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H.768

Introduced by Representatives Goslant of Northfield, McCoy of Poultney,  
Anthony of Barre City, Bancroft of Westford, Beck of St.  
Johnsbury, Brennan of Colchester, Canfield of Fair Haven,  
Cupoli of Rutland City, Dickinson of St. Albans Town,  
Gamache of Swanton, Graham of Williamstown, Gregoire of  
Fairfield, Hango of Berkshire, Higley of Lowell, LaClair of  
Barre Town, Lefebvre of Newark, Leffler of Enosburgh, Mattos  
of Milton, McFaun of Barre Town, Morgan of Milton, Page of  
Newport City, Palasik of Milton, Rosenquist of Georgia,  
Savage of Swanton, Seymour of Sutton, Shaw of Pittsford,  
Smith of Derby, Strong of Albany, Terenzini of Rutland Town,  
Toof of St. Albans Town, and Walz of Barre City

Referred to Committee on

Date:

Subject: Criminal procedures; insanity as a defense; guilty but mentally ill

Statement of purpose of bill as introduced: This bill proposes to augment the  
insanity defense in criminal cases by establishing an additional potential  
disposition of guilty but mentally ill.

1 An act relating to augmenting the insanity defense with a disposition of  
2 guilty but mentally ill

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

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

5 CHAPTER 157. INSANITY AS A DEFENSE

6 § 4801. ~~TEST OF~~ TESTS FOR INSANITY AND GUILTY BUT  
7 MENTALLY ILL IN CRIMINAL CASES

8 (a) The ~~test~~ tests when used as a ~~defense~~ defenses in criminal cases shall be  
9 as follows:

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

14 (2) A defendant is guilty but mentally ill if, when the defendant engaged  
15 in the criminal conduct, the defendant's mental disease or defect impacted but  
16 did not negate his or her capacity either to appreciate the criminality of his or  
17 her conduct or to conform his or her conduct to the requirements of law. A  
18 defendant found guilty but mentally ill is not relieved of criminal responsibility  
19 for criminal conduct and shall be subject to section 4819b of this title.

20 (3) The terms "mental disease or defect" do not include an abnormality  
21 manifested only by repeated criminal or otherwise anti-social conduct. The

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

3 (b) The defendant shall have the burden of proof in establishing insanity  
4 and guilty but mentally ill as ~~an~~ affirmative ~~defense~~ defenses by a  
5 preponderance of the evidence.

6 \* \* \*

7 § 4814. ORDER FOR EXAMINATION

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

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

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

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

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

5 (b) Such order may be issued by the court on its own motion, or on motion  
6 of the State, the defendant, or an attorney, guardian, or other person acting on  
7 behalf of the defendant.

8 (c) When the court believes that there is doubt as to the defendant's sanity  
9 at the time of the alleged offense and doubt as to the defendant's mental  
10 competency to be tried for the alleged offense, a competency evaluation shall  
11 occur first, and a sanity evaluation shall not be conducted until after the  
12 defendant has been found competent.

13 \* \* \*

14 § ~~4819~~ 4819a. ACQUITTAL BY REASON OF INSANITY

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

18 § 4819b. DISPOSITION OF GUILTY BUT MENTALLY ILL

19 After a determination of guilt, the defendant or the State may move for the  
20 defendant to be found guilty but mentally ill. The court shall hold a hearing on  
21 the motion after an examination has been made and a report submitted by an

1 examining psychiatrist in accordance with sections 4814-4816 of this title.  
2 The Department of Mental Health or the Department of Disabilities, Aging,  
3 and Independent Living shall be a party to the hearing, and any crime victim  
4 shall be provided notice. If the trier of fact finds the defendant to be guilty but  
5 mentally ill, the Court shall sentence the defendant according to the applicable  
6 maximum criminal sentence and issue an order regarding the defendant's  
7 custody pursuant to section 4823a of this title.

8 \* \* \*

9 § 4823a. FINDINGS AND ORDER; PERSONS FOUND GUILTY BUT

10 MENTALLY ILL

11 (a) A person found not guilty but mentally ill pursuant to section 4019 of  
12 this title shall be committed to the custody of:

13 (1) the Commissioner of Corrections and the Commissioner of Mental  
14 Health; or

15 (2) the Commissioner of Corrections and the Commissioner of  
16 Disabilities, Aging, and Independent Living.

17 (b) The court shall hold a hearing to determine if the person is a person in  
18 need of treatment. The person who is the subject of the proceedings; his or her  
19 attorney; the legal guardian, if any; the Commissioner of Mental Health or the  
20 Commissioner of Disabilities, Aging, and Independent Living; and the State's  
21 Attorney or other prosecuting officer representing the State in the case shall be

1 given notice of the time and place of a hearing under 4820 of this title. The  
2 Department of Mental Health or the Department of Disabilities, Aging, and  
3 Independent Living and any victim of the offense shall have standing to be  
4 heard at the hearing.

5 (c)(1) If the court finds that the person is a person in need of treatment, the  
6 court shall commit the person to the care and supervision of the Commissioner  
7 of Mental Health for a period of time equivalent to the applicable maximum  
8 criminal sentence.

9 (2) An order of commitment issued pursuant to this subsection shall  
10 have the same force and effect as an order issued under 18 V.S.A. §§ 7611–  
11 7622, and a person committed under this order shall have the same status and  
12 the same rights, including the right to receive care and treatment, to be  
13 examined, and to apply for and obtain judicial review of his or her case, as a  
14 person ordered committed under 18 V.S.A. §§ 7611–7622, provided that in no  
15 event shall a person be discharged until the expiration of the person’s criminal  
16 sentence. The Commissioner may seek an order of involuntary commitment  
17 pursuant to 18 V.S.A. § 7620 for a person committed pursuant to this  
18 subsection not less than 30 days before the expiration of the person’s sentence.

19 (3) If the person’s treating psychiatrist determines that the person is no  
20 longer a person in need of treatment, the court shall transfer the person to the

1 care and supervision of the Commissioner of Corrections for a period of time  
2 equivalent to the remainder of the applicable criminal sentence.

3 (d) If the court finds that the person is not a person in need of treatment or  
4 a person in need of continued treatment, the court shall sentence the person to  
5 the care and supervision of the Commissioner of Corrections for a period of  
6 time equivalent to the applicable criminal sentence.

7 (e) A crime victim shall be notified of all proceedings scheduled and orders  
8 issued pursuant to this section.

9 (f) All persons performing forensic evaluations pursuant to this section  
10 shall be nationally certified with a Certified Forensic Mental Health Evaluator  
11 credential or meet minimum standards related to performing forensic  
12 examinations and evaluations established by a nationally accredited forensic  
13 organization.

14 \* \* \*

15 Sec. 2. EFFECTIVE DATE

16 This act shall take effect on July 1, 2020.