Senate Judiciary
March 16, 2023
S.91
Testimony of Jared Bianchi, Deputy State's Attorney

Dear Mr. Chair and Honorable Members of the Committee:

Thank you for allowing me to testify on this important bill. As you are aware, we see this bill and S.89 as being complementary parts of a whole piece of necessary reform. This part of that whole removes unnecessary layers from the litigation of mental capacity and streamlines the parties' roles. In so doing we believe that litigants will reach resolutions to their cases more quickly and that this will have a positive impact on the backlog of cases currently in the judiciary.

In addition to the suggestions we have made concerning S.89, we would suggest some minor edits here.

1. To Section 1, Page 2, Lines 13-15: Insert a period after "establishing insanity" on line 13. Strike all language through line 15. This language reflects what is already the case and so is surplusage except that it may serve to create confusion around when such a defense must be raised.
2. To Section 2, Page 3, Lines 17-19: Insert a period after "moving party" on line 18 and strike all language through line 19. Responsibility for necessary defense costs for indigent defendants is already addressed at 13 V.S.A. § 5231.
3. To Section 2, Page 4, Lines 1-3: Insert the phrase "or Rule of Criminal Procedure 16.1," between the words "section" and "shall" on line 1. This is to create parity for all parties' forensic experts.
4. To Section 3, Page 4, Line 11: Replace the word "and" with the word "or." This will allow any observer to motion for the examination while not having met with the defendant. Prosecutors and judges often know of and observe facts calling for a competency evaluation and make requests on those grounds. Prosecutors and judges generally do not meet with defendants.
5. To Section 3, Page 5, Lines 11-12: Strike the word "written" on line 11. Needing to await a written order is unnecessary as the requisite findings can be made on the record. If an inpatient evaluation is needed such delay can be harmful to everyone involved.
6. To Section 4, Page 6, Line 5-13: Replace the phrase "examining psychiatrist or, if applicable under subsection (b) of this section, the psychiatrist and the psychologist" with the word "examiners."
7. Section 5, Page 8, Line 5: This is an important piece of additional clarity. This is the general rule in the majority of jurisdictions. "A defendant is generally presumed competent to stand trial on criminal charges." *See* 22A C.J.S. Criminal Procedure and Rights of Accused § 527. It is consistent with most Vermont practice but inconsistencies can arise when there is a lack of a codified standard.
8. Section 6, Page 10, Lines 5-10: This is an important clarification as there are different approaches throughout the State and some inconsistency around how commitment orders interact with other orders. This provides clarity and serves the interest of public safety and transparency.

9. We support the move toward establishing a competency restoration program.
10. We reiterate our proposal first made regarding S.89 and suggest that it could be easily included here, in S.91 as well. This is because this bill is already amending Title 13, Chapter 157, which is where our proposed language would reside. It is also consistent with this committee's existing text at section 6, page 10, lines 5-10. Our proposal is restated here, below:
    - 13 V.S.A. § 4821 is amended to read:
      The person who is the subject of the proceedings, his or her attorney, the legal guardian, if any, the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, and the State's Attorney or other prosecuting officer representing the State in the case shall be given notice of the time and place of a hearing under 4820 of this title. Procedures for hearings for persons with a mental illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3. Notwithstanding any other provision of law to the contrary, any party to a commitment hearing under Section 4820 of this title concerning a defendant charged with a felony who has been held without bail under section 7553 or section 7553a of this title, may argue for commitment at a forensic facility. The court may so order if it finds that:
      (a) The defendant is in need of commitment as set forth above;
      (b) the defendant is not in need of inpatient hospitalization;
      (c) commitment to a forensic facility is the least restrictive placement consistent with both the Defendant's
      1. treatment needs, and
      2. the need for public safety.

      Any such order shall be treated as an exception to the court's mittimus. The mittimus so excepted shall remain in force pending placement at the facility and after the defendant is discharged therefrom.

For all of these reasons we ask you to include this provision in S.89 and S.91 and to pass both bills.

Thank you for taking the time to hear our testimony.