

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred Senate Bill No.
3 192 entitled “An act relating to forensic facility admissions criteria and
4 processes” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 * * * Purpose and Legislative Intent * * *

9 Sec. 1. PURPOSE AND LEGISLATIVE INTENT

10 It is the purpose of this act to enable the Commissioner of Mental Health to
11 seek treatment and programming for certain individuals in a forensic facility as
12 anticipated by the passage of 2023 Acts and Resolves No. 27.

13 * * * Human Services Community Safety Panel * * *

14 Sec. 2. 3 V.S.A. § 3098 is added to read:

15 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

16 (a) There is hereby created the Human Services Community Safety Panel
17 within the Agency of Human Services. The Panel shall be designated as the
18 entity responsible for assessing the potential placement of individuals at a
19 forensic facility pursuant to 13 V.S.A. § 4821 for individuals who:

20 (1) present a significant risk of danger to self or others if not held in a
21 secure setting; and

1 (2)(A) are charged with a crime for which there is no right to bail
2 pursuant to 13 V.S.A. §§ 7553 and 7553a and are found not competent to stand
3 trial due to mental illness or intellectual disability; or

4 (B) were charged with a crime for which bail is not available and
5 adjudicated not guilty by reason of insanity.

6 (b)(1) The Panel shall comprise the following members:

7 (A) the Secretary of Human Services;

8 (B) the Commissioner of Mental Health; and

9 (C) the Commissioner of Corrections.

10 (2) The Panel shall have the technical, legal, fiscal, and administrative
11 support of the Agency of Human Services and the Departments of Mental
12 Health and of Corrections.

13 (c) As used in this section, “forensic facility” has the same meaning as in
14 18 V.S.A. § 7101.

15 Sec. 3. 13 V.S.A. § 4821 is amended to read:

16 § 4821. NOTICE OF HEARING; PROCEDURES

17 (a) The person who is the subject of the proceedings, ~~his or her~~; the
18 person’s attorney; the person’s legal guardian, if any; the Commissioner of
19 Mental Health or the Commissioner of Disabilities, Aging, and Independent
20 Living; and the State’s Attorney or other prosecuting officer representing the
21 State in the case shall be given notice of the time and place of a hearing under

1 section 4820 of this title. Procedures for hearings for persons with a mental
2 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
3 for persons with an intellectual disability shall be as provided in 18 V.S.A.
4 chapter 206, subchapter 3.

5 (b)(1) Once a report concerning competency or sanity is completed or
6 disclosed to the opposing party, the Human Services Community Safety Panel
7 established in 3 V.S.A. § 3098 may conduct a review on its own initiative
8 regarding whether placement of the person who is the subject of the report is
9 appropriate in a forensic facility. The review shall **inform the Commissioner**
10 **of Mental Health's** decision as to whether to seek placement of the person in a
11 forensic facility.

12 (2)(A) If the Panel does not initiate its own review, a party to a hearing
13 under section 4820 of this chapter may file a written motion to the court
14 requesting that the Panel conduct a review within seven days after receiving a
15 report under section 4816 of this chapter or within seven days after being
16 adjudicated not guilty by reason of insanity.

17 (B) A motion filed pursuant to this subdivision (2) shall specify that
18 the person who is the subject of the proceedings is charged with a crime for
19 which there is no right to bail pursuant to sections 7553 and 7553a of this title,
20 and may include a person adjudicated not guilty by reason of insanity, and that

1 the person presents a significant risk of danger to themselves or the public if
2 not held in a secure setting.

3 (C) The court shall rule on a motion filed pursuant to this subdivision
4 (2) within five days. A Panel review ordered pursuant to this subdivision (2)
5 shall be completed and submitted to the court at least three days prior to a
6 hearing under section 4820 of this title.

7 (c) In conducting a review as whether to seek placement of a person in a
8 forensic facility, the Human Services Community Safety Panel shall consider
9 the following criteria:

10 (1) clinical factors, including:

11 (A) that the person is served in the least restrictive setting necessary
12 to meet the needs of the person; and

13 (B) that the person’s treatment and programming needs dictate that
14 the treatment or programming be provided at an intensive residential level; and

15 (2) risk of harm factors, including:

16 (A) whether the person has inflicted or attempted to inflict serious
17 bodily injury on another, attempted suicide or serious self-injury, or committed
18 an act that would constitute sexual conduct with a child as defined in section
19 2821 of this title or lewd and lascivious conduct with a child as provided in
20 section 2602 of this title, and there is reasonable probability that the conduct
21 will be repeated if admission to a forensic facility is not ordered;

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 (2) If the Commissioner seeks to have a person receive treatment in a
5 forensic facility pursuant to an order of nonhospitalization under subdivision
6 (1) of this subsection, the Commissioner shall submit a petition to the court
7 expressly stating that such treatment is being sought, including:

8 (A) a statement setting forth the reasons for the Commissioner’s
9 determination that clinically appropriate treatment for the person’s condition
10 can be provided safely only in a forensic facility; and

11 (B) the recommendation of the Human Services Community Safety
12 Panel pursuant to section 4821 of this title.

13 (3) If the Commissioner determines that treatment at a forensic facility
14 is appropriate, and the court finds that treatment at a forensic facility is the
15 least restrictive setting adequate to meet the person’s needs, the court shall
16 order the person to receive treatment at a forensic facility for a period of 90
17 days. The court may, at any time following the issuance of an order, on its
18 own motion or on motion of an interested party, review whether treatment at
19 the forensic facility continues to be the least restrictive treatment option.

20 (b) An order of commitment issued pursuant to this section shall have the
21 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a

1 person committed under this order shall have the same status and the same
2 rights, including the right to receive care and treatment, to be examined and
3 discharged, and to apply for and obtain judicial review of ~~his or her~~ the
4 person's case, as a person ordered committed under 18 V.S.A. §§ 7611–7622.

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, a forensic facility, or a secure residential
16 recovery facility to the community on an order of nonhospitalization pursuant
17 to 18 V.S.A. § 7618;

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

1 (III) any time that the person elopes from the custody of the
2 Commissioner.

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

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

12 (d) The court may continue the hearing provided in subsection (c) of this
13 section for a period of 15 additional days upon a showing of good cause.

14 (e) If the court determines that commitment shall no longer be necessary, it
15 shall issue an order discharging the patient from the custody of the Department
16 of Mental Health.

17 (f) The court shall issue its findings and order not later than 15 days from
18 the date of hearing.

1 Sec. 5. 18 V.S.A. § 7101 is amended to read:

2 § 7101. DEFINITIONS

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

5 * * *

6 (31)(A) “Forensic facility” means a residential facility, licensed as a
7 therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an
8 individual initially committed pursuant to:

9 (i) 13 V.S.A. § 4822 who is in need of treatment or continued
10 treatment pursuant to chapter 181 of this title within a secure setting for an
11 extended period of time; or

12 (ii) 13 V.S.A. § 4823 who is in need of custody, care, and
13 habilitation or continued custody, care, and habilitation pursuant to chapter 206
14 of this title within a secure setting for an extended period of time.

15 (B) A forensic facility shall not be used for any purpose other than
16 the purposes permitted by this part or chapter 206 of this title. As used in this
17 subdivision (31), “secure” has the same meaning as in section 7620 of this title.

18 Sec. 6. 18 V.S.A. § 7620 is amended to read:

19 § 7620. APPLICATION FOR CONTINUED TREATMENT

20 (a) If, prior to the expiration of any order issued in accordance with section
21 7623 of this title, the Commissioner believes that the condition of the patient is

1 such that the patient continues to require treatment, the Commissioner shall
2 apply to the court for a determination that the patient is a patient in need of
3 further treatment and for an order of continued treatment.

4 (b) An application for an order authorizing continuing treatment shall
5 contain a statement setting forth the reasons for the Commissioner's
6 determination that the patient is a patient in need of further treatment, a
7 statement describing the treatment program provided to the patient, and the
8 results of that course of treatment.

9 (c) Any order of treatment issued in accordance with section 7623 of this
10 title shall remain in force pending the court's decision on the application.

11 (d) If the Commissioner seeks to have the patient receive the further
12 treatment in a forensic facility or secure residential recovery facility, the
13 application for an order authorizing continuing treatment shall expressly state
14 that such treatment is being sought. The application shall contain, in addition
15 to the statements required by subsection (b) of this section, a statement setting
16 forth the reasons for the Commissioner's determination that clinically
17 appropriate treatment for the patient's condition can be provided safely only in
18 a secure residential recovery facility or forensic facility, as appropriate. An
19 application for continued treatment in a forensic facility shall include the
20 recommendation of the Human Services Community Safety Panel pursuant to
21 13 V.S.A. § 4821.

1 (e) As used in this chapter:

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

5 (2) “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 who no longer requires acute inpatient care but
8 who does remain in need of treatment within a secure setting for an extended
9 period of time. A secure residential recovery facility shall not be used for any
10 purpose other than the purposes permitted by this section.

11 Sec. 7. 18 V.S.A. § 7621 is amended to read:

12 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
13 ORDERS

14 * * *

15 (c) If the court finds that the patient is a patient in need of further treatment
16 but does not require hospitalization, it shall order nonhospitalization for up to
17 one year. If the treatment plan proposed by the Commissioner for a patient in
18 need of further treatment includes admission to a secure residential recovery
19 facility or a forensic facility, the court may at any time, on its own motion or
20 on motion of an interested party, review the need for treatment at the secure
21 residential recovery facility or forensic facility, as applicable.

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Sec. 8. 18 V.S.A. § 7624 is amended to read:

§ 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

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

§ 907(4)(H);

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

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

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

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

6 (6) has been placed under an order of nonhospitalization in a forensic
7 facility; or

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

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

15 (B) serious deterioration of the person's mental condition is
16 occurring.

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

1 (2) If the application for involuntary medication is filed pursuant to
2 subdivision (a)(4) or (a)(6) of this section:

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

5 (B) the court shall consolidate the application for involuntary
6 treatment with the application for involuntary medication and rule on the
7 application for involuntary treatment before ruling on the application for
8 involuntary medication.

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

12 (4) Within 72 hours of the filing of an application for involuntary
13 medication pursuant to subdivision ~~(a)(6)~~(7) of this section, the court shall
14 determine, based solely upon a review of the psychiatrist's certification and
15 any other filings, whether the requirements of that subdivision have been
16 established. If the court determines that the requirements of subdivision
17 ~~(a)(6)~~(7) of this section have been established, the court shall consolidate the
18 application for involuntary treatment with the application for involuntary
19 medication and hear both applications within 10 days after the date that the
20 application for involuntary medication is filed. The court shall rule on the
21 application for involuntary treatment before ruling on the application for

1 involuntary medication. Subsection 7615(b) of this title shall apply to
2 applications consolidated pursuant to this subdivision.

3 * * *

4 Sec. 9. 18 V.S.A. § 7627 is amended to read:

5 § 7627. COURT FINDINGS; ORDERS

6 * * *

7 (o) For a person who is receiving treatment pursuant to an order of
8 nonhospitalization in a forensic facility, if the court finds that without an order
9 for involuntary medication there is a substantial probability that the person
10 would continue to refuse medication and as a result would pose a danger of
11 harm to self or others, the court may order administration of involuntary
12 medications at a forensic facility for up to 90 days, unless the court finds that
13 an order is necessary for a longer period of time. An order for involuntary
14 medication pursuant to this subsection shall not be longer than the duration of
15 the current order of nonhospitalization. If at any time the treating psychiatrist
16 finds that a person subject to an order for involuntary medication has become
17 competent pursuant to subsection 7625(c) of this title, the order shall no longer
18 be in effect.

1 court shall order a mental health screening to be completed by a designated
2 mental health professional or specialist in intellectual disability, as appropriate.
3 while the defendant is still at the court.

4 (e) If the screening cannot be commenced and completed at the courthouse
5 within two hours from the time of the defendant's appearance before the court,
6 the court may forgo consideration of the screener's recommendations.

7 (f) The court and parties shall review the recommendation of the designated
8 mental health professional and consider the facts and circumstances
9 surrounding the charge and observations of the defendant in court. If the court
10 finds sufficient facts to order an examination, it may be ordered to be
11 completed in the least restrictive environment deemed sufficient to complete
12 the examination, consistent with subsection (a) of this section.

13 (g)(1) Inpatient examination at the Vermont State Hospital, or its successor
14 in interest, or a designated hospital. The court shall not order an inpatient
15 examination unless the a designated mental health professional determines that
16 the defendant is a person in need of treatment as defined in 18 V.S.A. §
17 7101(17).

18 (2) Before ordering the inpatient examination, the court shall determine
19 what terms, if any, shall govern the defendant's release from custody under
20 sections 7553-7554 of this title.

1 (3) An order for inpatient examination shall provide for placement of the
2 defendant in the custody and care of the Commissioner of Mental Health.

3 (A) If a Vermont State Hospital psychiatrist, or a psychiatrist of its
4 successor in interest, or a designated hospital psychiatrist determines that the
5 defendant is not in need of inpatient hospitalization prior to admission, the
6 Commissioner shall release the defendant pursuant to the terms governing the
7 defendant’s release from the Commissioner’s custody as ordered by the court.
8 The Commissioner of Mental Health shall ensure that all individuals who are
9 determined not to be in need of inpatient hospitalization receive appropriate
10 referrals for outpatient mental health services.

11 (B) If a Vermont State Hospital psychiatrist, or a psychiatrist of its
12 successor in interest, or designated hospital psychiatrist determines that the
13 defendant is in need of inpatient hospitalization:

14 (i) The Commissioner **of Mental Health** shall obtain an
15 appropriate inpatient placement for the defendant at the Vermont State
16 Hospital psychiatrist, or a psychiatrist of its successor in interest, or a
17 designated hospital and, based on the defendant’s clinical needs, may transfer
18 the defendant between hospitals at any time while the order is in effect. A
19 transfer to a designated hospital outside the no refusal system is subject to
20 acceptance of the patient for admission by that hospital.

1 (e) The relevant portion of a psychiatrist's **or psychologist's** report shall be
2 admitted into evidence as an exhibit on the issue of the person's mental
3 competency to stand trial and the opinion shall be conclusive on the issue if
4 agreed to by the parties and if found by the court to be relevant and probative
5 on the issue.

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

12 **Sec. 13. 13 V.S.A. § 4817 is amended to read:**

13 **§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION**

14 * * *

15 (c) If a person indicted, complained, or informed against for an alleged
16 criminal offense, an attorney or guardian acting in the person's behalf, or the
17 State, at any time before final judgment, raises before the court before which
18 such person is tried or is to be tried, the issue of whether such person is
19 incompetent to stand trial, or if the court has reason to believe that such person
20 may not be competent to stand trial, a hearing shall be held before such court at
21 which evidence shall be received and a finding made regarding the person's

1 competency to stand trial. However, in cases where the court has reason to
2 believe that such person may be incompetent to stand trial due to a mental
3 disease or mental defect, such hearing shall not be held until an examination
4 has been made and a report submitted by an examining psychiatrist **or**
5 **psychologist** in accordance with sections 4814–4816 of this title.

6 * * *

7 **Sec. 14. 13 V.S.A. § 4820 is amended to read:**

8 **§ 4820. HEARING REGARDING COMMITMENT**

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

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

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

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

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

18 (2) ~~the~~ **The** court before which such person is tried or is to be tried for
19 such offense, shall hold a hearing for the purpose of determining whether such
20 person should be committed to the custody of the Commissioner of Mental
21 Health **or Commissioner of Disabilities, Aging, and Independent Living, as**

1 **appropriate**. Such person may be confined in jail or some other suitable place
2 by order of the court pending hearing for a period not exceeding 21 days.

3 (b) When a person is found to be incompetent to stand trial, has not been
4 indicted by reason of insanity for the alleged offense, or has been acquitted by
5 reason of insanity at the time of the alleged offense, the person shall be entitled
6 to have counsel appointed from Vermont Legal Aid to represent the person.
7 The Department of Mental Health and, if applicable, the Department of
8 Disabilities, Aging, and Independent Living shall be entitled to appear and call
9 witnesses at the proceeding.

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

16 Sec. **15**. 13 V.S.A. § 4823 is amended to read:

17 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
18 DISABILITY

19 (a) If the court finds **by clear and convincing evidence** that such person is a
20 person in need of custody, care, and habilitation as defined in 18 V.S.A.
21 § 8839, the court shall issue an order of commitment **for up to one year**

1 directed to the Commissioner of Disabilities, Aging, and Independent Living
2 for placement in a designated program in the least restrictive environment
3 consistent with the person’s need for custody, care, and habilitation of such
4 person for an indefinite or limited period in a designated program.

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

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

16 Sec. 16. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

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

18 Who Present a Danger of Harm to Others

19 § 8839. DEFINITIONS

20 As used in this subchapter:

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

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

10 (3) “Person in need of continued custody, care, and habilitation” means
11 a person who was previously found to be a person in need of custody, care, and
12 habilitation who poses a danger of harm to others and for whom the
13 Commissioner has, in the Commissioner’s discretion, consented to or approved
14 the continuation of the designated program. A danger of harm to others shall
15 be shown by establishing that, in the time since the last order of commitment
16 was issued, the person:

17 (A) has inflicted or attempted to inflict physical or sexual harm to
18 another;

19 (B) by the person’s threats or actions, has placed another person in
20 reasonable fear of physical or sexual harm; or

1 (C) has exhibited behavior demonstrating that, absent treatment or
2 programming provided by the Commissioner, there is a reasonable [AD:
3 substantial?] likelihood that the person would inflict or attempt to inflict
4 physical or sexual harm to another.

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

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

9 (B) who presents a danger of harm to others has inflicted or
10 attempted to inflict serious bodily injury to another or who has committed an
11 act that would constitute sexual conduct with a child as defined in section 2821
12 of this title or lewd and lascivious conduct with a child as provided in section
13 2602 of this title; and

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

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

17 § 8840. JURISDICTION AND VENUE

18 Proceedings brought under this subchapter for commitment to the
19 Commissioner for custody, care, and habilitation shall be commenced by
20 petition in the Family Division of the Superior Court for the unit in which the
21 respondent resides. [Repealed.]

1 § 8841. ~~PETITION; PROCEDURES~~

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

4 § 8842. ~~HEARING~~

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

7 § 8843. ~~FINDINGS AND ORDER~~

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

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

12 ~~(c) If the court finds that the respondent is a person in need of custody,~~
13 ~~care, and habilitation, it shall order the respondent committed to the custody of~~
14 ~~the Commissioner for placement in a designated program in the least restrictive~~
15 ~~environment consistent with the respondent's need for custody, care, and~~
16 ~~habilitation for an indefinite or a limited period. [Repealed.]~~

17 § 8844. ~~LEGAL COMPETENCE~~

18 ~~No determination that a person is in need of custody, care, and habilitation~~
19 ~~or in need of continued custody, care, and habilitation and no order authorizing~~
20 ~~commitment shall lead to a presumption of legal incompetence.~~

1 § 8845. JUDICIAL REVIEW PETITION AND ORDER FOR CONTINUED
2 CUSTODY, CARE, AND HABILITATION

3 (a) ~~A person committed under this subchapter may be discharged from~~
4 ~~eustody by a Superior judge after judicial review as provided herein or by~~
5 ~~administrative order of the Commissioner.~~

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

11 (c) ~~A person committed under this subchapter shall be entitled to a judicial~~
12 ~~review annually. If no such review is requested by the person, it shall be~~
13 ~~initiated by the Commissioner. However, such person may initiate a judicial~~
14 ~~review under this subsection after 90 days after initial commitment but before~~
15 ~~the end of the first year of the commitment.~~

16 (d) ~~If at the completion of the hearing and consideration of the record, the~~
17 ~~court finds at the time of the hearing that the person is still in need of custody,~~
18 ~~care, and habilitation, commitment shall continue for an indefinite or limited~~
19 ~~period. If the court finds at the time of the hearing that the person is no longer~~
20 ~~in need of custody, care, and habilitation, it shall discharge the person from the~~

1 ~~custody of the Commissioner. An order of discharge may be conditional or~~
2 ~~absolute and may have immediate or delayed effect.~~

3 (1) If, prior to the expiration of any previous commitment order issued in
4 accordance with 13 V.S.A. § 4823, the Commissioner believes that the person
5 is a person in need of continued custody, care, and habilitation, the
6 Commissioner shall seek continued custody, care, habilitation in the Family
7 Division of the Superior Court. The Commissioner shall, by filing a written
8 petition, commence proceedings for the continued custody, care, and
9 habilitation of a person. The petition shall state the current and relevant facts
10 upon which the person’s alleged need for continued custody, care, and
11 habilitation is predicated.

12 (2) Any commitment order for custody, care, and habilitation or
13 continued custody, care, and habilitation issued in accordance with 13 V.S.A.
14 § 4823 or this subchapter shall remain in force pending the court’s decision on
15 the petition.

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

19 (c) If the court finds by clear and convincing evidence at the time of the
20 hearing that the person is a person in need of continued custody, care, and
21 habilitation, it shall issue an order of commitment for up to one year in a

1 designated program in the least restrictive environment consistent with the
2 person’s need for continued custody, care, and habilitation. If the court finds
3 at the time of the hearing that the person is no longer in need of continued
4 custody, care, and habilitation, it shall discharge the person from the custody of
5 the Commissioner in accordance with section 8847 of this subchapter. [Policy
6 discussion: In determining whether a person is a person in need of continued
7 custody, care, and habilitation, the court shall consider the degree to which the
8 person has previously engaged in or complied with the treatment and
9 programming provided by the Commissioner.]

10 **§ 8846. RIGHT TO INITIATE REVIEW**

11 A person may initiate a judicial review in the Family Division of the
12 Superior Court under this subchapter at any time after 90 days following a
13 current order of commitment or continued commitment and not earlier than six
14 months after the filing of a previous application under this section. If the court
15 finds that the person is not a person in need of custody, care, and habilitation or
16 continued custody, care, and habilitation, the person shall be discharged from
17 the custody of the Commissioner.

18 **§ 8847. DISCHARGE FROM COMMITMENT**

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

1 (1) by a Family Division Superior Court judge after review of an order
2 of custody, care, and habilitation or an order of continued custody, care, and
3 habilitation if the court finds that the person is not a person in need of custody,
4 care, and habilitation or continued custody, care, and habilitation, respectively;
5 or

6 (2) by administrative order of the Commissioner regarding an order of
7 custody, care, and habilitation or an order of continued custody, care, and
8 habilitation if the Commissioner determines that a person is no longer a person
9 in need of custody, care, and habilitation or continued custody, care, and
10 habilitation, respectively.

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

13 (c)(1) [Policy discussion: When a person is under an order of commitment
14 pursuant to 18 V.S.A. § 4823 or continued commitment pursuant to this
15 subchapter, the Commissioner shall provide notice to the State's Attorney of
16 the county where the prosecution originated or to the Office of the Attorney
17 General if that Office prosecuted the case:

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

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

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

7 (2) When the State’s Attorney or Attorney General receives notice under
8 subdivision (1) of this subsection, the Office shall provide notice of the action
9 to any victim of the offense for which the person has been charged who has not
10 opted out of receiving notice. A victim receiving notice pursuant to this
11 subdivision has the right to submit a victim impact statement to the Family
12 Division of the Superior Court in writing or through the State’s Attorney or
13 Attorney General’s Office as appropriate.]

14 (d) Whenever a person is subject to a judicial or administrative discharge
15 from commitment, the Criminal Division of the Superior Court shall retain
16 jurisdiction over the person’s underlying charge and any orders holding the
17 person without bail or concerning bail, and conditions of release shall remain
18 in place. Those orders shall be placed on hold while a person is in the custody,
19 care, and habilitation or continued custody, care, and habilitation of the
20 Commissioner. When a person is discharged from the Commissioner’s

1 custody, care, and habilitation to a correctional facility, the custody of the
2 Commissioner shall cease when the person enters the correctional facility.

3 § ~~8846~~ 8848. RIGHT TO COUNSEL

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

8 * * * Proposal for Enhanced Services * * *

9 Sec. 17. INDIVIDUALS WITH INTELLECTUAL DISABILITES;

10 ENHANCED SERVICES

11 On or before December 1, 2024, the Department of Disabilities, Aging, and
12 Independent Living, in consultation with Disability Rights Vermont, Vermont
13 Legal Aid, and Vermont Care Partners, shall submit a proposal to the House
14 Committee on Human Services and to the Senate Committee on Health and
15 Welfare for enhanced community-based services for those individuals
16 committed to the custody of the Commissioner who require programming in
17 higher security settings for brief periods of time. The proposal shall address
18 required resources, including funding, staffing, and physical space.

19 * * * Fiscal Estimate of Competency Restoration Program * * *

20 Sec. 18. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL

21 ESTIMATE

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

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

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

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

16 * * * Rulemaking * * *

17 Sec. 19. RULEMAKING; CONFORMING AMENDMENTS

18 On or before November 1, 2024, the Commissioner of Disabilities, Aging,
19 and Independent Living, in consultation with the Commissioner of Mental
20 Health, shall file initial proposed rule amendments with the Secretary of State
21 pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and

1 Independent Living, Licensing and Operating Regulations for Therapeutic

2 Community Residences (CVR 13-110-12) for the purpose of:

3 (1) adding a forensic facility section of the rule that includes allowing
4 the use of emergency involuntary procedures and the administration of
5 involuntary medication at a forensic facility; and

6 (2) amending the secure residential recovery facility section of the rule
7 to allow the use of emergency involuntary procedures and the administration of
8 involuntary medication at the secure residential recovery facility.

9 * * * Effective Dates * * *

10 Sec. 20. EFFECTIVE DATES

11 This section, Sec. 18 (report; competency restoration program; fiscal
12 estimate), and Sec. 19 (rulemaking; conforming amendments) shall take effect
13 on passage. All remaining sections shall take effect on July 1, 2025.

14 [Policy discussion: Effective date of Act 248 commitment changes?]

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20 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE