

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 defendants 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
8 examination is appropriate in a forensic facility. The review shall inform
9 either the Commissioner of Mental Health’s or Commissioner of Disabilities,
10 Aging, and Independent Living’s decision in whether to seek placement of the
11 person in a 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. A motion filed pursuant
16 to this subdivision shall specify that the person who is the subject of the
17 proceedings is charged with a crime for which there is no right to bail pursuant
18 to sections 7553 and 7553a of this title and that the person presents a
19 significant risk of danger to the public if not held in a secure setting. The court
20 shall issue an order on the party’s request within five days. A Panel review
21 ordered pursuant to this subdivision shall be completed and submitted to the

1 court at least three days prior to a hearing under section 4820 of this title
2 regarding placement in a forensic facility.

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

6 (1) clinical factors, including:

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

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

11 (2) dangerousness factors, including:

12 (A) whether the person has inflicted or attempted to inflict serious
13 bodily injury on another, attempted suicide or serious self-injury, or committed
14 an act that would constitute sexual or lewd and lascivious conduct with a child,
15 and there is reasonable probability that the conduct will be repeated if
16 admission to a forensic facility is not ordered;

17 (B) whether the person has threatened to inflict serious bodily injury
18 to the person or others and there is reasonable probability that the conduct will
19 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, the court shall
4 order the person to receive treatment there for a period of 90 days. The court
5 may at any time, on its own motion or on motion of an interested party, review
6 the need for treatment at the forensic facility.

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

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

18 (C) In proceedings in which they are entitled to appear and call
19 witnesses, the State’s Attorney, Attorney General’s Office, or victim, or any
20 combination thereof, may request a discharge hearing to be held within 15
21 days.

1 (D) Custody of a person discharged from a forensic facility and
2 deemed competent to stand trial shall transfer from the Commissioner of
3 Mental Health to the Commissioner of Corrections so the person can stand
4 trial.

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

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

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

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

15 § 7620. APPLICATION FOR CONTINUED TREATMENT

16 (a) If, prior to the expiration of any order issued in accordance with section
17 7623 of this title, the Commissioner believes that the condition of the patient is
18 such that the patient continues to require treatment, the Commissioner shall
19 apply to the court for a determination that the patient is a patient in need of
20 further treatment and for an order of continued treatment.

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

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

8 (d) If the Commissioner seeks to have the patient receive the further
9 treatment in a forensic facility or secure residential recovery facility, the
10 application for an order authorizing continuing treatment shall expressly state
11 that such treatment is being sought. The application shall contain, in addition
12 to the statements required by subsection (b) of this section, a statement setting
13 forth the reasons for the Commissioner’s determination that clinically
14 appropriate treatment for the patient’s condition can be provided safely only in
15 a secure residential recovery facility or forensic facility, as appropriate.

16 (e) As used in this chapter:

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

20 (2) “Secure residential recovery facility” means a residential facility,
21 licensed as a therapeutic community residence as defined in 33 V.S.A.

1 § 7102(11), for an individual who no longer requires acute inpatient care but
2 who does remain in need of treatment within a secure setting for an extended
3 period of time. A secure residential recovery facility shall not be used for any
4 purpose other than the purposes permitted by this section.

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

6 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
7 ORDERS

8 * * *

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

16 * * *

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

18 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

7 (3) has been committed to the custody of the Commissioner of
8 Corrections as a convicted felon and is being held in a correctional facility
9 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for
10 whom the Departments of Corrections and of Mental Health have determined
11 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.
12 § 907(4)(H);

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

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

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

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

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

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

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

13 (B) serious deterioration of the person's mental condition is
14 occurring.

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

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

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

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

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

10 (4) Within 72 hours ~~of~~ after the filing of an application for involuntary
11 medication pursuant to subdivision (a)(~~6~~)(7) of this section, the court shall
12 determine, based solely upon a review of the psychiatrist’s certification and
13 any other filings, whether the requirements of that subdivision have been
14 established. If the court determines that the requirements of subdivision
15 (a)(~~6~~)(7) of this section have been established, the court shall consolidate the
16 application for involuntary treatment with the application for involuntary
17 medication and hear both applications within ten days ~~of~~ after the date that the
18 application for involuntary medication is filed. The court shall rule on the
19 application for involuntary treatment before ruling on the application for
20 involuntary medication. Subsection 7615(b) of this title shall apply to
21 applications consolidated pursuant to this subdivision.

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Sec. 11. 18 V.S.A. § 7627 is amended to read:

§ 7627. COURT FINDINGS; ORDERS

(o) For a person who is receiving treatment pursuant to an order of nonhospitalization in a forensic facility, if the court finds that without an order for involuntary medication there is a substantial probability that the person 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 involuntary medications at a forensic facility for up to 90 days, unless the court finds that an order is necessary for a longer period of time. An order for involuntary medication pursuant to this subsection shall not be longer than the duration of the current order of nonhospitalization. If at any time the treating psychiatrist finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

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

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

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

1 (a) If the court finds that such person is a person in need of custody, care,
2 and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order
3 of commitment directed to the Commissioner of Disabilities, Aging, and
4 Independent Living for placement in a designated program in the least
5 restrictive environment consistent with the person’s need for custody, care, and
6 habilitation of such person for an indefinite or limited period in a designated
7 program for an indefinite or limited period.

8 (b) ~~Such order of commitment shall have the same force and effect as an~~
9 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
10 ~~order shall have the same status, and the same rights, including the right to~~
11 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
12 ~~and obtain judicial review of their cases, as persons ordered committed under~~
13 ~~18 V.S.A. § 8843~~ Judicial review procedures for an order issued pursuant to
14 subsection (a) of this section and for discharge from an order of commitment
15 shall occur in accordance with 18 V.S.A. § 8845.

16 (c)(1) ~~Section 4822 of this title shall apply to persons proposed for~~
17 ~~discharge under this section; however, judicial proceedings shall be conducted~~
18 ~~in the Criminal Division of the Superior Court in which the person then~~
19 ~~resides, unless the person resides out of State in which case the proceedings~~
20 ~~shall be conducted in the original committing court~~ If the Commissioner seeks
21 to have a person committed pursuant to this section placed in a forensic

1 facility, the Commissioner shall provide a statement setting forth the reasons
2 for the Commissioner’s determination that clinically appropriate treatment and
3 programming can be provided safely only in a forensic facility, including the
4 recommendation of the Human Services Community Safety Panel pursuant to
5 13 V.S.A. § 4821. Placement at a forensic facility pursuant to this section shall
6 constitute the designated program required by subsection (a) of this section and
7 section 8845(f) of this title. Custody of a person discharged from a forensic
8 facility and deemed competent to stand trial shall transfer from the
9 Commissioner of Disabilities, Aging, and Independent Living to the
10 Commissioner of Corrections so the person can stand trial. Nothing in this
11 section shall be construed as prohibiting the Human Services Community
12 Safety Panel from providing additional services and habilitation pursuant to a
13 designated program to a person committed under this section.

14 (2) As used in this subchapter, “forensic facility” has the same meaning
15 as in section 7101 of this title.

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

17 § 8839. DEFINITIONS

18 As used in this subchapter:

19 (1) ~~“Danger of harm to others” means the person has inflicted or~~
20 ~~attempted to inflict serious bodily injury to another or has committed an act~~
21 ~~that would constitute a sexual assault or lewd or lascivious conduct with a~~

1 ~~child~~ “Commissioner” means the Commissioner of Disabilities, Aging, and
2 Independent Living.

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

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

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

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

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

17 (4) “Person in need of continued custody, care, and habilitation” means
18 a person who was previously found to be a person in need of custody, care, and
19 habilitation who poses a danger of harm to others and for whom the
20 Commissioner has, in the Commissioner’s discretion, consented to or approved
21 the continuation of the designated program. A danger of harm to others shall

1 be shown by establishing that, in the time since the last order of commitment
2 was issued, the person:

3 (A) has inflicted or attempted to inflict physical or sexual harm to
4 another;

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

7 (C) has exhibited behavior demonstrating that, absent treatment or
8 programming provided by the Commissioner, there is a reasonable likelihood
9 that the person would inflict or attempt to inflict physical or sexual harm to
10 another.

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

12 § 8840. ~~JURISDICTION AND VENUE~~

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

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

18 § 8841. ~~PETITION; PROCEDURES~~

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

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

2 § 8842. ~~HEARING~~

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

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

6 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

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

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

2 § 8845. JUDICIAL REVIEW

3 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
4 discharged from custody by a Superior judge after judicial review as provided
5 ~~herein~~ in accordance with this subchapter or by administrative order of the
6 Commissioner. At least 10 days prior to the effective date of any
7 administrative order for discharge by the Commissioner, the Commissioner
8 shall give notice of the discharge to the committing court and to the State’s
9 Attorney of the county where the prosecution occurred.

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

15 (e) A person committed under 13 V.S.A. § 4823 or this subchapter shall be
16 entitled to a judicial review of the person’s need for commitment annually.
17 The Family Division of the Superior Court shall have exclusive jurisdiction
18 over all judicial review proceedings brought under this section. If no ~~such~~
19 judicial review is requested by the person within one year from the date of the
20 last order of commitment, it shall be initiated by the Commissioner. However,
21 such person may initiate a judicial review under this subsection after 90 days

1 ~~of~~ after initial commitment but before the end of the first year of the
2 commitment, or if commitment has been continued under this subchapter, the
3 person may petition for review after 90 days from the date of an order for
4 continued commitment.

5 ~~(d)~~(c) If the Commissioner seeks to place the person committed pursuant to
6 this subchapter in a forensic facility, the petition shall expressly state that such
7 placement is being sought. The petition shall set forth the reasons for the
8 Commissioner’s determination that clinically appropriate treatment and
9 programming can be provided safely only in a forensic facility.

10 (1) When a person committed under this subchapter or 13 V.S.A. § 4823
11 has been placed in a forensic facility, the Commissioner shall provide notice
12 at least ten days prior to discharging the person from a forensic facility to the
13 State’s Attorney where the prosecution originated.

14 (2) When the State’s Attorney receives notice under subdivision (1) of
15 this subsection (c), the State’s Attorney shall provide notice of the discharge to
16 any victim of the offense for which the person has been charged who has not
17 opted out of receiving notice. As used in this subsection, “victim” shall have
18 the same meaning as in 13 V.S.A. § 5301(4).

19 (3) If entitled to appear and call witnesses in the proceeding, the State’s
20 Attorney and the victim may request a hearing on the person’s discharge from

1 placement at a forensic facility, which shall be held within 15 days after the
2 request.

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

5 (e) The Commissioner or the Commissioner's designee shall attend the
6 commitment hearing and be available to testify. All persons to whom notice is
7 given may attend the commitment hearing and testify, except that the court
8 may exclude those persons not necessary for the conduct of the hearing.

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

19 (g) In determining whether a person is in need of continued custody, care,
20 and habilitation, the court shall consider the degree to which the person has

1 engaged in or complied with the treatment and supervision provided by the
2 Commissioner.

3 * * * Certificate of Need * * *

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

5 § 9435. EXCLUSIONS

6 * * *

7 (g) Excluded from this subchapter is any forensic facility, as defined in
8 18 V.S.A. § 7101, that is supervised and operated by the Commissioner of
9 Mental Health or the Commissioner of Disabilities, Aging, and Independent
10 Living, or both.

11 * * * Rulemaking * * *

12 ~~Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC~~
13 ~~FACILITY~~

14 ~~(a) On or before July 1, 2023, the Secretary of Human Services, in~~
15 ~~consultation with the Departments of Mental Health and of Disabilities, Aging,~~
16 ~~and Independent Living, shall file an initial proposed rule with the Secretary of~~
17 ~~State pursuant to 3 V.S.A. § 836(a)(2) specifying the criteria that the~~
18 ~~Departments shall use to determine admission to a forensic facility and the~~
19 ~~process used by the Commissioners to determine appropriate admissions. The~~
20 ~~admission criteria and process shall ensure that:~~

1 ~~(1) an individual is served in the least restrictive setting necessary to~~
2 ~~meet the needs of the individual;~~

3 ~~(2) an individual's treatment and programming needs dictate that the~~
4 ~~treatment or programming be provided at an intensive residential level in a~~
5 ~~forensic facility; and~~

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

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

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

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

1 ~~(D) being charged with a felony offense involving an act of violence~~
2 ~~against another person for which bail may be withheld pursuant to 13 V.S.A.~~
3 ~~§ 7553 or 7553a.~~

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

6 Sec. 21. RULEMAKING; CONFORMING AMENDMENTS

7 On or before July 1, 2023, the Commissioners of Mental Health and of
8 Disabilities, Aging, and Independent Living, respectively, shall file initial
9 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
10 § 826(a)(2) to account for the establishment of the forensic facility:

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

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

20 * * * Presentation and Report * * *

21 Sec. 22. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

5 (1) a plan for staffing and programming at the forensic facility,
6 including whether any specialized training will be required for staff members
7 and whether any services provided at the forensic facility will be contracted to
8 third parties;

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

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

13 Sec. 23. REPORT; FORENSIC FACILITY

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

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

- 1 (2) the number of individuals waitlisted for the forensic facility, and
- 2 where these individuals receive treatment or programming while waiting for a
- 3 bed at the forensic facility;
- 4 (3) aggregated demographic data about the individuals served at the
- 5 forensic facility; and
- 6 (4) an account of the number and types of emergency involuntary
- 7 procedures used at the forensic facility.

* * * Effective Dates * * *

9 Sec. 24. EFFECTIVE DATES

10 This section and ~~Secs. 18 (rulemaking; admissions criteria for forensic~~

11 facility) and ~~19~~ Sec. 21 (rulemaking; conforming amendments) shall take

12 effect on passage. All remaining sections shall take effect on July 1, 2024.

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(Committee vote: _____)

1

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Representative _____

3

FOR THE COMMITTEE