

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 *** Competency to Stand Trial and Sanity at the Time of the Offense ***

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

9 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

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

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

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

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

1 applicable ~~matters listed in~~ provisions of subsection (a) of this section. The
2 report shall be transmitted to the court issuing the order for examination, and
3 copies of the report sent to the State’s Attorney, ~~and,~~ to the respondent, to the
4 respondent’s attorney if the respondent is represented by counsel, to the
5 Commissioner of Mental Health, and, if applicable, to the Department of
6 Disabilities, Aging, and Independent Living.

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

16 * * *

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

18 § 4820. HEARING REGARDING COMMITMENT

19 (a) When a person charged on information, complaint, or indictment with a
20 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 *** Reports and Studies ***

6 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH

7 SERVICES

8 (a) On or before ~~November 1, 2021~~ January 1, 2022, the Departments of
9 Corrections and of Mental Health shall jointly submit an inventory and
10 evaluation of the mental health services provided by the entity with whom the
11 Department of Corrections contracts for health care services to the House
12 Committees on Corrections and Institutions, on Health Care, and on Judiciary
13 and to the Senate Committees on Health and Welfare and on Judiciary.

14 (b) The evaluation shall include:

15 (1) a comparison as to how the type, frequency, and timeliness of
16 mental health services provided in a correctional setting differ from those
17 services available in the community, recognizing that comparison to
18 currently available community services does not necessarily establish the
19 standard of care for best practices;

20 (2) a comparison as to how the type, frequency, and timeliness of mental
21 health services differ among Vermont correctional settings, including between

1 men and women’s facilities, and from those mental health services provided to
2 individuals under the care and custody of the Department of Corrections
3 incarcerated in an out-of-state correctional facility;

4 (3) an assessment as to how the use of a for-profit entity with whom the
5 Department of Corrections contracts for health care services affects costs or
6 quality of care in correctional settings;

7 (4) an assessment as to whether the Department of Mental Health should
8 provide oversight authority for mental health services provided by the entity
9 with whom the Department of Corrections contracts for health care services;

10 and

11 (5) information as to how the memorandum of understanding executed
12 by the Departments of Corrections and of Mental Health impacts the mental
13 health services provided by the entity with whom the Department of
14 Corrections contracts for health care services and whether it is adequately
15 addressing needs of those individuals with severe illness or in need of inpatient
16 care.

17 (c) In conducting the work required by this section, the Departments of
18 Corrections and of Mental Health shall ensure that social and racial equity
19 issues are considered, including issues related to transgender and gender non-
20 conforming persons.

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Sec. 6. FORENSIC CARE WORKING GROUP

(a) On or before August 1, 2021, the Department of Mental Health shall convene a working group of interested stakeholders to provide recommendations necessary to carry out the provisions in subsections (b) and (c) 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) the Department of Buildings and General Services;~~

(3) the Chief Superior Judge;

(4) a representative from the Department of State’s Attorneys and Sheriffs;

(5) a representative from the Office of the Attorney General;

(6) a representative from the Office of the Defender General;

(7) the Director of Health Care Reform or designee;

(8) a representative appointed by Vermont Care Partners;

(9) a representative appointed by Vermont Legal Aid’s Mental Health

Project;

(10) a representative appointed by the Vermont Medical Society;

1 (11) two three crime victims representatives, appointed by the Vermont
2 Center for Crime Victim Services;

3 (12) the Mental Health Care Ombudsman established pursuant to
4 18 V.S.A. § 7259 or designee;

5 (13) a representative of the designated hospitals, appointed by the
6 Vermont Association of Hospitals and Health Care Systems;

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

10 (15) a representative appointed by the Vermont Developmental
11 Disabilities Council; and

12 (15) any other interested party permitted by the Commissioner of
13 Mental Health.

14 (b)(1) On or before February 1, 2022, the Department of Mental Health
15 shall submit a preliminary report to the House Committees on Corrections and
16 Institutions, on Health Care, and on Judiciary and to the Senate Committees on
17 Health and Welfare and on Judiciary addressing:

18 (A) any gaps in the current mental health and criminal justice system
19 structure;

20 (B) opportunities to:

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

4 (ii) consider the importance of victims’ rights in the forensic care
5 process;

6 (C) competency restoration models used in other states, including
7 both:

8 (i) models that do not rely on involuntary medication to restore
9 competency; and

10 (ii) how cases where competency is not restored are addressed;

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

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

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

19 (G) models for forensic treatment, including inpatient treatment,
20 community-based treatment, or other treatment models; and

1 (H) any additional recommendations to address the gaps in the
2 current mental health and criminal justice system structure and opportunities to
3 improve public safety and address the treatment needs for individuals
4 incompetent to stand trial or who are adjudicated not guilty by reason of
5 insanity.

6 (2) Based on the recommendations in the preliminary report submitted
7 to the General Assembly pursuant to subdivision (1) of this subsection, the
8 Department shall submit a second preliminary report to the Joint Legislative
9 Justice Oversight Committee on or before July 1, 2022 as to whether or not a
10 forensic treatment facility is needed in Vermont.

11 (3) On or before January 1, 2023, the Department shall submit a final
12 report to the House Committees on Corrections and Institutions, on Health
13 Care, and on Judiciary and to the Senate Committees on Health and Welfare
14 and on Judiciary that refines and finalizes the recommendations made pursuant
15 to subdivisions (1) and (2) of this subsection, including addressing the size,
16 scope, and fiscal impact of any forensic treatment facility if one is
17 recommended in subdivision (2).

18 (c) On or before February 1, 2022, the Department of Mental Health shall
19 submit a report to the House Committees on Corrections and Institutions, on
20 Health Care, and on Judiciary and to the Senate Committees on Health and
21 Welfare and on Judiciary that assesses the necessity of notification to the

1 prosecutor upon becoming aware that individuals on orders of
2 nonhospitalization pursuant to 18 V.S.A. § 7618 are not complying with the
3 order or that the alternative treatment is not adequate to meet the individual’s
4 treatment needs, including any recommendations:

5 (1) necessary to clarify the process;

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

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

10 (d)(1) In conducting the work required by this section, including
11 evaluations for forensic treatment facility models pursuant to subdivision

12 (b)(2) of this section, the working group shall ensure:

13 (A) that social and racial equity issues are considered, including
14 issues related to transgender and gender non-conforming persons; and

15 (B) consistency with the General Assembly’s policy in 18 V.S.A.
16 § 7629(c) of working “toward a mental health system that does not require
17 coercion or the use of involuntary medication.”

18 (2) These considerations shall be reflected in the final report submitted
19 pursuant to subdivision (b)(3) of this section and the report submitted pursuant
20 to subsection (c) of this section.

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

4 (f) The final report submitted pursuant to subdivision (b)(3) of this section
5 and the report submitted pursuant to subsection (c) of this section shall include
6 proposed draft legislation addressing any identified needed changes to statute.

7 (g) Members of the working group who are neither State employees nor
8 otherwise paid to participate in the working group in their professional
9 capacity shall be entitled to per diem compensation and reimbursement of
10 expenses for attending meetings as permitted under 32 V.S.A. § 1010.

11 (h) In fiscal year 2022, \$25,000.00 is appropriated to the Department from
12 the General Fund to complete the work described in this section.

13 * * * Amendment of the Joint Legislative Justice Oversight Committee * * *

14 Sec. 7. 2 V.S.A. § 801 is amended to read:

15 § 801. CREATION OF COMMITTEE

16 * * *

17 (b) The Committee shall be composed of ~~10~~ 12 members: ~~five~~ six members
18 of the House of Representatives, who shall not all be from the same party,
19 appointed by the Speaker of the House; and ~~five~~ six members of the Senate,
20 who shall not all be from the same party, appointed by the Committee on
21 Committees. In addition to one member-at-large appointed from ~~each chamber~~

1 the House, two members-at-large appointed by the Senate, one appointment
2 shall be made from each of the House and Senate Committees on
3 Appropriations and on Judiciary, the Senate Committees on Health and
4 Welfare and on Institutions, and the House Committees on Corrections and
5 Institutions, on Health Care, and on Human Services.

6 * * *

7 * * * Effective Date * * *

8 Sec. 8. EFFECTIVE DATE

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

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14 (Committee vote: _____)

15

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Representative _____

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FOR THE COMMITTEE