

1 S.3

2 Introduced by Senators Sears, Clarkson, Lyons and White

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedures; mental health; competency to stand trial and  
6 insanity as a defense

7 Statement of purpose of bill as introduced: This bill proposes several measures  
8 related to criminal proceedings involving the defendant's sanity at the time the  
9 offense was committed or the defendant's competency to stand trial for the  
10 offense. The bill (1) clarifies that the psychiatric examination that must occur  
11 when the question of the defendant's sanity or competency has been raised  
12 may evaluate the defendant's competency, or the defendant's sanity, or both;  
13 (2) provides that, if the defendant has been found to be either insane at the time  
14 of the offense or incompetent to stand trial and does not have a private  
15 attorney, the court will appoint counsel from Vermont Legal Aid to represent  
16 the defendant; (3) establishes procedures for notification of the crime victim  
17 when the defendant is discharged from a mental health treatment facility or  
18 from Department of Mental Health custody if the case involves certain serious  
19 offenses; and (4) permits the prosecution to have its own psychiatrist examine  
20 the defendant when a court-ordered examiner has found the defendant  
21 incompetent to stand trial. The bill also establishes a forensic care working

1 group, and requires the Departments of Corrections and of Mental Health to  
2 jointly submit an inventory and evaluation of the mental health services  
3 provided by the entity with whom the Department of Corrections contracts for  
4 health care services.

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

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

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

8 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

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

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

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

18 (c)(1) As soon as practicable after the examination has been completed, the  
19 examining psychiatrist or psychologist, ~~if applicable~~, shall prepare a report  
20 containing findings in regard to ~~each of the applicable matters listed in~~

1 provisions of subsection (a) of this section. The report shall be transmitted to  
2 the court issuing the order for examination, and copies of the report sent to the  
3 State's Attorney, ~~and~~, to the respondent's attorney if the respondent is  
4 represented by counsel, and to the Commissioner of Mental Health.

5 (2) If the psychiatrist or psychologist has been asked to provide opinions  
6 as to both the person's competency to stand trial and the person's sanity at the  
7 time of the alleged offense, those opinions shall be presented in separate  
8 reports and addressed separately by the court. In such cases, the examination  
9 of the person's sanity shall only be undertaken if the psychiatrist or  
10 psychologist is able to form the opinion that the person is competent to stand  
11 trial.

12 \* \* \*

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

14 § 4820. HEARING REGARDING COMMITMENT

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

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

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

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

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

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

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

17       § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

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

1 Mental Health for an indeterminate period. In any case involving personal  
2 injury or threat of personal injury, the committing court may issue an order  
3 requiring a court hearing before a person committed under this section may be  
4 discharged from custody.

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

11 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at  
12 least 10 days prior to the proposed discharge of any person committed under  
13 this section, the Commissioner of Mental Health shall give notice of the  
14 discharge to the committing court and State’s Attorney of the county where the  
15 prosecution originated. In all cases requiring a hearing prior to discharge of a  
16 person found incompetent to stand trial under section 4817 of this title, the  
17 hearing shall be conducted by the committing court issuing the order under that  
18 section. In all other cases, when the committing court orders a hearing under  
19 subsection (a) of this section or when, in the discretion of the Commissioner of  
20 Mental Health, a hearing should be held prior to the discharge, the hearing  
21 shall be held in the Family Division of the Superior Court to determine if the

1 committed person is no longer a person in need of treatment or a patient in  
2 need of further treatment as set forth in subsection (a) of this section. Notice  
3 of the hearing shall be given to the Commissioner, the State's Attorney of the  
4 county where the prosecution originated, the committed person, and the  
5 person's attorney. Prior to the hearing, the State's Attorney may enter an  
6 appearance in the proceedings and may request examination of the patient by  
7 an independent psychiatrist, who may testify at the hearing.

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

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

15 (ii) recklessly endangering another person as defined in section  
16 1025 of this title;

17 (iii) operating a vehicle under the influence of alcohol or other  
18 substance with either death or serious bodily injury resulting as defined in  
19 23 V.S.A. § 1210(f) and (g);

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

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

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

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

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

14 \* \* \*

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

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

17 (a) The Person of the Defendant.

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

21 \* \* \*

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

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

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

9 \* \* \*

10 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH  
11 SERVICES

12 On or before November 1, 2021, the Departments of Corrections and of  
13 Mental Health shall jointly submit an inventory and evaluation of the mental  
14 health services provided by the entity with whom the Department of  
15 Corrections contracts for health care services to the House Committees on  
16 Corrections and Institutions, on Health Care, and on Judiciary and to the  
17 Senate Committees on Health and Welfare and on Judiciary. The evaluation  
18 shall include a comparison as to how the type, frequency, and timeliness of  
19 mental health services provided in a correctional setting differ from those  
20 services available in the community. The evaluation shall further address how  
21 the memorandum of understanding executed by the Departments of



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

4 Sec. 6. FORENSIC CARE WORKING GROUP

5 (a) On or before August 1, 2021, the Department of Mental Health shall  
6 convene a working group of interested stakeholders, including as appropriate,  
7 the Department of Corrections, the Department of State's Attorneys and  
8 Sheriffs, the Office of the Attorney General, the Office of the Defender  
9 General, the Director of Health Care Reform, the Department of Buildings and  
10 General Services, a representative appointed by Vermont Care Partners, a  
11 representative appointed by Vermont Legal Aid's Mental Health Project, the  
12 Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259, a  
13 representative of the designated hospitals appointed by the Vermont  
14 Association of Hospitals and Health Care Systems, a person with lived  
15 experience of mental illness, and any other interested party permitted by the  
16 Commissioner of Mental Health, to:

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

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

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

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

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

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

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

19 (E) the fiscal impact of constructing or repurposing a forensic  
20 treatment facility and estimated annual operational costs considering  
21 “institutions of mental disease” waivers available through the Center for

1 Medicare and Medicaid Services that do not provide federal fiscal participation  
2 for forensic mental health patients.

3 (b) On or before November 1, 2021, the Department of Mental Health shall  
4 submit a report containing the findings and recommendations of the working  
5 group to the Joint Legislative Justice Oversight Committee. The report shall  
6 include proposed draft legislation addressing any identified needed changes to  
7 statute.

8 Sec. 7. EFFECTIVE DATE

9 This act shall take effect on July 1, 2021.