

1 H.144

2 Introduced by Representative Donahue of Northfield

3 Referred to Committee on

4 Date:

5 Subject: Health; mental health; judiciary; commitment

6 Statement of purpose of bill as introduced: This bill proposes to distinguish
7 between mental illness, developmental disabilities, and traumatic brain injuries
8 for the purpose of examining competency in relation to criminal proceedings.

9 It also amends existing commitment processes for individuals with a mental
10 illness to ensure medical necessity is taken into account.

11 An act relating to accounting for medical necessity in commitment
12 decisions

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

14 * * * Insanity as a Defense * * *

15 Sec. 1. 13 V.S.A. § 4801(a) is amended to read:

16 § 4801. TEST OF INSANITY IN CRIMINAL CASES

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

18 * * *

19 (2) The terms “mental disease or defect” do not include an abnormality
20 manifested only by repeated criminal or otherwise anti-social conduct. The

1 terms “mental disease or defect” shall include congenital, degenerative, and
2 traumatic ~~mental~~ brain conditions as well as disease.

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 or order the Department of Disabilities, Aging, and Independent Living to have
8 the defendant examined by a psychologist or other medical professional, as
9 appropriate, at any time before, during, or after trial, and before final judgment
10 in any of the following cases:

11 * * *

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

13 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

14 * * *

15 (b) The order for examination may provide for an examination at any jail or
16 correctional center, or at the State Hospital, or at its successor in interest, or at
17 such other place as the court shall determine, after hearing a recommendation
18 by the Commissioner of Mental Health or of Disabilities, Aging, and
19 Independent Living, as appropriate.

20 * * *

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

2 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

3 * * *

4 (b) A competency evaluation for an individual thought to have a
5 ~~developmental disability~~ congenital, degenerative, or traumatic brain condition
6 shall include a current evaluation by a psychologist or other appropriate
7 medical professional skilled in assessing individuals with ~~developmental~~
8 ~~disabilities~~ a congenital, degenerative, or traumatic brain condition.

9 * * *

10 Sec. 5. 13 V.S.A. § 4820 is amended to read:

11 § 4820. ~~HEARING REGARDING COMMITMENT~~ DETERMINATION OF
12 COMPETENCY OR SANITY; TRANSFER TO FAMILY
13 DIVISION

14 (a) ~~When~~ The court shall transfer the case to the Family Division pursuant
15 to subsection (b) of this section when a person charged on information,
16 complaint, or indictment with a criminal offense:

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

20 (2) ~~Is is~~ is found upon hearing pursuant to section 4817 of this title to be
21 incompetent to stand trial due to a mental disease or mental defect;:

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

3 (4) ~~Upon~~ upon trial by court or jury, is acquitted by reason of insanity at
4 the time of the alleged offense;

5 **(b) Upon a finding that one of the criteria in subdivisions (a)(1) through (4)**
6 **of this section has been met, the court before which such person is tried or is to**
7 **be tried for such offense, shall hold a hearing for the purpose of determining**
8 **whether such person should be committed to the custody of the Commissioner**
9 **of Mental Health shall transfer the case to the Family Division of the Superior**
10 **Court for a hearing pursuant to 18 V.S.A. §§ 7612–7616 for the purpose of**
11 **determining whether the person is a person in need of treatment or a patient in**
12 **need of further treatment as defined in 18 V.S.A. § 7101 or a person in need of**
13 **custody, care, and habilitation as defined in 18 V.S.A. § 8839. Such person**
14 **may be confined in jail or some other suitable place by order of the court**
15 **pending hearing for a period not exceeding 15 days.**

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

17 § 4822. ~~FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS~~

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

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

5 (b) ~~An order of commitment issued pursuant to this section shall have the~~
6 ~~same force and effect as an order issued under 18 V.S.A. §§ 7611-7622, and a~~
7 ~~person committed under this order shall have the same status and the same~~
8 ~~rights, including the right to receive care and treatment, to be examined and~~
9 ~~discharged, and to apply for and obtain judicial review of his or her case, as a~~
10 ~~person ordered committed under 18 V.S.A. §§ 7611-7622.~~

11 (c) ~~Notwithstanding the provisions of subsection (b) of this section, at least~~
12 ~~10 days prior to the proposed discharge of any person committed under this~~
13 ~~section, the Commissioner of Mental Health shall give notice of the discharge~~
14 ~~to the committing court and State's Attorney of the county where the~~
15 ~~prosecution originated. In all cases requiring a hearing prior to discharge of a~~
16 ~~person found incompetent to stand trial under section 4817 of this title, the~~
17 ~~hearing shall be conducted by the committing court issuing the order under that~~
18 ~~section. In all other cases, when the committing court orders a hearing under~~
19 ~~subsection (a) of this section or when, in the discretion of the Commissioner of~~
20 ~~Mental Health, a hearing should be held prior to the discharge, the hearing~~
21 ~~shall be held in the Family Division of the Superior Court to determine if the~~

1 committed person is no longer a person in need of treatment or a patient in
2 need of further treatment as set forth in subsection (a) of this section. Notice of
3 the hearing shall be given to the Commissioner, the State's Attorney of the
4 county where the prosecution originated, the committed person, and the
5 person's attorney. Prior to the hearing, the State's Attorney may enter an
6 appearance in the proceedings and may request examination of the patient by
7 an independent psychiatrist, who may testify at the hearing.

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

10 (e) If the court determines that commitment shall no longer be necessary, it
11 shall issue an order discharging the patient from the custody of the Department
12 of Mental Health.

13 (f) The court shall issue its findings and order not later than 15 days from
14 the date of hearing. [Repealed.]

15 Sec. 7. 13 V.S.A. § 4823 is amended to read:

16 § 4823. ~~FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL~~
17 ~~DISABILITY~~

18 (a) If the court finds that such person is a person in need of custody, care,
19 and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order
20 of commitment directed to the Commissioner of Disabilities, Aging, and

1 ~~Independent Living for care and habilitation of such person for an indefinite or~~
2 ~~limited period in a designated program.~~

3 ~~(b) Such order of commitment shall have the same force and effect as an~~
4 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
5 ~~order shall have the same status, and the same rights, including the right to~~
6 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
7 ~~and obtain judicial review of their cases, as persons ordered committed under~~
8 ~~18 V.S.A. § 8843.~~

9 ~~(c) Section 4822 of this title shall apply to persons proposed for discharge~~
10 ~~under this section; however, judicial proceedings shall be conducted in the~~
11 ~~Criminal Division of the Superior Court in which the person then resides,~~
12 ~~unless the person resides out of State in which case the proceedings shall be~~
13 ~~conducted in the original committing court. [Repealed.]~~

14 * * * Involuntary Treatment * * *

15 Sec. 8. 18 V.S.A. § 7101 is amended to read:

16 § 7101. DEFINITIONS

17 As used in this part of this title, the following words, unless the context
18 otherwise requires, shall have the following meanings:

19 * * *

20 (17) “A person in need of treatment” means a person who has a mental
21 illness and, as a result of that mental illness, his or her capacity to exercise self-

1 control, judgment, or discretion in the conduct of his or her affairs and social
2 relations is so lessened that he or she poses a danger of harm to himself, ~~to~~ or
3 herself; or to others:

4 (A) A danger of harm to others may be shown by establishing that:

5 (i) he or she has inflicted or attempted to inflict bodily harm on
6 another; or

7 (ii) by his or her threats or actions he or she has placed others in
8 reasonable fear of physical harm to themselves; ~~or~~

9 (iii) by his or her actions or inactions he or she has presented a
10 danger to persons in his or her care;

11 (iv) by his or her violation of a criminal statute that placed another
12 person at risk of harm, although the person in need of treatment was found to
13 be insane pursuant to 13 V.S.A. § 4801; or

14 (v) by his or her violation of a criminal statute that placed another
15 person at risk of harm, although the person in need of treatment was found not
16 competent to stand trial pursuant to 13 V.S.A. § 4817.

17 (B) A danger of harm to himself or herself may be shown by
18 establishing that:

19 (i) he or she has threatened or attempted suicide or serious bodily
20 harm; or

1 (ii) he or she has behaved in such a manner as to indicate that he
2 or she is unable, without supervision and the assistance of others, to satisfy his
3 or her need for nourishment, personal or medical care, shelter, or self-
4 protection and safety, so that it is probable that death, substantial physical
5 bodily injury, serious mental deterioration, or serious physical debilitation or
6 disease will ensue unless adequate treatment is afforded.

7 * * *

8 Sec. 9. 18 V.S.A. § 7510 is amended to read:

9 § 7510. PRELIMINARY HEARING

10 (a) Within five days after a person is admitted to a designated hospital for
11 emergency examination, he or she may request the ~~Criminal~~ Family Division
12 of the Superior Court to conduct a preliminary hearing to determine whether
13 there is probable cause to believe that he or she was a person in need of
14 treatment at the time of his or her admission.

15 * * *

16 Sec. 10. 18 V.S.A. § 7612a is redesignated to read:

17 § ~~7612a~~ 7612b. PROBABLE CAUSE REVIEW

1 Sec. 11. 18 V.S.A. § 7612a is added to read:

2 § 7612a. REFERRAL FROM THE CRIMINAL DIVISION

3 A referral from the Criminal Division of the Superior Court pursuant to
4 13 V.S.A. § 4820 shall have the same effect and meaning as an application for
5 involuntary treatment.

6 Sec. 12. 18 V.S.A. § 7617 is amended to read:

7 § 7617. FINDINGS; ORDER

8 (a) If the court finds that the proposed patient was not a person in need of
9 treatment at the time of admission to a hospital or at the time of application for
10 involuntary treatment or is not a patient in need of further treatment at the time
11 of the hearing, the court shall enter a finding to that effect and shall dismiss the
12 application.

13 (b) If the proposed patient is found to have been a person in need of
14 treatment at the time of admission to a hospital or at the time of application for
15 involuntary treatment and a patient in need of further treatment at the time of
16 the hearing, the court may order the person:

17 ~~(1) hospitalized in a designated hospital;~~

18 ~~(2) hospitalized in any other public or private hospital if he or she and~~
19 ~~the hospital agree; or~~

20 ~~(3) to undergo a program of treatment other than hospitalization to be~~
21 committed to the care and custody of the Commissioner of Mental Health for a

1 period of up to 90 days if the Commissioner determines that an appropriate
2 program exists to provide treatment.

3 ~~(c)(1) Prior to ordering any course of treatment, the court shall determine~~
4 ~~whether there exists an available program of treatment for the person which is~~
5 ~~an appropriate alternative to hospitalization. The court shall not order~~
6 ~~hospitalization without a thorough consideration of available alternatives. The~~
7 ~~order for involuntary commitment may require treatment in an inpatient setting~~
8 ~~if:~~

9 ~~(A) the Commissioner recommends that the person is in need of~~
10 ~~inpatient hospitalization;~~

11 ~~(B) the court determines that the person is in need of inpatient~~
12 ~~hospitalization; and~~

13 ~~(C) a no less restrictive means exist to protect the person or others~~
14 ~~from danger.~~

15 ~~(2) Preference between available hospitals shall be given to the hospital~~
16 ~~that is located nearest the person's residence, except when the person requests~~
17 ~~otherwise or there are other compelling reasons for not following the~~
18 ~~preference.~~

19 ~~(3) If the person is not already hospitalized, an order for conditional~~
20 ~~hospitalization shall be issued for the purpose of the Commissioner~~
21 ~~transporting the person under his or her care and custody to a hospital for an~~

1 admitting physician's determination of medical necessity. If a person is found
2 not to meet criteria for medical necessity, the person shall be transported
3 forthwith to the court issuing the order, unless the conditional order also
4 included an alternative order for less restrictive treatment.

5 ~~(d)(1) Before making its decision, the court shall order testimony by an~~
6 ~~appropriate representative of a hospital, a community mental health agency,~~
7 ~~public or private entity or agency, or a suitable person, who shall assess the~~
8 ~~availability and appropriateness for the individual of treatment programs other~~
9 ~~than hospitalization. The court may issue an order for treatment in a secure~~
10 residential recovery facility if:

11 (A) the Commissioner recommends that the person is not in need of
12 inpatient hospitalization;

13 (B) the court determines that the person is not in need of inpatient
14 hospitalization or an admitting physician finds that inpatient hospitalization is
15 not medically necessary; and

16 (C) a no less restrictive means exist to protect the person or others.

17 (2) If the Commissioner seeks to have the patient receive treatment in a
18 secure residential recovery facility, the application for an order authorizing
19 treatment shall expressly state that such treatment is being sought. The
20 application shall contain a statement setting forth the reasons for the
21 Commissioner's determination that clinically appropriate treatment for the

1 patient's condition can be provided safely only in a secure residential recovery
2 facility.

3 ~~(e) Prior to ordering the hospitalization of a person, the court shall inquire~~
4 ~~into the adequacy of treatment to be provided to the person by the hospital.~~
5 ~~Hospitalization shall not be ordered unless the hospital in which the person is~~
6 ~~to be hospitalized can provide him or her with treatment which is adequate and~~
7 ~~appropriate to his or her condition~~ If the Commissioner recommends less
8 restrictive alternatives to a hospital or a secure residential facility, the court
9 shall order testimony by an appropriate community mental health agency,
10 public or private entity or agency, or other suitable person, who shall assess the
11 availability and appropriateness of other treatment programs for the person to
12 be offered by the agency or entity. An order for less restrictive treatment shall
13 only include treatment that is available and appropriate and shall include the
14 least restrictive conditions necessary to protect the person or others from
15 danger of harm.

16 ~~(f) Preference between available hospitals shall be given to the hospital~~
17 ~~which is located nearest to the person's residence, except when the person~~
18 ~~requests otherwise or there are other compelling reasons for not following the~~
19 ~~preference~~ A person shall not be committed to the care and custody of the
20 Commissioner for treatment if the person is competent to consent to treatment
21 and provides consent to the recommended treatment, unless the person has

1 been found to pose a danger of harm to others pursuant to subdivisions
2 1701(17)(A)(iv) or (v) of this title.

3 Sec. 13. 18 V.S.A. § 7618 is amended to read:

4 § 7618. COMMITMENT ORDER; NONHOSPITALIZATION FOR LESS
5 RESTRICTIVE TREATMENT

6 (a) ~~If the court finds that a treatment program other than hospitalization is~~
7 ~~adequate to meet the person's treatment needs, the court shall order the person~~
8 ~~to receive whatever treatment other than hospitalization is appropriate for a~~
9 ~~period of 90 days. [Repealed.]~~

10 (b) If at any time during the specified period ~~it comes to the attention of the~~
11 ~~court~~ the Commissioner files a motion alleging either that the patient is not
12 complying with the order or that the alternative treatment has not been
13 adequate to meet the patient's treatment needs, the court may, after proper
14 hearing:

15 (1) ~~Consider~~ consider other alternatives, modify its original order, and
16 direct the patient to undergo another program of alternative treatment for the
17 remainder of the 90-day period; or

18 (2) ~~Enter a new order directing that the patient be hospitalized for the~~
19 ~~remainder of the 90-day period~~ if the Commissioner recommends and the court
20 determines that the person is in need of inpatient hospitalization and no less
21 restrictive means exist to protect the person or others, the commitment order

1 may be modified to require involuntary inpatient treatment pursuant to
2 subsection 7617(c) of this title.

3 Sec. 14. 18 V.S.A. § 7619 is amended to read:

4 § 7619. TERMINATION OF HOSPITALIZATION ORDER;

5 HOSPITALIZATION

6 ~~An initial order of hospitalization shall be for a period of 90 days from the~~
7 ~~date of the hearing~~ A hospitalization order for a person committed to the care
8 and custody of the Commissioner shall terminate when the treating inpatient
9 physician determines hospitalization is no longer medically necessary. The
10 Commissioner may request the court to modify an order to require treatment at
11 a secure residential recovery facility pursuant to subsection 7617(d) of this title
12 or less restrictive treatment pursuant to subsection 7617(e) of this title.

13 Sec. 15. 18 V.S.A. § 7630 is added to read:

14 § 7630. NOTICE TO STATE'S ATTORNEY

15 If a person in need of treatment was found to have placed another person at
16 risk of harm due to his or her violation of a criminal statute, but was not found
17 competent to stand trial pursuant to subdivision 7101(17)(v) of this title, the
18 State's Attorney shall be notified by the Commissioner at the following
19 interims for the purpose of determining whether to move for a competency
20 evaluation:

1 Sec. 17. 18 V.S.A. § 7709 is amended to read:

2 § 7709. CHANGE FROM INVOLUNTARY TO VOLUNTARY

3 At any time, a patient may, ~~with the permission of the head of the hospital,~~
4 have his or her status changed from involuntary to voluntary upon making
5 application as provided in section 7503 of this title.

6 * * * Mentally Ill Users of Alcohol or Drugs * * *

7 Sec. 18. REPEAL

8 18 V.S.A. chapter 197 (mentally ill users of alcohol or drugs) is repealed.

9 * * * Commitment to the Commissioner of Disabilities, Aging, and
10 Independent Living * * *

11 Sec. 19. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

12 Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability
13 Who Present a Danger of Harm to Others

14 § 8839. DEFINITIONS

15 As used in this subchapter:

16 (1) "Danger of harm to others" means:

17 (A) the person has inflicted or attempted to inflict serious bodily
18 injury to another or has committed an act that would constitute a sexual assault
19 or lewd or lascivious conduct with a child;

1 (B) the person violated a criminal statute that placed another person
2 at risk of harm, although the person in need of treatment was found to be
3 insane pursuant to 13 V.S.A. § 4801; or

4 (C) the person violated a criminal statute that placed another person
5 at risk of harm, although the person in need of treatment was found not
6 competent to stand trial pursuant to 13 V.S.A. § 4817.

7 * * *

8 § 8840. JURISDICTION AND VENUE

9 (a) Proceedings brought under this subchapter for commitment to the
10 Commissioner for custody, care, and habilitation shall be commenced by
11 petition in the ~~Criminal~~ Family Division of the Superior Court for the unit in
12 which the respondent resides.

13 (b) A referral from the Criminal Division of the Superior Court pursuant to
14 13 V.S.A. § 4820 shall initiate a hearing in accordance with this subchapter.

15 § 8841. ~~PETITION; PROCEDURES~~

16 ~~The filing of the petition and procedures for initiating a hearing shall be as~~
17 ~~provided in sections 8822-8826 of this title. [Repealed.]~~

18 § 8842. ~~HEARING~~

19 ~~Hearings under this subchapter for commitment shall be conducted in~~
20 ~~accordance with section 8827 of this title. [Repealed.]~~

21 * * *

1 § 8845. JUDICIAL REVIEW

2 (a) A person committed under this subchapter may be discharged from
3 custody by a Superior judge after judicial review as provided herein or by
4 administrative order of the Commissioner.

5 (b) ~~Procedures for judicial review of persons committed under this
6 subchapter shall be as provided in section 8834 of this title, except that
7 proceedings shall be brought in the Criminal Division of the Superior Court in
8 the unit in which the person resides or, if the person resides out of state, in the
9 unit which issued the original commitment order. [Repealed.]~~

10 * * *

11 § 8847. NOTICE TO STATE'S ATTORNEY

12 If a person in need of custody, care, and habilitation is found to have placed
13 another person at risk of harm due to his or her violation of a criminal statute,
14 but was not found competent to stand trial pursuant to subdivision 8839(1)(C)
15 of this title, the State's Attorney shall be notified by the Commissioner at the
16 following interims for the purpose of determining whether to move for a
17 competency evaluation:

18 (1) at the outcome of the initial commitment hearing;

19 (2) when the Commissioner discharges the person from custody; and

20 (3) when any order under this chapter may expire or be renewed.

1

* * * Effective Date * * *

2

Sec. 20. EFFECTIVE DATE

3

This act shall take effect on July 1, 2019.