

TO: Senate Judiciary Committee
FROM: Jack McCullough
SUBJECT: S. 183—Competency and Sanity
DATE: February 12, 2020

Thank you for the opportunity to comment on this legislation.

I had the opportunity to participate in the commission to study offenders diagnosed with mental illness, and the Mental Health Law Project broadly supports this legislation. In particular, we agree with the concept embodied in Section 3 of the bill that because of the expertise in dealing with mental health issues it is important to rest responsibility for litigating those issues on Vermont Legal Aid and the Attorney General's office.

I do have one technical proposal. I agree with the comments that have been made that it is inconsistent with the structure of criminal proceedings to have the Mental Health Law Project be a party to a criminal case. Consequently, we propose to amend Section 3 as follows:

Sec. 1. 13 V.S.A. § 4820(5) is added to read:

(5) (a) When a person who is found to be incompetent to stand trial pursuant to subdivision (2) of this section, has not been indicted by reason of insanity of 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;

(b) The Department of Mental Health shall be entitled to appear and be represented by the Office of the Attorney General.

In addition, it is important to point out that Vermont Legal Aid does not at present have the resources to take on this additional caseload. We would anticipate that in the lead-up to the effective date of this section, we would enter into a new or amended contract with the state to obtain additional funding for these new cases.