

SB 392 - AS AMENDED BY THE SENATE

02/24/2022 0796s

2022 SESSION

22-3036

05/04

SENATE BILL **392**

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

SPONSORS: Sen. Sherman, Dist 24; Sen. Prentiss, Dist 5

COMMITTEE: Judiciary

AMENDED ANALYSIS

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

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Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

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

Be it Enacted by the Senate and House of Representatives in General Court convened:

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

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

7 II. As is evidenced by the number of individuals ordered for competency evaluations, the
8 need for these evaluations has increased substantially over the last 5 years, with some state
9 jurisdictions reporting 70 to 100 percent increases. Accordingly, New Hampshire experienced a 75
10 percent increase in the number of competency orders since 2015. In 2019, there was an average of
11 66 court orders for trial competency evaluations each month. With increases of the numbers of
12 competency evaluations, there are more individuals court ordered for competency restoration. An
13 individual ordered into competency restoration is expected to improve and return to court to face
14 their charges upon restoration of his or her competency. Analysis of 56 published studies from 1975
15 to 2013 showed that nationwide, 81 percent of individuals ordered to inpatient competency
16 restoration treatment were able to return to court.

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

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

27 V. Numerous state jurisdictions have sought to reform their respective competency
28 restoration system. The Council of State Governments and the National Center for State Courts
29 have published useful guidance for state-level improvements. New Hampshire is currently planning
30 to build a new forensic hospital. Creation of a study commission will allow informed stakeholders to

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1 review the existing statutes, examine the current competency, restoration, and sanity needs of New
2 Hampshire, and utilize national resources to develop needed improvements.

3 2 New Subdivision; New Hampshire Hospital and Insane Persons; Commission to Study
4 Insanity and Restoration of Competency; Established. Amend RSA 135 by inserting after section 48
5 the following new subdivision:

6 Commission to Study Insanity and Restoration of Competency

7 135:49 Commission to Study Insanity and Restoration of Competency; Established. There is
8 hereby established a commission to study insanity and restoration of competency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 III. The commission shall study:

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

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

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

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

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

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

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

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

18 (3) Improvement of current judicial review process;

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

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

22 (6) Review of incorporating juvenile competency.

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

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

30 VI. The commission shall submit an interim report of its findings and any recommendations
31 for proposed legislation to the president of the senate, the speaker of the house of representatives,
32 the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2022.
33 The commission shall submit a final report of its findings and any recommendations for proposed
34 legislation to the speaker of the house of representatives, the president of the senate, the house
35 clerk, the senate clerk, the governor, and the state library on or before November 1, 2023.

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1 3 Repeal. RSA 135:49 and the subdivision heading preceding RSA 135:49, relative to the
2 commission to study the statutory definition of insane or insane person and restoration of
3 competency, are repealed.

4 4 Effective Date.

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

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