

1 Introduced by Senators Sears, Lyons, and Clarkson

2 Referred to Committee on

3 Date:

4 Subject: Criminal procedures; mental health; competency to stand trial and

5 insanity as a defense; persons adjudicated not guilty by reason of

6 insanity for homicide or attempted homicide

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

18 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 found  
9 incompetent to stand trial under section 4817 of this title, the hearing shall be  
10 conducted by the committing court issuing the order under that section. In all  
11 other cases, when the committing court orders a hearing under subsection (a)  
12 of this section or when, in the discretion of the Commissioner of Mental  
13 Health, a hearing should be held prior to the discharge, the hearing shall be  
14 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 Requirements \* \* \*

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.

1       Sec. 4. FORENSIC CARE WORKING GROUP

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

12           (b) On or before November 1, 2020, the Department of Mental Health shall  
13       submit a report containing the findings and recommendations of the working  
14       group to the House Committees on Corrections and Institutions, on Health  
15       Care, and on Judiciary and the Senate Committees on Health and Welfare and  
16       on Judiciary. The report shall contain a survey and literature review of  
17       competency restoration programs administered by other states, including  
18       Connecticut’s Psychiatric Security Review Board. The report shall evaluate  
19       the strengths and weaknesses of these programs both generally and in terms of  
20       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.