

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, if applicable under subsection 4816(b) of this title,
21 the psychiatrist and the psychologist, shall prepare a report containing findings

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

7 (2) If the court orders examination of both the person’s competency to
8 stand trial and the person’s sanity at the time of the alleged offense, those
9 opinions shall be presented in separate reports and addressed separately by the
10 court. In such cases, the examination of the person’s sanity shall only be
11 undertaken if the psychiatrist or, if applicable under subsection 4816(b) of this
12 title, the psychiatrist and the psychologist, are able to form the opinion that the
13 person is competent to stand trial, unless the defendant requests that the
14 examinations occur concurrently. If the evaluation of the defendant’s sanity at
15 the time of the alleged offense does not occur until the defendant is deemed
16 competent to stand trial, the psychiatrist or, if applicable under subsection
17 4816(b) of this title, the psychiatrist and the psychologist, shall make a
18 reasonable effort to collect and preserve any evidence necessary to form an
19 opinion as to sanity if the person regains competence.

20 * * *

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

2 § 4820. HEARING REGARDING COMMITMENT

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

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

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

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

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

18 (b) When a person is found to be incompetent to stand trial, has not been
19 indicted by reason of insanity for the alleged offense, or has been acquitted by
20 reason of insanity at the time of the alleged offense, the person shall be entitled
21 to have counsel appointed from Vermont Legal Aid to represent the person.

1 The Department of Mental Health and, if applicable, the Department of
2 Disabilities, Aging, and Independent Living, shall be entitled to appear and call
3 witnesses at the proceeding.

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

5 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

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

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

20 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
21 least 10 days prior to the proposed discharge of any person committed under

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

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

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

1 (ii) incompetent to stand trial, provided that the person’s criminal
2 case has not been dismissed.

3 (B)(i) When a person has been committed under this section, the
4 Commissioner shall provide notice to the State’s Attorney of the county where
5 the prosecution originated or to the Office of the Attorney General if that office
6 prosecuted the case:

7 (I) at least 10 days prior to discharging the person from:
8 (aa) the care and custody of the Commissioner; or
9 (bb) a hospital or a secure residential recovery facility to the
10 community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;

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

14 (III) any time that the person elopes from the custody of the
15 Commissioner.

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

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

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

RULE 16.1. DISCLOSURE TO THE PROSECUTION

(a) The Person of the Defendant.

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

* * *

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

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

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

* * *

1 *** Reports and Studies ***

2 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH

3 SERVICES

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

10 (b) The evaluation shall include:

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

16 (2) a comparison as to how the type, frequency, and timeliness of mental
17 health services differ among Vermont correctional settings, including between
18 men and women's facilities, and from those mental health services provided to
19 individuals under the care and custody of the Department of Corrections
20 incarcerated in an out-of-state correctional facility;

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

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

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

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

18 Sec. 6. FORENSIC CARE WORKING GROUP

19 (a) On or before August 1, 2021, the Department of Mental Health shall
20 convene a working group of interested stakeholders to provide

1 recommendations necessary to carry out the provisions in subsections (b) and
2 (c) of this section, including as appropriate:

3 (1) a representative from the Department of Corrections;

4 (2) a representative from the Department of Disabilities, Aging, and
5 Independent Living;

6 (3) the Chief Superior Judge;

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

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

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

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

12 (8) a representative appointed by Vermont Care Partners;

13 (9) a representative appointed by Vermont Legal Aid’s Mental Health
14 Project;

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

16 (11) three crime victims representatives, appointed by the Vermont
17 Center for Crime Victim Services;

18 (12) the Mental Health Care Ombudsman established pursuant to
19 18 V.S.A. § 7259 or designee;

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

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

4 (15) a representative appointed by the Vermont Developmental
5 Disabilities Council; and

6 (16) any other interested party permitted by the Commissioner of
7 Mental Health.

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

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

14 (B) opportunities to:

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

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

20 (C) competency restoration models used in other states, including
21 both:

1 (i) models that do not rely on involuntary medication to restore
2 competency; and
3 (ii) how cases where competency is not restored are addressed;
4 (D) models used in other states to determine public safety risks and
5 the means used to address such risks, including guilty but mentally ill verdicts
6 in criminal cases;
7 (E) due process requirements for defendants held without
8 adjudication of a crime and presumed innocent;
9 (F) processes regarding other mental conditions affecting competence
10 or sanity, including intellectual disabilities, traumatic brain injury, and
11 dementia;
12 (G) models for forensic treatment, including inpatient treatment,
13 community-based treatment, or other treatment models; and
14 (H) any additional recommendations to address the gaps in the
15 current mental health and criminal justice system structure and opportunities to
16 improve public safety and address the treatment needs for individuals
17 incompetent to stand trial or who are adjudicated not guilty by reason of
18 insanity.
19 (2) Based on the recommendations in the preliminary report submitted
20 to the General Assembly pursuant to subdivision (1) of this subsection, the
21 Department shall submit a second preliminary report to the Joint Legislative

1 Justice Oversight Committee on or before July 1, 2022 as to whether or not a
2 forensic treatment facility is needed in Vermont.

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

10 (c) On or before February 1, 2022, the Department of Mental Health shall
11 submit a report to the House Committees on Corrections and Institutions, on
12 Health Care, and on Judiciary and to the Senate Committees on Health and
13 Welfare and on Judiciary that assesses the necessity of notification to the
14 prosecutor upon becoming aware that individuals on orders of
15 nonhospitalization pursuant to 18 V.S.A. § 7618 are not complying with the
16 order or that the alternative treatment is not adequate to meet the individual's
17 treatment needs, including any recommendations:

18 (1) necessary to clarify the process;

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

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

3 (d)(1) In conducting the work required by this section, including
4 evaluations for forensic treatment facility models pursuant to subdivision
5 (b)(2) of this section, the working group shall ensure:

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

8 (B) consistency with the General Assembly’s policy in 18 V.S.A.
9 § 7629(c) of working “toward a mental health system that does not require
10 coercion or the use of involuntary medication.”

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

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

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

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

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

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

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

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

7 § 801. CREATION OF COMMITTEE

8 * * *

9 (b) The Committee shall be composed of ~~10~~ 12 members: ~~five~~ six members
10 of the House of Representatives, who shall not all be from the same party,
11 appointed by the Speaker of the House; and ~~five~~ six members of the Senate,
12 who shall not all be from the same party, appointed by the Committee on
13 Committees. In addition to one member-at-large appointed from ~~each chamber~~
14 the House, two members-at-large appointed by the Senate, one appointment
15 shall be made from each of the House and Senate Committees on
16 Appropriations and on Judiciary, the Senate Committees on Health and
17 Welfare and on Institutions, and the House Committees on Corrections and
18 Institutions, on Health Care, and on Human Services.

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* * * Effective Date * * *

Sec. 8. EFFECTIVE DATE

This act shall take effect on July 1, 2021.

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE