### **Criminal Court**

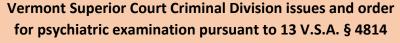
# Incompetency/Insanity Evaluation Flow Chart

#### **Mental Illness**

related, evaluation may be on an inpatient basis if defendant is:

- -Danger to self and others,
- -No less restrictive, appropriate place than a hospital.

Otherwise, evaluation is on outpatient basis.



- To determine defendant's competency to stand trial and/or sanity at the time of the alleged crime.
- Applies to those with a "mental disease or defect" as defined by 13 V.S.A. § 4801(a)(2).
- The examinations may occur on an inpatient (designated hospital) or outpatient (corrections, other appropriate facility, or community) basis.
- Inpatient reserved for those believed to have a mental illness.



**Developmental Disability** related, evaluation should on an outpatient basis as defendant cannot be "a person in need of treatment" as defined by 18 V.S.A. § 7101(17).

If defendant is found incompetent and/or insane, may be eligible for an Act 248 Commitment.



### **Inpatient Examination**

- If found competent/sane = will be prosecuted for crime and process ends. Cannot remain in the hospital.
- If incompetent and/or insane and found to need continued hospital level of care = 90 day OH.
- If incompetent and/or insane but does not need hospital level care = 90-day ONH (often stipulated to by parties and issued by court but may also be issued by court after a contested hearing.



90-day Order of Hospitalization

A defendant found

incompetent and/or

or after a contested

day OH

insane may, by stipulation

hearing, be placed on a 90-





## **Outpatient Examination**

- If found competent/sane = may be prosecuted for crime. Process ends for DMH.
- If incompetent and/or insane = likely ONH





placement on a 90-day ONH



Not a DA client = schedule and complete an intake assessment through conditions of release or 90day ONH



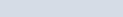
Current client of DA =

by stipulation or after

hearing







If person continues to need treat outpatient treatment before 90-day order expires, DMH may file an ACT in the Vermont Superior Court Family Division seeking up to a 1 year (ONH or OH).

**ACT** 



ONHs in this context often happen by stipulation. If parties will not stipulate, and individual has no contact with DA, parties/courts often frustrated there is no "provider"/expert to testify about need for treatment/level of care.