

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Health Care recommends that the report of the
3 Committee on Human Services be amended by striking out all after the
4 enacting clause and inserting in lieu thereof the following:

5 * * * Purpose * * *

6 Sec. 1. PURPOSE

7 It is the purpose of this act to:

8 (1) enable the Commissioner of Mental Health to seek treatment for
9 individuals at a secure residential recovery facility, regardless of a previous
10 order of hospitalization, and at a psychiatric residential treatment facility for
11 youth; and

12 (2) update the civil commitment procedures for individuals with
13 intellectual disabilities.

14 * * * Involuntary Commitment of Individuals with Mental Illness * * *

15 Sec. 2. 13 V.S.A. § 4822 is amended to read:

16 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

17 (a) If the court finds that the person is a person in need of treatment or a
18 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
19 shall issue an order of commitment directed to the Commissioner of Mental
20 Health that shall admit the person to the care and custody of the Department of
21 Mental Health for ~~an indeterminate~~ a period of 90 days. In any case involving

1 personal injury or threat of personal injury, the committing court may issue an
2 order requiring a court hearing before a person committed under this section
3 may be discharged from custody.

4 * * *

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

1 appearance in the proceedings and may request examination of the patient by
2 an independent psychiatrist, who may testify at the hearing.

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

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

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

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

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

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

15 (bb) a hospital or a secure residential recovery facility to the
16 community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;

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

20 (III) any time that the person elopes from the custody of the
21 Commissioner.

1 (ii) When the State’s Attorney or Attorney General receives notice
2 under subdivision (i) of this subdivision (B), the Office shall provide notice of
3 the action to any victim of the offense for which the person has been charged
4 who has not opted out of receiving notice. A victim receiving notice pursuant
5 to this subdivision (ii) has the right to submit a victim impact statement to the
6 Family Division of the Superior Court in writing or through the State’s
7 Attorney or Attorney General’s office.

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

10 * * *

11 Sec. 3. 18 V.S.A. § 7101 is amended to read:

12 § 7101. DEFINITIONS

13 As used in this part of this title, the following words, unless the context
14 otherwise requires, shall have the following meanings:

15 * * *

16 (31) “Department” means the Department of Mental Health.

17 (32) “Psychiatric residential treatment facility for youth” means a non-
18 hospital facility that:

19 (A) serves individuals between 12 and 21 years of age;

20 (B) has a provider agreement with the Department of Vermont Health
21 Access to provide residential services to Medicaid-eligible individuals;

1 (C) is accredited by the Joint Commission or any other accrediting
2 organization with comparable standards recognized by the Commissioner of
3 Mental Health; and

4 (D) meets the requirements in 42 C.F.R. §§ 441.151–441.182.

5 (33) “Secure residential recovery facility” means a residential facility,
6 licensed as a therapeutic community residence as defined in 33 V.S.A.
7 § 7102(11), for an individual in need of treatment within a secure setting for an
8 extended period of time. “Secure,” when describing a secure residential
9 recovery facility, means that the residents can be physically prevented from
10 leaving the facility by means of locking devices or other mechanical or
11 physical mechanisms.

12 Sec. 4. 18 V.S.A. § 7253 is amended to read:

13 § 7253. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

14 The Commissioner of Mental Health, in consultation with health care
15 providers as defined in section 9432 of this title, including designated
16 hospitals, designated agencies, individuals with mental conditions or
17 psychiatric disabilities, and other stakeholders, shall design and implement a
18 clinical resource management system that ensures the highest quality of care
19 and facilitates long-term, sustained recovery for individuals in the custody of
20 the Commissioner.

1 (1) For the purpose of coordinating the movement of individuals across
2 the continuum of care to the most appropriate services, the clinical resource
3 management system shall:

4 * * *

5 (J) Ensure that individuals under the custody of the Commissioner
6 being served in a designated ~~hospitals~~ ~~hospital~~, an intensive residential
7 recovery ~~facilities~~ ~~facility~~, a psychiatric residential treatment facility for youth,
8 and ~~the~~ a secure residential recovery facility shall have access to a mental
9 health patient representative. The patient representative shall advocate for
10 persons receiving services and shall also foster communication between
11 persons receiving services and health care providers. The Department of
12 Mental Health shall contract with an independent, peer-run organization to
13 staff the full-time equivalent of a representative of persons receiving services.

14 * * *

15 Sec. 5. 18 V.S.A. § 7255 is amended to read:

16 § 7255. SYSTEM OF CARE

17 The Commissioner of Mental Health shall coordinate a geographically
18 diverse system and continuum of mental health care throughout the State that
19 shall include at least the following:

- 1 (1) comprehensive and coordinated community services, including
- 2 prevention, to serve children, families, and adults at all stages of mental
- 3 condition or psychiatric disability;
- 4 (2) peer services, which may include:
 - 5 (A) a warm line;
 - 6 (B) peer-provided transportation services;
 - 7 (C) peer-supported crisis services; and
 - 8 (D) peer-supported hospital diversion services;
- 9 (3) alternative treatment options for individuals seeking to avoid or
- 10 reduce reliance on medications;
- 11 (4) recovery-oriented housing programs;
- 12 (5) intensive residential recovery facilities;
- 13 (6) appropriate and adequate psychiatric inpatient capacity for voluntary
- 14 patients;
- 15 (7) appropriate and adequate psychiatric inpatient capacity for
- 16 involuntary inpatient treatment services, including persons receiving treatment
- 17 through court order from a civil or criminal court; ~~and~~
- 18 (8) a secure residential recovery facility; and
- 19 (9) a psychiatric residential treatment facility for youth.

1 **Sec. 6. 18 V.S.A. § 7256 is amended to read:**

2 § 7256. REPORTING REQUIREMENTS

3 Notwithstanding 2 V.S.A. § 20(d), the Department of Mental Health shall
4 report annually on or before January 15 to the Senate Committee on Health and
5 Welfare and the House Committee on **Human Services Health Care** regarding
6 the extent to which individuals with a mental health condition or psychiatric
7 disability receive care in the most integrated and least restrictive setting
8 available. The Department shall consider measures from a variety of sources,
9 including the Joint Commission, the National Quality Forum, the Centers for
10 Medicare and Medicaid Services, the National Institute of Mental Health, and
11 the Substance Abuse and Mental Health Services Administration. The report
12 shall address:

- 13 (1) use of services across the continuum of mental health services;
- 14 (2) adequacy of the capacity at each level of care across the continuum
15 of mental health services;
- 16 (3) individual experience of care and satisfaction;
- 17 (4) individual recovery in terms of clinical, social, and legal results;
- 18 (5) performance of the State's mental health system of care as compared
19 to nationally recognized standards of excellence;
- 20 (6) ways in which patient autonomy and self-determination are
21 maximized within the context of involuntary treatment and medication;

1 (7) the number of petitions for involuntary medication filed by the State
2 pursuant to section § 7624 of this title and the outcome in each case;

3 (8) performance measures that demonstrate results and other data on
4 individuals for whom petitions for involuntary medication are filed; and

5 ~~(8)~~(9) progress on alternative treatment options across the system of
6 care for individuals seeking to avoid or reduce reliance on medications,
7 including supported withdrawal from medications.

8 Sec. 7. 18 V.S.A. § 7257 is amended to read:

9 § 7257. REPORTABLE ADVERSE EVENTS

10 (a) An acute inpatient hospital, an intensive residential recovery facility, a
11 designated agency, a psychiatric residential treatment facility for youth, or a
12 secure residential recovery facility shall report to the Department of Mental
13 Health instances of death or serious bodily injury to individuals with a mental
14 condition or psychiatric disability in the custody or temporary custody of the
15 Commissioner.

16 * * *

17 Sec. 8. 18 V.S.A. § 7260 is added to read:

18 § 7260. PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY FOR

19 YOUTH

20 (a) An applicant shall not establish, maintain, or operate a psychiatric
21 residential treatment facility for youth in this State without first obtaining a

1 license from the Department of Health for the psychiatric residential treatment
2 facility for youth in accordance with this section.

3 (b) Upon receipt of the application for a license, the Department of Health
4 shall issue a license if it determines that the applicant and the proposed
5 psychiatric residential treatment facility for youth meet the following minimum
6 standards:

7 (1) The applicant shall demonstrate the capacity to operate a psychiatric
8 residential treatment facility for youth in accordance with rules adopted by the
9 Department of Health and in a manner that ensures person-centered care and
10 resident dignity.

11 (2) The applicant shall demonstrate that its facility complies fully with
12 standards for health, safety, and sanitation as required by State law, including
13 standards set forth by the State Fire Marshal and the Department of Health, and
14 municipal ordinance.

15 (3) The applicant shall have a clear process for responding to resident
16 complaints.

17 (4) The psychiatric residential treatment facility for youth, including the
18 buildings and grounds, shall be subject to inspection by the Department of
19 Disabilities, Aging, and Independent Living, its designees, and other
20 authorized entities at all times.

1 (c) A license is not transferable or assignable and shall be issued only for
2 the premises named in the application.

3 (d) Once licensed, a psychiatric residential treatment facility for youth shall
4 be among the placement options for individuals committed to the custody of
5 the Commissioner under an order of nonhospitalization.

6 (e) The Department of Health shall adopt rules pursuant to 3 V.S.A.
7 chapter 25 to carry out the purposes of this section. Rules pertaining to
8 emergency involuntary procedures shall:

9 (1) be identical to those rules adopted by the Department of Mental
10 Health governing the use of emergency involuntary procedures in psychiatric
11 inpatient units; and

12 (2) require that a certificate of need for all emergency involuntary
13 procedures performed at the psychiatric residential treatment facility for youth
14 be submitted to the Department and the Mental Health Care Ombudsman in the
15 same manner and time frame as required for hospitals.

16 Sec. 9. 18 V.S.A. § 7503 is amended to read:

17 § 7503. APPLICATION FOR VOLUNTARY ADMISSION

18 (a) Any person 14 years of age or over may apply for voluntary admission
19 to a designated hospital or psychiatric residential treatment facility for youth
20 for examination and treatment.

21 * * *

1 **Sec. 10.** 18 V.S.A. § 7612 is amended to read:

2 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

3 (a) An interested party may, by filing a written application, commence
4 proceedings for the involuntary treatment of an individual by judicial process.

5 * * *

6 (d) The application shall contain:

7 (1) The name and address of the applicant.

8 (2) A statement of the current and relevant facts upon which the
9 allegation of mental illness and need for treatment is based. The application
10 shall be signed by the applicant under penalty of perjury.

11 (e) The application shall be accompanied by:

12 (1) a certificate of a licensed physician, which shall be executed under
13 penalty of perjury stating that the physician has examined the proposed patient
14 within five days after the date the petition is filed and is of the opinion that the
15 proposed patient is a person in need of treatment, including the current and
16 relevant facts and circumstances upon which the physician's opinion is based;
17 or

18 (2) a written statement by the applicant that the proposed patient refused
19 to submit to an examination by a licensed physician.

20 (f) Before an examining physician completes the certificate of examination,
21 ~~he or she~~ **the examining physician** shall consider available alternative forms of

1 care and treatment that might be adequate to provide for the person’s needs
2 without requiring hospitalization. The examining physician shall document on
3 the certificate the specific alternative forms of care and treatment that ~~he or she~~
4 the examining physician considered and why those alternatives were deemed
5 inappropriate, including information on the availability of any appropriate
6 alternatives.

7 (g) If the Commissioner seeks to have the patient receive treatment in a
8 secure residential recovery facility or a psychiatric residential treatment facility
9 for youth, the application for an order authorizing treatment shall expressly
10 state that such treatment is being sought. The application shall contain, in
11 addition to the statements required by subsections (d) and (e) of this section, a
12 statement setting forth the reasons for the Commissioner’s determination that
13 clinically appropriate treatment for the patient’s condition can be provided
14 safely only in a secure residential recovery facility or a psychiatric residential
15 treatment facility for youth, respectively.

16 Sec. 11. 18 V.S.A. § 7618 is amended to read:

17 § 7618. ORDER; NONHOSPITALIZATION

18 (a) If the court finds that a treatment program other than hospitalization is
19 adequate to meet the person’s treatment needs, the court shall order the person
20 to receive whatever treatment other than hospitalization is appropriate for a
21 period of 90 days. If the treatment plan proposed by the Commissioner for a

1 facility or a psychiatric residential treatment facility for youth, the court may at
2 any time, on its own motion or on a motion of an interested party, review the
3 need for treatment at the secure residential recovery facility or the psychiatric
4 residential treatment facility for youth, respectively.

5 (b) If at any time during the specified period it comes to the attention of the
6 court either that the patient is not complying with the order or that the
7 alternative treatment has not been adequate to meet the patient's treatment
8 needs, the court may, after proper hearing:

9 (1) consider other alternatives, modify its original order, and direct the
10 patient to undergo another program of alternative treatment for the remainder
11 of the 90-day period; or

12 (2) enter a new order directing that the patient be hospitalized for the
13 remainder of the 90-day period.

14 Sec. 12. 18 V.S.A. § 7620 is amended to read:

15 § 7620. APPLICATION FOR CONTINUED TREATMENT

16 * * *

17 (d) If the Commissioner seeks to have the patient receive the further
18 treatment in a secure residential recovery facility or a psychiatric residential
19 treatment facility for youth, the application for an order authorizing continuing
20 treatment shall expressly state that such treatment is being sought. The
21 application shall contain, in addition to the statements required by subsection

1 (b) of this section, a statement setting forth the reasons for the Commissioner’s
2 determination that clinically appropriate treatment for the patient’s condition
3 can be provided safely only in a secure residential recovery facility or a
4 psychiatric residential treatment facility for youth, respectively.

5 ~~(e) As used in this chapter:~~

6 ~~(1) “Secure,” when describing a residential facility, means that the~~
7 ~~residents can be physically prevented from leaving the facility by means of~~
8 ~~locking devices or other mechanical or physical mechanisms.~~

9 ~~(2) “Secure residential recovery facility” means a residential facility,~~
10 ~~licensed as a therapeutic community residence as defined in 33 V.S.A.~~
11 ~~§ 7102(11), for an individual who no longer requires acute inpatient care but~~
12 ~~who does remain in need of treatment within a secure setting for an extended~~
13 ~~period of time. A secure residential recovery facility shall not be used for any~~
14 ~~purpose other than the purposes permitted by this section.~~

15 **Sec. 13.** 18 V.S.A. § 7621 is amended to read:

16 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
17 ORDERS

18 * * *

19 (c) If the court finds that the patient is a patient in need of further treatment
20 but does not require hospitalization, it shall order nonhospitalization for up to
21 one year. If the treatment plan proposed by the Commissioner for a patient in

1 need of further treatment includes admission to a secure residential recovery
2 facility or a psychiatric residential treatment facility for youth, the court may at
3 any time, on its own motion or on motion of an interested party, review the
4 need for treatment at the secure residential recovery facility or the psychiatric
5 residential treatment facility for youth, respectively.

6 * * *

7 Sec. 14. 18 V.S.A. § 7624 is amended to read:

8 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

9 (a) The Commissioner may commence an action for the involuntary
10 medication of a person who is refusing to accept psychiatric medication and
11 meets any one of the following ~~six~~ conditions:

12 (1) has been placed in the Commissioner's care and custody pursuant to
13 section 7619 of this title or subsection 7621(b) of this title;

14 (2) has previously received treatment under an order of hospitalization
15 and is currently under an order of nonhospitalization, including a person on an
16 order of nonhospitalization who resides in a secure residential recovery
17 facility;

18 (3) has been committed to the custody of the Commissioner on an order
19 of nonhospitalization and has been placed at a secure residential recovery
20 facility;

1 (4) has been committed to the custody of the Commissioner of
2 Corrections as a convicted felon and is being held in a correctional facility that
3 is a designated facility pursuant to section 7628 of this title and for whom the
4 Departments of Corrections and of Mental Health have determined jointly that
5 involuntary medication would be appropriate pursuant to 28 V.S.A.

6 § 907(4)(H);

7 (4)(5) has an application for involuntary treatment pending for which
8 the court has granted a motion to expedite pursuant to subdivision
9 7615(a)(2)(A)(i) of this title;

10 (5)(6)(A) has an application for involuntary treatment pending;

11 (B) waives the right to a hearing on the application for involuntary
12 treatment until a later date; and

13 (C) agrees to proceed with an involuntary medication hearing without
14 a ruling on whether ~~he or she~~ the person is a person in need of treatment; or

15 (6)(7) has had an application for involuntary treatment pending pursuant
16 to subdivision 7615(a)(1) of this title for more than 26 days without a hearing
17 having occurred and the treating psychiatrist certifies, based on specific
18 behaviors and facts set forth in the certification, that in ~~his or her~~ the
19 psychiatrist's professional judgment there is good cause to believe that:

20 (A) additional time will not result in the person establishing a
21 therapeutic relationship with providers or regaining competence; and

1 (B) serious deterioration of the person’s mental condition is
2 occurring.

3 (b)(1) Except as provided in subdivisions (2), ~~(3)(4)~~, and ~~(4)(5)~~ of this
4 subsection, an application for involuntary medication shall be filed in the
5 Family Division of the Superior Court in the county in which the person is
6 receiving treatment.

7 (2) If the application for involuntary medication is filed pursuant to
8 subdivision ~~(a)(4)~~ ~~(a)(5)~~ of this section:

9 (A) the application shall be filed in the county in which the
10 application for involuntary treatment is pending; and

11 (B) the court shall consolidate the application for involuntary
12 treatment with the application for involuntary medication and rule on the
13 application for involuntary treatment before ruling on the application for
14 involuntary medication.

15 (3) If the application for involuntary medication is filed pursuant to
16 subdivision ~~(a)(5)(6)~~ or ~~(a)(6)(7)~~ of this section, the application shall be filed in
17 the county in which the application for involuntary treatment is pending.

18 (4) Within 72 hours of the filing of an application for involuntary
19 medication pursuant to subdivision ~~(a)(6)(7)~~ of this section, the court shall
20 determine, based solely upon a review of the psychiatrist’s certification and
21 any other filings, whether the requirements of that subdivision have been

1 established. If the court determines that the requirements of subdivision
2 (a)~~(6)~~(7) of this section have been established, the court shall consolidate the
3 application for involuntary treatment with the application for involuntary
4 medication and hear both applications within 10 days after the date that the
5 application for involuntary medication is filed. The court shall rule on the
6 application for involuntary treatment before ruling on the application for
7 involuntary medication. Subsection 7615(b) of this title shall apply to
8 applications consolidated pursuant to this subdivision.

9 * * *

10 **Sec. 15. 18 V.S.A. § 7628 is amended to read:**

11 § 7628. PROTOCOL

12 The Department of Mental Health shall develop and adopt by rule a strict
13 protocol to ensure the health, safety, dignity, and respect of patients subject to
14 administration of involuntary psychiatric medications in any designated
15 hospital **or secure residential recovery facility**. This protocol shall be followed
16 by all designated hospitals **and secure residential recovery facilities**
17 administering involuntary psychiatric medications.

1 * * * Policies Applicable to the Secure Residential Recovery Facility * * *

2 Sec. 16. RULEMAKING; **SECURE RESIDENTIAL RECOVERY**
3 **FACILITY**

4 On or before August 1, 2024, the Commissioner of Disabilities, Aging, and
5 Independent Living, in consultation with the Commissioner of Mental Health,
6 shall file permanent proposed rule amendments with the Secretary of State
7 pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and
8 Independent Living, Licensing and Operating Regulations for Therapeutic
9 Community Residences (CVR 13-110-12) for the purpose of amending the
10 secure residential recovery facility section of the rule. Prior to the permanent
11 rules taking effect, the Department shall adopt similar emergency rules that
12 shall be deemed to have met the standard for emergency rulemaking in
13 3 V.S.A. § 844. Both the permanent and emergency rules shall:

14 (1) authorize the use of emergency involuntary procedures at a secure
15 residential recovery facility in a manner identical to that required in rules
16 adopted by the Department of Mental Health governing the use of emergency
17 involuntary procedures in psychiatric inpatient units;

18 (2) require that a certificate of need for all emergency involuntary
19 procedures performed at a secure residential recovery facility be submitted to
20 the Department and the Mental Health Care Ombudsman in the same manner
21 and time frame as required for hospitals;

- 1 (3) authorize the administration of involuntary medication at a secure
2 residential recovery facility in a manner identical to that required in rules
3 adopted by the Department of Mental Health governing the use of the
4 administration of involuntary medication in psychiatric inpatient units; and
5 (4) ensure person-centered care and resident dignity.

6 Sec. 17. 2021 Acts and Resolves No. 50, Sec. 3(c) is amended to read:

7 (c) The amount appropriated in subdivision (a)(1) of this section shall be
8 used to construct a 16-bed Secure Residential Recovery Facility on Parcel
9 ID# 200-5-003-001 as designated on the Town of Essex’s Tax Parcel Maps for
10 transitional support for individuals who are being discharged from inpatient
11 psychiatric care. Through interior fit-up, versus building redesign, the 16-bed
12 facility shall include two eight-bed wings designed with the capability to allow
13 for separation of one wing from the main section of the facility, if necessary.
14 Both wings shall be served by common clinical and activity spaces. Neither
15 wing shall include a locked seclusion area, and the facility shall not use
16 emergency involuntary procedures. Outdoor space shall be adequate for
17 exercise and other activities but not less than 10,000 square feet.

18 Sec. 18. NOTICE OF MATERIAL CHANGE; CERTIFICATE OF NEED

19 The Department of Mental Health shall file a notice of material change to
20 the certificate of need for the secure residential treatment program in Essex
21 pursuant to 18 V.S.A. § 9444 to allow:

- 1 (1) the use of emergency involuntary procedures; and
- 2 (2) the initial commitment of individuals in the custody of the
- 3 Commissioner.

4 Sec. 19. REPEAL; INVOLUNTARY MEDICATION REPORT

5 1998 Acts and Resolves No. 114, Sec. 5 (report) is repealed on July 1, 2024.

6 * * * Persons in Need of Custody, Care, and Habilitation or Continued
7 Custody, Care, and Habilitation * * *

8 Sec. 20. 13 V.S.A. § 4814 is amended to read:

9 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

10 * * *

11 (d) Notwithstanding any other provision of law, an examination ordered
12 pursuant to subsection (a) of this section may be conducted by a doctoral-level
13 psychologist trained in forensic psychology and licensed under 26 V.S.A.
14 chapter 55. ~~This subsection shall be repealed on July 1, 2024.~~

15 * * *

16 Sec. 21. 13 V.S.A. § 4816 is amended to read:

17 § 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

18 * * *

19 (b) A competency evaluation for an individual thought to have a
20 developmental disability shall ~~include~~ be a current evaluation by a doctoral-

1 level psychologist trained in forensic psychology and skilled in assessing
2 individuals with developmental disabilities.

3 * * *

4 (e) The relevant portion of a psychiatrist's report produced by a psychiatrist
5 or psychologist, as described in subsection (c) of this section, shall be admitted
6 into evidence as an exhibit on the issue of the person's mental competency to
7 stand trial and the opinion shall be conclusive on the issue if agreed to by the
8 parties and if found by the court to be relevant and probative on the issue.

9 (f) Introduction of a report under subsection (d) of this section shall not
10 preclude either party or the court from calling the psychiatrist or psychologist
11 as described in subsection (b) of this section who wrote the report as a witness
12 or from calling witnesses or introducing other relevant evidence. Any witness
13 called by either party on the issue of the defendant's competency shall be at the
14 State's expense, or, if called by the court, at the court's expense.

15 Sec. 22. 13 V.S.A. § 4817 is amended to read:

16 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

17 * * *

18 (c) If a person indicted, complained, or informed against for an alleged
19 criminal offense, an attorney or guardian acting in the person's behalf, or the
20 State, at any time before final judgment, raises before the court before which
21 such person is tried or is to be tried, the issue of whether such person is

1 incompetent to stand trial, or if the court has reason to believe that such person
2 may not be competent to stand trial, a hearing shall be held before such court at
3 which evidence shall be received and a finding made regarding the person's
4 competency to stand trial. However, in cases where the court has reason to
5 believe that such person may be incompetent to stand trial due to a mental
6 disease or mental defect, such hearing shall not be held until an examination
7 has been made and a report submitted by an examining psychiatrist or
8 psychologist in accordance with sections 4814–4816 of this title.

9 * * *

10 Sec. 23. 13 V.S.A. § 4820 is amended to read:

11 § 4820. HEARING REGARDING COMMITMENT

12 (a)(1) When a person charged on information, complaint, or indictment
13 with a criminal offense:

14 (1) ~~[Repealed.]~~

15 (2)(A) is found upon hearing pursuant to section 4817 of this title to be
16 incompetent to stand trial due to a mental disease or mental defect;

17 (3)(B) is not indicted upon hearing by grand jury by reason of insanity at
18 the time of the alleged offense, duly certified to the court; or

19 (4)(C) upon trial by court or jury is acquitted by reason of insanity at the
20 time of the alleged offense;

1 (2) ~~the~~ The court before which such person is tried or is to be tried for
2 such offense, shall hold a hearing for the purpose of determining whether such
3 person should be committed to the custody of the Commissioner of Mental
4 Health or Commissioner of Disabilities, Aging, and Independent Living, as
5 appropriate. Such person may be confined in jail or some other suitable place
6 by order of the court pending hearing for a period not exceeding 21 days.

7 (b) When a person is found to be incompetent to stand trial, has not been
8 indicted by reason of insanity for the alleged offense, or has been acquitted by
9 reason of insanity at the time of the alleged offense, the person shall be entitled
10 to have counsel appointed from Vermont Legal Aid to represent the person.

11 The Department of Mental Health and, if applicable, the Department of
12 Disabilities, Aging, and Independent Living shall be entitled to appear and call
13 witnesses at the proceeding.

14 (c) Notwithstanding any other provision of law, a commitment order issued
15 pursuant to this chapter shall not modify or vacate orders concerning
16 conditions of release or bail issued pursuant to chapter 229 of this title, and the
17 commitment order shall remain in place unless expressly modified, provided
18 that inpatient treatment shall be permitted if a person who is held without bail
19 is found to be in need of inpatient treatment under this chapter.

1 Sec. **24**. 13 V.S.A. § 4823 is amended to read:

2 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
3 DISABILITY

4 (a) If the court finds by clear and convincing evidence that such person is a
5 person in need of custody, care, and habilitation as defined in 18 V.S.A.
6 § 8839, the court shall issue an order of commitment for up to one year
7 directed to the Commissioner of Disabilities, Aging, and Independent Living
8 for placement in a designated program in the least restrictive environment
9 consistent with the person’s need for custody, care, and habilitation of such
10 person for an indefinite or limited period in a designated program.

11 (b) Such order of commitment shall have the same force and effect as an
12 order issued under 18 V.S.A. ~~§ 8843~~ chapter 206, subchapter 3 and persons
13 committed under such an order shall have the same status, and the same rights,
14 including the right to receive care and habilitation, to be examined and
15 discharged, and to apply for and obtain judicial review of their cases, as
16 persons ordered committed under 18 V.S.A. ~~§ 8843~~ chapter 206, subchapter 3.

17 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
18 ~~under this section; however, judicial proceedings shall be conducted in the~~
19 ~~Criminal Division of the Superior Court in which the person then resides,~~
20 ~~unless the person resides out of State in which case the proceedings shall be~~
21 ~~conducted in the original committing court. [Repealed.]~~

1 Sec. 25. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

2 Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability

3 Who Present a Danger of Harm to Others

4 § 8839. DEFINITIONS

5 As used in this subchapter:

6 (1) ~~“Danger of harm to others” means the person has inflicted or~~
7 ~~attempted to inflict serious bodily injury to another or has committed an act~~
8 ~~that would constitute a sexual assault or lewd or lascivious conduct with a~~
9 ~~child~~ “Commissioner” means the Commissioner of Disabilities, Aging, and
10 Independent Living.

11 (2) “Designated program” means a program designated by the
12 Commissioner as adequate to provide in an individual manner appropriate
13 custody, care, and habilitation to persons with intellectual disabilities receiving
14 services under this subchapter.

15 (3)(A) “Person in need of continued custody, care, and habilitation”
16 means a person:

17 (i) who was previously found to be a person in need of custody,
18 care, and habilitation;

19 (ii) who poses a danger of harm to others; and

20 (iii) for whom appropriate custody, care, and habilitation can be
21 provided by the Commissioner in a designated program.

1 (B) As used in this subdivision (3), a danger of harm to others shall
2 be shown by establishing that, in the time since the last order of commitment
3 was issued, the person:

4 (i) has inflicted or attempted to inflict serious bodily injury to
5 another or has committed an act that would constitute sexual conduct with a
6 child as defined in section 2821 of this title or lewd and lascivious conduct
7 with a child as provided in section 2602 of this title; or

8 (ii) has exhibited behavior demonstrating that, absent treatment or
9 programming provided by the Commissioner, there is a substantial likelihood
10 that the person would inflict or attempt to inflict physical or sexual harm to
11 another.

12 (4) “Person in need of custody, care, and habilitation” means a person:

13 (A) ~~a person~~ with an intellectual disability, which means significantly
14 subaverage intellectual functioning existing concurrently with deficits in
15 adaptive behavior that were manifest before 18 years of age;

16 (B) who ~~presents a danger of harm to others~~ has inflicted or
17 attempted to inflict serious bodily injury to another or who has committed an
18 act that would constitute sexual conduct with a child as defined in section 2821
19 of this title or lewd and lascivious conduct with a child as provided in section
20 2602 of this title; and

1 (C) for whom appropriate custody, care, and habilitation can be
2 provided by the Commissioner in a designated program.

3 (5) “Victim” has the same meaning as in 13 V.S.A. § 5301(4).

4 § 8840. ~~JURISDICTION AND VENUE~~

5 ~~Proceedings brought under this subchapter for commitment to the~~
6 ~~Commissioner for custody, care, and habilitation shall be commenced by~~
7 ~~petition in the Family Division of the Superior Court for the unit in which the~~
8 ~~respondent resides. [Repealed.]~~

9 § 8841. ~~PETITION; PROCEDURES~~

10 ~~The filing of the petition and procedures for initiating a hearing shall be as~~
11 ~~provided in sections 8822-8826 of this title. [Repealed.]~~

12 § 8842. ~~HEARING~~

13 ~~Hearings under this subchapter for commitment shall be conducted in~~
14 ~~accordance with section 8827 of this title. [Repealed.]~~

15 § 8843. ~~FINDINGS AND ORDER~~

16 ~~(a) In all cases, the court shall make specific findings of fact and state its~~
17 ~~conclusions of law.~~

18 ~~(b) If the court finds that the respondent is not a person in need of custody,~~
19 ~~care, and habilitation, it shall dismiss the petition.~~

20 ~~(c) If the court finds that the respondent is a person in need of custody,~~
21 ~~care, and habilitation, it shall order the respondent committed to the custody of~~

1 ~~the Commissioner for placement in a designated program in the least restrictive~~
2 ~~environment consistent with the respondent's need for custody, care, and~~
3 ~~habilitation for an indefinite or a limited period. [Repealed.]~~

4 § 8844. LEGAL COMPETENCE

5 No determination that a person is in need of custody, care, and habilitation
6 or in need of continued custody, care, and habilitation and no order authorizing
7 commitment shall lead to a presumption of legal incompetence.

8 § 8845. JUDICIAL REVIEW PETITION AND ORDER FOR CONTINUED
9 CUSTODY, CARE, AND HABILITATION

10 (a) ~~A person committed under this subchapter may be discharged from~~
11 ~~custody by a Superior judge after judicial review as provided herein or by~~
12 ~~administrative order of the Commissioner.~~

13 (b) ~~Procedures for judicial review of persons committed under this~~
14 ~~subchapter shall be as provided in section 8834 of this title, except that~~
15 ~~proceedings shall be brought in the Criminal Division of the Superior Court in~~
16 ~~the unit in which the person resides or, if the person resides out of state, in the~~
17 ~~unit that issued the original commitment order.~~

18 (c) ~~A person committed under this subchapter shall be entitled to a judicial~~
19 ~~review annually. If no such review is requested by the person, it shall be~~
20 ~~initiated by the Commissioner. However, such person may initiate a judicial~~

1 ~~review under this subsection after 90 days after initial commitment but before~~
2 ~~the end of the first year of the commitment.~~

3 ~~(d) If at the completion of the hearing and consideration of the record, the~~
4 ~~court finds at the time of the hearing that the person is still in need of custody,~~
5 ~~care, and habilitation, commitment shall continue for an indefinite or limited~~
6 ~~period. If the court finds at the time of the hearing that the person is no longer~~
7 ~~in need of custody, care, and habilitation, it shall discharge the person from the~~
8 ~~custody of the Commissioner. An order of discharge may be conditional or~~
9 ~~absolute and may have immediate or delayed effect.~~

10 (1) If, prior to the expiration of any previous commitment order issued in
11 accordance with 13 V.S.A. § 4823 or this subchapter, the Commissioner
12 believes that the person is a person in need of continued custody, care, and
13 habilitation, the Commissioner shall seek continued custody, care, and
14 habilitation in the Family Division of the Superior Court. The Commissioner
15 shall, by filing a written petition, commence proceedings for the continued
16 custody, care, and habilitation of a person. The petition shall state the current
17 and relevant facts upon which the person’s alleged need for continued custody,
18 care, and habilitation is predicated.

19 (2) Any commitment order for custody, care, and habilitation or
20 continued custody, care, and habilitation issued in accordance with 13 V.S.A.

1 § 4823 or this subchapter shall remain in force pending the court’s decision on
2 the petition.

3 (b) Upon receipt of the petition for the continued custody, care, and
4 habilitation, the court shall hold a hearing within 14 days after the date of
5 filing.

6 (c) If the court finds by clear and convincing evidence at the time of the
7 hearing that the person is a person in need of continued custody, care, and
8 habilitation, it shall issue an order of commitment for up to one year in a
9 designated program in the least restrictive environment consistent with the
10 person’s need for continued custody, care, and habilitation. If the court finds
11 at the time of the hearing that the person is no longer in need of continued
12 custody, care, and habilitation, it shall discharge the person from the custody of
13 the Commissioner in accordance with section 8847 of this subchapter. In
14 determining whether a person is a person in need of continued custody, care,
15 and habilitation, the court shall consider the degree to which the person has
16 previously engaged in or complied with the treatment and programming
17 provided by the Commissioner.

18 § 8846. RIGHT TO INITIATE REVIEW

19 A person may initiate a judicial review in the Family Division of the
20 Superior Court or an administrative review under this subchapter at any time
21 after 90 days following a current order of commitment or continued

1 commitment and not earlier than six months after the filing of a previous
2 application under this section. If the court or Commissioner finds that the
3 person is not a person in need of custody, care, and habilitation or continued
4 custody, care, and habilitation, the person shall be discharged from the custody
5 of the Commissioner pursuant to section 8847 of this subchapter.

6 § 8847. DISCHARGE FROM COMMITMENT

7 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
8 discharged as follows:

9 (1) by a Family Division Superior Court judge after review of an order
10 of custody, care, and habilitation or an order of continued custody, care, and
11 habilitation if the court finds that a person is not a person in need of custody,
12 care, and habilitation or continued custody, care, and habilitation, respectively;
13 or

14 (2) by administrative order of the Commissioner regarding an order of
15 custody, care, and habilitation or an order of continued custody, care, and
16 habilitation if the Commissioner determines that a person is no longer a person
17 in need of custody, care, and habilitation or continued custody, care, and
18 habilitation, respectively.

19 (b) A judicial or administrative order of discharge may be conditional or
20 absolute and may have immediate or delayed effect.

1 (c)(1) When a person is under an order of commitment pursuant to
2 13 V.S.A. § 4823 or continued commitment pursuant to this subchapter, the
3 Commissioner shall provide notice to the State’s Attorney of the county where
4 the prosecution originated or to the Office of the Attorney General if that
5 Office prosecuted the case:

6 (A) at least 10 days prior to discharging a person from commitment
7 or continued commitment;

8 (B) at least 10 days prior to the expiration of a commitment or
9 continued commitment order if the Commissioner does not seek an order of
10 continued custody, care, and habilitation; or

11 (C) any time that the person elopes from custody of the
12 Commissioner and cannot be located, and there is reason to believe the person
13 may be lost or poses a risk of harm to others.

14 (2) When the State’s Attorney or Attorney General receives notice under
15 subdivision (1) of this subsection, the Office shall provide notice of the action
16 to any victim of the offense for which the person has been charged who has not
17 opted out of receiving notice.

18 (d) Whenever a person is subject to a judicial or administrative discharge
19 from commitment, the Criminal Division of the Superior Court shall retain
20 jurisdiction over the person’s underlying charge and any orders holding the
21 person without bail or concerning bail, and conditions of release shall remain

1 in place. Those orders shall be placed on hold while a person is in the custody,
2 care, and habilitation or continued custody, care, and habilitation of the
3 Commissioner. When a person is discharged from the Commissioner’s
4 custody, care, and habilitation to a correctional facility, the custody of the
5 Commissioner shall cease when the person enters the correctional facility.

6 § ~~8846~~ 8848. RIGHT TO COUNSEL

7 Persons subject to commitment ~~or judicial review under, continued~~
8 commitment, or self-initiated review pursuant to section 8846 of this
9 subchapter shall have a right to counsel as provided in section 7111 of this
10 title.

11 * * * Proposal for Enhanced Services * * *

12 Sec. 26. INDIVIDUALS WITH INTELLECTUAL DISABILITIES;

13 ENHANCED SERVICES

14 On or before December 1, 2024, the Department of Disabilities, Aging, and
15 Independent Living, in consultation with Disability Rights Vermont, Vermont
16 Legal Aid, Developmental Services State Program Standing Committee, and
17 Vermont Care Partners, may submit an alternative proposal to the forensic
18 facility to the House Committee on Human Services and to the Senate
19 Committee on Health and Welfare for enhanced community-based services for
20 those individuals committed to the Commissioner who require custody, care,
21 and habilitation in a secure setting for brief periods of time. A proposal

1 submitted pursuant to this subsection shall address required resources,
2 including funding and staffing, and be eligible for funding through the Global
3 Commitment Home- and Community-Based Services Waiver.

4 * * * Fiscal Estimate of Competency Restoration Program * * *

5 Sec. 27. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
6 ESTIMATE

7 On or before November 1, 2024, the Agency of Human Services shall
8 submit a report to the House Committees on Appropriations, on Health Care,
9 and on Human Services and to the Senate Committees on Appropriations and
10 on Health and Welfare that provides a fiscal estimate for the implementation of
11 a competency restoration program operated or under contract with the
12 Department of Mental Health. The estimate shall include:

13 (1) whether and how to serve individuals with an intellectual disability
14 in a competency restoration program;

15 (2) varying options dependent upon which underlying charges are
16 eligible for court-ordered competency restoration; and

17 (3) costs associated with establishing a residential program where court-
18 ordered competency restoration programming may be performed on an
19 individual who is neither in the custody of the Commissioner of Mental Health
20 pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of
21 Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

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* * * Effective Date * * *

Sec. 28. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

and that after passage the title of the bill be amended to read: “An act relating to civil commitment procedures at a secure residential recovery facility and a psychiatric residential treatment facility for youth and civil commitment procedures for individuals with an intellectual disability”

(Committee vote: _____)

Representative _____

FOR THE COMMITTEE