

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. 1. 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 both the person's competency to stand trial and the person's sanity at the
19 time of the alleged offense, those opinions shall be presented in separate
20 reports, and addressed separately by the court. In such cases, the examination
21 of the defendant's sanity shall only be undertaken if the psychiatrist or

1 psychologist is able to form the opinion that the defendant is competent to
2 stand trial.

3 * * *

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

5 § 4820. HEARING REGARDING COMMITMENT

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

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

9 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

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

18 (b) An order of commitment issued pursuant to this section shall have the
19 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a
20 person committed under this order shall have the same status and the same
21 rights, including the right to receive care and treatment, to be examined and

1 discharged, and to apply for and obtain judicial review of his or her case, as a
2 person ordered committed under 18 V.S.A. §§ 7611–7622.

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

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(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

(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.

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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

1 the memorandum of understanding executed by the Departments of
2 Corrections and of Mental Health impacts the mental health services provided
3 by the entity with whom the Department of Corrections contracts for health
4 care services.

5 Sec. 6. FORENSIC CARE WORKING GROUP

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

18 (1) Identify any gaps in the current mental health and criminal justice
19 system structure and opportunities to improve public safety and the
20 coordination of treatment for individuals incompetent to stand trial or who are
21 adjudicated not guilty by reason of insanity. The working group shall review

1 competency restoration models used in other states and explore models used in
2 other states that balance the treatment and public safety risks posed by
3 individuals found not guilty by reason of insanity, such as Psychiatric Security
4 Review Boards, including the Connecticut Psychiatric Security Review Board,
5 and guilty but mentally ill verdicts in criminal cases; and

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

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

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

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

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

20 (E) the fiscal impact of constructing or repurposing a forensic
21 treatment facility and estimated annual operational costs considering

1 “institutions of mental disease” waivers available through the Center for
2 Medicare and Medicaid Services that do not provide federal fiscal participation
3 for forensic mental health patients.

4 (b) On or before November 1, 2020, the Department of Mental Health shall
5 submit a report containing the findings and recommendations of the working
6 group to the Joint Legislative Justice Oversight Committee. The report shall
7 include proposed draft legislation ~~adapting Connecticut’s Psychiatric Security~~
8 ~~Review Board to reflect Vermont’s mental health and criminal justice systems~~
9 addressing any identified needed changes to statute.

10 Sec. 7. EFFECTIVE DATE

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

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15 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE