

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 3  
3 entitled “An act relating to competency to stand trial and insanity as a defense”  
4 respectfully reports that it has considered the same and recommends that the  
5 House propose to the Senate that the bill be amended by striking out all after  
6 the enacting clause and inserting in lieu thereof the following:

7 \*\*\* Competency to Stand Trial and Sanity at the Time of the Offense \*\*\*

8 Sec. 1. 13 V.S.A. § 4816 is amended to read:

9 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

10 (a) Examinations provided for in section 4815 of this title shall have  
11 reference to one or both of the following:

12 (1) ~~mental~~ Mental competency of the person examined to stand trial for  
13 the alleged offense; ~~and~~.

14 (2) ~~sanity~~ Sanity of the person examined at the time of the alleged  
15 offense.

16 (b) A competency evaluation for an individual thought to have a  
17 developmental disability shall include a current evaluation by a psychologist  
18 skilled in assessing individuals with developmental disabilities.

19 (c)(1) As soon as practicable after the examination has been completed, the  
20 examining psychiatrist or, if applicable under subsection 4816(b) of this title,  
21 the psychiatrist and the psychologist, ~~if applicable,~~ shall prepare a report

1 containing findings in regard to ~~each of the matters listed in~~ applicable  
2 provisions of subsection (a) of this section. The report shall be transmitted to  
3 the court issuing the order for examination, and copies of the report sent to the  
4 State's Attorney, ~~and, to the respondent,~~ to the respondent's attorney if the  
5 respondent is represented by counsel, to the Commissioner of Mental Health,  
6 and, if applicable, to the Department of Disabilities, Aging, and Independent  
7 Living.

8 (2) ~~If the psychiatrist or psychologist has been asked to provide opinions~~  
9 ~~as to~~ If the court orders examination of both the person's competency to stand  
10 trial and the person's sanity at the time of the alleged offense, those opinions  
11 shall be presented in separate reports and addressed separately by the court. In  
12 such cases, the examination of the person's sanity shall only be undertaken if  
13 the psychiatrist or, if applicable under subsection 4816(b) of this title, the  
14 psychiatrist and the psychologist are able to form the opinion that the person is  
15 competent to stand trial, unless the defendant requests that the examinations  
16 occur concurrently. If the evaluation of the defendant's sanity at the time of  
17 the alleged offense does not occur until the defendant is deemed competent to  
18 stand trial, the psychiatrist or, if applicable under subsection 4816(b) of this  
19 title, the psychiatrist and the psychologist shall make a reasonable effort to  
20 collect and preserve any evidence necessary to form an opinion as to sanity if  
21 the person regains competence.

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Sec. 2. 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.

(2) 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 not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court.

(4) 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 days.

(b) When a person is found to be incompetent to stand trial pursuant to subdivision (a)(2) of this section, has not been indicted by reason of insanity for the alleged offense, or has been acquitted by reason of insanity at the time

1 of the alleged offense, the person shall be entitled to have counsel appointed  
2 from Vermont Legal Aid to represent the person. The Department of Mental  
3 Health and, if applicable, the Department of Disabilities, Aging, and  
4 Independent Living shall be entitled to appear and call witnesses at the  
5 proceeding.

6 Sec. 3. 13 V.S.A. § 4822 is amended to read:

7 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

8 (a) If the court finds that the person is a person in need of treatment or a  
9 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court  
10 shall issue an order of commitment directed to the Commissioner of Mental  
11 Health that shall admit the person to the care and custody of the Department of  
12 Mental Health for an indeterminate period. In any case involving personal  
13 injury or threat of personal injury, the committing court may issue an order  
14 requiring a court hearing before a person committed under this section may be  
15 discharged from custody.

16 (b) An order of commitment issued pursuant to this section shall have the  
17 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a  
18 person committed under this order shall have the same status and the same  
19 rights, including the right to receive care and treatment, to be examined and  
20 discharged, and to apply for and obtain judicial review of his or her case, as a  
21 person ordered committed under 18 V.S.A. §§ 7611–7622.

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

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

1                   (i) not guilty by reason of insanity; or

2                   (ii) incompetent to stand trial, provided that the person's criminal  
3 case has not been dismissed.

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

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

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

10                                   (bb) commitment in a hospital or a secure residential  
11 recovery facility to the community on an order of nonhospitalization pursuant  
12 to 18 V.S.A. § 7618;

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

16                           (III) any time that the person absconds elopes from the custody  
17 of the Commissioner.

18                   (ii) When the State's Attorney or Attorney General receives notice  
19 under subdivision (i) of this subdivision (B), the Office shall provide notice of  
20 the action to any victim of the offense for which the person has been charged  
21 who has not opted out of receiving notice.

1                    (iii) As used in this subdivision (B), “victim” has the same  
2                    meaning as in section 5301 of this title.

3                    ~~(C) When a person has been committed under this section and is~~  
4                    ~~subject to a nonhospitalization order as a result of that commitment under 18~~  
5                    ~~V.S.A. § 7618, the Commissioner shall provide notice to the commit court and~~  
6                    ~~to the State’s Attorney of the county where the prosecution originated, or to the~~  
7                    ~~Office of the Attorney General if that office prosecuted the case if the~~  
8                    ~~Commissioner becomes aware that:~~

9                    ~~(i) the person is not complying with the order; or~~  
10                    ~~(ii) the alternative treatment has not been adequate to meet the~~  
11                    ~~person’s treatment needs.~~

12                    \* \* \*

13                    Sec. 4. Vermont Rule of Criminal Procedure 16.1 is amended to read:

14                    RULE 16.1. DISCLOSURE TO THE PROSECUTION

15                    (a) The Person of the Defendant.

16                    (1) Notwithstanding the initiation of judicial proceedings, and subject to  
17                    constitutional limitations, upon motion and notice a judicial officer may  
18                    require the defendant to:

19                    \* \* \*

20                    (H) provide specimens of ~~his~~ the defendant’s handwriting; ~~and~~

1 (I) submit to a reasonable physical or medical inspection of ~~his~~ the  
2 defendant's body or, if notice is given by the defendant that sanity is in issue or  
3 that expert testimony will be offered as provided in Rule 12.1, to a reasonable  
4 mental examination by a psychiatrist or other expert; and

5 (J) submit to a reasonable mental examination by a psychiatrist or  
6 other expert when a court ordered examiner pursuant to 13 V.S.A. § 4814(a)(2)  
7 or (4) reports that a defendant is not competent to stand trial.

8 \* \* \*

9 \*\*\* Reports and Studies \*\*\*

10 Sec. 5. CORRECTIONS; ASSESSMENT OF MENTAL HEALTH

11 SERVICES

12 (a) On or before ~~November 1, 2021~~ January 1, 2022, the Departments of  
13 Corrections and of Mental Health shall jointly submit an inventory and  
14 evaluation of the mental health services provided by the entity with whom the  
15 Department of Corrections contracts for health care services to the House  
16 Committees on Corrections and Institutions, on Health Care, and on Judiciary  
17 and to the Senate Committees on Health and Welfare and on Judiciary.

18 (b) The evaluation shall include:

19 (1) a comparison as to how the type, frequency, and timeliness of mental  
20 health services provided in a correctional setting differ from those services  
21 available in the community, recognizing that comparison to currently available

1 community services does not necessarily establish the standard of care for best  
2 practices;

3 (2) a comparison as to how the type, frequency, and timeliness of mental  
4 health services differ among Vermont correctional settings, including between  
5 men's and women's facilities, and from those mental health services provided  
6 to individuals under the care and custody of the Department of Corrections  
7 incarcerated in an out-of-state correctional facility;

8 (3) an assessment as to how the use of a for-profit entity with whom the  
9 Department of Corrections contracts for health care services affects costs or  
10 quality of care in correctional settings;

11 (4) an assessment as to whether the Department of Mental Health should  
12 provide oversight authority for mental health services provided by the entity  
13 with whom the Department of Corrections contracts for health care services;  
14 and

15 (5) information as to how the memorandum of understanding executed  
16 by the Departments of Corrections and of Mental Health impacts the mental  
17 health services provided by the entity with whom the Department of  
18 Corrections contracts for health care services and whether it is adequately  
19 addressing needs of those individuals with severe illness or in need of inpatient  
20 care.

1           (c) In conducting the work required by this section, the Departments of  
2           Corrections and of Mental Health shall ensure that social and racial equity  
3           issues are considered, including issues related to transgender and gender  
4           nonconforming persons.

5           Sec. 6. FORENSIC CARE WORKING GROUP

6           (a) On or before August 1, 2021, the Department of Mental Health shall  
7           convene a working group of interested stakeholders to provide  
8           recommendations necessary to carry out the provisions in subsections (b) and  
9           (c) of this section, including as appropriate:

10           (1) a representative from the Department of Corrections;

11           (2) a representative from the Department of Disabilities, Aging, and  
12           Independent Living;

13           ~~(3) the Department of Buildings and General Services;~~

14           (3) the Chief Superior Judge;

15           (4) a representative from the Department of State's Attorneys and  
16           Sheriffs;

17           (5) a representative from the Office of the Attorney General;

18           (6) a representative from the Office of the Defender General;

19           (7) the Director of Health Care Reform or designee;

20           (8) a representative appointed by Vermont Care Partners;

1           (9) a representative appointed by Vermont Legal Aid’s Mental Health  
2 Project;

3           (10) a representative appointed by the Vermont Medical Society;

4           (11) ~~two~~ three crime victims representatives, appointed by the Vermont  
5 Center for Crime Victim Services;

6           (12) the Mental Health Care Ombudsman established pursuant to  
7 18 V.S.A. § 7259 or designee;

8           (13) a representative of the designated hospitals, appointed by the  
9 Vermont Association of Hospitals and Health Care Systems;

10           (14) ~~one~~ three individuals with lived experience of mental illness, at  
11 least one of whom has lived experience of the criminal justice system or the  
12 civil commitment system, or both, appointed by Vermont Psychiatric  
13 Survivors;

14           (15) a representative appointed by the Vermont Developmental  
15 Disabilities Council; and

16           (16) any other interested party permitted by the Commissioner of  
17 Mental Health.

18           (b)(1) On or before February 1, 2022, the Department of Mental Health  
19 shall submit a preliminary report to the House Committees on Corrections and  
20 Institutions, on Health Care, and on Judiciary and to the Senate Committees on  
21 Health and Welfare and on Judiciary addressing;

1           (A) any gaps in the current mental health and criminal justice system  
2           structure;

3           (B) opportunities to:

4                   (i) improve public safety and address the treatment needs for  
5           individuals incompetent to stand trial or who are adjudicated not guilty by  
6           reason of insanity; and

7                   (ii) consider the importance of victims' rights in the forensic care  
8           process;

9           (C) competency restoration models used in other states, including  
10          both:

11                   (i) models that do not rely on involuntary medication to restore  
12          competency; and

13                   (ii) how cases where competency is not restored are addressed;

14           (D) models used in other states to determine public safety risks and  
15          the means used to address such risks, including guilty but mentally ill verdicts  
16          in criminal cases;

17           (E) due process requirements for defendants held without  
18          adjudication of a crime and presumed innocent;

19           (F) processes regarding other mental conditions affecting competence  
20          or sanity, including intellectual disabilities, traumatic brain injury, and  
21          dementia;

1           (G) models for forensic treatment, including inpatient treatment,  
2           community-based treatment, or other treatment models; and

3           (H) any additional recommendations to address the gaps in the  
4           current mental health and criminal justice system structures and opportunities  
5           to improve public safety and address the treatment needs for individuals  
6           incompetent to stand trial or who are adjudicated not guilty by reason of  
7           insanity.

8           (2) Based on the recommendations in the preliminary report submitted  
9           to the General Assembly pursuant to subdivision (1) of this subsection, the  
10           Department shall submit a second preliminary report to the Joint Legislative  
11           Justice Oversight Committee on or before July 1, 2022 as to whether or not a  
12           forensic treatment facility is needed in Vermont.

13           (3) On or before January 1, 2023, the Department shall submit a final  
14           report to the House Committees on Corrections and Institutions, on Health  
15           Care, and on Judiciary and to the Senate Committees on Health and Welfare  
16           and on Judiciary that refines and finalizes the recommendations made pursuant  
17           to subdivisions (1) and (2) of this subsection, including addressing the size,  
18           scope, and fiscal impact of any forensic treatment facility if one is  
19           recommended in subdivision (2).

20           (c) On or before February 1, 2022, the Department of Mental Health shall  
21           submit a report to the House Committees on Corrections and Institutions, on

1 Health Care, and on Judiciary and to the Senate Committees on Health and  
2 Welfare and on Judiciary that assesses the necessity of notification to the  
3 prosecutor upon becoming aware that individuals on orders of  
4 nonhospitalization pursuant to 18 V.S.A. § 7618 are not complying with the  
5 order or that the alternative treatment is not adequate to meet the individual's  
6 treatment needs, including any recommendations:

7 (1) necessary to clarify the process;

8 (2) addressing what facts and circumstances should trigger the  
9 Commissioner's duty to notify the prosecutor; and

10 (3) addressing steps that the prosecutor should take after receiving the  
11 notification.

12 (d)(1) In conducting the work required by this section, including  
13 evaluations for forensic treatment facility models pursuant to subdivision

14 (b)(2) of this section, the working group shall ensure:

15 (A) that social and racial equity issues are considered, including  
16 issues related to transgender and gender nonconforming persons; and

17 (B) consistency with the General Assembly's policy in 18 V.S.A.  
18 § 7629(c) of working "toward a mental health system that does not require  
19 coercion or the use of involuntary medication."



1 appointed by the Speaker of the House; and ~~five~~ six members of the Senate,  
2 who shall not all be from the same party, appointed by the Committee on  
3 Committees. In addition to one ~~member at large~~ member at large appointed  
4 ~~from each chamber~~, by the House and two members at large appointed by the  
5 Senate, one appointment shall be made from each of the House and Senate  
6 Committees on Appropriations and on Judiciary, the Senate Committees on  
7 Health and Welfare and on Institutions, and the House Committees on  
8 Corrections and Institutions, on Health Care, and on Human Services.

9 \* \* \*

10 \* \* \* Effective Date \* \* \*

11 Sec. 8. EFFECTIVE DATE

12 This act shall take effect on July 1, 2021.

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16  
17 (Committee vote: \_\_\_\_\_)

18 \_\_\_\_\_

19 Representative \_\_\_\_\_

20 FOR THE COMMITTEE