

**MEMORANDUM**

**TO:** Senator Dick Sears Jr., Chair, Senate Committee on Judiciary

**FROM:** Emily Hawes, Commissioner, Department of Mental Health

**DATE:** March 14, 2023

**RE:** Department of Mental Health Proposed Language Edits to Section 18 in S. 89- *An act relating to establishing a forensic facility*

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*Below is language AHS/DMH/DAIL is proposing to replace the current section 18 in S.89:*

**Sec. 18. MEMORANDUM OF UNDERSTANDING; ADMISSIONS CRITERIA FOR FORENSIC FACILITY**

(a) On or before July 1, 2023, the Departments of Mental Health and of Disabilities, Aging, and Independent Living shall jointly develop a memorandum of understanding for the purpose of ~~determining appropriate admission criteria to a forensic facility. The memorandum of understanding shall establish guidelines to ensure that:~~ **the administration and operation of a forensic facility. The MOU shall also address the criteria for the admission of a person into the forensic facility which include:**

- (1) **that** an individual is served in the least restrictive setting necessary to meet the needs of the individual;
- (2) **that** an individual's treatment and programming needs dictate that the treatment or programming be provided at an intensive residential level; and
- (3) **that** an individual only receives treatment or programming within a forensic facility if the individual has demonstrated a significant risk of dangerousness, ~~such as:~~ **by considering factors such as:**
  - (A) **whether the individual has** ~~inflicted or attempted to~~ **inflicted or attempted to** inflict serious bodily injury on another, attempted suicide or serious self-injury, or committed an act that would constitute a sexual assault or lewd and lascivious conduct with a child, and there is reasonable probability that the conduct will be repeated if admission to a forensic facility is not ordered;
  - (B) **whether the individual has** ~~threatened to~~ **threatened to** inflict serious bodily injury to the individual or on others, and there is reasonable probability that the conduct will occur if admission to a forensic facility is not ordered;
  - (C) **whether the results of** ~~obtaining results on~~ **obtaining results on** any applicable evidence-based violence risk assessment tool **indicates that** ~~showing that~~ **showing that** the individual's behavior is deemed a significant risk to others; or and
  - (D) **any other factors the Commissioners determine to be relevant to the assessment of risk.**
- ~~(4) that individuals having a prior criminal history, including providing preference, when all other criteria have been met, to those defendants charged with felonies who have been held without bail pursuant to 13 V.S.A. § 7553 or 7553a. are prioritized for placement in the facility over others who have substantially similar risk profiles.~~

(b) On or before October 1, 2023, the Departments shall present the memorandum of understanding to and solicit input from the Joint Fiscal Committee and the Joint Legislative Justice Oversight Committee. The Departments shall execute the memorandum of understanding after considering each Committee's input but not later than December 1, 2023.

