

TO: House Committee on Corrections and Institutions
FROM: Jack McCullough
SUBJECT: S. 61--Offenders with Mental Illness
DATE: April 12, 2017

Thank you for the opportunity to comment on this legislation.

I had the opportunity to participate in the commission that gave rise to this legislation, and the Mental Health Law Project broadly supports this legislation. In particular, we agree with the concept embodied in Section 1 of the bill that because of the expertise in dealing with mental health issues it is important to rest responsibility for litigating those issues on Vermont Legal Aid and the Attorney General's office.

I do have one technical proposal. As written the bill would have the Criminal Division of the Superior Court appoint the Mental Health Law Project of Vermont Legal Aid to represent all defendants found incompetent to stand trial. Because some of these defendants are incompetent not because of a mental illness but because of a developmental disability or traumatic brain injury, they might be represented not by the Mental Health Law Project but by the Disability Law Project. Consequently, we propose to amend Section 1 as follows:

*(c) For a person who is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to mental illness or developmental disability, the court shall appoint counsel **from the Mental Health Law Project Vermont Legal Aid** to represent the person who is the subject of the proceedings and from the Office of the Attorney General to represent the State in the proceedings.*

In addition, it is important to point out that Vermont Legal Aid does not at present have the resources to take on this additional caseload. We would anticipate that in the lead-up to July 1, 2018, the effective date of this section, we would enter into a new or amended contract with the state to obtain additional funding for these new cases.