

1 S.91

2 Introduced by Senators Lyons and Sears

3 Referred to Committee on

4 Date:

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

6 Statement of purpose of bill as introduced: This bill proposes to make several
7 changes to the law of competency to stand trial and the insanity defense in
8 criminal proceedings, including decoupling the procedures for determining
9 competency and sanity so that a competency determination must be made
10 before an insanity defense can be raised, requiring that the defendant's mental
11 health records be released to the psychiatrist conducting the evaluation when
12 the defendant's competency is at issue, establishing a presumption that a
13 defendant is competent, and requiring the Department of Mental Health and
14 the Department of Disabilities, Aging, and Independent Living to develop a
15 plan for a competency restoration program.

16 An act relating to competency to stand trial and insanity as a defense

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. 13 V.S.A. § 4801 is amended to read:

19 § 4801. TEST OF INSANITY IN CRIMINAL CASES

20 (a) The test when used as a defense in criminal cases shall be as follows:

1 (1) A person is not responsible for criminal conduct if at the time of
2 such conduct as a result of mental disease or defect ~~he or she~~ the person lacks
3 adequate capacity either to appreciate the criminality of ~~his or her~~ the person's
4 conduct or to conform ~~his or her~~ the person's conduct to the requirements of
5 law.

6 (2) The terms “mental disease or defect” do not include an abnormality
7 manifested only by repeated criminal or otherwise anti-social conduct. The
8 terms “mental disease or defect” ~~shall include~~ includes congenital and
9 traumatic mental conditions as well as disease.

10 (b) The defendant shall have the burden of proof in establishing insanity as
11 an affirmative defense by a preponderance of the evidence. The defendant
12 shall be responsible for hiring the defendant's own forensic evaluator for the
13 purpose of establishing insanity and may raise insanity as a defense at any time
14 during the proceedings pursuant to Rule 12 of the Vermont Rules of Criminal
15 Procedure.

16 Sec. 2. 13 V.S.A. § 4814 is amended to read:

17 § 4814. ORDER FOR EXAMINATION

18 (a) Any court before which a criminal prosecution is pending may order the
19 Department of Mental Health to have the defendant examined by a psychiatrist
20 at any time before, during, or after trial, and before final judgment in any of the
21 following cases:

1 (1) ~~when the defendant enters a plea of not guilty, or when such a plea is~~
2 ~~entered in the defendant's behalf, and then gives notice of the defendant's~~
3 ~~intention to rely upon the defense of insanity at the time of the alleged crime,~~
4 ~~or to introduce expert testimony relating to a mental disease, defect, or other~~
5 ~~condition bearing upon the issue of whether he or she had the mental state~~
6 ~~required for the offense charged; [Repealed.]~~

7 (2) when the defendant, the State, or an attorney, guardian, or other
8 person acting on behalf of the defendant, raises before such court the issue of
9 whether the defendant is mentally competent to stand trial for the alleged
10 offense; or

11 (3) ~~when the court believes that there is doubt as to the defendant's~~
12 ~~sanity at the time of the alleged offense; or [Repealed.]~~

13 (4) when the court believes that there is doubt as to the defendant's
14 mental competency to be tried for the alleged offense.

15 (b) ~~Such~~ The order may be issued by the court on its own motion, or on
16 motion of the State, the defendant, or an attorney, guardian, or other person
17 acting on behalf of the defendant. The examination shall be at the expense of
18 the moving party, provided that the State shall pay for the competency
19 evaluation of an indigent defendant whose competency is at issue.

1 (f) The court and parties shall review the recommendation of the designated
2 mental health professional and consider the facts and circumstances
3 surrounding the charge and observations of the defendant in court. If the court
4 finds sufficient facts to order an examination, it may be ordered to be
5 completed in the least restrictive environment deemed sufficient to complete
6 the examination, consistent with subsection (a) of this section.

7 * * *

8 (h) ~~Except upon good cause shown, defendants~~ Defendants charged with
9 misdemeanor offenses who are not in the custody of the Commissioner of
10 Corrections shall be examined on an outpatient basis for mental competency
11 unless the court makes written findings on the record that there is good cause
12 for an inpatient evaluation. Examinations occurring in the community shall be
13 conducted at a location within 60 miles of the defendant's residence or at
14 another location agreed to by the defendant.

15 * * *

16 Sec. 4. 13 V.S.A. § 4816 is amended to read:

17 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

20 (1) mental competency of the person examined to stand trial for the
21 alleged offense.

1 ~~(2) sanity of the person examined at the time of the alleged offense.~~

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

5 ~~(c)(1)~~ As soon as practicable after the examination has been completed, the
6 examining psychiatrist or, if applicable under subsection (b) of this section, ~~the~~
7 ~~psychiatrist and~~ the psychologist shall prepare a report containing findings in
8 regard to the applicable provisions of subsection (a) of this section. The report
9 shall be transmitted to the court issuing the order for examination, and copies
10 of the report sent to the State's Attorney, to the respondent, to the respondent's
11 attorney if the respondent is represented by counsel, to the Commissioner of
12 Mental Health, and, if applicable, to the Department of Disabilities, Aging, and
13 Independent Living.

14 ~~(2) If the court orders examination of both the person's competency to~~
15 ~~stand trial and the person's sanity at the time of the alleged offense, those~~
16 ~~opinions shall be presented in separate reports and addressed separately by the~~
17 ~~court. In such cases, the examination of the person's sanity shall only be~~
18 ~~undertaken if the psychiatrist or, if applicable under subsection (b) of this~~
19 ~~section, the psychiatrist and the psychologist are able to form the opinion that~~
20 ~~the person is competent to stand trial, unless the defendant requests that the~~
21 ~~examinations occur concurrently. If the evaluation of the defendant's sanity at~~

1 ~~the time of the alleged offense does not occur until the defendant is deemed~~
2 ~~competent to stand trial, the psychiatrist or, if applicable under subsection (b)~~
3 ~~of this section, the psychiatrist and the psychologist shall make a reasonable~~
4 ~~effort to collect and preserve any evidence necessary to form an opinion as to~~
5 ~~sanity if the person regains competence.~~

6 (d) No statement made in the course of the examination by the person
7 examined, whether or not ~~he or she~~ the person has consented to the
8 examination, shall be admitted as evidence in any criminal proceeding for the
9 purpose of proving the commission of a criminal offense or for the purpose of
10 impeaching testimony of the person examined.

11 (e) The relevant portion of a psychiatrist's report shall be admitted into
12 evidence as an exhibit on the issue of the person's mental competency to stand
13 trial and the opinion shall be conclusive on the issue if agreed to by the parties
14 and if found by the court to be relevant and probative on the issue.

15 (f) Introduction of a report under subsection (d) of this section shall not
16 preclude either party or the court from calling the psychiatrist who wrote the
17 report as a witness or from calling witnesses or introducing other relevant
18 evidence. Any witness called by either party on the issue of the defendant's
19 competency shall be at the State's expense, or, if called by the court, at the
20 court's expense.

1 Sec. 5. 13 V.S.A. § 4817 is amended to read:

2 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

3 (a) A defendant shall be presumed to be competent.

4 (b) A person shall not be tried for a criminal offense if ~~he or she~~ the person
5 is incompetent to stand trial.

6 ~~(b)~~(c) If a person indicted, complained, or informed against for an alleged
7 criminal offense, an attorney or guardian acting in ~~his or her~~ the person's
8 behalf, or the State, at any time before final judgment, raises before the court
9 before which such person is tried or is to be tried, the issue of whether such
10 person is incompetent to stand trial, or if the court has reason to believe that
11 such person may not be competent to stand trial, a hearing shall be held before
12 such court at which evidence shall be received and a finding made regarding
13 ~~his or her~~ the person's competency to stand trial. However, in cases where the
14 court has reason to believe that such person may be incompetent to stand trial
15 due to a mental disease or mental defect, such hearing shall not be held until an
16 examination has been made and a report submitted by an examining
17 psychiatrist in accordance with sections 4814–4816 of this title.

18 ~~(c)~~(d) A person who has been found incompetent to stand trial for an
19 alleged offense may be tried for that offense if, upon subsequent hearing, such
20 person is found by the court having jurisdiction of ~~his or her~~ the person's trial
21 for the offense to have become competent to stand trial.

1 Sec. 6. 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. [Repealed.]~~

8 (2) ~~Is~~ 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~~ 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; or

12 (4) ~~Upon~~ upon trial by court or jury is acquitted by reason of insanity at
13 the time of the alleged offense; the court before which such person is tried or is
14 to 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~~ 21
18 days.

19 (b) When a person is found to be incompetent to stand trial, has not been
20 indicted by reason of insanity for the alleged offense, or has been acquitted by
21 reason of insanity at the time of the alleged offense, the person shall be entitled

1 to have counsel appointed from Vermont Legal Aid to represent the person.

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

5 (c) A commitment order issued pursuant to this chapter shall not modify or
6 vacate orders concerning conditions of release or bail issued pursuant to
7 chapter 229 of this title, and the commitment order shall remain in place unless
8 expressly modified, provided that inpatient treatment shall be permitted if a
9 person who is held without bail is found to be in need of inpatient treatment
10 under this chapter.

11 Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN

12 On or before November 15, 2023, the Department of Mental Health and the
13 Department of Disabilities, Aging, and Independent Living shall report a plan
14 for a competency restoration program to the Governor, the Senate Committees
15 on Judiciary and on Health and Welfare, and the House Committees on
16 Judiciary, on Health Care, and on Human Services. The report shall include
17 recommendations for best practices, any changes to law necessary to establish
18 the program, estimated costs, and a proposal for implementing the program.

19 Sec. 8. EFFECTIVE DATE

20 This act shall take effect on July 1, 2023.