

1 S.91

2 Introduced by Senators Lyons and Sears

3 Referred to Committee on Judiciary

4 Date: February 17, 2023

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~~

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

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

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

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

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

18 § 4814. ORDER FOR EXAMINATION

19 (a) Any court before which a criminal prosecution is pending may order
20 ~~the Department of Mental Health to have the defendant examined by a~~

1 ~~psychiatrist at any time before, during, or after trial, and before final judgment~~

2 in any of the following cases:

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8 ~~required for the offense charged; [Repealed.]~~

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

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14 ~~sanity at the time of the alleged offense; or [Repealed.]~~

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

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

1 ~~(c) An order issued pursuant to this section shall order the release of all~~
2 relevant records to the examiner, including all juvenile and adult court, mental
3 health, and other health records.

4 Sec. 3. 13 V.S.A. § 4815 is amended to read:

5 § 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

6 * * *

7 (c) A motion for examination shall be made as soon as practicable after a
8 party or the court has good faith reason to believe that there are grounds for an
9 examination. A motion for an examination shall detail the facts indicating
10 incompetency on which the motion is based and shall certify that the motion is
11 made after the moving party has met with and personally observed the
12 defendant. An attorney making such a motion shall be subject to the potential
13 sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

14 (d) Upon the making of a motion for examination, if the court finds
15 sufficient facts to order an examination, the court shall order a mental health
16 screening to be completed by a designated mental health professional while the
17 defendant is still at the court.

18 (e) If the screening cannot be commenced and completed at the courthouse
19 within two hours from the time of the defendant's appearance before the court,
20 ~~the court may forgo consideration of the screener's recommendations.~~

1 ~~(f) The court and parties shall review the recommendation of the~~
2 designated 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,
13 and 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 ~~See 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
16 an examination has been made and a report submitted by an examining
17 psychiatrist in accordance with sections 4814–4816 of this title.

18 ~~(e)(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.~~

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

~~§ 4801. TEST OF INSANITY IN CRIMINAL CASES~~

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

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

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

~~(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence. The defendant shall be responsible for hiring the defendant's own forensic evaluator for the purpose of establishing insanity provided that the State shall pay for the evaluation of an indigent defendant.~~

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

~~§ 4814. ORDER FOR EXAMINATION~~

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

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

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

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

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

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

~~(c) An order issued pursuant to this section or Rule 16.1 of the Vermont Rules of Criminal Procedure shall order the release of all relevant records to the examiner, including all juvenile and adult court, mental health, and other health records.~~

~~(d) Notwithstanding any other provision of law, an examination ordered pursuant to subsection (a) of this section may be conducted by a doctoral-level psychologist trained in forensic psychology and licensed under 26 V.S.A. chapter 55. This subsection shall be repealed on July 1, 2024.~~

~~Sec. 3. 13 V.S.A. § 4815 is amended to read:~~

~~§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT~~

~~* * *~~

~~(c) A motion for examination shall be made as soon as practicable after a party or the court has good faith reason to believe that there are grounds for an examination. A motion for an examination shall detail the facts indicating incompetency on which the motion is based and shall certify that the motion is made after the moving party has met with or personally observed the defendant. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.~~

~~(d) Upon the making of a motion for examination, if the court finds sufficient facts to order an examination, the court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the court.~~

~~(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the court, the court may forgo consideration of the screener's recommendations.~~

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

~~* * *~~

~~(1) Except upon good cause shown, defendants Defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency unless the court makes findings on the record that there is good cause for an inpatient evaluation. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.~~

~~***~~

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

~~§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE~~

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

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

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

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

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

~~(2) If the court orders examination of both the person's competency to stand trial and the person's sanity at the time of the alleged offense, those opinions shall be presented in separate reports and addressed separately by the court. In such cases, the examination of the person's sanity shall only be undertaken if the psychiatrist or, if applicable under subsection (b) of this section, the psychiatrist and the psychologist are able to form the opinion that the person is competent to stand trial, unless the defendant requests that the examinations occur concurrently. If the evaluation of the defendant's sanity at the time of the alleged offense does not occur until the defendant is deemed competent to stand trial, the psychiatrist or, if applicable under subsection (b) of this section, the psychiatrist and the psychologist shall make a reasonable~~

~~effort to collect and preserve any evidence necessary to form an opinion as to sanity if the person regains competence.~~

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

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

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

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

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

~~(a) A defendant shall be presumed to be competent and shall have the burden of proving incompetency by a preponderance of the evidence.~~

~~(b) A person shall not be tried for a criminal offense if ~~he or she~~ the person is found incompetent to stand trial by a preponderance of the evidence.~~

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

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

~~for the offense to have become competent to stand trial.~~

~~Sec. 6. 13 V.S.A. § 4820 is amended to read:~~

~~§ 4820. HEARING REGARDING COMMITMENT~~

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

~~(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title to have been insane at the time of the alleged offense. [Repealed.]~~

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

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

~~(4) Upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense, the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the Commissioner of Mental Health. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 21 days.~~

~~(b) When a person is found to be incompetent to stand trial, has not been indicted by reason of insanity for the alleged offense, or has been acquitted by reason of insanity at the time of the alleged offense, the person shall be entitled to have counsel appointed from Vermont Legal Aid to represent the person. The Department of Mental Health and, if applicable, the Department of Disabilities, Aging, and Independent Living shall be entitled to appear and call witnesses at the proceeding.~~

~~(c) Notwithstanding any other provision of law, a commitment order issued pursuant to this chapter shall not modify or vacate orders concerning conditions of release or bail issued pursuant to chapter 229 of this title, and the commitment order shall remain in place unless expressly modified, provided that inpatient treatment shall be permitted if a person who is held without bail is found to be in need of inpatient treatment under this chapter.~~

~~Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN~~

~~On or before November 15, 2023, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living shall report to the Governor, the Senate Committees on Judiciary and on Health and Welfare, and the House Committees on Judiciary, on Health Care, and on Human Services~~

~~whether a plan for a competency restoration program should be adopted in Vermont. If a competency restoration plan is recommended, the report shall include recommendations for best practices, any changes to law necessary to establish the program, estimated costs, and a proposal for implementing the program.~~

~~Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE
REVIEW; COMPETENCY AND SANITY EXAMINATIONS~~

~~(a) The Joint Legislative Justice Oversight Committee shall review whether Vermont law should permit competency and sanity examinations of defendants under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level psychologists trained in forensic psychology, by other doctoral-level mental health providers, psychiatric nurse practitioners, or any other professionals. The Committee's recommendation under subsection (b) of this section shall reflect its determination of which professionals, if any, should be permitted to conduct the competency and sanity examinations.~~

~~(b) On or before November 15, 2023, the Committee shall recommend any changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency and sanity examinations by doctoral-level psychologists trained in forensic psychology) to the Senate and House Committees on Judiciary.~~

~~Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN~~

~~On or before November 15, 2023, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living, in consultation with interested parties, shall report to the Governor, the Senate Committees on Judiciary and on Health and Welfare, and the House Committees on Judiciary, on Health Care, and on Human Services on whether a plan for a competency restoration program should be adopted in Vermont. If a competency restoration plan is recommended, the report shall include recommendations for best practices, any changes to law necessary to establish the program, estimated costs, and a proposal for implementing the program.~~

~~Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE
REVIEW; COMPETENCY AND SANITY EXAMINATIONS~~

~~(a) The Joint Legislative Justice Oversight Committee shall review whether Vermont law should permit competency and sanity examinations of defendants under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level psychologists trained in forensic psychology, by other doctoral-level mental health providers, psychiatric nurse practitioners, or any other professionals. The review shall include consideration of laws on the issue in other states and whether any changes to 13 V.S.A. § 4814 or any other Vermont laws are necessary to permit referral of the evaluation to~~

~~psychiatrist when appropriate. The Committee's recommendation under subsection (c) of this section shall reflect its determination of which professionals, if any, should be permitted to conduct the competency and sanity examinations.~~

~~(b) The Joint Legislative Justice Oversight Committee shall conduct the review of competency and sanity evaluation procedures required by subsection (a) of this section at not more than four of its 2023 meetings. Two members of the Senate Committee on Health and Welfare appointed by the Chair of that Committee and two members of the House Committee on Health Care appointed by the Chair of that Committee shall be permitted to attend and participate in the meetings. Members of the Committees on Health and Welfare and on Health Care who attend the meetings as authorized by this section shall be permitted to participate in the Justice Oversight Committee's development of the recommendations required by subsection (c) of this section.~~

~~(c) On or before November 15, 2023, the Committee shall recommend any changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency and sanity examinations by doctoral-level psychologists trained in forensic psychology) to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Health Care.~~

Sec. 9. EFFECTIVE DATE

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

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

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

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

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

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

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence. The defendant shall be responsible for hiring the defendant's own forensic evaluator for the purpose of establishing insanity, provided that the Office of the Defender General shall pay for the evaluation of an indigent defendant.

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

§ 4814. ORDER FOR EXAMINATION OF COMPETENCY

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

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

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

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

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

~~(b) Such~~ The order may be issued by the court on its own motion, or on motion of the State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

(c) An order issued pursuant to this section or Rule 16.1 of the Vermont Rules of Criminal Procedure shall order the release of all relevant records to the examiner, including all juvenile and adult court, mental health, and other health records.

(d) Notwithstanding any other provision of law, an examination ordered pursuant to subsection (a) of this section may be conducted by a doctoral-level psychologist trained in forensic psychology and licensed under 26 V.S.A. chapter 55. This subsection shall be repealed on July 1, 2024.

(e) After an initial competency determination, a court may order subsequent evaluations of a defendant to be performed by the Department of Mental Health only upon a showing of changed circumstances. In determining whether to order subsequent evaluations, the court shall consider a treating physician's clinical evidence, if any, indicating that the defendant's competency may have changed. This section shall not limit the parties'

abilities to secure their own evaluations voluntarily or under Vermont Rule of Criminal Procedure 16.1.

(f) The court may issue a warrant for the arrest of a defendant who, after receiving notice of an evaluation ordered under this section, fails to appear for the evaluation.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

* * *

(c) A motion for examination shall be made as soon as practicable after a party or the court has good faith reason to believe that there are grounds for an examination. A motion for an examination shall detail the facts indicating incompetency on which the motion is based and shall certify that the motion is made after the moving party has met with or personally observed the defendant. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, if the court finds sufficient facts to order an examination, the court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the court, the court may forgo consideration of the screener's recommendations.

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

* * *

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

* * *

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

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

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

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

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

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

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

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

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

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

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

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

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A defendant shall be presumed to be competent and shall have the burden of proving incompetency by a preponderance of the evidence.

(b) A person shall not be tried for a criminal offense if ~~he or she~~ the person is found incompetent to stand trial by a preponderance of the evidence.

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

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

Sec. 6. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

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

~~(1) Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title to have been insane at the time of the alleged offense. [Repealed.]~~

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

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

~~(4) Upon upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the Commissioner of Mental Health. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding ~~15~~ 21 days.~~

~~(b) When a person is found to be incompetent to stand trial, has not been indicted by reason of insanity for the alleged offense, or has been acquitted by reason of insanity at the time of the alleged offense, the person shall be entitled to have counsel appointed from Vermont Legal Aid to represent the person. The Department of Mental Health and, if applicable, the Department of Disabilities, Aging, and Independent Living shall be entitled to appear and call witnesses at the proceeding.~~

~~(c) Notwithstanding any other provision of law, a commitment order issued pursuant to this chapter shall not modify or vacate orders concerning conditions of release or bail issued pursuant to chapter 229 of this title, and the commitment order shall remain in place unless expressly modified, provided that inpatient treatment shall be permitted if a person who is held without bail is found to be in need of inpatient treatment under this chapter.~~

~~Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN~~

~~(a)(1) On or before November 15, 2023, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living shall report to the Governor, the Senate Committees on Judiciary and on Health and Welfare, and the House Committees on Judiciary, on Health Care, and on Human Services on whether a plan for a competency restoration program should be adopted in Vermont.~~

~~(2) For purposes of the report required by the section:~~

~~(A) the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living shall consult with:~~

~~(i) the Chief Superior Judge or designee;~~

(ii) the Commissioner of Corrections or designee;

(iii) the Executive Director of the Department of State's Attorneys and Sheriffs or designee;

(iv) the Executive Director of the Vermont Center for Crime Victim Services or designee;

(v) the Vermont Legal Aid Disability Law Project; and

(vi) the Defender General or designee; and

(B) consideration shall be given to providing notification and information to victims of record.

(b) If a competency restoration plan is recommended, the report shall include recommendations for best practices, any changes to law necessary to establish the program, estimated costs, and a proposal for implementing the program.

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE REVIEW; COMPETENCY EXAMINATIONS

(a) The Joint Legislative Justice Oversight Committee shall review whether Vermont law should permit competency examinations of defendants under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level psychologists trained in forensic psychology, by other doctoral-level mental health providers, psychiatric nurse practitioners, or any other professionals. The review shall include consideration of laws on the issue in other states and whether any changes to 13 V.S.A. § 4814 or any other Vermont laws are necessary to permit referral of the evaluation to a psychiatrist when appropriate. The Committee's recommendation under subsection (c) of this section shall reflect its determination of which professionals, if any, should be permitted to conduct the competency examinations.

(b) The Joint Legislative Justice Oversight Committee shall conduct the review of competency evaluation procedures required by subsection (a) of this section at not more than four of its 2023 meetings. Two members of the Senate Committee on Health and Welfare appointed by the Chair of that Committee and two members of the House Committee on Health Care appointed by the Chair of that Committee shall be permitted to attend and participate in the meetings. Members of the Committees on Health and Welfare and on Health Care who attend the meetings as authorized by this section shall be permitted to participate in the Justice Oversight Committee's development of the recommendations required by subsection (c) of this section.

(c) On or before November 15, 2023, the Committee shall recommend any changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency

examinations by doctoral-level psychologists trained in forensic psychology) to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, the House Committee on Health Care, and the House Committee on Human Services.

Sec. 9. REPORT ON CUMULATIVE COMPETENCY EVALUATIONS

On or before December 15, 2023, the Department of Mental Health, in consultation with the Department of Disabilities, Aging, and Independent Living shall report on cumulative competency evaluations to the House Committees on Judiciary and Health Care and the Senate Committees on Judiciary and Health and Welfare. The report shall include recommendations on how to address competency evaluations of persons who have already been determined incompetent to stand trial in another matter, including whether previous evaluations may be used or relied upon for subsequent evaluations.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2023.