

1 H.544

2 Introduced by Representatives Rachelson of Burlington and Arsenault of
3 Williston

4 Referred to Committee on

5 Date:

6 Subject: Criminal procedures; health; competency to stand trial; discharge
7 from commitment

8 Statement of purpose of bill as introduced: This bill proposes to permit a
9 crime victim to request a court hearing before a person is discharged from
10 commitment after having been found incompetent to stand trial for a criminal
11 offense.

12 An act relating to crime victim's rights in competency discharge
13 proceedings

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

15 Sec. 1. 13 V.S.A. § 4822 is amended to read:

16 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

17 * * *

18 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
19 least 10 days prior to the proposed discharge of any person committed under
20 this section, the Commissioner of Mental Health shall give notice of the

1 discharge to the committing court and State's Attorney of the county where the
2 prosecution originated. In all cases requiring a hearing prior to discharge of a
3 person found incompetent to stand trial under section 4817 of this title, the
4 hearing shall be conducted by the committing court issuing the order under that
5 section. In all other cases, when the committing court orders a hearing under
6 subsection (a) of this section or when, in the discretion of the Commissioner of
7 Mental Health, a hearing should be held prior to the discharge, the hearing
8 shall be held in the Family Division of the Superior Court to determine if the
9 committed person is no longer a person in need of treatment or a patient in
10 need of further treatment as set forth in subsection (a) of this section. Notice
11 of the hearing shall be given to the Commissioner, the State's Attorney of the
12 county where the prosecution originated, the committed person, and the
13 person's attorney. Prior to the hearing, the State's Attorney may enter an
14 appearance in the proceedings and may request examination of the patient by
15 an independent psychiatrist, who may testify at the hearing.

16 (2)(A) This subdivision (2) shall apply when a person is committed to
17 the care and custody of the Commissioner of Mental Health under this section
18 after having been found:

- 19 (i) not guilty by reason of insanity; or
20 (ii) incompetent to stand trial, provided that the person's criminal
21 case has not been dismissed.

1 (B)(i) When a person has been committed under this section, the
2 Commissioner shall provide notice to the State's Attorney of the county where
3 the prosecution originated or to the Office of the Attorney General if that office
4 prosecuted the case:

5 (I) at least 10 days prior to discharging the person from:

6 (aa) the care and custody of the Commissioner; or

7 (bb) a hospital or a secure residential recovery facility to the
8 community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;

9 (II) at least 10 days prior to the expiration of a commitment
10 order issued under this section if the Commissioner does not seek continued
11 treatment; or

12 (III) any time that the person elopes from the custody of the
13 Commissioner.

14 (ii) When the State's Attorney or Attorney General receives notice
15 under subdivision (i) of this subdivision (B), the Office shall provide notice of
16 the action to any victim of the offense for which the person has been charged
17 who has not opted out of receiving notice. A victim receiving notice pursuant
18 to this subdivision (ii) has the right to submit a victim impact statement to the
19 Family Division of the Superior Court in writing or through the State's
20 Attorney or Attorney General's office.

1 (iii) During the period in which the Commissioner gives notice of
2 the pending discharge pursuant to subdivision (i) of this subdivision (B) and
3 the anticipated date of discharge, which shall not be less than 10 days, the
4 State's Attorney or the Office of the Attorney General if that office prosecuted
5 the case, or the victim, may request a hearing in the Family Division of the
6 Superior Court on whether the person's pending discharge is appropriate,
7 which shall be held within 10 days after the request. The pending discharge
8 shall be stayed until the hearing has concluded and any subsequent orders are
9 issued, but in no event shall a subsequent order be issued more than five days
10 after the hearing.

11 (iv) As used in this subdivision (B), "victim" has the same
12 meaning as in section 5301 of this title.

13 (d) The court may continue the hearing provided in subsection (c) of this
14 section for a period of 15 additional days upon a showing of good cause.

15 (e) If the court determines that commitment shall no longer be necessary, it
16 shall issue an order discharging the patient from the custody of the Department
17 of Mental Health.

18 (f) The court shall issue its findings and order not later than 15 days from
19 the date of hearing.

1 Sec. 2. 18 V.S.A. § 8847 is amended to read:

2 § 8847. DISCHARGE FROM COMMITMENT

3 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
4 discharged as follows:

5 (1) by a Family Division Superior Court judge after review of an order
6 of custody, care, and habilitation or an order of continued custody, care, and
7 habilitation if the court finds that a person is not a person in need of custody,
8 care, and habilitation or continued custody, care, and habilitation, respectively;
9 or

10 (2) by administrative order of the Commissioner regarding an order of
11 custody, care, and habilitation or an order of continued custody, care, and
12 habilitation if the Commissioner determines that a person is no longer a person
13 in need of custody, care, and habilitation or continued custody, care, and
14 habilitation, respectively.

15 (b) A judicial or administrative order of discharge may be conditional or
16 absolute.

17 (c)(1) When a person is under an order of commitment pursuant to 13
18 V.S.A. § 4823 or continued commitment pursuant to this subchapter, the
19 Commissioner shall provide notice to the State's Attorney of the county where
20 the prosecution originated or to the Office of the Attorney General if that
21 Office prosecuted the case:

1 (A) at least 10 days prior to discharging a person from commitment
2 or continued commitment;

3 (B) at least 10 days prior to the expiration of a commitment or
4 continued commitment order if the Commissioner does not seek an order of
5 continued custody, care, and habilitation; or

6 (C) any time that the person elopes from custody of the
7 Commissioner and cannot be located, and there is reason to believe the person
8 may be lost or poses a risk of harm to others.

9 (2) When the State's Attorney or Attorney General receives notice under
10 subdivision (1) of this subsection, the Office shall provide notice of the action
11 to any victim of the offense for which the person has been charged who has not
12 opted out of receiving notice. A victim receiving notice pursuant to this
13 subdivision has the right to submit a victim impact statement to the Family
14 Division of the Superior Court in writing or through the State's Attorney's or
15 Attorney General's Office.

16 (3) During the period in which the Commissioner gives notice of the
17 pending discharge pursuant to subdivision (1) of this subsection and the
18 anticipated date of discharge, which shall not be less than 10 days, the State's
19 Attorney or the Office of the Attorney General if that office prosecuted the
20 case, or the victim, may request a hearing in the Family Division of the
21 Superior Court on whether the person's pending discharge is appropriate,

1 which shall be held within 10 days after the request. The pending discharge
2 shall be stayed until the hearing has concluded and any subsequent orders are
3 issued, but in no event shall a subsequent order be issued more than five days
4 after the hearing.

5 * * *

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on passage.