
This act summary is provided for the convenience of the public and members of the General Assembly. It is intended to provide a general summary of the act and may not be exhaustive. It has been prepared by the staff of the Office of Legislative Counsel without input from members of the General Assembly. It is not intended to aid in the interpretation of legislation or to serve as a source of legislative intent.

Act No. 28 (S. 91). An act relating to competency to stand trial and insanity as a defense

Subjects: Criminal procedures; competency to stand trial; insanity as a defense

This act separates the initial psychiatric examination that must occur when the question of a criminal defendant's sanity at the time the offense was committed or competency to stand trial has been raised. As a result, the initial examination will evaluate the defendant's competency, not the defendant's sanity.

The act permits the examination to be performed by doctoral-level psychologists with training in forensic psychology. Current law requires the initial examination to be conducted by a psychiatrist. This provision sunsets in one year, and during that year the Joint Legislative Committee on Justice Oversight will study and report back on whether this new option should be kept, repealed, or expanded to include other mental health professionals.

The act provides that subsequent competency evaluations after completion of the initial one will only be ordered by the court if circumstances have changed. In determining whether to order a subsequent evaluation, the court must consider any clinical evidence provided by the treating physician indicating that the defendant's competency may have changed. The act also permits the court to issue an arrest warrant for a defendant who has received notice of a competency evaluation but failed to appear for it.

The act reflects current practice by expressly providing that the defendant is presumed to be competent, has the burden of proving incompetency by a preponderance of the evidence, and cannot be tried for an offense if found to be incompetent.

The act requires the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living to submit reports on cumulative competency evaluations and on whether a plan for a competency restoration program should be adopted in Vermont.

Effective Date: July 1, 2023