

Representative Martin LaLonde,

Folks,

I apologize for yet another version of language for section (c)(2) of S.3. Because of some concerns expressed regarding the previous language, I am proposing language that seeks to follow more closely the standards set forth in the American Bar Association Criminal Justice Standards on Mental Health, Standard 7-3.4, while also adding a provision regarding preservation of evidence. Please let us know where you stand with this language or whether you wish to testify further on the provision.

If you do wish to testify, please contact Evan, who is copied on this email.

(2) If the court orders examination of both the person's competency to stand trial and the person's sanity at the time of the alleged offense, those opinions shall be presented in separate reports and addressed separately by the court. In such cases, the examination of the person's sanity shall only be undertaken if the psychiatrist and, if applicable, the psychologist is able to form the opinion that the person is competent to stand trial, unless the defendant requests that the examinations occur concurrently. If the evaluation of the defendant's sanity at the time of the alleged offense does not occur until the defendant is deemed competent to stand trial, the evaluator shall make a reasonable effort to collect and preserve any evidence necessary to form an opinion as to sanity if the person regains competence.

Matthew Valerio- Defender General's Office

There is something wrong with the language which I have highlighted in blue below. Should it be something like psychiatrist or psychologist, whichever is applicable?

I do not oppose the yellow highlighted language.

There does not seem to be a public recognition that competence is a jurisdictional prerequisite rather than a defense to be raised. On the other hand, sanity is a defense that can only be raised affirmatively by a competent defendant.

I see that this language attempts to recognize that concept consistent with the ABA Standards.

Best, Matt

Matthew Valerio, Defender General

Office of the Defender General

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AJ Ruben- Disabilities Rights Vermont

Hello all,

Thank you for this effort to remedy the concerns some of us expressed about S. 3. DRVT agrees with the Defender General's comments above and supports the new language. Peace, aj

Judge Brian Grearson- Chief Superior Judge

I agree with Matt's view as to both the highlighted language and the insertion of **or** **instead of and**.

Representative Anne Donahue

So -- question to the last 3 who responded: are you saying that it might be one or the other -- as in, only a psychologist? Reading of existing statute suggests that a psychiatrist always does an evaluation, and then, if an intellectual disability is identified, there would be an evaluation from the psychologist. As a result, in several places, it was changed to the current wording in the new law.

If the practice is different, then the language should probably be changed to reflect actual practice. (That would not surprise me, because there are several incongruent pieces of existing laws in terms of how mental versus intellectual disabilities are addressed. The whole thing needs to be rewritten, but in the interim, addressing only the specific items in the Senate bill, this was an attempt to create consistency on this particular issue.)

Erik FitzPatrick- Legislative Council

I believe the statute Rep. Donahue is referring to is 13 VSA section 4816(b):

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

The language "shall include" seems to imply that the psychologist's evaluation is in addition to the psychiatrist's report, in which case the term should be "and."

Erik

John McCullough- Vermont Legal Aid

I think we're on track here. I agree with the yellow. I also think the blue "psychiatrist and, if applicable, the psychologist" correctly reflects that there will always be a psychiatrist and that in some, but not all, cases there will also be a psychologist. A simple "psychiatrist or psychologist" suggests that there won't be a psychiatrist in all cases.

Jack

John J. McCullough III
Project Director
Mental Health Law Project
Vermont Legal Aid, Inc.

Matthew Valerio- Defender General's Office

I'm just saying it reads weirdly. How about " ... and, if applicable under 4816(b), the psychiatrist and the psychologist ... "

I just see this opening up odd litigation about what to do.

Matthew Valerio, Defender General
Office of the Defender General

Erik FitzPatrick- Legislative Council

I think Matt's suggestion also works, but I wonder if that structure is used whether it should then actually be "or", so it would read "the psychiatrist or, if applicable under 4816(b), the psychiatrist and the psychologist ... " This would address Jack's point

because the options would be either: (1) a psychiatrist; or (2) a psychiatrist and a psychologist. So there would be a psychiatrist in all cases.

Erik

Matthew Valerio- Defender General's Office

I agree that works.

For someone unfamiliar with what it was referring back to it is much clearer.

Matthew Valerio, Defender General

Office of the Defender General

Representative Anne Donahue

That same language exists in another section of the bill, I think, so should be changed for consistency.

Jack McCullough- Vermont Legal Aid

I think we may be there.

Jack

AJ Ruben- Disabilities Rights Vermont

Thanks Erik,

DRVT agrees with that interpretation, although in practice I'm not aware of how often both a psychiatrist and psychologist combine their work for competency/sanity

evaluations. It seems a good idea for people with both mental health conditions and intellectual disabilities to have access to both types of professionals if they are needed to obtain a valid evaluation.

Thanks again for these continued efforts. aj

Dr. Simha Ravven- Vermont Medical Society

This language looks good.

Simha E. Ravven, MD

Wilda White- Mad Freedom

Rep. LaLonde:

Thank you for the latest iteration of (c)(2) of S.3. The language allays the concerns of MadFreedom.

We appreciate your work on this bill.

Thank you.

Wilda

David Scherr- Vermont Attorney General's Office

No objection to this language, and I agree on the technical drafting fix identified by the judge and Matt.