

Amendment to SB 392

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT establishing a commission to study insanity and restoration of competency.
4

5 Amend the bill by replacing all after the enacting clause with the following:
6

7 1 Statement of Findings and Purpose. The general court finds that:

8 I. Individuals with severe mental illness are at increased risk of interacting with the probate
9 court on civil commitments as well as with the criminal justice system in 3 important areas:
10 insanity, trial competency, and competency restoration. Current New Hampshire statutes for
11 insanity and competency have not evolved with changing trends in the frequency of these types of
12 orders or the improvements in mental health treatment.

13 II. As is evidenced by the number of individuals ordered for competency evaluations, the
14 need for these evaluations has increased substantially over the last 5 years, with some state
15 jurisdictions reporting 70 to 100 percent increases. Accordingly, New Hampshire experienced a 75
16 percent increase in the number of competency orders since 2015. In 2019, there was an average of
17 66 court orders for trial competency evaluations each month. With increases of the numbers of
18 competency evaluations, there are more individuals court ordered for competency restoration. An
19 individual ordered into competency restoration is expected to improve and return to court to face
20 their charges upon restoration of his or her competency. Analysis of 56 published studies from 1975
21 to 2013 showed that nationwide, 81 percent of individuals ordered to inpatient competency
22 restoration treatment were able to return to court.

23 III. In New Hampshire, there is no formal, existing system to provide treatment for
24 individuals found incompetent. In stark contrast to these national numbers, fewer than half of the
25 individuals ordered into a competency restoration period are able to return to court and complete
26 their criminal case. Specifically, in 2019 only 44 percent of individuals were found to have his or her
27 competency restored.

28 IV. The current statutory definition of insanity in New Hampshire, originating in 1871, is
29 outdated and not in keeping with today's standards of the dignity afforded to people with mental
30 illness. The 43 state jurisdictions in which the insanity defense is available commit acquitted
31 individuals to a state hospital and or forensic psychiatric hospital for mental health treatment,
32 under the care and supervision of the department of health or human services or similar entity.

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1 V. Numerous state jurisdictions have sought to reform their respective competency
2 restoration system. The Council of State Governments and the National Center for State Courts
3 have published useful guidance for state-level improvements. New Hampshire is currently planning
4 to build a new forensic hospital. Creation of a study commission will allow informed stakeholders to
5 review the existing statutes, examine the current competency, restoration, and sanity needs of New
6 Hampshire, and utilize national resources to develop needed improvements.

7 2 New Subdivision; New Hampshire Hospital and Insane Persons; Commission to Study
8 Insanity and Restoration of Competency; Established. Amend RSA 135 by inserting after section 48
9 the following new subdivision:

10 Commission to Study Insanity and Restoration of Competency

11 135:49 Commission to Study Insanity and Restoration of Competency; Established. There is
12 hereby established a commission to study insanity and restoration of competency.

13 I. The members of the commission shall be as follows:

14 (a) Three members of the house of representatives, appointed by the speaker of the
15 house of representatives, one of whom shall be a member of the criminal justice and public safety
16 committee, one of whom shall be a member of the health, human services and elderly affairs
17 committee, and one of whom shall be a member of the judiciary committee. At least one of the 3
18 house members shall be a member of the minority party.

19 (b) One member of the senate, appointed by the president of the senate.

20 (c) The commissioner of the department of health and human services, or designee.

21 (d) The commissioner of the department of corrections, or designee.

22 (e) The chief executive officer of the New Hampshire Hospital, or designee.

23 (f) The chief medical officer of the New Hampshire Hospital, or designee.

24 (g) The director of the division for behavioral health, department of health and human
25 services, or designee.

26 (h) Two representatives from the department of justice, one from the criminal bureau
27 and one from the civil bureau, appointed by the attorney general.

28 (i) A representative from the New Hampshire Association of Chiefs of Police, appointed
29 by the association.

30 (j) A defense attorney, appointed by the New Hampshire Public Defender.

31 (k) A private defense attorney, appointed by the New Hampshire Bar Association.

32 (l) A county attorney, appointed by the New Hampshire Association of Counties.

33 (m) A superintendent of a county correctional facility, appointed by the New Hampshire
34 Association of Counties.

35 (n) A representative from a community mental health centers, appointed by the New
36 Hampshire Community Behavioral Health Association.

37 (o) A member of the judiciary, appointed by the judicial branch.

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1 (p) A representative from National Alliance on Mental Illness of New Hampshire
2 (NAMI-NH), appointed by the alliance.

3 (q) A representative from the Disability Rights Center, appointed by the center.

4 (r) A representative from the New Hampshire Psychiatric Society, appointed by the
5 society.

6 II. Legislative members of the commission shall receive mileage at the legislative rate when
7 attending to the duties of the commission.

8 III. The commission shall study:

9 (a) The statutory definition of insane or insane person and shall revise the definitions
10 based on current practices and standards.

11 (b) Organizational and statutory alignment of insanity-acquitted individuals to align
12 with the development of the forensic hospital.

13 (c) Best practice for inpatient and outpatient insanity-acquitted individuals.

14 (d) Quality improvement elements for insanity-acquitted individuals.

15 (e) Methods to streamline and improve the system of care for individuals with severe
16 mental illness who have been deemed incompetent to stand trial.

17 (f) Restoration of competency and to develop a plan for a comprehensive restoration
18 program for those individuals deemed not competent but restorable. The plan would include:

19 (1) Review of organizational alignment of the office of forensic examiners;

20 (2) Best practices for inpatient and outpatient competency restoration;

21 (3) Improvement of current judicial review process;

22 (4) Identify a central repository and management entity for the competency
23 restoration process;

24 (5) Quality improvement elements for competency restoration; and

25 (6) Review of incorporating juvenile competency.

26 IV. Commission members shall be appointed within 30 days after the effective date of this
27 section.

28 V. The members of the study commission shall elect a chairperson from among the
29 members. The first meeting of the commission shall be called by the senate member. The first
30 meeting of the commission shall be held within 45 days of the effective date of this section. The
31 commission shall hold a minimum of 10 meetings over the course of its study. A majority of the
32 members of the commission shall constitute a quorum.

33 VI. The commission shall submit an interim report of its findings and any recommendations
34 for proposed legislation to the president of the senate, the speaker of the house of representatives,
35 the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2022.
36 The commission shall submit a final report of its findings and any recommendations for proposed

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1 legislation to the speaker of the house of representatives, the president of the senate, the house
2 clerk, the senate clerk, the governor, and the state library on or before November 1, 2023.

3 3 Repeal. RSA 135:49 and the subdivision heading preceding RSA 135:49, relative to the
4 commission to study the statutory definition of insane or insane person and restoration of
5 competency, are repealed.

6 4 Effective Date.

7 I. Section 3 of this act shall take effect November 1, 2023.

8 II. The remainder of this act shall take effect upon its passage.

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AMENDED ANALYSIS

This bill establishes a commission to study insanity and restoration of competency.