

1 S.3

2 Senator Sears moves that Senate concur with the House proposal of  
3 amendment with further amendment as follows:

4 First: By striking out Sec. 6, forensic care working group, in its entirety and  
5 inserting in lieu thereof a new Sec. 6 to read as follows:

6 Sec. 6. **REPORTS; FORENSIC CARE WORKING GROUP; PROSECUTOR**  
7 **NOTIFICATION; COMPETENCY RESTORATION MODELS**

8 (a) On or before July 15, 2021, the Department of Mental Health shall  
9 convene a working groups of interested stakeholders to provide  
10 recommendations necessary to carry out the provisions in subsections (b), and  
11 (c), and (d) of this section, including as appropriate:

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

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

15 (3) a representative from the Department of Buildings and General  
16 Services;

17 (4) the Chief Superior Judge;

18 (5) a representative from the Department of State's Attorneys and  
19 Sheriffs;

20 (6) a representative from the Office of the Attorney General;

21 (7) a representative from the Office of the Defender General;

1           (8) the Director of Health Care Reform or designee;

2           (9) a representative appointed by Vermont Care Partners;

3           (10) a representative appointed by Vermont Legal Aid’s Mental Health  
4 Project;

5           (11) a representative appointed by the Vermont Medical Society;

6           (12) three crime victims representatives, appointed by the Vermont  
7 Center for Crime Victim Services;

8           (13) the Mental Health Care Ombudsman established pursuant to  
9 18 V.S.A. § 7259 or designee;

10           (14) a representative of the designated hospitals, appointed by the  
11 Vermont Association of Hospitals and Health Care Systems;

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

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

17           (17) any other interested party permitted by the Commissioner of  
18 Mental Health.

19           (b)(1) On or before August 1, 2022, the Department of Mental Health shall  
20 submit a final report to the Joint Legislative Justice Oversight Committee and  
21 the chairs of the House Committees on Corrections and Institutions, on Health

1 Care, and on Judiciary and to the Senate Committees on Health and Welfare

2 and on Judiciary addressing:

3 (A) any gaps in the current mental health and criminal justice system  
4 structure related to individuals incompetent to stand trial or who are  
5 adjudicated not guilty by reason of insanity;

6 (B) opportunities to:

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

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

12 (C) competency restoration models used in other states, including  
13 both:

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

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

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

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

1 ~~(F)~~(E) processes regarding other mental conditions affecting  
2 competence or sanity, including intellectual disabilities, traumatic brain injury,  
3 and dementia;

4 ~~(G)~~(F) models for forensic treatment, including inpatient treatment,  
5 community based treatment, or other treatment models the size, scope, and  
6 fiscal impact of any forensic treatment facility; and

7 ~~(H)~~(G) any additional recommendations to address the gaps in the  
8 current mental health and criminal justice system structures and opportunities  
9 to improve public safety and address the treatment needs for individuals  
10 incompetent to stand trial or who are adjudicated not guilty by reason of  
11 insanity.

12 (2) Based on the recommendations in the preliminary report submitted  
13 to the General Assembly pursuant to subdivision (1) of this subsection, On or  
14 before January 15, 2022, the Department shall submit a second preliminary  
15 report to the House Committees on Corrections and Institutions, on Health  
16 Care, and on Judiciary and to the Senate Committees on Health and Welfare  
17 and on Judiciary on or before April 15, 2022 as to whether or not a forensic  
18 treatment facility is needed in Vermont summarizing the work completed  
19 pursuant to subdivision (1) of this subsection to date.

20 ~~(3)~~ On or before September 15, 2022, the Department shall submit a  
21 final report to the Joint Legislative Justice Oversight Committee that refines

1 and finalizes the recommendations made pursuant to subdivisions (1) and (2)  
2 of this subsection, including addressing the size, scope, and fiscal impact of  
3 any forensic treatment facility if one is recommended in subdivision (2).

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

12 (1) necessary to clarify the process;

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

15 (3) addressing steps that the prosecutor should take after receiving the  
16 notification.

17 (d) On or before January 15, 2023, the Department of Mental Health shall  
18 submit a report to the House Committees on Corrections and Institutions, on  
19 Health Care, and on Judiciary and to the Senate Committees on Health and  
20 Welfare and on Judiciary comparing competency restoration models and  
21 addressing how cases where competency is not restored are addressed.

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

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

4 (A) that social and racial equity issues are considered, including  
5 issues related to transgender and gender nonconforming persons; and

6 (B) consistency with the General Assembly’s policy in 18 V.S.A.  
7 § 7629(c) of working “toward a mental health system that does not require  
8 coercion or the use of involuntary medication.”

9 (2) These considerations shall be reflected in the final report submitted  
10 pursuant to subdivision (b)(1) of this section and the reports submitted  
11 pursuant to subsections (c) and (d) of this section.

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

15 (g) The final report submitted pursuant to subdivision (b)(1) of this section  
16 and the reports submitted pursuant to subsections (c) and (d) of this section  
17 shall include proposed draft legislation addressing any identified needed  
18 changes to statute.

19 (h) Members of the working group who are neither State employees nor  
20 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 Second: By striking out Sec. 7, creation of committee, in its entirety and  
4 inserting in lieu thereof:

5 [Deleted.]