

1 TO THE HONORABLE SENATE:

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 bill be amended by striking out all after the enacting clause and inserting in
6 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 psychologist, ~~if applicable~~, shall prepare a report
20 containing findings in regard to ~~each of the applicable matters listed in~~
21 provisions of subsection (a) of this section. The report shall be transmitted to

1 the court issuing the order for examination, and copies of the report sent to the
2 State’s Attorney, ~~and~~, to the respondent’s attorney if the respondent is
3 represented by counsel, and to the Commissioner of Mental Health.

4 (2) If the psychiatrist or psychologist has been asked to provide opinions
5 as to both the person’s competency to stand trial and the person’s sanity at the
6 time of the alleged offense, those opinions shall be presented in separate
7 reports and addressed separately by the court. In such cases, the examination
8 of the person’s sanity shall only be undertaken if the psychiatrist or
9 psychologist is able to form the opinion that the person is competent to stand
10 trial.

11 * * *

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

13 § 4820. HEARING REGARDING COMMITMENT

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

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

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

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

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

9 (b) When a person is found to be incompetent to stand trial pursuant to
10 subdivision (a)(2) of this section, has not been indicted by reason of insanity
11 for the alleged offense, or has been acquitted by reason of insanity at the time
12 of the alleged offense, the person shall be entitled to have counsel appointed
13 from Vermont Legal Aid to represent the person. The Department of Mental
14 Health shall be entitled to appear and call witnesses at the proceeding.

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

16 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

17 (a) If the court finds that the person is a person in need of treatment or a
18 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
19 shall issue an order of commitment directed to the Commissioner of Mental
20 Health that shall admit the person to the care and custody of the Department of
21 Mental Health for an indeterminate period. In any case involving personal

1 injury or threat of personal injury, the committing court may issue an order
2 requiring a court hearing before a person committed under this section may be
3 discharged from custody.

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

10 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
11 least 10 days prior to the proposed discharge of any person committed under
12 this section, the Commissioner of Mental Health shall give notice of the
13 discharge to the committing court and State’s Attorney of the county where the
14 prosecution originated. In all cases requiring a hearing prior to discharge of a
15 person found incompetent to stand trial under section 4817 of this title, the
16 hearing shall be conducted by the committing court issuing the order under that
17 section. In all other cases, when the committing court orders a hearing under
18 subsection (a) of this section or when, in the discretion of the Commissioner of
19 Mental Health, a hearing should be held prior to the discharge, the hearing
20 shall be held in the Family Division of the Superior Court to determine if the
21 committed person is no longer a person in need of treatment or a patient in

1 need of further treatment as set forth in subsection (a) of this section. Notice
2 of the hearing shall be given to the Commissioner, the State's Attorney of the
3 county where the prosecution originated, the committed person, and the
4 person's attorney. Prior to the hearing, the State's Attorney may enter an
5 appearance in the proceedings and may request examination of the patient by
6 an independent psychiatrist, who may testify at the hearing.

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

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

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

13 (B)(i) When a person has been committed under this section, the
14 Commissioner shall provide notice to the State's Attorney of the county where
15 the prosecution originated or to the Office of the Attorney General if that office
16 prosecuted the case:

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

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

19 (bb) commitment in a hospital or a secure residential
20 recovery facility to the community on an order of non-hospitalization pursuant
21 to 18 V.S.A. § 7618;

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

4 (III) any time that the person absconds from the custody of the
5 Commissioner.

6 (ii) When the State’s Attorney or Attorney General receives notice
7 under subdivision (i) of this subdivision (B), the office shall provide notice of
8 the action to any victim of the offense who has not opted out of receiving
9 notice.

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

12 (C) When a person has been committed under this section and is
13 subject to a non-hospitalization order as a result of that commitment under
14 18 V.S.A. § 7618, the Commissioner shall provide notice to the committing
15 court and to the State’s Attorney of the county where the prosecution
16 originated, or to the Office of the Attorney General if that office prosecuted the
17 case, if the Commissioner becomes aware that:

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

19 (ii) the alternative treatment has not been adequate to meet the
20 person’s treatment needs.

21 * * *

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

2 RULE 16.1. DISCLOSURE TO THE PROSECUTION

3 (a) The Person of the Defendant.

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

7 * * *

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

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

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

16 * * *

17 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH

18 SERVICES

19 On or before November 1, 2021, the Departments of Corrections and of
20 Mental Health shall jointly submit an inventory and evaluation of the mental
21 health services provided by the entity with whom the Department of

1 Corrections contracts for health care services to the House Committees on
2 Corrections and Institutions, on Health Care, and on Judiciary and to the
3 Senate Committees on Health and Welfare and on Judiciary. The evaluation
4 shall include a comparison as to how the type, frequency, and timeliness of
5 mental health services provided in a correctional setting differ from those
6 services available in the community. The evaluation shall further address how
7 the memorandum of understanding executed by the Departments of
8 Corrections and of Mental Health impacts the mental health services provided
9 by the entity with whom the Department of Corrections contracts for health
10 care services.

11 Sec. 6. FORENSIC CARE WORKING GROUP

12 (a) On or before August 1, 2021, the Department of Mental Health shall
13 convene a working group of interested stakeholders, including as appropriate,
14 the Department of Corrections, the Department of State’s Attorneys and
15 Sheriffs, the Office of the Attorney General, the Office of the Defender
16 General, the Director of Health Care Reform, the Department of Buildings and
17 General Services, a representative appointed by Vermont Care Partners, a
18 representative appointed by Vermont Legal Aid’s Mental Health Project, a
19 crime victim’s representative appointed by the Vermont Center for Crime
20 Victim Services, the Mental Health Care Ombudsman established pursuant to
21 18 V.S.A. § 7259, a representative of the designated hospitals appointed by the

1 Vermont Association of Hospitals and Health Care Systems, a person with
2 lived experience of mental illness, and any other interested party permitted by
3 the Commissioner of Mental Health, to:

4 (1) Identify any gaps in the current mental health and criminal justice
5 system structure and opportunities to improve public safety and the
6 coordination of treatment for individuals incompetent to stand trial or who are
7 adjudicated not guilty by reason of insanity. The working group shall review
8 competency restoration models used in other states and explore models used in
9 other states that balance the treatment and public safety risks posed by
10 individuals found not guilty by reason of insanity, such as Psychiatric Security
11 Review Boards, including the Connecticut Psychiatric Security Review Board,
12 and guilty but mentally ill verdicts in criminal cases.

13 (2) Evaluate various models for the establishment of a State-funded
14 forensic treatment facility for individuals found incompetent to stand trial or
15 who are adjudicated not guilty by reason of insanity. The evaluation shall
16 address:

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

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

1 (C) the feasibility and appropriateness of repurposing an existing
2 facility for the purpose of establishing a forensic treatment facility versus
3 constructing a new facility for this purpose;

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

8 (E) the fiscal impact of constructing or repurposing a forensic
9 treatment facility and estimated annual operational costs considering
10 “institutions of mental disease” waivers available through the Center for
11 Medicare and Medicaid Services that do not provide federal fiscal participation
12 for forensic mental health patients.

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

16 (c) On or before November 1, 2021, the Department of Mental Health shall
17 submit a report containing the findings and recommendations of the working
18 group to the Joint Legislative Justice Oversight Committee. The report shall
19 include proposed draft legislation addressing any identified needed changes to
20 statute.

1 Sec. 7. EFFECTIVE DATE

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

3

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5

6 (Committee vote: _____)

7

8

Senator _____

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FOR THE COMMITTEE