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H.555

Representative Koch of Barre Town moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

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

(1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of ~~mental disease or defect~~ illness, intellectual disability, or traumatic brain injury, he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms ~~"mental disease or defect"~~ "mental illness, intellectual disability, or traumatic brain injury" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. ~~The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.~~

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.

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

§ 4814. ORDER FOR EXAMINATION

1 (a) Any court before which a criminal prosecution is pending may order the
2 department of mental health to have the defendant examined by a psychiatrist
3 at any time before, during or after trial, and before final judgment in any of the
4 following cases:

5 (1) When the defendant enters a plea of not guilty, or when such a plea is
6 entered in the defendant's behalf, and then gives notice of the defendant's
7 intention to rely upon the defense of insanity at the time of the alleged crime,
8 or to introduce expert testimony relating to a ~~mental disease, defect, mental~~
9 illness, intellectual disability, traumatic brain injury or other condition bearing
10 upon the issue of whether he or she had the mental state required for the
11 offense charged;

12 (2) When the defendant, the state, or an attorney, guardian, or other
13 person acting on behalf of the defendant, raises before ~~such~~ the court the issue
14 of whether the defendant is mentally competent to stand trial for the alleged
15 offense;

16 (3) When the court believes that there is doubt as to the defendant's
17 sanity at the time of the alleged offense; or

18 (4) When the court believes that there is doubt as to the defendant's
19 mental competency to be tried for the alleged offense.

1 (b) ~~Such~~ An order under this section may be issued by the court on its own
2 motion, or on motion of the state, the defendant, or an attorney, guardian, or
3 other person acting on behalf of the defendant.

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

5 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

6 (a) It is the purpose of this section to provide a mechanism by which a
7 defendant is examined in the least restrictive environment deemed sufficient to
8 complete the examination and prevent unnecessary pre-trial detention and
9 substantial threat of physical violence to any person, including a defendant.

10 (b) The order for examination may provide for an examination at any jail or
11 correctional center, or at the ~~State~~ Vermont Psychiatric Care Hospital or a
12 designated hospital, ~~or at its successor in interest~~, or at such other place as the
13 Court shall determine, after hearing a recommendation by the Commissioner of
14 Mental Health.

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

19 (d) Upon the making of a motion for examination, the Court shall order a
20 mental health screening to be completed by a designated mental health
21 professional while the defendant is still at the Court.

1 (e) If the screening cannot be commenced and completed at the courthouse
2 within two hours from the time of the defendant's appearance before the Court,
3 the Court may ~~forego~~ forgo consideration of the screener's recommendations.

4 (f) The Court and parties shall review the recommendation of the designated
5 mental health professional and consider the facts and circumstances
6 surrounding the charge and observations of the defendant in court. If the Court
7 finds sufficient facts to order an examination, it may be ordered to be
8 completed in the least restrictive environment deemed sufficient to complete
9 the examination, consistent with subsection (a) of this section.

10 (g)(1) Inpatient examination at the Vermont ~~State~~ Psychiatric Care Hospital,
11 ~~or its successor in interest~~, or a designated hospital. The Court shall not order
12 an inpatient examination unless the designated mental health professional
13 determines that the defendant is a person in need of treatment as defined in 18
14 V.S.A. § 7101(17).

15 (2) Before ordering the inpatient examination, the court shall determine
16 what terms, if any, shall govern the defendant's release from custody under
17 sections 7553-7554 of this title.

18 (3) An order for inpatient examination shall provide for placement of the
19 defendant in the custody and care of the commissioner of mental health.

20 (A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a~~
21 ~~psychiatrist of its successor in interest~~, or a designated hospital psychiatrist

1 determines prior to admission that the defendant is not in need of inpatient
2 hospitalization ~~prior to admission~~, the Commissioner shall release the
3 defendant pursuant to the terms governing the defendant's release from the
4 Commissioner's custody as ordered by the Court. The Commissioner of Mental
5 Health shall ensure that all individuals who are determined not to be in need of
6 inpatient hospitalization receive appropriate referrals for outpatient mental
7 health services.

8 (B) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a~~
9 ~~psychiatrist of its successor in interest~~, or designated hospital psychiatrist
10 determines that the defendant is in need of inpatient hospitalization:

11 (i) The Commissioner shall obtain an appropriate inpatient
12 placement for the defendant at the Vermont ~~State~~ Psychiatric Care Hospital
13 psychiatrist, ~~or a psychiatrist of its successor in interest~~, or a designated
14 hospital and, based on the defendant's clinical needs, may transfer the
15 defendant between hospitals at any time while the order is in effect. A transfer
16 to a designated hospital outside the no refusal system is subject to acceptance
17 of the patient for admission by that hospital.

18 (ii) The defendant shall be returned to court for further appearance
19 on the following business day if the defendant is no longer in need of inpatient
20 hospitalization, unless the terms established by the court pursuant to

1 subdivision (2) of this section permit the defendant to be released from
2 custody.

3 (C) The defendant shall be returned to court for further appearance
4 within two business days after the Commissioner notifies the court that the
5 examination has been completed, unless the terms established by the Court
6 pursuant to subdivision (2) of this section permit the defendant to be released
7 from custody.

8 (4) If the defendant is to be released pursuant to subdivision (3)(A),
9 (3)(B)(ii), or (3)(C) of this subsection and is not in the custody of the
10 Commissioner of Corrections, the defendant shall be returned to the
11 defendant's residence or ~~such other~~ to another appropriate place within the
12 State of Vermont by the Department of Mental Health at the expense of the
13 court.

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

1 (6) For the purposes of this subsection, "in need of inpatient
2 hospitalization" means an individual has been determined under clinical
3 standards of care to require inpatient treatment.

4 (h) Except upon good cause shown, defendants charged with misdemeanor
5 offenses who are not in the custody of the Commissioner of Corrections shall
6 be examined on an outpatient basis for mental competency. Examinations
7 occurring in the community shall be conducted at a location within 60 miles of
8 the defendant's residence or at another location agreed to by the defendant.

9 (i) As used in this section:

10 (4) "No refusal system" means a system of hospitals and intensive
11 residential recovery facilities under contract with the Department of Mental
12 Health that provides high intensity services, in which the facilities shall admit
13 any individual for care if the individual meets the eligibility criteria established
14 by the Commissioner in contract.

15 ~~(2) "Successor in interest" shall mean the mental health hospital owned~~
16 ~~and operated by the State that provides acute inpatient care and replaces the~~
17 ~~Vermont State Hospital.~~

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

19 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

20 (a) Examinations provided for in the preceding section shall have reference
21 to:

1 (1) Mental competency of the person examined to stand trial for the
2 alleged offense;

3 (2) Sanity of the person examined at the time of the alleged offense.

4 (b) A competency evaluation for an individual thought to have a
5 ~~developmental~~ intellectual disability or traumatic brain injury shall include a
6 current evaluation by a psychologist skilled in assessing individuals with
7 ~~developmental disabilities~~ those conditions.

8 (c) As soon as practicable after the examination has been completed, the
9 examining psychiatrist or psychologist, if applicable, shall prepare a report
10 containing findings in regard to each of the matters listed in subsection (a) of
11 this section. The report shall be transmitted to the Court issuing the order for
12 examination, and copies of the report shall be sent to the state's attorney, and to
13 the respondent's attorney if the respondent is represented by counsel.

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

19 (e) The relevant portion of a psychiatrist's report shall be admitted into
20 evidence as an exhibit on the issue of the person's mental competency to stand

1 trial, and the opinion therein shall be conclusive on the issue if agreed to by the
2 parties and if found by the Court to be relevant and probative on the issue.

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

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

10 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

11 (a) A person shall not be tried for a criminal offense if he or she is
12 incompetent to stand trial.

13 (b) If a person indicted, complained, or informed against for an alleged
14 criminal offense, an attorney or guardian acting in his or her behalf, or the
15 state, at any time before final judgment, raises before the court before which
16 ~~such~~ the person is tried or is to be tried, the issue of whether ~~such~~ the person is
17 incompetent to stand trial, or if the court has reason to believe that ~~such~~ the
18 person may not be competent to stand trial, a hearing shall be held before ~~such~~
19 the court at which evidence shall be received and a finding made regarding his
20 or her competency to stand trial. However, in cases where the court has reason
21 to believe that ~~such~~ the person may be incompetent to stand trial due to a

1 ~~mental disease or mental defect, such~~ illness, intellectual disability, or
2 traumatic brain injury, the hearing shall not be held until an examination has
3 been made and a report submitted by an examining psychiatrist in accordance
4 with sections 4814-4816 of this title.

5 (c) A person who has been found incompetent to stand trial for an alleged
6 offense may be tried for that offense if, upon subsequent hearing, ~~such the~~ the
7 person is found by the court having jurisdiction of his or her trial for the
8 offense to have become competent to stand trial.

9 Sec. 6. 13 V.S.A. § 4819 is amended to read:

10 § 4819. ACQUITTAL BY REASON OF INSANITY

11 When a person tried on information, complaint, or indictment is acquitted
12 by a jury by reason of insanity at the time of the alleged offense, the jury shall
13 state in its verdict of not guilty that the ~~same is given for such cause~~ acquittal is
14 for that reason.

15 Sec. 7. 13 V.S.A. § 4820 is amended to read:

16 § 4820. HEARING REGARDING COMMITMENT

17 When a person charged on information, complaint, or indictment with a
18 criminal offense:

19 (1) ~~Is~~ is reported by the examining psychiatrist following examination
20 pursuant to sections 4814-4816 of this title, to have been insane at the time of
21 the alleged offense; or

1 (2) ~~It is~~ is found upon hearing pursuant to section 4817 of this title to be
2 incompetent to stand trial due to a mental ~~disease or mental defect~~ illness,
3 intellectual disability, or traumatic brain injury; or

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

6 (4) ~~Upon~~ upon trial by court or jury is acquitted by reason of insanity at
7 the time of the alleged offense; the court before which ~~such~~ the person is tried
8 or is to be tried for ~~such~~ the offense; shall hold a hearing for the purpose of
9 determining whether ~~such~~ the person should be committed to the custody of
10 the commissioner of mental health or the commissioner of aging and
11 independent living. Such person may be confined in jail or some other suitable
12 place by order of the court pending hearing for a period not exceeding 15 days.

13 Sec. 8. 13 V.S.A. § 4821 is amended to read:

14 § 4821. NOTICE OF HEARING; PROCEDURES

15 The person who is the subject of the proceedings, his or her attorney, the
16 legal guardian, if any, the commissioner of mental health or the commissioner
17 of disabilities, aging, and independent living, and the state's attorney or other
18 prosecuting officer representing the state in the case, shall be given notice of
19 the time and place of a hearing under the preceding section. Procedures for
20 hearings for persons who are mentally ill shall be as provided in chapter 181 of
21 Title 18. Procedures for hearings for persons who are ~~mentally retarded~~

1 intellectually disabled or have a traumatic brain injury shall be as provided in
2 subchapter 3 of chapter 206 of Title 18.

3 Sec. 9. 13 V.S.A. § 4822 is amended to read:

4 § 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

5 (a) If the Court finds that ~~such~~ the person is a person in need of treatment or
6 a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
7 shall issue an order of commitment directed to the Commissioner of Mental
8 Health, which shall admit the person to the care and custody of the Department
9 of Mental Health for an indeterminate period. In any case involving personal
10 injury or threat of personal injury, the committing Court may issue an order
11 requiring a court hearing before a person committed under this section may be
12 discharged from custody.

13 (b) ~~Such~~ The order of commitment shall have the same force and effect as
14 an order issued under 18 V.S.A. §§ 7611-7622, and persons committed under
15 such an order shall have the same status, and the same rights, including the
16 right to receive care and treatment, to be examined and discharged, and to
17 apply for and obtain judicial review of their cases, as persons ordered
18 committed under 18 V.S.A. §§ 7611-7622.

19 (c) Notwithstanding the provisions of subsection (b) of this section, at least
20 10 days prior to the proposed discharge of any person committed under this
21 section the Commissioner of Mental Health shall give notice thereof to the

1 committing Court and state's attorney of the county where the prosecution
2 originated. In all cases requiring a hearing prior to discharge of a person found
3 incompetent to stand trial under section 4817 of this title, the hearing shall be
4 conducted by the committing Court issuing the order under that section. In all
5 other cases, when the committing Court orders a hearing under subsection (a)
6 of this section or when, in the discretion of the Commissioner of Mental
7 Health, a hearing should be held prior to the discharge, the hearing shall be
8 held in the Family Division of the Superior Court to determine if the
9 committed person is no longer a person in need of treatment or a patient in
10 need of further treatment as set forth in subsection (a) of this section. Notice of
11 the hearing shall be given to the Commissioner, the state's attorney of the
12 county where the prosecution originated, the committed person, and the
13 person's attorney. Prior to the hearing, the state's attorney may enter an
14 appearance in the proceedings and may request examination of the patient by
15 an independent psychiatrist, who may testify at the hearing.

16 (d) The Court may continue the hearing provided in subsection (c) of this
17 section for a period of 15 additional days upon a showing of good cause.

18 (e) If the court determines that commitment shall no longer be necessary, it
19 shall issue an order discharging the patient from the custody of the ~~department~~
20 ~~of developmental and mental health services~~ Department of Mental Health.

1 (f) The Court shall issue its findings and order not later than 15 days from
2 the date of hearing.

3 Sec. 10. 13 V.S.A. § 4823 is amended to read:

4 § 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~
5 ~~RETARDATION~~ INTELLECTUAL DISABILITY OR TRAUMATIC
6 BRAIN INJURY

7 (a) If the court finds that ~~such~~ the person is a person in need of custody, care
8 and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order
9 of commitment directed to the Commissioner of Disabilities, Aging, and
10 Independent Living for care and habilitation of such person for an indefinite or
11 limited period in a designated program.

12 (b) ~~Such~~ The order of commitment shall have the same force and effect as
13 an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~
14 the order shall have the same status, and the same rights, including the right to
15 receive care and habilitation, to be examined and discharged, and to apply for
16 and obtain judicial review of their cases, as persons ordered committed under
17 18 V.S.A. § 8843.

18 (c) Section 4822 of this title shall apply to persons proposed for discharge
19 under this section; however, judicial proceedings shall be conducted in the
20 Criminal Division of the Superior Court in which the person then resides,

1 unless the person resides out of state in which case the proceedings shall be
2 conducted in the original committing Court.

3 Sec. 11. 18 V.S.A. § 8839 is amended to read:

4 § 8839. DEFINITIONS

5 As used in this subchapter:

6 (3) "Person in need of custody, care, and habilitation" means:

7 (A) a ~~mentally retarded~~ person with an intellectual disability or a
8 traumatic brain injury;

9 (B) who presents a danger of harm to others; and

10 (C) for whom appropriate custody, care, and habilitation can be
11 provided by the commissioner in a designated program.

12 Sec. 12. CONSTRUCTION

13 This act's replacement of the terms "mental disease or mental defect" with the
14 terms "mental illness" or "intellectual disability" in chapter 157 of Title 13 shall
15 not be construed to alter the substance or effect of existing law or judicial
16 precedent. These changes in terminology are merely meant to reflect evolving
17 attitudes toward persons with disabilities.

18 Sec. 13. REPORTS

19 (a) On or before December 1, 2015 the Court Administrator shall report to
20 the House and Senate Committees on Judiciary on the number of cases from
21 July 1, 2014 through June 30, 2015 in which the Court ordered the Department
22 of Mental Health to examine a defendant pursuant to section 4814 of Title 13

1 to determine if he or she was insane at the time of the offense or is incompetent
2 to stand trial. The report shall include a break-down indicating how many
3 orders were based on mental illness, developmental disability, and traumatic
4 brain injury.

5 (b) On or before December 1, 2015 the Department of Aging and
6 Independent Living shall report to the House and Senate Committees on
7 Judiciary on its program of services for persons with traumatic brain injury.
8 The report shall include a description of the program's operations and
9 administration, how a person participates, what services are provided, the
10 number of persons who participate, the number of participants for whom a
11 traumatic brain injury has resulted in a finding of incompetency to stand trial
12 or not guilty by reason of insanity, and any recommendations for changes to
13 the program.

14 Sec. 14. EFFECTIVE DATE

15 This act shall take effect on July 1, 2014.