

1 S.91

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

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

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

5 § 4801. TEST OF INSANITY IN CRIMINAL CASES

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

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

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

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

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

2 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

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

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12 ~~required for the offense charged; [Repealed.]~~

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

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

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

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

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

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

12 (e) After an initial competency determination, a court may order
13 subsequent evaluations of a defendant to be performed by the Department of
14 Mental Health only upon a showing of changed circumstances. In determining
15 whether to order subsequent evaluations, the court shall consider a treating
16 physician's clinical evidence, if any, indicating that the defendant's
17 competency may have changed. This section shall not limit the parties'
18 abilities to secure their own evaluations voluntarily or under Vermont Rule of
19 Criminal Procedure 16.1.

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

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 or 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 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 findings on the record that there is good cause for an
12 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 and shall have the
4 burden of proving incompetency by a preponderance of the evidence.

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

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

19 ~~(e)(d)~~ (d) A person who has been found incompetent to stand trial for an
20 alleged offense may be tried for that offense if, upon subsequent hearing, such

1 person is found by the court having jurisdiction of ~~his or her~~ the person's trial
2 for the offense to have become competent to stand trial.

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

4 § 4820. HEARING REGARDING COMMITMENT

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

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

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

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

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

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

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

14 Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN

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

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

1 (A) the Department of Mental Health and the Department of
2 Disabilities, Aging, and Independent Living shall consult with:
3 (i) the Chief Superior Judge or designee;
4 (ii) the Commissioner of Corrections or designee;
5 (iii) the Executive Director of the Department of State’s Attorneys
6 and Sheriffs or designee;
7 (iv) the Executive Director of the Vermont Center for Crime
8 Victim Services or designee;
9 (v) the Vermont Legal Aid Disability Law Project; and
10 (vi) the Defender General or designee; and
11 (B) consideration shall be given to providing notification and
12 information to victims of record.

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

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

19 (a) The Joint Legislative Justice Oversight Committee shall review whether
20 Vermont law should permit competency examinations of defendants under 13
21 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level

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

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

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

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

5 Sec. 9. REPORT ON CUMULATIVE COMPETENCY EVALUATIONS

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

14 Sec. 10. EFFECTIVE DATE

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