

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 183
3 entitled “An act relating to competency to stand trial and insanity as a defense”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 13 V.S.A. § 4815 is amended to read:

8 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

9 * * *

10 (g)(1) Inpatient examination at the Vermont State Hospital, or its successor
11 in interest, or a designated hospital. The court shall not order an inpatient
12 examination unless the designated mental health professional determines that
13 the defendant is a person in need of treatment as defined in 18 V.S.A. §
14 7101(17).

15 * * *

16 (7) The Commissioner shall be a party when issues of competency or
17 sanity are raised.

18 * * *

19 Sec. 2. 13 V.S.A. § 4816 is amended to read:

20 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

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

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

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

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

17 (2) If the psychiatrist or psychologist has been asked to provide opinions
18 as to the person's competency to stand trial and the person's sanity at the time
19 of the alleged offense, those opinions shall be presented in separate reports,
20 and addressed separately by the court. The examination of the defendant's

1 sanity shall only be undertaken if the psychiatrist or psychologist is able to
2 form the opinion that the defendant is competent to stand trial.

3 * * *

4 Sec. 3. 13 V.S.A. § 4820 is amended to read:

5 § 4820. HEARING REGARDING COMMITMENT

6 When a person charged on information, complaint, or indictment with a
7 criminal offense:

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

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

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

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

1 The Commissioner of Mental Health and the Vermont Legal Aid Mental
2 Health Law Project shall be parties to the hearing.

3 Sec. 4. 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) An order of commitment issued pursuant to this section shall have the
14 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a
15 person committed under this order shall have the same status and the same
16 rights, including the right to receive care and treatment, to be examined and
17 discharged, and to apply for and obtain judicial review of his or her case, as a
18 person ordered committed under 18 V.S.A. §§ 7611–7622.

19 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
20 least 10 days prior to the proposed discharge of any person committed under
21 this section, the Commissioner of Mental Health shall give notice of the

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

16 (2)(A) This subdivision (2) shall apply when a person is committed to
17 the care and custody of the Commissioner of Mental Health under this section
18 after having been found not guilty by reason of insanity or incompetent to
19 stand trial for an offense listed in 33 V.S.A. § 5204(a).

20 (B) At least 10 days prior to discharging the person from a secure
21 mental health treatment facility or from the care and custody of the

1 Commissioner of Mental Health, the Commissioner shall provide notice of the
2 proposed action to the State’s Attorney of the county where the prosecution
3 originated, or to the Office of the Attorney General if that office prosecuted the
4 case. The State’s Attorney shall provide notice of the proposed action to any
5 victim of the offense who has requested that notice be provided.

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

8 * * *

9 **Sec. 5. Vermont Rule of Criminal Procedure 16.1 is amended to read:**

10 **RULE 16.1. DISCLOSURE TO THE PROSECUTION**

11 **(a) The Person of the Defendant.**

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

15 * * *

16 **(H) provide specimens of his handwriting; and**

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

1 (a) On or before August 1, 2020, the Department of Mental Health shall
2 convene a working group of interested stakeholders, including as appropriate,
3 the Department of Corrections, the Department of State’s Attorneys and
4 Sheriffs, the Office of the Attorney General, the Office of the Defender
5 General, the Director of Health Care Reform, and the Department of Buildings
6 and General Services, a representative appointed by Vermont Care Partners, a
7 representative appointed by Vermont Legal Aid’s Mental Health Project, a
8 person with lived experience of mental illness, and any other interested party
9 permitted by the Commissioner of Mental Health to:

10 (1) Identify any gaps in the current mental health and criminal justice
11 system structure and opportunities to improve public safety and the
12 coordination of treatment for individuals incompetent to stand trial or who are
13 adjudicated not guilty by reason of insanity. The working group shall review
14 competency restoration models used in other states and explore models used in
15 other states that balance the treatment and public safety risks posed by
16 individuals found not guilty by reason of insanity, such as Psychiatric Security
17 Review Boards and guilty but mentally ill verdicts in criminal cases; and

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

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

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

4 (C) the feasibility and appropriateness of repurposing an existing
5 facility for the purpose of establishing a forensic treatment facility, such as
6 Woodside Juvenile Rehabilitation Center, versus constructing a new facility
7 for this purpose;

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

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

17 (b) On or before November 1, 2020, the Department of Mental Health shall
18 submit a report containing the findings and recommendations of the working
19 group to the Joint Legislative Justice Oversight Committee. The report shall
20 include proposed draft legislation adapting Connecticut’s Psychiatric Security
21 Review Board to reflect Vermont’s mental health and criminal justice systems.

1 Sec. 8. EFFECTIVE DATE

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

3

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5

6 (Committee vote: _____)

7

8

Senator _____

9

FOR THE COMMITTEE