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S.183

Introduced by Senators Sears, Lyons and Clarkson

Referred to Committee on Judiciary

Date: January 7, 2020

Subject: Criminal procedures; mental health; competency to stand trial and
insanity as a defense; persons adjudicated not guilty by reason of
insanity for homicide or attempted homicide

Statement of purpose of bill as introduced: This bill proposes: (1) to establish
a three-year initial commitment period for a person adjudicated not guilty by
reason of insanity for a homicide or attempted homicide; (2) to require the
Criminal Division to hold a public safety hearing before the Department of
Mental Health can discharge or discontinue treatment for a person who is in
the Department's custody after being adjudicated not guilty by reason of
insanity for a homicide or attempted homicide; (3) to require reporting on
availability of psychiatric support services during the criminal process, mental
health services available in a correctional setting, and forensic models used in
other states; and (4) to implement a public education campaign regarding the
operation of the forensic care system.

19 An act relating to competency to stand trial and insanity as a defense

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

2 ~~*** Commitment and Public Safety Hearing ***~~

3 Sec. 1. 13 V.S.A. § 4822 is amended to read:

4 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

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

13 (b)(1) ~~An~~ Except as provided in subdivision (2) of this subsection, an order
14 of commitment issued pursuant to this section shall have the same force and
15 effect as an order issued under 18 V.S.A. §§ 7611–7622, and a person
16 committed under this order shall have the same status and the same rights,
17 including the right to receive care and treatment, to be examined and
18 discharged, and to apply for and obtain judicial review of his or her case, as a
19 person ordered committed under 18 V.S.A. §§ 7611–622.

20 (2) An initial order of commitment issued pursuant to this section shall
21 remain in effect for not less than three years if the person committed under the

1 ~~order was adjudicated not guilty by reason of insanity for a homicide or~~
2 ~~attempted homicide.~~

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

1 ~~(2)(A) This subdivision (2) shall apply when a person committed to the~~
2 care and custody of the Department of Mental Health under this section was
3 adjudicated not guilty by reason of insanity for a homicide or attempted
4 homicide.

5 (B) At least 10 days prior to discharging the person, discontinuing
6 treatment of the person in a secure residential recovery facility, or determining
7 not to apply for an order for continued treatment for the person, the
8 Commissioner of Mental Health shall provide notice of the proposed action to
9 the State's Attorney, any victim of the offense, and the Criminal Division of
10 the Superior Court that held the initial hearing required by section 4820 of this
11 title.

12 (C) The Criminal Division shall hold a public safety hearing to
13 consider whether the proposed action should occur. The State's Attorney and
14 any victim of the offense shall have standing to be heard at the hearing. The
15 party seeking the proposed action shall have the burden of proving by a
16 preponderance of the evidence that the proposed action would not cause an
17 unreasonable risk to public safety.

18 (D) If the court finds by a preponderance of the evidence that the
19 proposed action would not cause an unreasonable risk to public safety, the
20 ~~court shall issue an order permitting the Commissioner to proceed with the~~

1 ~~proposed action. If the court does not make such a finding, the court shall~~
2 issue an order directing the Commissioner not to proceed.

3 (E) As used in this subdivision (2):

4 (i) "State's Attorney" means the State's Attorney of the county
5 where the prosecution originated.

6 (ii) "Victim" has the same meaning as in section 5301 of this title.

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

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

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

14 * * * Reporting Requirement * * *

15 Sec. 2. AVAILABILITY OF PSYCHIATRIC SUPPORT SERVICES

16 The Executive Director of the Department of State's Attorneys and Sheriffs
17 and the Defender General of the Office of the Defender General shall
18 determine whether the Department and Office, respectively, have sufficient
19 and comparable resources to fund any psychiatric support or evaluative
20 services required by the Department and Office. On or before November 1,
21 ~~2020, the Executive Director and Defender General shall each submit a report~~

1 ~~containing findings and recommendations based on their review to the House~~
2 ~~Committees on Appropriations, on Health Care, and on Judiciary and to the~~
3 ~~Senate Committees on Appropriations, on Health and Welfare, and on~~
4 ~~Judiciary. The report shall contain an inventory of how existing funds are used~~
5 ~~to fund psychiatric support or evaluative services in the Department and~~
6 ~~Office.~~

7 Sec. 3. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH
8 SERVICES

9 On or before November 1, 2020, the Departments of Corrections and of
10 Mental Health shall jointly submit an inventory and evaluation of the mental
11 health services provided by the entity with whom the Department of
12 Corrections contracts for health care services to the House Committees on
13 Corrections and Institutions, on Health Care, and on Judiciary and to the
14 Senate Committees on Health and Welfare and on Judiciary. The evaluation
15 shall include a comparison as to how the type, frequency, and timeliness of
16 mental health services provided in a correctional setting differs from those
17 services available in the community. The evaluation shall further address how
18 the memorandum of understanding executed by the Departments of
19 Corrections and of Mental Health impacts the mental health services provided
20 by the entity with whom the Department of Corrections contracts for health
21 care services.

~~Sec. 4. FORENSIC CARE WORKING GROUP~~

~~(a) On or before August 1, 2020, the Department of Mental Health shall convene a working group of interested stakeholders, including the Department of Corrections, the Department of State's Attorneys and Sheriffs, the Office of the Attorney General, and the Office of the Defender General to identify any gaps in the current mental health and criminal justice system structure and opportunities to improve public safety and the coordination of treatment to alleged offenders. The working group shall review competency restoration models used in other states for individuals deemed not competent to stand trial and explore treatment and management recommendations for individuals found not guilty by reason of insanity.~~

~~(b) On or before November 1, 2020, the Department of Mental Health shall submit a report containing the findings and recommendations of the working group to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and the Senate Committees on Health and Welfare and on Judiciary. The report shall contain a survey and literature review of competency restoration programs administered by other states, including Connecticut's Psychiatric Security Review Board. The report shall evaluate the strengths and weaknesses of these programs both generally and in terms of their ability to be replicated in Vermont.~~

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~~*** Public Education ***~~
Sec. 5. APPROPRIATION; PUBLIC EDUCATION CAMPAIGN
In fiscal year 2021, \$8,000.00 is appropriated to the Department of Mental Health for the purpose of funding a public education campaign regarding how the forensic care system operates, including how the system addresses patient treatment needs and public safety.
*** Effective Date ***
Sec. 6. EFFECTIVE DATE
~~This act shall take effect on July 1, 2020.~~

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

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in section 4815 of this title shall have reference to one or both of the following:

(1) ~~mental~~ Mental competency of the person examined to stand trial for the alleged offense; ~~and~~.

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

(b) A competency evaluation for an individual thought to have a developmental disability shall include a current evaluation by a psychologist skilled in assessing individuals with developmental disabilities.

(c)(1) As soon as practicable after the examination has been completed, the examining psychiatrist or psychologist, ~~if applicable~~, shall prepare a report containing findings in regard to ~~each of the applicable matters listed in provisions of subsection (a) of this section~~. The report shall be transmitted to the court issuing the order for examination, and copies of the report sent to the State's Attorney, ~~and~~, to the respondent's attorney if the respondent is represented by counsel, and to the Commissioner of Mental Health.

(2) If the psychiatrist or psychologist has been asked to provide opinions as to both the person's competency to stand trial and the person's sanity at the time of the alleged offense, those opinions shall be presented in separate

reports, and addressed separately by the court. In such cases, the examination of the person's sanity shall only be undertaken if the psychiatrist or psychologist is able to form the opinion that the person is competent to stand trial.

* * *

Sec. 2. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

(a) When a person charged on information, complaint, or indictment with a criminal offense:

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

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

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

(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the Commissioner of Mental Health. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 15 days.

(b) When a person is found to be incompetent to stand trial pursuant to subdivision (a)(2) of this section, has not been indicted by reason of insanity for the alleged offense, or has been acquitted by reason of insanity at the time of the alleged offense, ~~the court shall appoint counsel from Vermont Legal Aid to represent the person who is the subject of the proceedings~~ the person shall be entitled to have counsel appointed from Vermont Legal Aid to represent the person. The Department of Mental Health shall be entitled to appear and call witnesses at the proceeding and be represented by the Office of the Attorney General.

Sec. 3. 13 V.S.A. § 4822 is amended to read:

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

(a) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental

Health that shall admit the person to the care and custody of the Department of Mental Health for an indeterminate period. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

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

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

(2)(A) This subdivision (2) shall apply when a person is committed to the care and custody of the Commissioner of Mental Health under this section after having been found not guilty by reason of insanity or incompetent to stand trial for a listed crime as defined in subdivision 5301(7) of this title other than:

(i) lewd or lascivious conduct as defined in section 2601 of this title;

(ii) recklessly endangering another person as defined in section 1025 of this title;

(iii) operating a vehicle under the influence of alcohol or other substance with either death or serious bodily injury resulting as defined in 23 V.S.A. § 1210(f) and (g);

(iv) careless or negligent operation resulting in serious bodily injury or death as defined in 23 V.S.A. § 1091(b);

(v) leaving the scene of an accident resulting in serious bodily injury or death as defined in 23 V.S.A. § 1128(b) or (c); or

(vi) a misdemeanor violation of chapter 28 of this title, relating to abuse, neglect, and exploitation of vulnerable adults.

(B) At least 10 days prior to discharging the person from a secure mental health treatment facility or from the care and custody of the Commissioner of Mental Health, the Commissioner shall provide notice of the proposed action to the State's Attorney of the county where the prosecution originated or to the Office of the Attorney General if that office prosecuted the case. The State's Attorney shall provide notice of the proposed action to any victim of the offense who has not opted out of receiving notice.

(C) As used in this subdivision (2), "victim" has the same meaning as in section 5301 of this title.

* * *

Sec. 4. Vermont Rule of Criminal Procedure 16.1 is amended to read:

RULE 16.1. DISCLOSURE TO THE PROSECUTION

(a) The Person of the Defendant.

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, upon motion and notice a judicial officer may require the defendant to:

* * *

~~(H) provide specimens of his handwriting; and~~

~~(I) submit to a reasonable physical or medical inspection of his body or, if notice is given by the defendant that sanity is in issue or that expert testimony will be offered as provided in Rule 12.1, to a reasonable mental examination by a psychiatrist or other expert; and~~

(H) provide specimens of ~~his~~ the defendant's handwriting; ~~and~~

(I) submit to a reasonable physical or medical inspection of ~~his~~ the defendant's body or, if notice is given by the defendant that sanity is in issue or that expert testimony will be offered as provided in Rule 12.1, to a reasonable mental examination by a psychiatrist or other expert; and

(J) submit to a reasonable mental examination by a psychiatrist or other expert when a court ordered examiner pursuant to 13 V.S.A. § 4814(a)(2) or (4) reports that a defendant is not competent to stand trial.

* * *

Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH SERVICES

On or before November 1, 2020, the Departments of Corrections and of Mental Health shall jointly submit an inventory and evaluation of the mental health services provided by the entity with whom the Department of Corrections contracts for health care services to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary. The evaluation shall include a comparison as to how the type, frequency, and timeliness of mental health services provided in a correctional setting differ from those services available in the community. The evaluation shall further address how the memorandum of understanding executed by the Departments of Corrections and of Mental Health impacts the mental health services provided by the entity with whom the Department of Corrections contracts for health care services.

Sec. 6. FORENSIC CARE WORKING GROUP

(a) On or before August 1, 2020, the Department of Mental Health shall convene a working group of interested stakeholders, including as appropriate, the Department of Corrections, the Department of State's Attorneys and Sheriffs, the Office of the Attorney General, the Office of the Defender General, the Director of Health Care Reform, the Department of Buildings and General Services, a representative appointed by Vermont Care Partners, a representative appointed by Vermont Legal Aid's Mental Health Project, the Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259, a representative of the designated hospitals appointed by the Vermont Association of Hospitals and Health Care Systems, a person with lived experience of mental illness, and any other interested party permitted by the Commissioner of Mental Health, to:

(1) Identify any gaps in the current mental health and criminal justice system structure and opportunities to improve public safety and the coordination of treatment for individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity. The working group shall review competency restoration models used in other states and explore models used in other states that balance the treatment and public safety risks posed by individuals found not guilty by reason of insanity, such as Psychiatric Security

Review Boards, including the Connecticut Psychiatric Security Review Board, and guilty but mentally ill verdicts in criminal cases.

(2) Evaluate various models for the establishment of a State-funded forensic treatment facility for individuals found incompetent to stand trial or who are adjudicated not guilty by reason of insanity. The evaluation shall address:

(A) the need for a forensic treatment facility in Vermont;

(B) the entity or entities most appropriate to operate a forensic treatment facility;

(C) the feasibility and appropriateness of repurposing an existing facility for the purpose of establishing a forensic treatment facility versus constructing a new facility for this purpose;

(D) the number of beds needed in a forensic treatment facility and the impact that repurposing an existing mental health treatment facility would have on the availability of beds for persons seeking mental health treatment in the community or through the civil commitment system; and

(E) the fiscal impact of constructing or repurposing a forensic treatment facility and estimated annual operational costs considering "institutions of mental disease" waivers available through the Center for Medicare and Medicaid Services that do not provide federal fiscal participation for forensic mental health patients.

(b) On or before November 1, 2020, the Department of Mental Health shall submit a report containing the findings and recommendations of the working group to the Joint Legislative Justice Oversight Committee. The report shall include proposed draft legislation addressing any identified needed changes to statute.

Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2020.