

Journal of the House

Thursday, April 27, 2023

At one o'clock in the afternoon, the Speaker called the House to order.

Devotional Exercises

Devotional exercises were conducted by Rev. Elissa Johnk, First Congregational Church of Burlington.

House Bill Introduced

H. 518

By Reps. Dodge of Essex, Black of Essex, and Garofano of Essex,
House bill, entitled

An act relating to the approval of amendments to the charter of the Town of Essex

Was read the first time and referred to the Committee on Government Operations and Military Affairs.

Senate Bill Referred

S. 146

Senate bill, entitled

An act relating to the permitting of indirect discharges

Was read the first time and referred to the Committee on Environment and Energy.

Bills Referred to Committee on Ways and Means

Bills of the following titles, appearing on the Notice Calendar, affecting the revenue of the State or materially affecting the revenue of one or more municipalities, under House Rule 35(a), were referred to the Committee on Ways and Means:

H. 490

House bill, entitled

An act relating to approving the merger of the Village of Lyndonville with the Town of Lyndon

S. 56

Senate bill, entitled

An act relating to child care and early childhood education

**Pending Entry on the Notice Calendar;
Bills Referred to Committee on Appropriations**

Bills of the following titles, pending entry on the Notice Calendar, carrying appropriations, under House Rule 35(a), were referred to the Committee on Appropriations:

S. 17

Senate bill, entitled

An act relating to sheriff reforms

S. 99

Senate bill, entitled

An act relating to miscellaneous changes to laws related to vehicles

Ceremonial Reading

H.C.R. 87

House concurrent resolution congratulating Mikaela Shiffrin on her exceptional and historic 2022–2023 world record-setting accomplishments in World Cup Alpine ski racing

Offered by: Representatives James of Manchester, Andrews of Westford, Anthony of Barre City, Arsenault of Williston, Austin of Colchester, Bartholomew of Hartland, Bartley of Fairfax, Beck of St. Johnsbury, Berbeco of Winooski, Birong of Vergennes, Black of Essex, Bluemle of Burlington, Bongartz of Manchester, Bos-Lun of Westminster, Boyden of Cambridge, Branagan of Georgia, Brennan of Colchester, Brown of Richmond, Brownell of Pownal, Brumsted of Shelburne, Burditt of West Rutland, Burke of Brattleboro, Buss of Woodstock, Campbell of St. Johnsbury, Canfield of Fair Haven, Carpenter of Hyde Park, Chapin of East Montpelier, Chase of Chester, Chase of Colchester, Chesnut-Tangerman of Middletown Springs, Clifford of Rutland City, Coffey of Guilford, Conlon of Cornwall, Corcoran of Bennington, Cordes of Lincoln, Demar of Enosburgh, Demrow of Corinth, Dickinson of St. Albans Town, Dodge of Essex, Dolan of Essex Junction, Dolan of Waitsfield, Donahue of Northfield, Durfee of Shaftsbury, Emmons of Springfield, Farlice-Rubio of Barnet, Galfetti of Barre Town, Garofano of Essex, Goslant of Northfield, Graham of Williamstown, Graning of Jericho, Gregoire of Fairfield, Hango of Berkshire, Harrison of Chittenden, Headrick

of Burlington, Higley of Lowell, Holcombe of Norwich, Hooper of Randolph, Hooper of Burlington, Houghton of Essex Junction, Howard of Rutland City, Hyman of South Burlington, Jerome of Brandon, Kornheiser of Brattleboro, Krasnow of South Burlington, Krowinski of Burlington, Labor of Morgan, Lalley of Shelburne, LaMont of Morristown, Laroche of Franklin, Leavitt of Grand Isle, Lipsky of Stowe, Logan of Burlington, Long of Newfane, Maguire of Rutland City, Marcotte of Coventry, Masland of Thetford, Mattos of Milton, McCann of Montpelier, McCoy of Poultney, McFaun of Barre Town, McGill of Bridport, Mihaly of Calais, Minier of South Burlington, Morgan of Milton, Morris of Springfield, Morrissey of Bennington, Mrowicki of Putney, Nicoll of Ludlow, Notte of Rutland City, Nugent of South Burlington, O'Brien of Tunbridge, Ode of Burlington, Oliver of Sheldon, Page of Newport City, Pajala of Londonderry, Parsons of Newbury, Patt of Worcester, Peterson of Clarendon, Pouech of Hinesburg, Priestley of Bradford, Rachelson of Burlington, Rice of Dorset, Roberts of Halifax, Sammis of Castleton, Scheu of Middlebury, Shaw of Pittsford, Sheldon of Middlebury, Sibia of Dover, Sims of Craftsbury, Small of Winooski, Smith of Derby, Squirrell of Underhill, Stebbins of Burlington, Stevens of Waterbury, Stone of Burlington, Surprenant of Barnard, Taylor of Milton, Templeman of Brownington, Toof of St. Albans Town, Torre of Moretown, Troiano of Stannard, Walker of Swanton, Waters Evans of Charlotte, Whitman of Bennington, Williams of Granby, Wilson of Lyndon, and Wood of Waterbury

Whereas, the FIS (International Ski and Snowboard Federation) Alpine World Cup is the world's foremost Alpine ski racing competition, and

Whereas, Mikaela Shiffrin, a Burke Mountain Academy graduate, first skied in a World Cup race prior to her 16th birthday and has since established an unsurpassed record on the world's most challenging Alpine ski trails, and

Whereas, the World Cup's annual overall title, represented by an iconic crystal globe, honors the male and female skiers who amass the most overall points over the five-month season, and smaller crystal globes are awarded in each individual racing discipline, and

Whereas, on January 24, 2023, at Kronplatz, Italy, she won her 83rd World Cup event, surpassing American racer Lindsey Vonn to become the winningest female Alpine racer of all time, and

Whereas, on March 11, 2023, at Åre, Sweden, she won her 87th event at the age of 27, surpassing a record held since the 1980s by male Swedish ski champion Ingemar Stenmark and becoming the all-time World Cup record holder, and

Whereas, she ended the 2022–2023 World Cup racing season with 88 victories, bringing her totals to 138 career podiums, 15 overall and discipline World Cup globes, and 17 Olympic and World Championship medals, and she is the first and only skier to have won a race in each of the six World Cup Alpine racing disciplines, and

Whereas, upon surpassing his record, 10-time Olympic and World Championship medalist Stenmark paid tribute to Shiffrin by saying, “She’s much better than I was. You cannot compare. She has everything,” now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly congratulates Mikaela Shiffrin on her exceptional and historic 2022–2023 world record-setting accomplishments in World Cup Alpine ski racing, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to Mikaela Shiffrin and to U.S. Ski & Snowboard.

Having been adopted in concurrence on Friday, April 14, 2023 in accord with Joint Rule 16b, was read.

Senate Proposal of Amendment Concurred in

H. 89

The Senate proposed to the House to amend House bill, entitled

An act relating to civil and criminal procedures concerning legally protected health care activity

The Senate proposed to the House to amend the bill as follows:

First: In Sec. 1, 1 V.S.A. § 150, by striking out subsections (a)–(c) in their entirety and inserting in lieu thereof new subsections (a)–(c) to read as follows:

(a) “Gender-affirming health care services” means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to the treatment of gender dysphoria and gender incongruence. “Gender-affirming health care services” does not include conversion therapy as defined by 18 V.S.A. § 8351.

(b)(1) “Legally protected health care activity” means:

(A) the exercise and enjoyment, or attempted exercise and enjoyment, by any person of rights to reproductive health care services or gender-affirming health care services secured by this State;

(B) any act or omission undertaken to aid or encourage, or attempt to aid or encourage, any person in the exercise and enjoyment, or attempted exercise and enjoyment, of rights to reproductive health care services or gender-affirming health care services secured by this State, provided that the provision of such a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient's location; or

(C) the provision, issuance, or use of, or enrollment in, insurance or other health coverage for reproductive health care services or gender-affirming health care services that are legal in this State, or any act to aid or encourage, or attempt to aid or encourage, any person in the provision, issuance, or use of, or enrollment in, insurance or other health coverage for those services, regardless of the location of the insured or individual seeking insurance or health coverage, if the insurance or health coverage is permitted under the laws of this State.

(2) Except as provided in subdivision (3) of this subsection, the protections applicable to "legally protected health care activity" shall not apply to a lawsuit; judgment; or civil, criminal, or administrative action that is based on conduct for which an action would exist under the laws of this State if the course of conduct that forms the basis for liability had occurred entirely in this State.

(3) Notwithstanding subdivision (2) of this subsection, the provision of a health care service by a person duly licensed under the laws of this State and physically present in this State shall be legally protected if the service is permitted under the laws of this State, regardless of the patient's location or whether the health care provider is licensed in the state where the patient is located at the time the service is rendered.

(c)(1) "Reproductive health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative, or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management, or the termination of a pregnancy.

(2) "Reproductive health care services" includes medication that was approved by the U.S. Food and Drug Administration (FDA) for termination of a pregnancy as of January 1, 2023, regardless of the medication's current FDA approval status:

(A) when such medication is procured, ordered, stored, distributed, prescribed, dispensed, or administered, or a combination thereof, by a person

duly licensed under the laws of this State, as long as the licensee's actions conform to the essential standards of acceptable and prevailing practice for the licensee's profession; or

(B) when such medication is used by an individual.

Second: By striking out Sec. 9, effective dates, and its reader assistance heading in their entirety and inserting in lieu thereof the following:

* * * Effective Date * * *

Sec. 9. EFFECTIVE DATE

This act shall take effect on passage.

Which proposal of amendment was considered and concurred in.

**Second Reading; Proposal of Amendment Agreed to;
Third Reading Ordered**

S. 14

Rep. Dolan of Essex Junction, for the Committee on Judiciary, to which had been referred Senate bill, entitled

An act relating to a report on criminal justice-related investments and trends

Recommended that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 28 V.S.A. § 125 is amended to read:

§ 125. ~~JUSTICE REINVESTMENT II INITIATIVES~~ CRIMINAL JUSTICE INVESTMENTS AND TRENDS; REPORT

(a) Intent. It is the intent of the General Assembly that the report on Vermont's criminal justice investments and trends required under this section assist in the systemic assessment of the State's Justice Reinvestment and justice reform efforts and initiatives to inform future legislative policy and fiscal decisions.

(b) Definitions. As used in this section:

(1) "Arrest" means when a person is seized by law enforcement, charged with the commission of an offense, and referred for prosecution.

(2) "Clearance" means the process by which a law enforcement agency closes an offense by arrest or exceptional means in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program.

(3) “Desistance” means the process by which criminality, or the individual risk for antisocial conduct, declines over the life-course of the individual, generally after adolescence.

(4) “Exceptional means” means the death of the offender, the victim’s refusal to cooperate with the prosecution after the offender is identified, the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense, or other circumstance in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

(5) “Recidivism” has the same meaning as in section 4 of this title.

(c) Report.

(1) On or before January ~~November~~ 15 each year, 2024 and every three years thereafter, the ~~Commissioner of Corrections~~ Vermont Statistical Analysis Center (SAC), in consultation with the Commissioners of ~~Corrections, of Health, of Mental Health, of Public Safety, of Labor, and for Children and Families and;~~ the Attorney General; ~~the Defender General; the Chief Superior Judge of the Superior Court; the Division of Racial Justice Statistics; the Executive Director of the Department of State’s Attorneys and Sheriffs; and the Parole Board Director,~~ shall submit a report to the House Committees on Appropriations, on Judiciary, and on Corrections and Institutions ~~and,~~ the Senate Committees on Appropriations and on Judiciary detailing ~~the expenditures on Justice Reinvestment II and the following related initiatives:~~

~~(1) funding for domestic violence intervention programming in the Department of Corrections;~~

~~(2) funding for offender transitional housing capacity with the Department of Corrections and other departments;~~

~~(3) funding for the Department of Correction’s data collection Offender Management System;~~

~~(4) funding for community-based mental health and substance use services for individuals under Department of Corrections supervision;~~

~~(5) funding provided for diversion and restorative justice programs including community justice centers, court diversion, and balanced and restorative justice (BARJ); and~~

~~(6) funding and a description of any other General Fund expenditures for Justice Reinvestment II initiatives, the Joint Legislative Justice Oversight Committee, and the Executive Director of the Office of Racial Equity examining the trends associated with Vermont’s criminal justice-related~~

investments and expenditures since the last report was submitted pursuant to this section.

(2) The report required pursuant to subdivision (1) of this subsection shall include data showing:

(A) recidivism rates;

(B) clearance rates;

(C) evidence of desistance, including successful completion of community supervision;

(D) returns to incarceration from community supervision with the following relevant data points:

(i) community supervision type, classified by probation, parole, and furlough;

(ii) an indication if a return was for a violation or a new charge, including the crime type;

(iii) an indication if a violation was classified as “significant/not violent” or “significant and violent” for any applicable statuses; and

(iv) all available demographic information;

(E) bail rates, including detainees held without bail, detainees held with bail and the associated monetary amounts, and bailees who post bail and are released;

(F) pretrial detainees held in Vermont correctional facilities, including the crime type and jurisdiction for which they are held;

(G) the funding for, and utilization of, substance use disorder treatment, mental health, educational, and vocational initiatives for incarcerated individuals; and

(H) the funding for, and utilization by, individuals served through Justice Reinvestment II and related initiatives, including:

(i) domestic violence intervention programming in the Department of Corrections, including the results from the evaluation framework between the Vermont Network Against Domestic and Sexual Violence and the University of Nebraska;

(ii) offender transitional housing capacity with the Department of Corrections and other departments;

(iii) advancements to the Department of Corrections’ data collection Offender Management System;

(iv) agencies, departments, municipalities, programs, and services employing restorative justice principles, including community justice centers;

(v) other General Fund expenditures for Justice Reinvestment II initiatives;

(vi) the Department of Corrections' out-of-state beds contracted by the Department and the average cost per bed in fiscal year 2019 and for each fiscal year thereafter; and

(vii) the Department of Corrections' in-state beds, separated by gender, including specialty units and units closed or unavailable in fiscal year 2019 and for each fiscal year thereafter.

~~(b) The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this section.~~

(d) Informational availability.

(1) The information required pursuant to subsection (c) of this section shall include race, gender, age, and other demographic variables whenever possible.

(2) The report required pursuant to subsection (c) of this section shall explain any obstacles or impediments to the availability and collectability of data required pursuant to this section, including whether collecting certain data would put particular populations at risk, along with the substance use and mental health needs and educational and vocational status of justice-involved individuals.

(e) Data sharing. Notwithstanding any provision of law to the contrary, all State and local agencies and departments that possess the data necessary to compile the report required pursuant to this section shall, upon request, provide SAC with any data that it determines is relevant to the report. The obligation to disclose shall supersede any other legal obligation with respect to the data required pursuant to this section, and a department, agency, or other entity shall not decline to disclose data required based on any other purported legal obligation.

(f) Confidentiality. Any data or records transmitted to or obtained by SAC are exempt from public inspection and copying under the Public Records Act and shall be confidential to the extent required by law unless and until the data or records are included in the report required by this section. A State or local agency or department that transmits data or records to SAC shall be the sole records custodian for purposes of responding to requests for the data or records. SAC may direct any request for these data or records to the transmitting agency or department for response.

Sec. 2. 28 V.S.A. § 126 is added to read:

§ 126. COORDINATED JUSTICE REFORM ADVISORY COUNCIL

(a) Creation. There is created the Coordinated Justice Reform Advisory Council to establish a unified and collaborative State approach to support State and local community-based programs and services that are consistent with Vermont's restorative justice policy pursuant to section 2a of this title. The Council shall consult with State and local partners to use a data-driven approach that improves public safety, reduces correctional and criminal justice spending, and reinvests savings or redirects funding in strategies that foster desistance or decrease crime, delinquencies, and recidivism.

(b) Membership. The Coordinated Justice Reform Advisory Council shall be composed of the following members:

(1) the Attorney General or designee;

(2) the Chief Superior Judge of the Vermont Superior Court or designee;

(3) the Commissioner of Corrections or designee;

(4) the Commissioner for Children and Families or designee;

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

(6) the Executive Director of the Vermont Statistical Analysis Center or designee;

(7) one current member of the House of Representatives selected from the Committee on Appropriations, the Committee on Corrections and Institutions, or the Committee on Judiciary, appointed by the Speaker of the House; and

(8) one current member of the Senate selected from the Committee on Appropriations or the Committee on Judiciary, appointed by the Committee on Committees.

(c) Powers and duties. The Coordinated Justice Reform Advisory Council shall:

(1) Review and provide data-driven recommendations for the priorities and appropriations necessary to support a unified and collaborative State approach in accordance with subsection (a) of this section.

(2) Review all relevant government appropriations, reauthorizations, and allocations made during the most recent fiscal year.

(3) Consult with Department of Mental Health; the Department of State's Attorneys and Sheriffs; the Office of the Defender General; the Parole Board; the Office of Racial Equity; the Office of the Child, Youth, and Family Advocate; the Vermont Network Against Domestic and Sexual Violence; and community justice entities that receive State funding for programs and services employing restorative justice principles on the potential uses and priorities of funding in accordance with subsection (a) of this section.

(4) Consistent with subsection (a) of this section, consider opportunities and make recommendations to establish a sustainable planning and funding structure to administer State and local community-based programs and services and modern data collection systems.

(5) On or before September 1, 2023 and annually thereafter, recommend to the Commissioner of Corrections the appropriate allocation of not more than \$900,000.00 from the Justice Reinvestment II line item of the Department of Corrections' budget for the upcoming fiscal year to support community-based programs and services, related data collection and analysis capacity, and other initiatives in accordance with subsection (a) of this section.

(d) Assistance. The Coordinated Justice Reform Advisory Council shall have the administrative, technical, and legal assistance of the Office of the Attorney General, the Department of Corrections, and the Department for Children and Families for those issues and services within the jurisdiction of the respective office or department.

(e) Reports. On or before November 15, 2023 and annually thereafter, the Coordinated Justice Reform Advisory Council shall submit recommendations pursuant to subdivisions (c)(4) and (c)(5) of this section to the Joint Legislative Justice Oversight Committee; the Senate Committees on Appropriations and on Judiciary; and the House Committees on Appropriations, on Corrections and Institutions, and on Judiciary. Any recommendations submitted pursuant to subdivision (c)(4) shall be in the form of proposed legislation.

(f) Meetings; officers; committees; rules; compensation; term.

(1) The Chief Superior Judge of the Vermont Superior Court or designee shall call the first meeting of the Coordinated Justice Reform Advisory Council on or before July 15, 2023.

(2) The Council shall meet not more than six times per year.

(3) The Chief Superior Judge of the Vermont Superior Court or designee shall serve as the Chair of the Council.

(4) The Council may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules or bylaws as necessary and appropriate to perform its work.

(5) Members who are appointed to the Council shall be appointed for terms of three years, except that the Commissioners of Corrections and for Children and Families and members appointed by the Speaker of the House of Representative and the Senate Committee on Committees shall be appointed for a term of two years. Initial appointments shall be made such that the Commissioners of Corrections and for Children and Families and the members appointed by the Speaker of the House of Representative and the Senate Committee on Committees shall be appointed for a term of one year. Members shall hold office for the term of their appointments until their successors have been appointed. Vacancies on the Council shall be filled for the remaining period of the term in the same manner as initial appointments. Members are eligible for reappointment.

(6) A majority of the membership shall constitute a quorum.

(7) Members of the Council who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than six meetings per year.

(8) Council meetings shall be subject to the Open Meeting Law.

Sec. 3. 28 V.S.A. § 102(c) is amended to read:

(c) The Commissioner is charged with the following responsibilities:

* * *

(23) To include the Coordinated Justice Reform Advisory Council's appropriation recommendations made pursuant to subdivision 126(c)(5) of this title in the Department's annual proposed budget for the purposes of developing the State budget required to be submitted to the General Assembly in accordance with 32 V.S.A. § 306.

Sec. 4. REPEALS

(a) 28 V.S.A. 102(c)(23) (Commissioner of Corrections' responsibility to incorporate Coordinated Justice Reform Advisory Council's recommendations into the Department's budget) is repealed on July 1, 2028.

(b) 28 V.S.A. § 125 (criminal justice investments and trends; report) is repealed on July 1, 2028.

(c) 28 V.S.A. § 126 (Coordinated Justice Reform Advisory Council) is repealed on July 1, 2028.

Sec. 5. EFFECTIVE DATES

This act shall take effect on July 1, 2023, except that Secs. 1 (criminal justice investments and trends; report) and 4(b) (prospective repeal of 28 V.S.A. § 125) shall take effect on passage.

Rep. Squirrell of Underhill, for the Committee on Appropriations, recommended that the House propose to the Senate to amend the bill as recommended by the Committee on Judiciary.

The bill, having appeared on the Notice Calendar, was taken up, read the second time, the report of the Committee on Judiciary agreed to, and third reading ordered.

**Second Reading; Motion to Commit Disagreed to;
Proposal of Amendment Agreed to; Third Reading Ordered**

S. 91

Rep. Arsenault of Williston, for the Committee on Judiciary, to which had been referred Senate bill, entitled

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

Recommended that the House propose to the Senate that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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; and

(v) 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, and the House Committee on Health Care.

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.

The bill, having appeared on the Notice Calendar, was taken up and read the second time.

Pending the question, Shall the House propose to the Senate to amend the bill as recommended by the Committee on Judiciary?, **Rep. Sammis of Castleton** moved that the bill be committed to the Committee on Health Care, which was disagreed to.

Thereafter, the report of the Committee on Judiciary was agreed to, and third reading ordered.

Action on Bill Postponed

H. 222

House bill, entitled

An act relating to reducing overdoses

Was taken up and, pending consideration of the Senate proposal of amendment, on motion of **Rep. Wood of Waterbury**, action on the bill was postponed two legislative days.

Message from the Senate No. 47

A message was received from the Senate by Ms. Kucserik, its Assistant Secretary, as follows:

Madam Speaker:

I am directed to inform the House that:

The Senate has considered bills originating in the House of the following titles:

H. 76. An act relating to captive insurance.

H. 146. An act relating to amendments to the charter of the Northeast Kingdom Waste Management District.

And has passed the same in concurrence.

The Senate has considered bills originating in the House of the following titles:

H. 473. An act relating to radiologist assistants.

H. 494. An act relating to making appropriations for the support of government.

And has passed the same in concurrence with proposals of amendment in the adoption of which the concurrence of the House is requested.

The Senate has considered joint resolution originating in the House of the following title:

J.R.H. 5. Joint resolution authorizing the Green Mountain Girls State educational program to use the facilities of the State House on a mutually agreed upon day and for a designated time span during the week of June 18, 2023.

And has adopted the same in concurrence.

Adjournment

At two o'clock and eight minutes in the afternoon, on motion of **Rep. McCoy of Poultney**, the House adjourned until tomorrow at nine o'clock and thirty minutes in the forenoon.