

S.192: An act relating to forensic facility admissions criteria and processes

as Passed the Senate

* * * PURPOSE * * *

Sec. 1. Purpose and Legislative Intent

- Specifies that the purpose of the act is to allow the Commissioners of DAIL and DMH to seek treatment and programming for certain individuals in a forensic facility (as anticipated by 2023 Acts and Resolves No. 27)

* * * HUMAN SERVICES COMMUNITY SAFETY PANEL * * *

Sec. 2. Human Services Community Safety Panel (3 V.S.A. § 3098)

- Establishes a Panel within AHS for the purpose of assessing the potential placement of the following individuals at a forensic facility:
 - Those who present a significant risk of danger to self or others if not held in a secure setting; and
 - Those who are charged for a crime pursuant to 13 V.S.A. §§ 7553-7533a and adjudicated not guilty by reason of insanity
- Panel membership:
 - Secretary of AHS
 - Commissioners of DMH, DOC, and DAIL
- Panel has assistance/support of AHS, DMH, DOC, and DAIL

Sec. 3. Notice of Hearing; Procedures (13 V.S.A. § 4821)

- (b): Once report regarding competency/sanity is completed or disclosed to the opposing party (during the course of criminal justice proceedings), the Panel may conduct a review on its own initiative as to whether the person who is subject of the report should be placed in a forensic facility
 - (2)(A): If Panel does not initiate a review, a party to a commitment hearing may file a motion requesting the Panel to conduct a review within 7 days after receiving a competency report or within 7 days after being adjudicated not guilty by reason of insanity
 - (B): A motion filed under subdivision (2) must specify that the person is charged with a crime under 13 V.S.A. §§ 7553-7533a and may include a person adjudicated not guilty by reason of insanity and that the person present a significant risk of danger to self or public if not held in a secure setting
 - (C): Court must rule on motion under subdivision (2) within 5 days; if a Panel review is ordered, it must be completed and submitted to the court at least three days prior to commitment hearing.
- (c): Criteria for Panel to consider during review:
 - (1) the following clinical factors:
 - Person is served in least restrictive setting necessary to meet the person's needs; and
 - Person's treatment and programming needs dictate that treatment or programming is provided at an intensive residential level

- (2) the following risk of harm factors:
 - Whether the person has inflicted or attempted to inflict serious bodily injury on another, attempted suicide or serious self-injury, or committed an act that would constitute sexual conduct with a child or L & L with a child and there is a probability the conduct will be repeated if admission to a forensic facility is not ordered;
 - Whether the person has threatened to inflict serious bodily injury to the person or others and there is reasonable probability that the conduct will occur if admission to a forensic facility is not ordered;
 - Whether the results of any applicable evidence-based violence risk-assessment tool indicates that the person’s behavior is deemed a significant risk to others;
 - The position of the parties to the criminal case and victim; and
 - Any other factors the Panel deems a relevant assessment of risk.

* * * ADMISSION TO FORENSIC FACILITY FOR PERSONS IN NEED OF TREATMENT OR
CONTINUED TREATMENT * * *

Sec. 4. Findings and Order; Persons with a Mental Illness (13 V.S.A. § 4822)

- (a)(1) Modifies existing language authorizing initial commitment “for an indeterminate period” to “a period of 90 days” to be consistent with T.18
 - (2) If the Commissioner of MH seeks to have a person receive treatment in a forensic facility pursuant to an ONH, the Commissioner must submit a petition to the court stating that such treatment is being sought, including:
 - A statement explaining the Commissioner’s determination that clinically appropriate treatment for a person’s condition can be provided safely only in a forensic facility; and
 - Recommendation of the Panel.
 - (3) If Commissioner determines that treatment in a forensic facility is appropriate, and court finds that treatment at a forensic facility is the least restrictive setting adequate to meet the person’s needs, the court shall order the person to receive treatment at a forensic facility for a 90 day period and may at any time review whether treatment at a forensic facility continues to be the least restrictive option
- (c)(2)(B)(ii): Provides a victim with notice of discharge from commitment generally, or from discharge from a hospital, secure residential recovery facility, or forensic facility and the right to submit a victim impact statement to the Family Division or thought the prosecutor

Sec. 5. Definitions (18 V.S.A. § 7101)

- Adds a definition of “forensic facility” to mean a residential facility licensed as a therapeutic community residence for an individual initially committed under:
 - 13 V.S.A. § 4822 (insanity as a defense; persons with a mental illness) who is in need of treatment or further treatment in a secure setting for an extended period of time; or

- 13 V.S.A. § 4823 (insanity as a defense; persons with an intellectual disability) who is in need of custody, care, and habilitation in a secure setting for an extended period of time

Sec. 6. Application for Continued Treatment (18 V.S.A. § 7620)

- Specifies that an application for continued treatment at a forensic facility must expressly state where treatment is being sought and why the Commissioner of MH has determined that clinically appropriate treatment for the individual's condition can only be provided for safely in a forensic facility
- Requires the application for continued treatment to include the Panel's recommendation

Sec. 7. Hearing on Application for Continued Treatment; Orders (18 V.S.A. § 7621)

- Authorizes the court to place an individual in need of further treatment on an order of nonhospitalization at a forensic facility

Sec. 8. Application for Involuntary Medication (18 V.S.A. § 7624)

- Allows the Commissioner of MH to seek involuntary medication for an individual refusing to accept psychiatric medication who has been placed under an order of nonhospitalization at forensic facility

Sec. 8a. Court Findings; Orders (18 V.S.A. § 7627)

- Adds a new subsection (o): If the court finds that w/o an order for involuntary medication there is a substantial probability that the individual would continue to refuse medication and as a result would pose a danger of harm to self or others, the court may order administration of medication at a forensic facility for up to 90 days or longer if necessary
- If the individual becomes competent, the order is no longer in effect

* * * PERSONS IN NEED OF CUSTODY, CARE, AND HABILITATION OR CONTINUED CUSTODY,
CARE, AND HABILITATION * * *

Sec. 9. Findings and Order; Persons with Intellectual Disability (13 V.S.A. § 4823)

- (a): Specifies that if an individual is committed to the Commissioner of DAIL that the placement must be in a designated program in the least restrictive environment consistent with the person's need for custody for up to one year
- (b): Commitment procedures and orders from discharge shall occur in accordance with 18 V.S.A. §§ 8845-8847
- (c): Specifying that if the Commissioner is seeking to have an individual placed at a forensic facility, the Commissioner must provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely at the forensic facility, including the Panel recommendation

Sec. 10. Judicial Proceedings; Persons with an Intellectual Disability (18 V.S.A. chapter 206, subchapter 3)

Definitions (18 V.S.A. § 8839)

- Removes the definition of "danger of harm to others"

- Adds a definition of “Commissioner”, “Person in need of continued custody, care, and habilitation”, and “victim”
- Amends the definition of “Person in need of custody, care, and habilitation”

18 V.S.A. §§ 8840-8843 are repealed:

Jurisdiction and Venue (18 V.S.A. § 8840)

Petition; Procedures (18 V.S.A. § 8841)

Hearing (18 V.S.A. § 8842)

Findings and Order (18 V.S.A. § 8843)

S.192 proposes to repeal 18 V.S.A. §§ 8840-8843 as they are “form without substance”. 18 V.S.A. chapter 206, subchapters 1 and 2 were repealed in 1995. A portion of 18 V.S.A. chapter 206, subchapter 3 (18 V.S.A. §§ 8840-8843), which used to provide a separate mechanism for an interested person to petition the court for state supervision of a person with an intellectual disability who presented a danger of harm to others was not repealed, however, and remains intact. Despite its apparent structure, subchapter 3 does not provide an independent avenue for seeking civil commitment in the absence of subchapters 1 and 2, and it does not make sense to retain 18 V.S.A. §§ 8840-8843.

Legal Competence (18 V.S.A. § 8844)

- Specifies that a determination that an individual is “in need of continued custody, care, and habilitation” does not lead to a presumption of legal incompetence

Initial Order for Custody, Care, and Habilitation (18 V.S.A. § 8845)

- (a)(1): Specifies if an individual is found incompetent to stand trial under 13 V.S.A. § 4823 (insanity as a defense; persons with intellectual disability), the Criminal Division must automatically schedule a commitment hearing
 - (2): If the Commissioner of DAIL recommends that the person subject to the commitment proceeding be placed in a forensic facility, the recommendation must be filed with the court prior to the commitment hearing and must:
 - Expressly state the reason for the Commissioner’s determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility; and
 - Include the Panel recommendation
- (b): Directs the Commissioner or designee to attend commitment hearing and be available to testify and specifies that all persons to whom notice is given may attend the commitment hearing and testify, except the court may exclude those persons not necessary for the conduct of the hearing
- (c): Vt Rules of Evidence apply to all judicial proceedings in the subchapter
- (d)(1): If the court finds by clear and convincing evidence that the person meet the standard for commitment, commitment is ordered in the least restrictive environment for up to 1 year
 - (2): A person may initiate a judicial review in the Family Division at any time following 90 days of the current commitment order
- (e): If the Commissioner recommended placement in a forensic facility, the court, after first determining whether the person meets the criteria for commitment, shall determine

whether placement at the forensic facility is appropriate and the least restrictive setting adequate to meet the person's needs

- Placement at a forensic facility cannot exceed the duration of the initial commitment order
- Requires the committing court to automatically review any placement at a forensic facility 90 days after commitment to ensure that the placement remain the least restrictive setting adequate to meet the person's needs

Petition for Continued Care, Custody, and Habilitation (18 V.S.A. § 8846)

- (a)(1): If, prior to the expiration of a commitment or continued commitment order, the Commissioner believes the person meets continued commitment criteria, the Commissioner must initiate a judicial review in the Family Division of the Superior Court by filing a petition that includes:
 - Name and address of the person alleged to need continued commitment; and
 - Statement of the relevant facts
- (2): A commitment or continued commitment order shall remain in effect pending the court's decision on the petition
- (3) If the Commissioner of DAIL recommends that the person subject to the continued commitment proceeding be placed in a forensic facility, the Commissioner's petition shall:
 - Expressly state the reason for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility; and
 - Include a renewed Panel recommendation
- (b): Requires court to set date for hearing within 10 days of filing; hearing held in accordance with subsections 8845(b) and (c)
- (c)(1): If at the end of hearing and review of record, the court finds by clear and convincing evidence that the person meets the criteria for continued commitment, it shall be ordered for up to 1 year in the least restrictive environment consistent with the person's need for continued custody, otherwise person is discharged
 - Court must consider the degree to which the person previously engaged in or complied with treatment/programming
 - Commissioner can seek consecutive commitment orders
- (2): If placement in a forensic facility is sought, the court, after first determining whether the person meets the criteria for continued commitment, shall determine whether placement at the forensic facility is appropriate and the least restrictive setting adequate to meet the person's needs
 - Placement at a forensic facility cannot exceed duration of the initial commitment order
 - Requires the committing court to automatically review any placement at a forensic facility 90 days after commitment to ensure that the placement remain the least restrictive setting adequate to meet the person's needs
- (d): A person may initiate a judicial review in the Family Division at any time following 90 days of the current continued commitment order

Discharge from Commitment or Placement in a Forensic Facility (18 V.S.A. § 8847)

- (a): A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged as follows:
 - (1): by the Criminal Division after an automatic 90-day review of forensic facility placement;
 - (2) by a Family Division after judicial review of commitment, continued commitment, or placement at a forensic facility; or
 - (3) by administrative order of the Commissioner of DAIL regarding commitment, continued commitment, or placement at a forensic facility
- (b)(1): A person under commitment or continued commitment is entitled to judicial review of the need for commitment, and will be discharged from commitment or continued commitment if no longer meeting criteria
 - (2)(A): In reviewing a forensic facility placement, the court may decide that while the placement is no longer appropriate or is no longer the least restrictive setting adequate to meet the person's needs, that the person still meets commitment or continued commitment criteria, in which case the court shall discharge the person from placement at a forensic facility and maintain the commitment/continued commitment order
 - (B): When a person subject to a judicial review under this subsection is placed at a forensic facility, the prosecutor or victim, or both may file a position with the court as an interested person concerning whether person's discharge from placement at a forensic facility is appropriate
- (c)(1)(A): If the Commissioner determines a person is no longer in need of custody, continued custody, or placement at a forensic facility, the Commissioner shall issue an administrative discharge for commitment or placement, or both
 - At least 10 days prior to administrative discharge or 10 days prior to expiration of current commitment order where continued commitment is not sought, the Commissioner shall give notice of the pending discharge to the prosecutor
 - (B): In reviewing a forensic facility placement, the Commissioner may decide that while the placement is no longer appropriate or is no longer the least restrictive setting adequate to meet the person's needs, that the person still meets commitment or continued commitment criteria, in which case the Commissioner shall discharge the person from placement at a forensic facility and maintain the commitment/continued commitment order
 - (2)(A): When a person is subject to an administrative discharge under this subsection is at a forensic facility, the prosecutor shall provide notice of the pending administrative discharge from the forensic facility and commitment, if applicable, to a victim
 - (B): In the 10-day period between notice of pending administrative discharge and anticipated date of discharge, the prosecutor or victim, or both, may request a hearing in the Family Division on whether the pending discharge from a forensic facility is appropriate, which shall be held within 10 days of request
 - The pending administrative discharge from placement at a forensic facility is stayed until conclusion of hearing and any subsequent orders are issued

- (d): When a person is subject to a judicial or administrative discharge from commitment, the Criminal Division retains jurisdiction of the person’s underlying charges and any orders holding the person without bail or concerning bail, and conditions of release stay in place
 - When a person is discharged from the custody of the Commissioner of DAIL to a correctional facility, the Commissioner’s custody terminates when the person enters the correctional facility

Right to Counsel (18 V.S.A. § ~~8846~~ 8848)

- Replaces reference to “judicial review” and adds reference to “continued custody”

* * * COMPETENCY EXAMINATION * * *

Sec. 11. Order for Examination of Competency (13 V.S.A. § 4814)

- Removes sunset on allowing psychologists to complete competency examinations

* * * FISCAL ESTIMATE OF COMPETENCY RESTORATION PROGRAM * * *

Sec. 12. Report; Competency Restoration Program; Fiscal Estimate

- By 11/1/2024, AHS is required to submit a report to the General Assembly that provides a fiscal estimate for the implementation of a competency restoration program operated by or under contract with DMH

* * * RULEMAKING * * *

Sec. 13. Rulemaking; Conforming Amendments

- By 8/1/24, directs the Commissioner of DAIL, in consultation with the Commissioner of MH, to file initial proposed rule amendments to Licensing and Operating Regulations for Therapeutic Community Residences (to allow the use of emergency involuntary procedures and administration of involuntary medication at a forensic facility and secure residential recovery facility)

* * * EFFECTIVE DATES * * *

Sec. 14. Effective Dates

- Secs. 12-14 take effect on passage; all remaining sections on 7/1/25