

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 89
3 entitled “An act relating to establishing a forensic facility” respectfully reports
4 that it has considered the same and recommends that the House propose to the
5 Senate that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Purpose * * *

8 Sec. 1. PURPOSE

9 It is the purpose of this act to enable the Commissioners of Mental Health
10 and of Disabilities, Aging, and Independent Living to seek treatment and
11 programming for certain individuals in a forensic facility. An initial forensic
12 facility shall be located in the nine-bed unit of the current Vermont Psychiatric
13 Care Hospital. This unit shall be relicensed as a therapeutic community
14 residence.

15 * * * Human Services Community Safety Panel * * *

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

17 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

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

1 crime for which bail is not available and who present a significant risk of
2 danger if not held in a secure setting.

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

4 (A) the Secretary of Human Services;

5 (B) the Commissioner of Mental Health;

6 (C) the Commissioner of Disabilities, Aging, and Independent
7 Living; and

8 (D) the Commissioner of Corrections.

9 (2) The Panel shall have the technical, legal, fiscal, and administrative
10 support of the Agency of Human Services and the Departments of Mental
11 Health; of Disabilities, Aging, and Independent Living; and of Corrections.

12 * * * Admission to Forensic Facility for Persons in Need of Treatment or
13 Continued Treatment * * *

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

15 § 4821. NOTICE OF HEARING; PROCEDURES

16 (a) The person who is the subject of the proceedings, ~~his or her~~, the
17 person's attorney,; the legal guardian, if any,; the Commissioner of Mental
18 Health or the Commissioner of Disabilities, Aging, and Independent Living,;
19 and the State's Attorney or other prosecuting officer representing the State in
20 the case shall be given notice of the time and place of a hearing under
21 section 4820 of this title. Procedures for hearings for persons with a mental

1 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
2 for persons with an intellectual disability shall be as provided in 18 V.S.A.
3 chapter 206, subchapter 3.

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

12 (2) 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 calendar days after
15 receiving a report under section 4816 of this chapter or notice from the defense
16 of an intent to use the insanity defense. A motion filed pursuant to this
17 subdivision shall specify that the person who is the subject of the proceedings
18 is charged with a crime for which there is no right to bail pursuant to sections
19 7553 and 7553a of this title and that the person presents a significant risk of
20 danger to themselves or the public if not held in a secure setting. The court
21 shall issue an order on the party’s request within five days. A Panel review

1 ordered pursuant to this subdivision shall be completed and submitted to the
2 court at least three days prior to a hearing under section 4820 of this title
3 regarding placement in a forensic facility.

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

7 (1) clinical factors, including:

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

10 (B) that the person's treatment and programming needs dictate that
11 the treatment or programming be provided at an intensive residential level; and

12 (2) dangerousness factors, including:

13 (A) whether the person has inflicted or attempted to inflict serious
14 bodily injury on another, attempted suicide or serious self-injury, or committed
15 an act that would constitute sexual or lewd and lascivious conduct with a child,

16 and there is reasonable probability that the conduct will be repeated if
17 admission to a forensic facility is not ordered;

18 (B) whether the person has threatened to inflict serious bodily injury
19 to the person or others and there is reasonable probability that the conduct will
20 occur if admission to a forensic facility is not ordered;

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

4 Sec. 5. 18 V.S.A. § 7612 is amended to read:

5 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

8 (b) The application shall be filed in the Family Division of the Superior
9 Court.

10 (c) If the application is filed under section 7508 or 7620 of this title, it shall
11 be filed in the unit of the Family Division of the Superior Court in which the
12 hospital is located. In all other cases, it shall be filed in the unit in which the
13 proposed patient resides. In the case of a nonresident, it may be filed in any
14 unit. The court may change the venue of the proceeding to the unit in which
15 the proposed patient is located at the time of the trial.

16 (d) The application shall contain:

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

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

21 (e) The application shall be accompanied by:

1 (1) a certificate of a licensed physician, which shall be executed under
2 penalty of perjury stating that ~~he or she~~ the licensed physician has examined
3 the proposed patient within five days ~~of~~ from the date the petition is filed and
4 is of the opinion that the proposed patient is a person in need of treatment,
5 including the current and relevant facts and circumstances upon which the
6 physician’s opinion is based; or

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

9 (f) Before an examining physician completes the certificate of examination,
10 ~~he or she~~ the examining physician shall consider available alternative forms of
11 care and treatment that might be adequate to provide for the person’s needs
12 without requiring hospitalization. The examining physician shall document on
13 the certificate the specific alternative forms of care and treatment that ~~he or she~~
14 the examining physician considered and why those alternatives were deemed
15 inappropriate, including information on the availability of any appropriate
16 alternatives.

17 (g) If the Commissioner seeks to have a person receive treatment in a
18 forensic facility pursuant to an order of nonhospitalization, the application for
19 an order authorizing treatment shall expressly state that such treatment is being
20 sought. The application shall contain, in addition to the statements required by
21 this section, a statement setting forth the reasons for the Commissioner’s

1 determination that clinically appropriate treatment for the person’s condition
2 can be provided safely only in a forensic facility, including the
3 recommendation of the Human Services Community Safety Panel pursuant to
4 13 V.S.A. § 4821.

5 Sec. 6. 18 V.S.A. § 7615 is amended to read:

6 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY
7 TREATMENT

8 (a)(1) Upon receipt of the application, the court shall set a date for the
9 hearing to be held within 10 days from the date of the receipt of the application
10 or 20 days from the date of the receipt of the application if a psychiatric
11 examination is ordered under section 7614 of this title unless the hearing is
12 continued by the court pursuant to subsection (b) of this section.

13 (2)(A) The applicant or a person who is certified as a person in need of
14 treatment pursuant to section 7508 of this title may file a motion to expedite
15 the hearing. The motion shall be supported by an affidavit, and the court shall
16 rule on the motion on the basis of the filings without holding a hearing. The
17 court:

18 (i) shall grant the motion if it finds that the person demonstrates a
19 significant risk of causing the person or others serious bodily injury as defined
20 in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have
21 failed to address the risk of harm to the person or others;

1 (ii) may grant the motion if it finds that the person has received
2 involuntary medication pursuant to section 7624 of this title during the past
3 two years and, based upon the person’s response to previous and ongoing
4 treatment, there is good cause to believe that additional time will not result in
5 the person establishing a therapeutic relationship with providers or regaining
6 competence.

7 (B) If the court grants the motion for expedited hearing pursuant to
8 this subdivision, the hearing shall be held within ten days from the date of the
9 order for expedited hearing.

10 (3)(A) The applicant or a person for whom an order of
11 nonhospitalization at a forensic facility is sought may file a motion to expedite
12 the hearing. The motion shall be supported by an affidavit. The court:

13 (i) shall grant the motion if it finds that the person demonstrates a
14 significant risk of causing the person or others serious bodily injury as defined
15 in 13 V.S.A. § 1021 even while in custody, and clinical interventions have
16 failed to address the risk of harm to the person or others;

17 (ii) may grant the motion if it finds that the person has received
18 involuntary medication pursuant to section 7624 of this title during the past
19 two years and, based upon the person’s response to previous and ongoing
20 treatment, there is good cause to believe that additional time will not result in

1 the person establishing a therapeutic relationship with providers or regaining
2 competence.

3 (B) If the court grants the motion for expedited hearing pursuant to
4 this subdivision (3), the hearing shall be held within three days from the date of
5 the order for expedited hearing. The court may grant an extension of not more
6 than five days to allow for a psychiatric examination in accordance with
7 section 7614 of this title.

8 (4) If a hearing on the application for involuntary treatment has not
9 occurred within 60 days from the date of the court’s receipt of the application,
10 the Commissioner shall request that the court and both parties’ attorneys
11 provide the reasons for the delay. The Commissioner shall submit a report to
12 the court, the Secretary of Human Services, and the patient’s attorney that
13 either explains why the delay was warranted or makes recommendations as to
14 how delays of this type can be avoided in the future.

15 * * *

16 Sec. 7. 18 V.S.A. § 7618 is amended to read:

17 § 7618. ORDER; NONHOSPITALIZATION

18 (a)(1) If the court finds that a treatment program other than hospitalization
19 is adequate to meet the person’s treatment needs, the court shall order the
20 person to receive whatever treatment other than hospitalization is appropriate
21 for a period of 90 days.

1 (2) If the Commissioner determines that treatment at a forensic facility
2 is appropriate, and the court finds that treatment at a forensic facility is the
3 least restrictive setting adequate to meet the person’s needs and that the person
4 either is presently incompetent to stand trial or has been found not guilty by
5 reason of insanity and that the evidence that the person committed the alleged
6 crime is great, the court shall order the person to receive treatment there for a
7 period of 90 days. The court may at any time, on its own motion or on motion
8 of an interested party, review the need for treatment at the forensic facility.

9 (A) When a person has been committed under this subdivision (a)(2),
10 the Commissioner shall provide notice at least ten days prior to discharging the
11 person from a forensic facility to either the State’s Attorney of the county
12 where the prosecution originated or to the Office of the Attorney General if
13 that office prosecuted the case.

14 (B) When the State’s Attorney or the Attorney General receives
15 notification pursuant to subdivision (A) of this subdivision (a)(2), the
16 respective office shall provide notice of the action to any victim of the offense
17 for which the person has been charged, unless the victim has opted not to
18 receive notice. As used in this subdivision (2), “victim” shall have the same
19 meaning as in 13 V.S.A. § 5301(4).

20 (C) The State’s Attorney of the county where the prosecution
21 originated or the Office of the Attorney General if that office prosecuted the

1 case, the victim, or any combination thereof, may request a discharge hearing
2 to be held within 15 days. Once a hearing is requested it shall be held within
3 10 days and the pending discharge shall be stayed until reviewed by the court.
4 The State’s Attorney or the Attorney General’s Office, and the victim, are
5 entitled to appear to provide their opinion as to whether the person shall be
6 discharged from a forensic facility. The prosecutor may call witnesses and
7 present evidence pursuant to 18 V.S.A. § 7612.

8 (D) The Criminal Division of the Superior Court shall retain
9 jurisdiction over the person’s underlying charge and any orders holding the
10 person without bail or concerning bail and conditions of release shall remain in
11 place. Those orders shall be placed on hold while the person is held at the
12 forensic facility. When a person is discharged from the forensic facility to a
13 correctional facility, the custody of the Commissioner of Mental Health, shall
14 cease upon that person entering the correctional facility.

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

19 (1) ~~Consider~~ consider other alternatives, modify its original order, and
20 direct the patient to undergo another program of alternative treatment for the
21 remainder of the 90-day period; or

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

3 Sec. 8. 18 V.S.A. § 7620 is amended to read:

4 § 7620. APPLICATION FOR CONTINUED TREATMENT

5 (a) If, prior to the expiration of any order issued in accordance with section
6 7623 of this title, the Commissioner believes that the condition of the patient is
7 such that the patient continues to require treatment, the Commissioner shall
8 apply to the court for a determination that the patient is a patient in need of
9 further treatment and for an order of continued treatment.

10 (b) An application for an order authorizing continuing treatment shall
11 contain a statement setting forth the reasons for the Commissioner’s
12 determination that the patient is a patient in need of further treatment, a
13 statement describing the treatment program provided to the patient, and the
14 results of that course of treatment.

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

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

1 forth the reasons for the Commissioner’s determination that clinically
2 appropriate treatment for the patient’s condition can be provided safely only in
3 a secure residential recovery facility or forensic facility, as appropriate.

4 (e) As used in this chapter:

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

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

14 Sec. 9. 18 V.S.A. § 7621 is amended to read:

15 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;

16 ORDERS

17 * * *

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

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

4 * * *

5 Sec. 10. 18 V.S.A. § 7624 is amended to read:

6 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

16 (3) has been committed to the custody of the Commissioner of
17 Corrections as a convicted felon and is being held in a correctional facility
18 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for
19 whom the Departments of Corrections and of Mental Health have determined
20 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.
21 § 907(4)(H);

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

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

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

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

9 (6) has been placed under an order of nonhospitalization in a forensic
10 facility or has an application for involuntary treatment at a forensic facility
11 pending for which the court has granted a motion to expedite pursuant to
12 subdivision 7615(a)(3)(A)(i) of this title, regardless of whether the person has
13 previously been under an order of hospitalization; or

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

19 (A) additional time will not result in the person establishing a
20 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), and (4) 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) or (a)(6) 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) 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~~ after 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 ten days ~~of~~ 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. 11. 18 V.S.A. § 7627 is amended to read:

11 § 7627. COURT FINDINGS; ORDERS

12 * * *

13 (o) For a person who is receiving treatment pursuant to an order of
14 nonhospitalization in a forensic facility, if the court finds that without an order
15 for involuntary medication there is a substantial probability that the person
16 would continue to refuse medication and as a result would pose a danger of
17 harm to self or others, the court may order administration of involuntary
18 medications at a forensic facility for up to 90 days, unless the court finds that
19 an order is necessary for a longer period of time. An order for involuntary
20 medication pursuant to this subsection shall not be longer than the duration of
21 the current order of nonhospitalization. If at any time the treating psychiatrist

1 finds that a person subject to an order for involuntary medication has become
2 competent pursuant to subsection 7625(c) of this title, the order shall no longer
3 be in effect.

4 * * * Persons in Need of Custody, Care, and Habilitation or Continued
5 Custody, Care, and Habilitation * * *

6 Sec. 12. 13 V.S.A. § 4823 is amended to read:

7 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
8 DISABILITY

9 (a) (1) If the court finds that ~~such a~~ person is a person in need of custody,
10 care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an
11 order of commitment directed to the Commissioner of Disabilities, Aging, and
12 Independent Living for placement in a designated program in the least
13 restrictive environment consistent with the person's need for custody, care, and
14 habilitation of such person for an indefinite or limited period in a designated
15 program for an indefinite or limited period.

16 (2) Prior to issuing an order of commitment to a forensic facility, the
17 court shall find that the person either is presently incompetent to stand trial or
18 has been found not guilty by reason of insanity and that the evidence that the
19 person committed the alleged crime is great.

20 (b) ~~Such order of commitment shall have the same force and effect as an~~
21 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~

1 ~~order shall have the same status, and the same rights, including the right to~~
2 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
3 ~~and obtain judicial review of their cases, as persons ordered committed under~~
4 ~~18 V.S.A. § 8843~~ **When** the Commissioner seeks to have a person **committed**
5 **to a forensic facility under subdivision (a)(2) of this section**, the Commissioner
6 shall provide a statement **expressly stating that such placement is being sought**
7 **and** setting forth the reasons for the Commissioner’s determination that
8 clinically appropriate treatment and programming can be provided safely only
9 in a forensic facility, including the recommendation of the Human Services
10 Community Safety Panel pursuant to 13 V.S.A. § 4821. Placement at a
11 forensic facility pursuant to this section shall constitute the designated program
12 required by subdivision (a)(1) of this section and 18 V.S.A. § 8845(c). Nothing
13 in this section shall be construed as prohibiting the Human Services
14 Community Safety Panel from recommending additional services and
15 habilitation at a designated program for a person committed under this section.

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

1 order issued pursuant to subsection (a) of this section and for discharge from
2 an order of commitment shall occur in accordance with 18 V.S.A. § 8845.

3 (d) As used in this section, “forensic facility” has the same meaning as in
4 18 V.S.A. § 7101.

5 Sec. 13. 18 V.S.A. § 8839 is amended to read:

6 § 8839. DEFINITIONS

7 As used in this subchapter:

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

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

17 (3) “Forensic facility” has the same meaning as in section 7101 of this
18 title.

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

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

4 (B) who ~~presents a danger of harm to others~~ has inflicted or
5 attempted to inflict serious bodily injury to another or who has committed an
6 act that would constitute a sexual assault or lewd and lascivious conduct with a
7 child; and

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

10 (5) “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 likelihood
3 that the person would inflict or attempt to inflict physical or sexual harm to
4 another.

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

6
7 Sec. 14. 18 V.S.A. § 8840 is amended to read:

8 § 8840. ~~JURISDICTION AND VENUE~~

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

13 Sec. 15. 18 V.S.A. § 8841 is amended to read:

14 § 8841. ~~PETITION; PROCEDURES~~

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

17 Sec. 16. 18 V.S.A. § 8842 is amended to read:

18 § 8842. ~~HEARING~~

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

1 Sec. 17. 18 V.S.A. § 8843 is amended to read:

2 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

12 Sec. 18. 18 V.S.A. § 8844 is amended to read:

13 § 8844. LEGAL COMPETENCE

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

17 Sec. 19. 18 V.S.A. § 8845 is amended to read:

18 § 8845. JUDICIAL REVIEW

19 (a) **Manner of discharge.** A person committed under 13 V.S.A. § 4823 or
20 this subchapter may be discharged from custody by:

1 (1) a Superior judge after judicial review as provided ~~herein in~~
2 ~~subsection (b) of this section.~~ or

3 (2) ~~by~~ administrative order of the Commissioner.

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

9 ~~(c)~~(1) ~~Commitment.~~ A person committed under 13 V.S.A. § 4823 or this
10 subchapter shall be entitled to a judicial review of the person's need for
11 commitment annually. The Family Division of the Superior Court shall have
12 exclusive jurisdiction over all judicial review proceedings brought under this
13 section. If no ~~such~~ judicial review is requested by the person within one year
14 from the date of the last order of commitment, it shall be initiated by the
15 Commissioner. However, ~~such a~~ person may initiate a judicial review under
16 this subsection ~~after beginning~~ 90 days of after initial commitment but before
17 the end of the first year of the commitment, or if commitment has been
18 continued under this subchapter, the person may petition for review after 90
19 days from the date of an order for continued commitment.

20 ~~(d)~~(2) ~~If the Commissioner seeks to place the person committed pursuant to~~
21 ~~this subchapter in a forensic facility, the petition shall expressly state that such~~

1 ~~placement is being sought. The petition shall set forth the reasons for the~~
2 ~~Commissioner's determination that clinically appropriate treatment and~~
3 ~~programming can be provided safely only in a forensic facility. Continued~~
4 ~~commitment.~~

5 (A) If at the completion of the hearing and consideration of the
6 record, the court finds by clear and convincing evidence that at the time of the
7 hearing that the person is still in need of continued custody, care, and
8 habilitation, commitment shall continue in a designated program in the least
9 restrictive environment consistent with the person's need for custody, care, and
10 habilitation for an indefinite or limited period. If the court finds at the time of
11 the hearing that the person is no longer in need of continued custody, care, and
12 habilitation, it shall discharge the person from the custody of the
13 Commissioner. An order of discharge may be conditional or absolute and may
14 have immediate or delayed effect.

15 (B) In determining whether a person is in need of continued custody,
16 care, and habilitation, the court shall consider the degree to which the person
17 has engaged in or complied with the treatment and supervision provided by the
18 Commissioner.

19 (3) Attendance at hearing. The Commissioner or the Commissioner's
20 designee shall attend the commitment or continued commitment hearing and
21 be available to testify. All persons to whom notice is given may attend the

1 commitment or continued commitment hearing and testify, except that the
2 court may exclude those persons not necessary for the conduct of the hearing.

3 (4) Rules of evidence. The Vermont rules of evidence and procedure
4 applicable in civil cases shall apply in all judicial review proceedings brought
5 under this subchapter.

6 (5) Discharge from forensic facility by judicial review. When a judicial
7 review conducted pursuant to this subsection contemplates a person's
8 discharge from a forensic facility, either the State's Attorney of the county
9 where the prosecution originated or the Office of the Attorney General if that
10 office prosecuted the person's case or the victim or both may intervene to
11 provide a position as to whether the person's discharge from the forensic
12 facility is appropriate.

13 (d) Administrative discharge. At least 10 days prior to the effective date of
14 any administrative order for discharge by the Commissioner, the
15 Commissioner shall give notice of the discharge to the committing court and to
16 either the State's Attorney of the county where the prosecution originated or to
17 the Office of the Attorney General if that office prosecuted the case.

18 (1) When the State's Attorney or the Office of the Attorney General
19 receives notice under this subsection of a person's pending discharge from a
20 forensic facility, the State's Attorney or the Office of the Attorney General
21 shall provide notice of the pending administrative discharge to any victim of

1 the offense for which the person has been charged who has not opted out of
2 receiving notice.

3 (2) If entitled to appear and call witnesses in the proceeding underlying
4 criminal case, the State’s Attorney or the Office of the Attorney General, or the
5 victim, or both may request a hearing on the person’s pending administrative
6 discharge from a forensic facility, which shall be held within 10 days after the
7 request. Once a hearing is requested the pending administrative discharge
8 shall be stayed until reviewed by the Family Division of the Superior Court.

9 (e) Discharge from a forensic facility. The Criminal Division of the Superior
10 Court shall retain jurisdiction over the person’s underlying charge and any
11 orders holding the person without bail or concerning bail and conditions of
12 release shall remain in place. Those orders shall be placed on hold while the
13 person is held at the forensic facility. When a person is discharged from the
14 forensic facility to a correctional facility, the custody of the Commissioner of
15 Disabilities, Aging, and Independent Living shall cease upon that person
16 entering the correctional facility.

17 * * * Certificate of Need * * *

18 Sec. 20. 18 V.S.A. § 9435 is amended to read:

19 § 9435. EXCLUSIONS

20 * * *

1 ~~(3) an individual only receives treatment or programming within a~~
2 ~~forensic facility if the individual has demonstrated a significant risk of~~
3 ~~dangerousness, such as:~~

4 ~~(A) inflicting or attempting to inflict serious bodily injury on another,~~
5 ~~attempting suicide or serious self injury, or committing an act that would~~
6 ~~constitute a sexual assault or lewd and lascivious conduct with a child, and~~
7 ~~there is reasonable probability that the conduct will be repeated if admission to~~
8 ~~a forensic facility is not ordered;~~

9 ~~(B) threatening to inflict serious bodily injury to the individual or on~~
10 ~~others, and there is reasonable probability that the conduct will occur if~~
11 ~~admission to a forensic facility is not ordered;~~

12 ~~(C) obtaining results on any applicable evidence-based violence risk~~
13 ~~assessment tool showing that the individual's behavior is deemed a significant~~
14 ~~risk to others; or~~

15 ~~(D) being charged with a felony offense involving an act of violence~~
16 ~~against another person for which bail may be withheld pursuant to 13 V.S.A.~~
17 ~~§ 7553 or 7553a.~~

18 ~~(b) The Departments shall not admit residents to a forensic facility until a~~
19 ~~permanent rule has been adopted pursuant to this section.~~

20 Sec. 21. RULEMAKING; CONFORMING AMENDMENTS

1 On or before July 1, 2023, the Commissioners of Mental Health and of
2 Disabilities, Aging, and Independent Living, respectively, shall file initial
3 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
4 § 826(a)(2) to account for the establishment of the forensic facility:

5 (1) Department of Disabilities, Aging, and Independent Living,
6 Licensing and Operating Regulations for Therapeutic Community Residences
7 (CVR 13-110-12) for the purpose of allowing the use of emergency
8 involuntary procedures and the administration of involuntary medication at a
9 forensic facility; and

10 (2) Department of Mental Health, Rules for the Administration of
11 Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the
12 purpose of allowing the administration of involuntary medication at a forensic
13 facility.

14 * * * Presentation and Report * * *

15 Sec. 22. PRESENTATION; FORENSIC FACILITY PROGRAMMING

16 On or before February 1, 2024, the Departments of Mental Health and of
17 Disabilities, Aging, and Independent Living shall jointly present the following
18 information to the House Committee on Human Services and to the Senate
19 Committee on Health and Welfare:

20 (1) a plan for staffing and programming at the forensic facility,
21 including whether any specialized training will be required for staff members

1 and whether any services provided at the forensic facility will be contracted to
2 third parties;

3 (2) a plan for the joint management of the forensic facility by the
4 Departments; and

5 (3) whether any additional resources are needed for the operation of the
6 forensic facility.

7 Sec. 23. REPORT; FORENSIC FACILITY

8 Annually, on or before January 15 between 2025 and 2030, the Departments
9 of Mental Health and of Disabilities, Aging, and Independent Living shall
10 jointly submit a report to the House Committee on Human Services and to the
11 Senate Committee on Health and Welfare containing:

12 (1) the average daily census at the forensic facility, including trends
13 over time;

14 (2) the number of individuals waitlisted for the forensic facility, and
15 where these individuals receive treatment or programming while waiting for a
16 bed at the forensic facility;

17 (3) aggregated demographic data about the individuals served at the
18 forensic facility; and

19 (4) an account of the number and types of emergency involuntary
20 procedures used at the forensic facility.

21 * * * Effective Dates * * *

1 Sec. 24. EFFECTIVE DATES

2 This section and Secs. 18 (rulemaking; admissions criteria for forensic
3 facility) and 19 Sec. 21 (rulemaking; conforming amendments) shall take
4 effect on passage. All remaining sections shall take effect on July 1, 2024.

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12 (Committee vote: _____)

13

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Representative _____

15

FOR THE COMMITTEE

16