

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 3
3 entitled “An act relating to competency to stand trial and insanity as a defense”
4 respectfully reports that it has considered the same and recommends that the
5 House propose to the Senate that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

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 and, if applicable, the examining psychologist, if
20 applicable, shall prepare a report containing findings in regard to ~~each of the~~
21 applicable ~~matters listed in~~ provisions of subsection (a) of this section. The

1 report shall be transmitted to the court issuing the order for examination, and
2 copies of the report sent to the State’s Attorney, ~~and~~ to the respondent, to the
3 respondent’s attorney if the respondent is represented by counsel, to the
4 Commissioner of Mental Health, and, if applicable, to the Department of
5 Disabilities, Aging, and Independent Living.

6 (2) If the psychiatrist ~~or~~ and, if applicable, the psychologist has been
7 asked to provide opinions as to both the person’s competency to stand trial and
8 the person’s sanity at the time of the alleged offense, those opinions shall be
9 presented in separate reports and addressed separately by the court. In such
10 cases, the examination of the person’s sanity shall only be undertaken if the
11 psychiatrist ~~or~~ and, if applicable the psychologist is able to form the opinion
12 that the person is competent to stand trial, provided that the psychiatrist or, if
13 applicable, the psychologist shall collect and preserve any evidence necessary
14 to form an opinion as to sanity if the person regains competence.

15 * * *

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

17 § 4820. HEARING REGARDING COMMITMENT

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

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

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

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

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

14 **(b) When a person is found to be incompetent to stand trial pursuant to**
15 **subdivision (a)(2) of this section, has not been indicted by reason of insanity**
16 **for the alleged offense, or has been acquitted by reason of insanity at the time**
17 **of the alleged offense, the person shall be entitled to have counsel appointed**
18 **from Vermont Legal Aid to represent the person. The Department of Mental**
19 **Health and, if applicable, the Department of Disabilities, Aging, and**
20 **Independent Living, shall be entitled to appear and call witnesses at the**
21 **proceeding.**

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

2 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

3 (a) If the court finds that the person is a person in need of treatment or a
4 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
5 shall issue an order of commitment directed to the Commissioner of Mental
6 Health that shall admit the person to the care and custody of the Department of
7 Mental Health for an indeterminate period. In any case involving personal
8 injury or threat of personal injury, the committing court may issue an order
9 requiring a court hearing before a person committed under this section may be
10 discharged from custody.

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

17 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
18 least 10 days prior to the proposed discharge of any person committed under
19 this section, the Commissioner of Mental Health shall give notice of the
20 discharge to the committing court and State’s Attorney of the county where the
21 prosecution originated. In all cases requiring a hearing prior to discharge of a

1 person found incompetent to stand trial under section 4817 of this title, the
2 hearing shall be conducted by the committing court issuing the order under that
3 section. In all other cases, when the committing court orders a hearing under
4 subsection (a) of this section or when, in the discretion of the Commissioner of
5 Mental Health, a hearing should be held prior to the discharge, the hearing
6 shall be held in the Family Division of the Superior Court to determine if the
7 committed person is no longer a person in need of treatment or a patient in
8 need of further treatment as set forth in subsection (a) of this section. Notice
9 of the hearing shall be given to the Commissioner, the State's Attorney of the
10 county where the prosecution originated, the committed person, and the
11 person's attorney. Prior to the hearing, the State's Attorney may enter an
12 appearance in the proceedings and may request examination of the patient by
13 an independent psychiatrist, who may testify at the hearing.

14 (2)(A) This subdivision (2) shall apply when a person is committed to
15 the care and custody of the Commissioner of Mental Health under this section
16 after having been found:

17 (i) not guilty by reason of insanity; or

18 (ii) incompetent to stand trial, provided that the person's criminal
19 case has not been dismissed.

20 (B)(i) When a person has been committed under this section, the
21 Commissioner shall provide notice to the State's Attorney of the county where

1 the prosecution originated or to the Office of the Attorney General if that office
2 prosecuted the case:

3 (I) at least 10 days prior to discharging the person from:

4 (aa) the care and custody of the Commissioner; or

5 (bb) ~~commitment in~~ a hospital or a secure residential
6 recovery facility to the community on an order of nonhospitalization pursuant
7 to 18 V.S.A. § 7618;

8 (II) at least 10 days prior to the expiration of a commitment
9 order issued under this section if the Commissioner does not seek continued
10 treatment; or

11 (III) any time that the person ~~absconds elopes~~ from the custody
12 of the Commissioner.

13 (ii) When the State’s Attorney or Attorney General receives notice
14 under subdivision (i) of this subdivision (B), the Office shall provide notice of
15 the action to any victim of the offense ~~for which the person has been charged~~
16 who has not opted out of receiving notice.

17 (iii) As used in this subdivision (B), “victim” has the same
18 meaning as in section 5301 of this title.

19 ~~(C) When a person has been committed under this section and is~~
20 ~~subject to a nonhospitalization order as a result of that commitment under~~
21 ~~18 V.S.A. § 7618, the Commissioner shall provide notice to the committing~~

1 ~~court and to the State's Attorney of the county where the prosecution~~
2 ~~originated, or to the Office of the Attorney General if that office prosecuted the~~
3 ~~case, if the Commissioner becomes aware that:~~

4 ~~(i) the person is not complying with the order; or~~

5 ~~(ii) the alternative treatment has not been adequate to meet the~~
6 ~~person's treatment needs.~~

7 * * *

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

9 RULE 16.1. DISCLOSURE TO THE PROSECUTION

10 (a) The Person of the Defendant.

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

14 * * *

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

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

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

4 * * *

5 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH
6 SERVICES

7 On or before November 1, 2021 2022, the Departments of Corrections and
8 of Mental Health shall jointly submit an inventory and evaluation of the mental
9 health services provided by the entity with whom the Department of
10 Corrections contracts for health care services to the House Committees on
11 Corrections and Institutions, on Health Care, and on Judiciary and to the
12 Senate Committees on Health and Welfare and on Judiciary. The evaluation
13 shall include a comparison as to how the type, frequency, and timeliness of
14 mental health services provided in a correctional setting differ from those
15 services available in the community. The evaluation shall further address how
16 the memorandum of understanding executed by the Departments of
17 Corrections and of Mental Health impacts the mental health services provided
18 by the entity with whom the Department of Corrections contracts for health
19 care services.

20 Sec. 6. FORENSIC CARE WORKING GROUP

1 (a) On or before August 1, 2021, the Department of Mental Health shall
2 convene a working group of interested stakeholders, including as appropriate,
3 the Department of Corrections, the Department of State’s Attorneys and
4 Sheriffs, the Office of the Attorney General, the Office of the Defender
5 General, the Director of Health Care Reform, the Department of Buildings and
6 General Services, the Department of Aging and Independent Living, the Chief
7 Superior Judge, and a representative appointed by Vermont Care Partners, a
8 representative appointed by Vermont Legal Aid’s Mental Health Project, two
9 crime victims representatives appointed by the Vermont Center for Crime
10 Victim Services, the Mental Health Care Ombudsman established pursuant to
11 18 V.S.A. § 7259, a representative of the designated hospitals appointed by the
12 Vermont Association of Hospitals and Health Care Systems, a representative
13 appointed by the Vermont Medical Society, a person two individuals with
14 lived experience of mental illness, and any other interested party permitted by
15 the Commissioner of Mental Health, to:

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

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

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

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

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

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

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

20 (E) the fiscal impact of constructing or repurposing a forensic
21 treatment facility and estimated annual operational costs considering

1 “institutions of mental disease” waivers available through the Center for
2 Medicare and Medicaid Services that do not provide federal fiscal participation
3 for forensic mental health patients; and

4 (F) models for forensic treatment other than inpatient facilities,
5 including community-based treatment.

6 (3) Consider the notification process under 13 V.S.A. § 4822(c)(2)(C)
7 when the Commissioner is required to provide notification to the prosecutor
8 upon becoming aware that persons on orders of non-hospitalization are not
9 complying with the order or that the alternative treatment is not adequate to
10 meet the person’s treatment needs. The working group shall make any
11 recommendations it deems necessary to clarify the process, including
12 recommendations as to what facts and circumstances should trigger the
13 Commissioner’s duty to notify the prosecutor, and recommendations as to
14 steps that the prosecutor should take after receiving the notification.

15 (b) In the work required by this section, including evaluations of forensic
16 treatment models pursuant to subdivision (a)(2), the Forensic Care Working
17 Group shall ensure that social and racial equity issues are considered. These
18 considerations shall be reflected in the report submitted pursuant to subsection
19 (d).

1 (c) Members of the working group who are not State employees shall be
2 entitled to per diem compensation and reimbursement of expenses for
3 attending meetings as permitted under 32 V.S.A. § 1010.

4 (d) On or before November 1, ~~2021~~ 2022, the Department of Mental Health
5 shall submit a report containing the findings and recommendations of the
6 working group to the ~~Joint Legislative Justice Oversight Committee~~ ~~House~~
7 ~~Committees on Corrections and Institutions, on Health Care, and on Judiciary and~~
8 ~~to the Senate Committees on Health and Welfare and on Judiciary.~~ The report
9 shall include proposed draft legislation addressing any identified needed
10 changes to statute.

11 Sec. 7. EFFECTIVE DATE

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

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17 (Committee vote: _____)

18

19

Representative _____

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FOR THE COMMITTEE