

Senate proposal of amendment to House proposal of amendment

S. 3

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

The Senate concurs in the House proposal of amendment with the following proposals of amendment thereto:

First: By striking out Sec. 6, forensic care working group, in its entirety and inserting in lieu thereof a new Sec. 6 to read as follows:

Sec. 6. REPORTS; FORENSIC CARE WORKING GROUP; PROSECUTOR NOTIFICATION; COMPETENCY RESTORATION MODELS

(a) On or before July 15, 2021, the Department of Mental Health shall convene working groups of interested stakeholders to provide recommendations necessary to carry out the provisions in subsections (b), (c), and (d) of this section, including as appropriate:

- (1) a representative from the Department of Corrections;
- (2) a representative from the Department of Disabilities, Aging, and Independent Living;
- (3) a representative from the Department of Buildings and General Services;
- (4) the Chief Superior Judge;
- (5) a representative from the Department of State's Attorneys and Sheriffs;
- (6) a representative from the Office of the Attorney General;
- (7) a representative from the Office of the Defender General;
- (8) the Director of Health Care Reform or designee;
- (9) a representative, appointed by Vermont Care Partners;
- (10) a representative, appointed by Vermont Legal Aid's Mental Health Project;
- (11) a representative, appointed by the Vermont Medical Society;
- (12) three crime victims representatives, appointed by the Vermont Center for Crime Victim Services;
- (13) the Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259 or designee;
- (14) a representative of the designated hospitals, appointed by the Vermont Association of Hospitals and Health Care Systems;

(15) three individuals with lived experience of mental illness, at least one of whom has lived experience of the criminal justice system or the civil commitment system, or both, appointed by Vermont Psychiatric Survivors;

(16) a representative appointed by the Vermont Developmental Disabilities Council; and

(17) any other interested party permitted by the Commissioner of Mental Health.

(b)(1) On or before August 1, 2022, the Department of Mental Health shall submit a final report to the Joint Legislative Justice Oversight Committee and the chairs of the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and of the Senate Committees on Health and Welfare and on Judiciary addressing:

(A) any gaps in the current mental health and criminal justice system structure related to individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity;

(B) opportunities to:

(i) improve public safety and address the treatment needs for individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity; and

(ii) consider the importance of victims' rights in the forensic care process;

(C) models used in other states to determine public safety risks and the means used to address such risks, including guilty but mentally ill verdicts in criminal cases;

(D) due process requirements for defendants held without adjudication of a crime and presumed innocent;

(E) processes regarding other mental conditions affecting competence or sanity, including intellectual disabilities, traumatic brain injury, and dementia;

(F) models for forensic treatment, including the size, scope, and fiscal impact of any forensic treatment facility; and

(G) any additional recommendations.

(2) On or before January 15, 2022, the Department shall submit a preliminary report 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 summarizing the work completed pursuant to subdivision (1) of this subsection to date.

(c) On or before February 1, 2022, the Department of Mental Health shall submit a report 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 that assesses the necessity of notification to the prosecutor upon becoming aware that individuals on orders of nonhospitalization pursuant to 18 V.S.A. § 7618 are not complying with the order or that the alternative treatment is not adequate to meet the individual's treatment needs, including any recommendations:

(1) necessary to clarify the process;

(2) addressing what facts and circumstances should trigger the Commissioner's duty to notify the prosecutor; and

(3) addressing steps that the prosecutor should take after receiving the notification.

(d) On or before January 15, 2023, the Department of Mental Health shall submit a report 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 comparing competency restoration models and addressing how cases where competency is not restored are addressed.

(e)(1) In conducting the work required by this section, including evaluations for forensic treatment facility models pursuant to subsection (b) of this section, the working group shall ensure:

(A) that social and racial equity issues are considered, including issues related to transgender and gender nonconforming persons; and

(B) consistency with the General Assembly's policy in 18 V.S.A. § 7629(c) of working "toward a mental health system that does not require coercion or the use of involuntary medication."

(2) These considerations shall be reflected in the final report submitted pursuant to subdivision (b)(1) of this section and the reports submitted pursuant to subsections (c) and (d) of this section.

(f) The Department shall access regional or national expertise to present models to the working group for review, including any model recommended by members of the working group.

(g) The final report submitted pursuant to subdivision (b)(1) of this section and the reports submitted pursuant to subsections (c) and (d) of this section shall include proposed draft legislation addressing any identified needed changes to statute.

(h) Members of the working group who are neither State employees nor otherwise paid to participate in the working group in their professional

capacity shall be entitled to per diem compensation and reimbursement of expenses for attending meetings as permitted under 32 V.S.A. § 1010.

Second: By striking out Sec. 7, creation of Committee, and its reader assistance heading in their entirety and inserting in lieu thereof:

Sec. 7. [Deleted.]