attorney or guardian acting in ~~his or her~~ the person's  
19 behalf, or the State, at any time before final judgment, raises before the court  
20 before which such person is tried or is to be tried, the issue of whether such  
21 person is incompetent to stand trial, or if the court has reason to believe that

1 such person may not be competent to stand trial, a hearing shall be held before  
2 such court at which evidence shall be received and a finding made regarding  
3 ~~his or her~~ the person's competency to stand trial. However, in cases where the  
4 court has reason to believe that such person may be incompetent to stand trial  
5 due to a mental disease or mental defect, such hearing shall not be held until an  
6 examination has been made and a report submitted by an examining  
7 psychiatrist in accordance with sections 4814–4816 of this title.

8 ~~(e)~~(d) A person who has been found incompetent to stand trial for an  
9 alleged offense may be tried for that offense if, upon subsequent hearing, such  
10 person is found by the court having jurisdiction of ~~his or her~~ the person's trial  
11 for the offense to have become competent to stand trial.

12 Sec. 6. 13 V.S.A. § 4820 is amended to read:

13 § 4820. HEARING REGARDING COMMITMENT

14 (a) When a person charged on information, complaint, or indictment with a  
15 criminal offense:

16 (1) ~~Is reported by the examining psychiatrist following examination~~  
17 ~~pursuant to sections 4814–4816 of this title to have been insane at the time of~~  
18 ~~the alleged offense. [Repealed.]~~

19 (2) ~~Is~~ is found upon hearing pursuant to section 4817 of this title to be  
20 incompetent to stand trial due to a mental disease or mental defect.;



1           (3) ~~Is~~ is not indicted upon hearing by grand jury by reason of insanity at  
2 the time of the alleged offense, duly certified to the court; or

3           (4) ~~Upon~~ upon trial by court or jury is acquitted by reason of insanity at  
4 the time of the alleged offense; the court before which such person is tried or is  
5 to be tried for such offense, shall hold a hearing for the purpose of determining  
6 whether such person should be committed to the custody of the Commissioner  
7 of Mental Health. Such person may be confined in jail or some other suitable  
8 place by order of the court pending hearing for a period not exceeding ~~45~~ 21  
9 days.

10           (b) When a person is found to be incompetent to stand trial, has not been  
11 indicted by reason of insanity for the alleged offense, or has been acquitted by  
12 reason of insanity at the time of the alleged offense, the person shall be entitled  
13 to have counsel appointed from Vermont Legal Aid to represent the person.

14           The Department of Mental Health and, if applicable, the Department of  
15 Disabilities, Aging, and Independent Living shall be entitled to appear and call  
16 witnesses at the proceeding.

17           (c) Notwithstanding any other provision of law, a commitment order issued  
18 pursuant to this chapter shall not modify or vacate orders concerning  
19 conditions of release or bail issued pursuant to chapter 229 of this title, and the  
20 commitment order shall remain in place unless expressly modified, provided

1 that inpatient treatment shall be permitted if a person who is held without bail  
2 is found to be in need of inpatient treatment under this chapter.

3 Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN

4 On or before November 15, 2023, the Department of Mental Health and the  
5 Department of Disabilities, Aging, and Independent Living shall report to the  
6 Governor, the Senate Committees on Judiciary and on Health and Welfare, and  
7 the House Committees on Judiciary, on Health Care, and on Human Services  
8 on whether a plan for a competency restoration program should be adopted in  
9 Vermont. If a competency restoration plan is recommended, the report shall  
10 include recommendations for best practices, any changes to law necessary to  
11 establish the program, estimated costs, and a proposal for implementing the  
12 program.

13 Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE

14 REVIEW; COMPETENCY AND SANITY EXAMINATIONS

15 (a) The Joint Legislative Justice Oversight Committee shall review whether  
16 Vermont law should permit competency and sanity examinations of defendants  
17 under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and  
18 doctoral-level psychologists trained in forensic psychology, by other doctoral  
19 level mental health providers, psychiatric nurse practitioners, or any other  
20 professionals. The Committee's recommendation under subsection (b) of this

1 section shall reflect its determination of which professionals, if any, should be  
2 permitted to conduct the competency and sanity examinations.

3 (b) On or before November 15, 2023, the Committee shall recommend any  
4 changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency  
5 and sanity examinations by doctoral-level psychologists trained in forensic  
6 psychology) to the Senate and House Committees on Judiciary.

7 Sec. 9. EFFECTIVE DATE

8 This act shall take effect on July 1, 2023.

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12 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

14

Senator \_\_\_\_\_

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FOR THE COMMITTEE