

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

Report of the House Committee on Human Services as amended by the House Committee on Health Care

* * * PURPOSE * * *

Sec. 1. Purpose and Legislative Intent

- Specifies that the purpose of the act is to:
 - Enable the Commissioner of MH to seek initial treatment for individuals at a SRRF and to seek treatment for youth at a PRTF
 - Update the civil commitment procedures for individuals with intellectual disability

* * * INVOLUNTARY COMMITMENT OF INDIVIDUALS WITH MENTAL ILLNESS * * *

Sec. 2. Findings and Order; Persons with a Mental Illness (Amends 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
- (c)(2)(B)(ii): Provides a victim with the right to submit a victim impact statement to the Family Division or through the prosecutor

Sec. 3. Definitions (Amends 18 V.S.A. § 7101)

- Adds a definition of “Department” and “psychiatric residential treatment facility for youth”
- Moves and modifies definition of “secure residential recovery facility”

Sec. 4. Clinical Resource Management and Oversight (Amends 18 V.S.A. § 7253)

- Adds PRTF to list of facilities at which patients are entitled to access a MH patient representative

Sec. 5. System of Care (Amends 18 V.S.A. § 7255)

- Adds the PRTF as an element of the MH system of care

Sec. 6. Reporting Requirements (Amends 18 V.S.A. § 7256)

- Updates the receiving committee from HHS to HHC
- Moves a reporting requirement regarding involuntary medication from 1998 A & R No. 114 to DMH’s systemwide annual report

Sec. 7. Reportable Adverse Events (Amends 18 V.S.A. § 7257)

- Adds a PRTF to the list of facilities that must report adverse events to DMH

Sec. 8. Psychiatric Residential Treatment Facility for Youth (Adds 18 V.S.A. § 7260)

- (a): Prohibits an applicant from establishing, maintaining, or operating a PRTF without obtaining a license from VDH
- (b): Directs VDH to issue a license if it determines that the applicant and the proposed PRTF adhere to the following standards:

- Applicant has demonstrated the capacity to operate a PRTF in accordance with VDH rules and in a manner that ensures person-centered care and resident dignity under 42 C.F.R. section 441.151
- Applicant has demonstrated the PRTF complies with health, safety, and sanitation standards
- Applicant has a clear process for responding to resident complaints
- PRTF is subject to inspection by DAIL and other authorized entities
- (c): PRTF license is not transferable or assignable and can only be used for the premises names in the application
- (d): PRTF shall be among the placement options for individuals committed to the custody of the Commissioner
- (e): Directs VDH to adopt rules for carrying out the section; those rules pertaining to EIPs shall:
 - Be identical to DMH rule governing use of EIPs in psychiatric inpatient units; and
 - Require that a certificate of need for all EIPs performed at a PRTF be submitted to DMH and the MH Care Ombudsman in the same manner as required for hospitals

Sec. 9. Application for Voluntary Admission (Amends 18 V.S.A. § 7503)

- Adds PRTF to the list of facilities that a person 14 years of age or older could apply for voluntary psychiatric care

Sec. 10. Application for Involuntary Treatment (Amends 18 V.S.A. § 7612)

- Specifies that an application for initial treatment at a SRRF or PRTF 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 safely in a SRRF or PRTF, respectively

Sec. 11. Order; Nonhospitalization (Amends 18 V.S.A. § 7618)

- Authorizes the court to place an individual in need of treatment on an order of nonhospitalization at a SRRF or PRTF
- Authorizes the court at any time, on its own motion or on the motion of an interested party, to review the need for treatment at a SRRF or PRTF, respectively

Sec. 12. Application for Continued Treatment (Amends 18 V.S.A. § 7620)

- Specifies that an application for continued treatment at a SRRF or PRTF 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 safely in a SRRF or PRTF, respectively
- Repeals existing definitions (because they are moved to 18 V.S.A. § 7101)

Sec. 13. Hearing on Application for Continued Treatment; Orders (Amends 18 V.S.A. § 7621)

- Authorizes the court to place an individual in need of further treatment on an order of nonhospitalization at a PRTF (placement at SRRF is already authorized)

- Authorizes the court at any time, on its own motion or on the motion of an interested party, to review the need for treatment at a SRRF or PRTF, respectively

Sec. 14. Application for Involuntary Medication (Amends 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 a SRRF

Sec. 15. Protocol (Amends 18 V.S.A. § 7628)

- Adds SRRF to DMH's protocol ensuring health, safety, and respect for patients subject to involuntary medication

Sec. 16. Treatment (Amends 18 V.S.A. § 7703)

- Adds SRRF and PRTF to the list of facilities where EIP data is collected by DMH

* * * POLICIES APPLICABLE TO THE SECURE RESIDENTIAL RECOVERY FACILITY * * *

Sec. 17. Rulemaking; Secure Residential Recovery Facility

- By 8/1/24, directs the Commissioner of DAIL, in consultation with the Commissioner of MH, to file initial proposed permanent rule amendments (and interim emergency rules) to the Licensing and Operating Regulations for Therapeutic Community Residences to:
 - Allow the use of EIPs at a SRRF in a manner identical to DMH's rule governing use of EIPs in psychiatric inpatient units
 - Require that a certificate of need for all EIPs performed at a SRRF be submitted to DMH and the MH Care Ombudsman in the same manner as required for hospitals
 - Authorize the use of involuntary medication at the SRRF in a manner identical to DMH's rule governing administration of involuntary medication in psychiatric inpatient units

Sec. 18. Amends 2021 Acts and Resolves No. 50, Sec. 3(c)

- Strikes language in a former capital bill restricting use of EIPs at a SRRF

Sec. 19. Certificate of Need

- Allows current SRRF to operate under its existing CON despite the policy changes made in this bill

Sec. 20. Repeal; Involuntary Medication Report

- Repeals Sec. 5 of existing report on involuntary medication (as the topic has been consolidated into annual DMH report)

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

Sec. 21. Order for Examination of Competency (Amends 13 V.S.A. § 4814)

- Removes sunset on allowing psychologists to complete competency examinations

Sec. 22. Scope of Examination; Report; Evidence (Amends 13 V.S.A. § 4816)

- (b): Specifies that a competency evaluation for an individual thought to have a developmental disability shall be conducted by a doctoral-level psychologist trained in forensic psychology and skilled in assessing individuals developmental disabilities
- (e): Specifies that the competency report described in subsec. (c) may be produced by a psychiatrist or psychologist
- (f): Specifies that a psychiatrist or psychologist producing the report may be called on as a witness

Sec. 23. Competency to Stand Trial; Determination (Amends 13 V.S.A. § 4817)

- Specifies that a psychiatrist or psychologist may conduct a competency exam in accordance with 13 V.S.A. §§ 4814-1816

Sec. 24. Hearing Regarding Commitment (Amends 13 V.S.A. § 4820)

- Reorganizes subsec. (a) for clarity and specifies that a commitment hearing may be for commitment to the Commissioner of DMH or DAIL, as appropriate

Sec. 25. Findings and Order; Persons with an Intellectual Disability (Amends 13 V.S.A. § 4823)

- (a): Specifies that if the court finds by clear and convincing evidence that a person is a person in need of custody, care, and habilitation, the court shall issue a commitment order for up to one year in a designated program in the least restrictive environment consistent with the person's need for custody
- (b): Commitment procedures and orders from discharge shall occur in accordance with 18 V.S.A. chapter 206, subchapter 3
- (c): [Repealed.]

Sec. 26. 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

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

- (a): Prior to the expiration of a commitment order pursuant to T.13, the Commissioner may seek continued commitment in the Family Division of the Superior Court by filing a petition that states current and relevant facts upon which continued custody is predicated
- (b): The court shall hold a hearing within 14 days after the date of the petition’s filing
- (c): If the court finds the person is in need of custody, care, and habilitation, it shall order commitment for up to one year in a designated program in the least restrictive environment, otherwise the person shall be discharged from commitment
 - In determining whether the person is in need of continued commitment, the court shall consider the degree to which the person previously engaged in or complied with treatment and programming

Right to Initiate Review (18 V.S.A. § 8846)

- A person may initiate judicial review in the Family Division of the Superior Court or an administrative review any time after 90 days following a current commitment or continued commitment order, but not earlier than 6 months after the filing of a previous review under this section
- If the person does not meet the statutory standards for commitment, the person shall be discharged from the Commissioner’s custody

Discharge from Commitment (18 V.S.A. § 8847)

- (a): A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged by:
 - (1): the Family Division judge after review of a commitment or continued commitment order if the court finds the person does not meet the relevant statutory standard for commitment; or
 - (2): administrative order of the Commissioner if the Commissioner finds the person does not meet the relevant statutory standard for commitment
- (b): Order of discharge may be conditional or absolute

- (c)(1): When a person is under a commitment or continued commitment order, the Commissioner shall provide notice to the prosecutor of the case:
 - (A): at least 10 days prior to discharging the person from commitment or continued commitment;
 - (B): at least 10 days prior to the expiration of a commitment or continued commitment order if the Commissioner does not seek a continued commitment order; or
 - (C): any time that the person elopes and cannot be located and there is reason to believe the person may be lost or pose a risk of harm to others.
- (2): When the prosecutor receives notice under subsec. (c), the prosecutor shall provide notice of the action to any victim of the offense for which the person has been charged who has not opted out of receiving notice
- (d): Whenever the person is discharged from commitment, the Criminal Division retains jurisdiction over the person’s underlying charge and any orders holding the person without bail or concerning bail, and conditions of release remain in place
 - Orders must be placed on hold while a person is under an order of commitment or continued commitment
 - When a person is discharged from commitment to a correctional facility, the custody of the Commissioner ceases when the person enters a correctional facility

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

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

* * * PROPOSAL FOR ENHANCED SERVICES * * *

Sec. 27. Individuals with Intellectual Disabilities; Enhanced Services

- By 11/1/24, DAIL, in consultation with DRVT, VLA, the DS State Program Standing Committee, and VCP, is authorized to submit an alternative proposal to the forensic facility to the General Assembly for enhanced community-based services for individuals who require custody, care, and habilitation in a secure setting for brief periods of time

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

Sec. 28. Report; Competency Restoration Program; Fiscal Estimate

- By 11/1/24, 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

* * * EFFECTIVE DATES * * *

Sec. 29. Effective Dates

- Effective on 7/1/24