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Testimony to House Judiciary

April 7, 2026

S.193-AN ACT
RELATING TO
ESTABLISHING A
FORENSIC FACILITY
FOR CERTAIN JUSTICE
INVOLVED PERSONS

INITIAL REMARKS

Hello, I am Jared Bianchi

- Currently a prosecutor in Bennington County
- More than a decade with the AGO representing AHS and all of its departments in administrative litigation and in state and federal trial and appellate courts.
- Previously responsible for all Act 248 and public guardianship matters
- Served on multiple legislative study committees regarding competency, sanity, and forensic care as well as on the judiciary's advisory committee on mental health and the courts



THE NEED FOR A FORENSIC SYSTEM OF CARE

Concepts and Cases

Following 'insanity' ruling, family of alleged Newbury murderer seeks answers

Pronto discharged from Vermont psych hospital—Corrections takes over custody

By Michael Albans, Bennington Banner Apr 11, 2023 Updated May 16, 2024

ST. ALBANS — A Vermont judge ordered a competency evaluation Monday for an Enosburgh man charged with murder and felony assault for allegedly beating his father to death and seriously injuring his mother late last week at a home they all shared.

Brattleboro ax murder suspect deemed unfit to stand trial for second time

After multiple family killings in Vermont, experts explore mental health impacts

"Typically when we see severe violence or we see multiple family victims that are killed, it also raises the issue of mental illness likely being present," she said.

Competency and sanity issues arise in every county. The most serious cases require the most serious attention. Every State's Attorney and every Sheriff supports this bill.

“Competency to stand trial is an entirely different issue from an insanity defense because the latter concerns the defendant's present mental capacity while the former relates to a past mental state. Thus, a defendant may be sane at time of the offense but incompetent to stand trial, or may be competent to stand trial but insane at the time of the offense.”

21 Am. Jur. 2d Criminal Law § 86

Before you consider this defense, the State must have proven each essential element of the offense[s] charged beyond a reasonable doubt. If the State has failed to do so, you must find (Def) _____ not guilty. However, if the State has proven each essential element of the offense[s] charged beyond a reasonable doubt, then you must consider whether to return a verdict of not guilty by reason of insanity.

NOT GUILTY BY REASON OF INSANITY

Before a jury ever considers an insanity defense the unanimous jury must first find that the state has proven all of the elements of the crime beyond a reasonable doubt

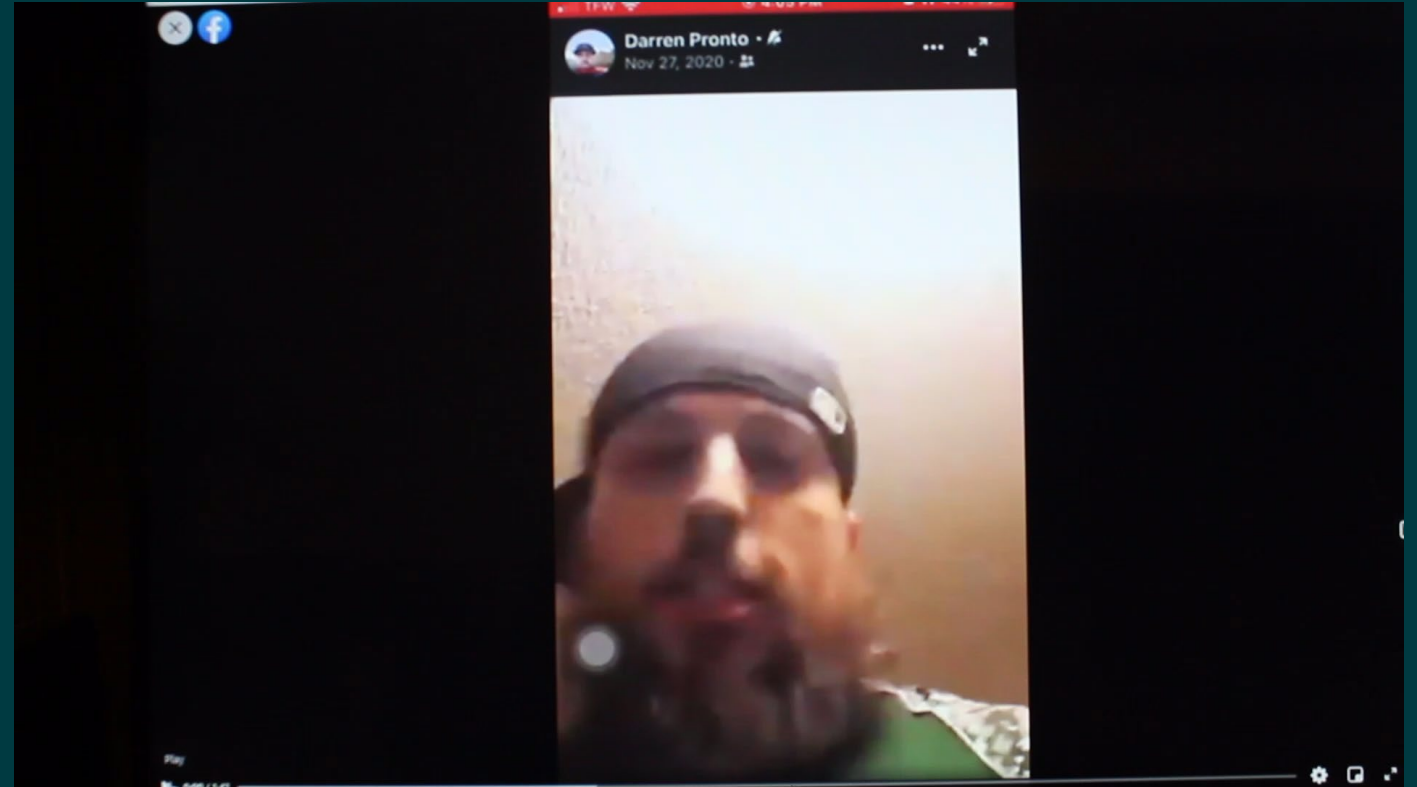
This means that a person acquitted by reason of insanity has been proven to have committed the actions they are accused of.

COMPETENCY

“To be competent to stand trial, a defendant must have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and a rational as well as factual understanding of the proceedings against him.”

State v. Tribble, 2005 VT 132, ¶ 10, 179 Vt. 235, 240, 892 A.2d 232, 237 (2005)

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COMPETENCY

- After posting this video this defendant was charged with murdering a woman in the middle of downtown Bennington in broad daylight.
- When our out-of-state evaluator spoke to this defendant he expressed that he was incompetent so he would be released home. Our evaluator thought he was deluded because she thought the outcome was so absurd. In fact, he was right. That is what happened in an earlier serious assault he had been charged with.



THE BILL

Section	Topic	Purpose
Section 1	Competency restoration	Provide competency restoration in cases carrying a potential life sentence.
Section 2	Dismissal of misdemeanors after two years	Clears backlog in minor cases.
Section 3	Forensic placement after insanity verdict	Provides secure placement for persons proven to have committed actions which would otherwise carry a life sentence.
Section 4	Forensic system creation	Establishes a forensic system of care for cases carrying potential life sentence.
Section 5	Rulemaking authority	Provision allowing for rulemaking to provide clarity on forensic care and process.
Section 6	Adding new form of hearing to Rules of Evidence	Aligns supervised relief hearings with violation of probation hearings.

What kinds of cases?

Generally, life offenses in Vermont consist of murder, rape, kidnapping. Small numbers, large impact on community.

Who would be eligible?

Any person who is not competent or who has been adjudicated insane. There are no diagnostic criteria. This allows a person specific approach to security, care, and competence restoration.

What is this language based upon?

This bill's text generally follows the structure of the federal statute on this topic. It also takes from other states which have misdemeanor dismissal after a period of inactivity equal to the potential sentence.

Why do we want to restore competency?

Both defendants and the public at large deserve a system where people who need accommodations receive them so that they can access the process that is due to them and can put the State to its burden of proof on the allegations they face.

Why does this bill presume placement in facility following an insanity verdict?

When a person is found by a jury to have been insane, the State has already carried the heaviest legal burden by proving to a unanimous jury that the person did engage in an act carrying a possible life sentence (i.e. murder, rape, kidnapping). At that point the burden properly shifts to that person to demonstrate that they do not present a risk to the public.

(a) **Determination of present mental condition of acquitted person.**--If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) **Psychiatric or psychological examination and report.**--Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of [section 4247\(b\)](#) and (c).

(c) **Hearing.**--A hearing shall be conducted pursuant to the provisions of [section 4247\(d\)](#) and shall take place not later than forty days following the special verdict.

(d) **Burden of proof.**--In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

18 U.S.C. § 4243

Burden shifting after an insanity verdict is based on federal law.

As passed the senate: State's Burden

We propose: keep state's burden. Balance with rebuttable presumption and dilating review period.

INS, OUTS, JUDICIAL REVIEW

SEC. 4815A (COMPETENCY)

- entry entry based on finding of incompetency in life offense
- Competency evaluated every 6 months
- Competency restoration provided
- If person regains competency they return to receiving their due process
- After 2 cycles of competency evaluation court can assess whether restoration is possible
- If restoration unlikely 4619a process applies

SEC. 4819A (INSANITY / INCOMP. AND NOT RESTORABLE)

- Entry based on verdict of not guilty due to insanity or finding that competency restoration unlikely
- Initial hearing:
 - now-48 hours
 - proposed-60 days. Why? Allow for forensic risk assessment and substantive review.
- Review:
 - now-every 6 months or more
 - Director suggestion; defendant petition
 - Proposed: 6 months then 3 years then every 5 years. Why? Burden on state. allows more information to be developed. Balance resource needs. Still have director suggestion and defendant petition.
 - Exit to supervised release
 - Return for non compliance and risk

Questions from prior hearings

- If a contractor does evaluations would that contractor have a monetary incentive to keep people longer than they should?
 - No. In my experience DOC has quality of care provisions in contract. Professionals are also licensed professionals and subject to professional ethics codes.
- How does current evaluation process work for evaluations for a person found not competent? Are there any follow up evals? Who requests them?
 - Neutral by DMH. Follow ups can be done by either defense or state.
- Where does “substantial risk of danger” language come from?
 - See e.g., 18 U.S.C. Sec. 4243
- For NGRI – do any other states house NGRI within corrections?
 - First, most states do not include their DOC as part of their human services agency. Second, yes:
 - NY Division of forensic services-
- Why doesn't DMH have a larger role?
 - Broader than mental illness as addressed by DMH
 - prison-based mental health satellite units.
 - residential programs located within prison facilities.
- How many people would qualify for the facility – comp restoration vs NGRI?
 - Generally estimated to be about 5 people in a given year (+/-). Almost all are competency related. NGRI is very rare.

Some brief points:

- This issue has been the subject of studies and discussion for years.
- Review periods after an insanity verdict are appropriately structured in this bill. Balancing victim impact, defendant due process, and evaluator flexibility.
- Reject the “if you build it, they will come” fallacy. These cases already exist.

SUGGESTED EDITS:

- Suggested edits are provided in a separate document.



Q&A

Please pass S.193.

Narrowly tailored to meet a critical need.