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H.712

Introduced by Representative Clarkson of Woodstock

Referred to Committee on

Date:

Subject: Criminal procedures; insanity as a defense

Statement of purpose of bill as introduced: This bill proposes to modernize
and update Vermont statutes relating to the insanity defense in criminal cases.

An act relating to insanity as a defense in criminal cases

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

Sec. 1. 13 V.S.A. chapter 157 is amended to read:

CHAPTER 157. INSANITY AS A DEFENSE

§ 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, 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” do~~ term “mental illness” means
a substantial disorder of thought, mood, perception, orientation, or memory,
any of which grossly impairs judgment, behavior, capacity to recognize reality,

1 or ability to meet the ordinary demands of life. The term “mental illness” shall
2 not include an abnormality manifested only by repeated criminal or otherwise
3 anti-social conduct. ~~The terms “mental disease or defect” shall include~~
4 ~~congenital and traumatic mental conditions as well as disease.~~

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

7 § 4802. M’NAGHTEN TEST ABOLISHED

8 The M’Naghten test of insanity in criminal cases is hereby abolished.

9 § 4814. ORDER FOR EXAMINATION

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

14 (1) when the defendant enters a plea of not guilty, or when such a plea is
15 entered ~~in~~ on the defendant’s behalf, and then gives notice of the defendant’s
16 intention to rely upon the defense of insanity at the time of the alleged crime,
17 or to introduce expert testimony relating to a mental ~~disease, defect,~~ illness or
18 other condition bearing upon the issue of whether he or she had the mental
19 state required for the offense charged;

20 (2) when the defendant, the State, or an attorney, guardian, or other
21 person acting on behalf of the defendant, raises before ~~such~~ the court the issue

1 of whether the defendant is mentally competent to stand trial for the alleged
2 offense;

3 (3) when the Court believes that there is doubt as to the defendant's
4 sanity at the time of the alleged offense; or

5 (4) when the Court believes that there is doubt as to the defendant's
6 mental competency to be tried for the alleged offense.

7 (b) ~~Such~~ An order under this section may be issued by the Court on its own
8 motion, or on motion of the State, the defendant, or an attorney, guardian, or
9 other person acting on behalf of the defendant.

10 (c) Any court order for examination shall include an order releasing all
11 relevant medical records concerning the defendant to the psychiatrist prior to
12 completion of the examination and issuance of the report.

13 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

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

18 (b) The order for examination may provide for an examination at any jail or
19 correctional center, or at the ~~State Hospital, or at its successor in interest~~
20 Vermont Psychiatric Care Hospital or at a designated hospital, or at such other

1 place as the Court shall determine, after hearing a recommendation by the
2 Commissioner of Mental Health.

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

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

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

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

19 (g)(1) Inpatient examination at the Vermont ~~State Hospital, or its successor~~
20 ~~in interest, or a~~ Psychiatric Care Hospital or other designated hospital. The
21 Court shall not order an inpatient examination unless the designated mental

1 health professional determines that the defendant is a person in need of
2 treatment as defined in 18 V.S.A. § 7101(17).

3 (2) Before ordering the inpatient examination, the Court shall determine
4 what terms, if any, shall govern the defendant's release from custody under
5 sections 7553-7554 of this title.

6 (3) An order for inpatient examination shall provide for placement of the
7 defendant in the custody and care of the Commissioner of Mental Health.

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

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

20 (i) The Commissioner of Mental Health shall obtain an
21 appropriate inpatient placement for the defendant at the Vermont ~~State~~

1 Psychiatric Care Hospital ~~psychiatrist, or a psychiatrist of its successor in~~
2 ~~interest,~~ or a other designated hospital and, based on the defendant's clinical
3 needs, may transfer the defendant between hospitals at any time while the
4 order is in effect. A transfer to a ~~designated~~ hospital outside the no refusal
5 system is subject to acceptance of the patient for admission by that hospital.

6 (ii) The defendant shall be returned to court for further appearance
7 on the following business day ~~if~~ when the psychiatrist determines that the
8 defendant is no longer in need of inpatient hospitalization, unless the terms
9 established by the court pursuant to subdivision (2) of this section permit the
10 defendant to be released from custody.

11 (C) The defendant shall be returned to court for further appearance
12 within two business days after the Commissioner of Mental Health notifies the
13 Court that the examination has been completed, unless the terms established by
14 the Court pursuant to subdivision (2) of this section permit the defendant to be
15 released from custody.

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

1 (5) ~~If it appears that an inpatient examination cannot reasonably be~~
2 ~~completed within 30 days, the Court issuing the original order, on request of~~
3 ~~the Commissioner of Mental Health and upon good cause shown may order~~
4 ~~placement at the hospital extended for additional periods of 15 days in order to~~
5 ~~complete the examination, and the defendant on the expiration of the period~~
6 ~~provided for in such order shall be returned in accordance with this subsection~~
7 Inpatient psychiatric examinations shall be completed within 30 days of being
8 ordered.

9 (6) ~~For the purposes of~~ As used in this subsection, “in need of inpatient
10 hospitalization” means an individual a defendant has been determined under
11 clinical standards of care to require inpatient treatment to be a “person in need
12 of treatment” as defined in 18 V.S.A. § 7101(17) and that there is no less
13 restrictive alternative to hospitalization.

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

19 (i) As used in this section:

20 (1) “No refusal system” means a system of hospitals and intensive
21 residential recovery facilities under contract with the Department of Mental

1 Health that provides high intensity services, in which the facilities shall admit
2 any individual for care if the individual meets the eligibility criteria established
3 by the Commissioner in contract.

4 (2) ~~“Successor in interest” shall mean the mental health hospital owned~~
5 ~~and operated by the State that provides acute inpatient care and replaces the~~
6 ~~Vermont State Hospital. [Repealed.]~~

7 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

8 (a) Examinations provided for in the preceding section shall have
9 reference to:

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

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

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

18 (c) As soon as practicable after the examination has been completed, the
19 examining psychiatrist or psychologist, if applicable, shall prepare a report
20 containing findings in regard to each of the matters listed in subsection (a) of
21 this section. The report shall be transmitted to the court issuing the order for

1 examination, and copies of the report sent to the Commissioner of Mental
2 Health, the State's Attorney, and to the ~~respondent's~~ defendant's attorney if the

3 ~~respondent~~ defendant is represented by counsel.

4 (d) No statement made in the course of the examination by the ~~person~~
5 defendant examined, whether or not he or she has consented to the
6 examination, shall be admitted as evidence in any criminal proceeding for the
7 purpose of proving the commission of a criminal offense or for the purpose of
8 impeaching testimony of the ~~person~~ defendant examined.

9 (e) The relevant portion of a psychiatrist's report shall be admitted into
10 evidence as an exhibit on the issue of the ~~person's~~ defendant's mental
11 competency to stand trial and the opinion therein shall be conclusive on the
12 issue if agreed to by the parties and if found by the Court to be relevant and
13 probative on the issue.

14 (f) Introduction of a report under subsection (d) of this section shall not
15 preclude either party or the Court from calling the psychiatrist who wrote the
16 report as a witness or from calling witnesses or introducing other relevant
17 evidence. Any witness called by either party on the issue of the defendant's
18 competency shall be at the ~~State's~~ expense of the party calling the witness, or,
19 if called by the Court, at the Court's expense.

1 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

2 (a) A ~~person~~ defendant shall not be tried for a criminal offense if he or she
3 is incompetent to stand trial.

4 (b) If a ~~person~~ defendant indicted, complained, or informed against for an
5 alleged criminal offense, an attorney or guardian acting in his or her behalf, or
6 the State, at any time before final judgment, raises before the court before
7 which ~~such person~~ the defendant is tried or is to be tried, the issue of whether
8 ~~such person~~ the defendant is incompetent to stand trial, or if the court has
9 reason to believe that ~~such person~~ the defendant may not be competent to stand
10 trial, a hearing shall be held before ~~such~~ the court at which evidence shall be
11 received and a finding made regarding his or her competency to stand trial.

12 However, in cases where the court has reason to believe that ~~such person~~ the
13 defendant may be incompetent to stand trial due to a mental ~~disease or mental~~
14 ~~defect~~ illness, ~~such~~ the hearing shall not be held until an examination has been
15 made and a report submitted by an examining psychiatrist in accordance with
16 sections 4814-4816 of this title.

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

1 § 4818. FAILURE TO INDICT BY REASON OF INSANITY

2 When a grand jury before which an indictment is heard returns the
3 indictment as not found by reason of insanity of the ~~person~~ defendant so
4 charged at the time of the alleged offense, the grand jury shall so certify to the
5 court.

6 § 4819. ACQUITTAL BY REASON OF INSANITY

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

10 § 4820. HEARING REGARDING COMMITMENT

11 When a ~~person~~ defendant charged on information, complaint, or indictment
12 with a criminal offense:

13 (1) Is reported by the examining psychiatrist following examination
14 pursuant to sections 4814-4816 of this title to have been insane at the time of
15 the alleged offense.

16 (2) Is found upon hearing pursuant to section 4817 of this title to be
17 incompetent to stand trial due to a mental ~~disease or mental defect~~ illness.

18 (3) Is not indicted upon hearing by grand jury by reason of insanity at
19 the time of the alleged offense, duly certified to the court.

20 (4) Upon trial by court or jury is acquitted by reason of insanity at the
21 time of the alleged offense; the court before which ~~such person~~ the defendant is

1 tried or is to be tried for such offense, shall hold a hearing for the purpose of
2 determining whether ~~such person~~ the defendant should be committed to the
3 custody of the Commissioner of Mental Health. ~~Such person~~ The defendant
4 may be confined in jail or some other suitable place by order of the court
5 pending hearing for a period not ~~exceeding~~ to exceed 15 days.

6 § 4821. NOTICE OF HEARING; PROCEDURES

7 The ~~person~~ defendant who is the subject of the proceedings, his or her
8 attorney, the legal guardian, if any, the Commissioner of Mental Health or the
9 Commissioner of Disabilities, Aging, and Independent Living, and the State's
10 Attorney or other prosecuting officer representing the State in the case, shall be
11 given notice of the time and place of a hearing and standing to appear under
12 ~~the preceding~~ section 4820 of this title. Procedures for hearings for ~~persons~~
13 defendants with a mental illness shall be as provided in 18 V.S.A. chapter 181.
14 Procedures for hearings for ~~persons~~ defendants with an intellectual disability
15 shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

16 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

17 (a) If the Court finds that the ~~person~~ defendant is a person in need of
18 treatment or a patient in need of further treatment as defined in 18 V.S.A.
19 § 7101, the Court shall issue an order of commitment directed to the
20 Commissioner of Mental Health, which shall admit the ~~person~~ defendant to the
21 care and custody of the ~~Department~~ Commissioner of Mental Health for an

1 indeterminate period. In any case involving personal injury or threat of
2 personal injury, the committing court may issue an order requiring a court
3 hearing before a ~~person~~ defendant committed under this section may be
4 discharged from custody.

5 (b) The purpose of treatment for a defendant committed under this chapter
6 shall include the restoration of competency. The Commissioner of Mental
7 Health shall designate the specific placement of defendants committed under
8 this chapter. A defendant committed under this chapter shall be evaluated on a
9 regular basis, at the expense of the court, to determine if competency has been
10 restored. The Commissioner of Mental Health, the State's Attorney, the
11 defendant's attorney, and the committing court shall be notified of the results
12 of the evaluation.

13 (c) An order of commitment issued pursuant to this section shall have the
14 same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and a
15 ~~person~~ defendant committed under this order shall have the same status and the
16 same rights, including the right to receive care and treatment, to be examined
17 and discharged, and to apply for and obtain judicial review of his or her case,
18 as a ~~person~~ defendant ordered committed under 18 V.S.A. §§ 7611-7622.

19 (e)(d) Notwithstanding the provisions of subsection (b)(c) of this section, at
20 ~~least 10 days~~ prior to the proposed discharge from custody of any ~~person~~
21 defendant committed under this section, the Commissioner of Mental Health

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

17 ~~(d)~~(e) The Court may continue the hearing provided in subsection ~~(e)~~(a) of
18 this section for a period of ~~15~~ seven additional days upon a showing of good
19 cause.

1 abnormality manifested only by repeated criminal or otherwise anti-social
2 conduct.

3 * * *

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

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

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

1 incompetent to stand trial, or if the court has reason to believe that the
2 defendant may not be competent to stand trial, a hearing shall be held before
3 the court at which evidence shall be received and a finding made regarding his
4 or her competency to stand trial. However, in cases where the court has reason
5 to believe that the defendant may be incompetent to stand trial due to a mental
6 illness, intellectual disability, or traumatic brain injury, the hearing shall not be
7 held until an examination has been made and a report submitted by an
8 examining psychiatrist in accordance with sections 4814-4816 of this title.

9 * * *

10 § 4820. HEARING REGARDING COMMITMENT

11 ~~When a defendant charged on information, complaint, or indictment with a~~
12 ~~criminal offense:~~

13 (1) ~~Is reported by the examining psychiatrist following examination~~
14 ~~pursuant to sections 4814-4816 of this title to have been insane at the time of~~
15 ~~the alleged offense.~~

16 (2) ~~Is found upon hearing pursuant to section 4817 of this title to be~~
17 ~~incompetent to stand trial due to a mental illness.~~

18 (3) ~~Is not indicted upon hearing by grand jury by reason of insanity at~~
19 ~~the time of the alleged offense, duly certified to the court.~~

20 (4) ~~Upon trial by court or jury is acquitted by reason of insanity at the~~
21 ~~time of the alleged offense; the court before which such defendant is tried or is~~

1 ~~to be tried for such offense, shall hold a hearing for the purpose of determining~~
2 ~~whether such defendant should be committed to the custody of the~~
3 ~~Commissioner of Mental Health. The defendant may be confined in jail or~~
4 ~~some other suitable place by order of the court pending hearing for a period not~~
5 ~~to exceed 15 days.~~

6 (a) The Court before which a defendant is tried or is to be tried for a
7 criminal offense shall hold a hearing for the purpose of determining whether
8 the defendant should be committed to the custody of the Commissioner of
9 Mental Health or, as provided in 18 V.S.A. chapter 206, to the Commissioner
10 of Disabilities, Aging, and Independent Living, if the defendant is charged on
11 information, complaint, or indictment with the offense and:

12 (1) is reported by the examining psychiatrist following examination
13 pursuant to sections 4814-4816 of this title to have been insane at the time of
14 the alleged offense;

15 (2) is found upon hearing pursuant to section 4817 of this title to be
16 incompetent to stand trial due to a mental illness, intellectual disability, or
17 traumatic brain injury;

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

20 (4) upon trial by court or jury is acquitted by reason of insanity at the
21 time of the alleged offense.

