

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 555 entitled  
3 “An act relating to the commitment of a criminal defendant who is  
4 incompetent to stand trial because of a traumatic brain injury” respectfully  
5 reports that it has considered the same and recommends that the bill be  
6 amended by striking out all after the enacting clause and inserting in lieu  
7 thereof the following:

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

9 § 4801. TEST OF INSANITY IN CRIMINAL CASES

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

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

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

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

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, mental~~  
13 illness, intellectual disability, traumatic brain injury or other condition bearing  
14 upon the issue of whether he or she had the mental state required for the  
15 offense charged;

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

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

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~~ An order under this section may be issued by the court on its own  
4 motion, or on motion of the state, the defendant, or an attorney, guardian, or  
5 other person acting on behalf of the defendant.

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

7           § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

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

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

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

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

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

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

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

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

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

3           (A) If a Vermont ~~State~~ Psychiatric Care Hospital psychiatrist, ~~or a~~  
4 ~~psychiatrist of its successor in interest~~, or a designated hospital psychiatrist  
5 determines prior to admission that the defendant is not in need of inpatient  
6 hospitalization ~~prior to admission~~, the Commissioner shall release the  
7 defendant pursuant to the terms governing the defendant's release from the  
8 Commissioner's custody as ordered by the Court. The Commissioner of Mental  
9 Health shall ensure that all individuals who are determined not to be in need of  
10 inpatient hospitalization receive appropriate referrals for outpatient mental  
11 health services.

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

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

1                   (ii) The defendant shall be returned to court for further appearance  
2                   on the following business day if the defendant is no longer in need of inpatient  
3                   hospitalization, unless the terms established by the court pursuant to  
4                   subdivision (2) of this section permit the defendant to be released from  
5                   custody.

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

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

17                  (5) If it appears that an inpatient examination cannot reasonably be  
18                  completed within 30 days, the Court issuing the original order, on request of  
19                  the commissioner and upon good cause shown, may order placement at the  
20                  hospital extended for additional periods of 15 days in order to complete the

1 examination, and the defendant on the expiration of the period provided for in  
2 such order shall be returned in accordance with this subsection.

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

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

11 (i) As used in this section:

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

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

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

21 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

1 (a) Examinations provided for in the preceding section shall have reference  
2 to:

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

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

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

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

17 (d) No statement made in the course of the examination by the person  
18 examined, whether or not he or she has consented to the examination, shall be  
19 admitted as evidence in any criminal proceeding for the purpose of proving the  
20 commission of a criminal offense or for the purpose of impeaching testimony  
21 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 therein shall be conclusive on the issue if agreed to by the  
4 parties 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 person shall not be tried for a criminal offense if he or she is  
14 incompetent to stand trial.

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

1 or her competency to stand trial. However, in cases where the court has reason  
2 to believe that ~~such~~ the person may be incompetent to stand trial due to a  
3 mental ~~disease or mental defect, such~~ illness, intellectual disability, or  
4 traumatic brain injury, the hearing shall not be held until an examination has  
5 been made and a report submitted by an examining psychiatrist in accordance  
6 with sections 4814-4816 of this title.

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

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

12 § 4819. ACQUITTAL BY REASON OF INSANITY

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

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

18 § 4820. HEARING REGARDING COMMITMENT

19 When a person charged on information, complaint, or indictment with a  
20 criminal offense:

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

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

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

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

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

17 § 4821. NOTICE OF HEARING; PROCEDURES

18           The person who is the subject of the proceedings, his or her attorney, the  
19 legal guardian, if any, the commissioner of mental health or the commissioner  
20 of disabilities, aging, and independent living, and the state's attorney or other  
21 prosecuting officer representing the state in the case, shall be given notice of

1 the time and place of a hearing under the preceding section. Procedures for  
2 hearings for persons who are mentally ill shall be as provided in chapter 181 of  
3 Title 18. Procedures for hearings for persons who are ~~mentally retarded~~  
4 intellectually disabled or have a traumatic brain injury shall be as provided in  
5 subchapter 3 of chapter 206 of Title 18.

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

7 § 4822. FINDINGS AND ORDER; MENTALLY ILL PERSONS

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

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

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

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

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

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

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

7 § 4823. FINDINGS AND ORDER; PERSONS WITH ~~MENTAL~~  
8 ~~RETARDATION~~ INTELLECTUAL DISABILITY OR TRAUMATIC  
9 BRAIN INJURY

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

15 (b) ~~Such~~ The order of commitment shall have the same force and effect as  
16 an order issued under 18 V.S.A. § 8843 and persons committed under ~~such an~~  
17 the order shall have the same status, and the same rights, including the right to  
18 receive care and habilitation, to be examined and discharged, and to apply for  
19 and obtain judicial review of their cases, as persons ordered committed under  
20 18 V.S.A. § 8843.

1 (c) Section 4822 of this title shall apply to persons proposed for discharge  
2 under this section; however, judicial proceedings shall be conducted in the  
3 Criminal Division of the Superior Court in which the person then resides,  
4 unless the person resides out of state in which case the proceedings shall be  
5 conducted in the original committing Court.

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

7 § 8839. DEFINITIONS

8 As used in this subchapter:

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

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

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

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

15 Sec. 12. CONSTRUCTION

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

21 Sec. 13. REPORTS

1       (a) On or before September 1, 2014 the Court Administrator shall report to  
2       the House and Senate Committees on Judiciary on the number of cases from  
3       July 1, 2011 through June 30, 2013 in which the Court ordered the Department  
4       of Mental Health to examine a defendant pursuant to section 4814 of Title 13  
5       to determine if he or she was insane at the time of the offense or is incompetent  
6       to stand trial. The report shall include a break-down indicating how many  
7       orders were based on mental illness, developmental disability, and traumatic  
8       brain injury, and shall include the number of persons who were found to be in  
9       need of custody, care and habilitation under section 4823 of Title 13. A copy  
10       of the report shall be provided to the Department of Disabilities, Aging, and  
11       Independent Living.

12       (b)(1) On or before September 1, 2014, the Department of Sheriffs and  
13       State's Attorneys shall report to the House and Senate Committees on  
14       Judiciary regarding the charging practices of State's Attorneys for persons with  
15       traumatic brain injury.

16       (2) The report shall describe the number of cases from July 1, 2011  
17       through June 30, 2013, broken down by the type of criminal charge, in which a  
18       person with traumatic brain injury was:

19               (A) charged with a criminal offense, including the disposition of the  
20       offense;



1           (B) charged with a criminal offense and the charges were dismissed  
2           because the person was suffering from a traumatic brain injury; and  
3           (C) arrested for or otherwise determined to be responsible for a crime  
4           and criminal charges were not brought because the person was suffering from a  
5           traumatic brain injury.

6           (3) A copy of the report shall be provided to the Department of  
7           Disabilities, Aging, and Independent Living.

8           (c) On or before October 1, 2014 and on or before February 1, 2015, the  
9           Department of Disabilities, Aging, and Independent Living shall report to the  
10           House and Senate Committees on Judiciary on the status of the Department's  
11           implementation of this Act. The status reports shall include updates on the  
12           Department's progress developing the programs and services needed to treat  
13           persons with traumatic brain injuries who have been found not guilty by reason  
14           of insanity or incompetent to stand trial as required by this Act.

15           Sec. 14. EFFECTIVE DATE

16           (a) Secs. 1-12 of this act shall take effect on July 1, 2015.

17           (b) Secs. 13 and 14 of this act shall take effect on passage.

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3 (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE