

1 H.631

2 Introduced by Representative Koch of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedure; insanity defense; forensic evaluations

6 Statement of purpose: This bill proposes to permit a hospital to discharge a  
7 patient who is a criminal defendant sent to the hospital for a forensic  
8 evaluation if the patient does not meet the requirements for hospitalization.

9 The court order for the forensic evaluation should specify terms of release, but  
10 if it does not, the patient shall be released into the custody of the commissioner  
11 of corrections.

12 An act relating to court-ordered forensic evaluations of criminal defendants

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

14 Sec. 1. 13 V.S.A. § 4815 is amended to read:

15 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

16 (a) It is the purpose of this section to provide a mechanism by which a  
17 defendant is examined in the least restrictive environment deemed sufficient to  
18 complete the examination and prevent unnecessary ~~pre-trial~~ pretrial detention  
19 and substantial threat of physical violence to any person, including a  
20 defendant.

1           (b) The order for examination may provide for an examination at any jail or  
2           correctional center, or at the state hospital, or at such other place as the court  
3           shall determine, after hearing a recommendation by the commissioner of  
4           mental health.

5           (c) A motion for examination shall be made as soon as practicable after a  
6           party or the court has good faith reason to believe that there are grounds for an  
7           examination. An attorney making such a motion shall be subject to the  
8           potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

9           (d) Upon the making of a motion for examination, the court shall order a  
10          mental health screening to be completed by a designated mental health  
11          professional while the defendant is still at the court.

12          ~~(e) If the screening cannot be commenced and completed at the courthouse~~  
13          ~~within two hours from the time of the defendant's appearance before the court,~~  
14          ~~the court may forego consideration of the screener's recommendations.~~

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

1 (g)(1) Inpatient examination at the state hospital or a designated hospital.  
2 The court shall not order an inpatient examination unless the designated mental  
3 health professional determines that the defendant is a person in need of  
4 treatment as defined in 18 V.S.A. § 7101(17).

5 (2) Before ordering the inpatient examination, the court shall also  
6 determine what terms, if any, shall govern the defendant's release from  
7 custody under sections 7553-7554 of this title, once the examination has been  
8 completed or the commissioner determines that the defendant does not meet  
9 the requirements for hospitalization. If the order does not include terms of  
10 release and the defendant no longer meets inpatient criteria, the defendant shall  
11 be immediately returned to the custody of the department of corrections.

12 (3) An order for inpatient examination shall provide for placement of the  
13 defendant in the custody and care of the commissioner of mental health for not  
14 more than 30 days from the date of the order, ~~and the defendant shall be~~  
15 ~~returned to court for further appearance as soon as the examination has been~~  
16 ~~completed, if ordered by the court.~~ If a return to court is ordered, such return  
17 shall occur within 48 hours of the commissioner's request. The commissioner  
18 shall have the authority to determine the most clinically appropriate designated  
19 hospital for the examination and, based on the most clinically appropriate  
20 determination, may transfer the defendant between designated hospitals at any  
21 time while the order is in effect.

1           (4) If a return to court is not ordered and the defendant is not in the  
2 custody of the commissioner of corrections, the defendant shall be returned to  
3 the defendant's residence or such other appropriate place within the state of  
4 Vermont by the department of mental health at the expense of the court.

5           (5) If it appears that an inpatient examination cannot reasonably be  
6 completed within 30 days, the court issuing the original order, on request of the  
7 commissioner and upon good cause shown may order placement at the hospital  
8 extended for additional periods of 15 days in order to complete the  
9 examination, and the defendant on the expiration of the period provided for in  
10 such order shall be returned in accordance with this subsection.

11          (h) Except upon good cause shown, defendants charged with misdemeanor  
12 offenses who are not in the custody of the commissioner of corrections shall be  
13 examined on an outpatient basis for mental competency. Examinations  
14 occurring in the community shall be conducted at a location within 60 miles of  
15 the defendant's residence or at another location agreed to by the defendant.