

---

---

**Report to  
The Vermont Legislature**

---

---

**Report on  
An act relating to competency to stand trial  
and insanity as a defense  
Forensic Work Group Preliminary Report**

**In Accordance with S.3 - Act 57, Sec. 6.b.2**

**Submitted to: House Committees on Corrections and Institutions  
House Committee on Health Care  
House Committee on Judiciary  
Senate Committee on Health and Welfare and  
Senate Committee on Judiciary**

**Submitted by: Emily Hawes, Commissioner, Dept of Mental Health**

**Prepared by: Shayla Livingston  
Policy Director, Agency of Human Services**

**Report Date: January 15, 2022**



## Legislative Charge

A.057 S.003 Sec. 6 (b) (2) 2021 Forensic Work Group- Preliminary Report

*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, except with regard to the work completed pursuant to subdivision (1)(G).*

*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;*

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

*Opportunities regarding victims' rights*

*(C) competency restoration models used in other states, including both models that do not rely on involuntary medication to restore competency and how cases where competency is not restored are addressed;*

*(D) 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;*

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

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

## STATUS UPDATE

This is the preliminary report summarizing the work completed by the Forensic Care Working Group (workgroup) to date. The workgroup met five times:

- July 15: Overview of Legislative charge and existing system of care
- September 23: Gaps in the mental health and criminal justice systems for individuals incompetent to stand trial or adjudicated not guilty by reason of insanity; treatment needs, public safety and victim's rights
- October 21: Competency restoration models from other states; how cases in which competency is not restored are addressed; use of involuntary medication; how other states determine and address public safety risks, how guilty but mentally ill verdicts are handled
- November 18: Review due process requirements for defendants held without adjudication of a crime and presumed innocent; review processes regarding other mental conditions affecting competence or sanity, including intellectual disabilities, traumatic brain injury and dementia

- December 9: Act 248, Traumatic Brain Injury, dementia and guardianship; review material on competency restoration, diversion programming and forensic facility; identify priorities

The workgroup has focused on information gathering and general discussion, and has settled on the following recommendations to guide further discussion:

1. Diversion Programs
  - i. Identify effective diversion programs that might work and the groups those programs would be available to.
 

Note: some members of the workgroup stated a desire for Vermont to stop “siloing” mental health and DD/TBI.
  - ii. Consider creation of a more formalized “probation/parole” like model, but assure it is person-centered and treatment focused while at the same time assuring community safety and considering victim rights.
  - iii. Develop a formal program to help people who have been found incompetent to stand trial transition to the hospital setting and then the community setting.
  - iv. Develop diversion for people who have been found incompetent to stand trial and who do not need a hospital level of care, like a mental health court.
  - v. Consider the Sequential Intercept Model to divert to outpatient care.
  - vi. Consider community settings for monitoring specialized treatment for individuals that have been found insane and no longer meet hospital level criteria.
  - vii. Provide more funding and oversight.
2. Competency Restoration/Forensic Facility:
  - i. A fundamental question remaining for the workgroup to consider is for whom both is who these programs apply.
  - ii. Consider a restoration of providence program, both hospital and community-based.
    1. The least restrictive alternative is a core value.
  - iii. Consider a forensic hospital to close the gap between clinical needs and those with competency and insanity assessment needs, and potentially for restoration.
  - iv. Consider the various populations that could be served by such a facility.
  - v. Consider staffing and cost.
  - vi. Assure programs and services are person-centered and treatment focused while assuring community safety and considering victim rights.

To effectively respond to the above recommendations, the group identified two key areas to address over the coming months: diversion programs and competency restoration/ forensic facilities. The discussion on each of these areas to date has provided the members a baseline of knowledge upon which they can expand to create a forum for deeper discussion, analysis, common understanding and an ability to articulate potential recommendations.

Some of the initial topic areas, such as those touching DAIL or ADAP, may be best led by additional stakeholders with more subject matter expertise and/or experience.

## Outside Expertise

The Legislature provided funding for outside expertise. The Department issued a request for proposals (RFP 69 for forensic consulting ran from 6/21/2022-7/30/2022, and RFP 73 for forensic consulting ran from 9/3/2021- 10/15/2021) and received no responses. Speakers at these meetings have included:

- Alex Lehning, Executive Director, Vermont Cooperative for Practice Improvement & Innovation (VCPI), [Creating Community & Change in Collaboration](#)
- Karen Barber, General Counsel, Department of Mental Health, Overview of the System of Care
- Matt Viens, Assistant Attorney General, Department of Mental Health, Overview of the System of Care; [A Review of the Flowchart for Criminal Cases](#)
- Michael A. Norko, MD, MAR, [Connecticut's Forensic System of Care](#)
- [Colorado's Forensic System of Care](#)
- Jack McCullough, Director, Mental Health Law Project
- [Competence to Stand Trial & Restoration](#)
- DAIL staff presented on Act 248, Dementia, Guardianship and TBI in December.

## Appendix A

### Forensic Care Working Group Members

<b>Required:</b>	<b>Appointed:</b>
A representative from the Department of Corrections	Annie Ramniceanu or Colleen Nilsen
A representative from the Department of Disabilities, Aging, and Independent Living	Ed Riddell
A representative from the Department of Buildings and General Services	Erik Filkorn
Chief Superior Judge	Brian Gearson
A representative from the Department of State's Attorneys and Sheriffs	John Campbell or Jared Bianchi
A representative from the Office of the Attorney General	Domenica Padula
A representative from the Office of the Defender General	Matt Valerio
The Director of Health Care Reform or designee	Ena Backus/ Julie Parker
A representative, appointed by Vermont Care Partners	Michael Hartmann
A representative, appointed by Vermont Legal Aid's Mental Health Project	Jack Mccullough
A representative, appointed by the Vermont Medical Society	Simha Ravven
Three crime victims' representatives, appointed by the Vermont Center for Crime Victim Services	JoAnne Kortendick Luke Parmenter Deb Loring
The Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259 or designee	Zachary Hozid
A representative of the designated hospitals, appointed by the Vermont Association of Hospitals and Health Care Systems	Matt Sommons – RRMC psychiatrist
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	Karim Chapman Zachary Hughes David Searles
A representative, appointed by the Vermont Developmental Disabilities Council	Susan Aranoff
Any other interested party permitted by the Commissioner of Mental Health. (4)	John Wallace Peg Bolton Kimberly Blake Kelly Carroll
Vermont Department of Mental Health	Samantha Sweet Matt Viens Karen Barber Emily Hawes Tom Weigel