

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 Sec. 1. LEGISLATIVE INTENT

8 It is the intent of the General Assembly that an initial forensic facility be  
9 authorized and operational beginning on July 1, 2024 in the nine-bed wing of  
10 the current Vermont Psychiatric Care Hospital. This wing shall be relicensed  
11 as a therapeutic community residence and shall provide a safe environment for  
12 both clients and staff. Any comingling of staff between the psychiatric  
13 hospital wings and the forensic facility shall be consistent with the  
14 requirements of any applicable collective bargaining agreements.

15 Sec. 2. CERTIFICATE OF NEED; EXCLUSION

16 Notwithstanding any law to the contrary, the Department of Mental Health  
17 and the Department of Disabilities, Aging, and Independent Living’s joint  
18 establishment of a nine-bed forensic facility within a wing of the existing  
19 Vermont Psychiatric Care Hospital is excluded from the certificate of need  
20 process prescribed in 18 V.S.A. chapter 221, subchapter 5.

21 Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

1           (a) On or before August 1, 2023, the Commissioner of Mental Health shall  
2           file an initial proposed rule amendment with the Secretary of State pursuant to  
3           3 V.S.A. 836(a)(2) to amend the Department of Mental Health, Rules for the  
4           Administration of Nonemergency Involuntary Psychiatric Medications (CVR  
5           13-150-11) for the purpose of allowing the administration of involuntary  
6           medication at a forensic facility.

7           (b) On or before September 1, 2023, the Commissioners of Mental Health  
8           and of Disabilities, Aging, and Independent Living shall begin to draft  
9           proposed amendments to Department of Disabilities, Aging, and Independent  
10           Living, Licensing and Operating Regulations for Therapeutic Community  
11           Residences (CVR 13-110-12) for the purposes of creating a forensic facility  
12           section of the rule that includes allowing the use of emergency involuntary  
13           procedures and the administration of involuntary medication.

14           Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

15           On or before February 1, 2024, the Agency of Human Services shall present  
16           the following information to the House Committees on Corrections and  
17           Institutions, on Health Care, on Human Services, and on Judiciary and to the  
18           Senate Committees on Health and Welfare, on Institutions, and on Judiciary:

19                   (1) a plan for staffing and programming at the forensic facility,  
20           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) whether any additional resources are needed for the operation of the  
4 forensic facility; and

5 (3) an assessment of laws, regulations, rules, and policies governing  
6 psychiatric hospitals and therapeutic community residences to determine  
7 whether there are any conflicts with serving two populations in the same  
8 facility.

9 Sec. 5. REPORT; FORENSIC FACILITY

10 Annually, on or before January 15 between 2025 and 2030, the Departments  
11 of Mental Health and of Disabilities, Aging, and Independent Living shall  
12 submit a report to the House Committees on Human Services and on Judiciary  
13 and to the Senate Committees on Health and Welfare and on Judiciary  
14 containing:

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

17 (2) the number of individuals waitlisted for the forensic facility and  
18 where these individuals receive treatment or programming while waiting for a  
19 bed at the forensic facility;

20 (3) aggregated demographic data about the individuals served at the  
21 forensic facility; and

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

3           Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO

4                   INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE  
5                   CRIMINAL-JUSTICE INVOLVED

6           (a) Creation. There is created the Working Group on Policies Pertaining to  
7           Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved.  
8           The Working Group shall assess whether a forensic level of care is needed for  
9           individuals with intellectual disabilities who are charged with a crime of  
10           violence against another person, have been determined incompetent to stand  
11           trial or adjudicated not guilty by reason of insanity, and are committed to the  
12           custody of the Commissioner of Disabilities, Aging, and Independent Living.  
13           If it is determined that forensic-level care is needed for such individuals, the  
14           Working Group shall propose legislation establishing the process and criteria  
15           for committing such individuals to a forensic facility. In developing  
16           legislation, the Working Group shall refer to earlier drafts of this act discussed  
17           by the General Assembly in 2023.

18           (b) Membership.

19           (1) The Working Group shall be composed of the following members:

20                   (A) a representative, appointed by the Disability Law Project of  
21           Vermont Legal Aid;

1           (B) a representative, appointed by the Developmental Disabilities

2           Council;

3           (C) a representative, appointed by the Green Mountain Self-

4           Advocates;

5           (D) a representative, appointed by Vermont Care Partners;

6           (E) a representative, appointed by the Vermont Crisis Intervention

7           Network;

8           (F) the Commissioner of Disabilities, Aging, and Independent Living

9           or designee;

10           (G) the Commissioner of Mental Health or designee;

11           (H) two members of the House of Representatives, one of whom is

12           from the House Committee on Human Services and one of whom is from the

13           House Committee on Judiciary, appointed by the Speaker; and

14           (I) two members of the Senate, one of whom is from the Senate

15           Committee on Health and Welfare and one of whom is from the Senate

16           Committee on Judiciary, appointed by the Committee on Committees.

17           (2) In completing its duties pursuant to this section, the Working Group,

18           to the extent feasible, shall consult with the following individuals:

19           (A) a psychologist with experience conducting competency

20           evaluations under 1987 Acts and Resolves No. 248;

1           (B) individuals with lived experience of a intellectual disability who  
2           have previous experience in the criminal justice system or civil commitment  
3           system, or both;

4           (C) family members of individuals with an intellectual disability who  
5           have experience in the criminal justice system or 1987 Acts and Resolves No.  
6           248;

7           (D) the Executive Director of the Department of State’s Attorneys  
8           and Sheriffs;

9           (E) the Defender General;

10           (F) a representative of the Center for Crime Victim Services;

11           (G) the Commissioner of Corrections;

12           (H) the State Program Standing Committee for Developmental  
13           Services; and

14           (I) the President of the Vermont State Employees’ Association.

15           (c) Powers and duties. The Working Group shall assess the need for a  
16           forensic level of care for individuals with an intellectual disability, including:

17           (1) the extent to which a forensic facility addresses any unmet needs or  
18           gaps in resources for individuals with intellectual disabilities;

19           (2) if the Working Group determines there is a need for individuals with  
20           an intellectual disability to receive programming in a forensic facility, the  
21           specific circumstances under which an individual committed to the custody of

1 the Commissioner of Disabilities, Aging, and Independent Living could be  
2 placed in a forensic facility;

3 (3) any amendments to 18 V.S.A. chapter 206, including amendments  
4 needed to ensure due process prior to and during the commitment process,  
5 regardless of whether the Working Group determines that a need for forensic-  
6 level care exists;

7 (4) the roles of Vermont Legal Aid, an ombudsman, or Disability Rights  
8 Vermont in serving individuals with intellectual disabilities placed in a  
9 forensic facility;

10 (5) necessary changes to 13 V.S.A. chapter 157; and

11 (6) investments, policies, and programmatic options for high-quality  
12 community-based supports for at-risk individuals committed to the custody of  
13 the Commissioner of Disabilities, Aging, and Independent Living.

14 (d) Assistance. The Working Group shall have the administrative,  
15 technical, and legal assistance of the Department of Disabilities, Aging, and  
16 Independent Living.

17 (e) Report. On or before December 1, 2023, the Working Group shall  
18 submit a written report to the House Committees on Human Services and on  
19 Judiciary and to the Senate Committees on Health Welfare and on Judiciary  
20 with its findings and any recommendations for legislative action, including  
21 proposed legislative language.

1        (f) Meetings.

2            (1) The representative of the Department of Disabilities, Aging, and  
3        Independent Living shall call the first meeting of the Working Group to occur  
4        on or before July 10, 2023.

5            (2) The Committee shall select a chair from among its members at the  
6        first meeting.

7            (3) A majority of the membership shall constitute a quorum.

8            (4) The Working Group shall cease to exist on July 1, 2024.

9        (g) Compensation and reimbursement.

10            (1) For attendance at meetings during adjournment of the General  
11        Assembly, a legislative member of the Working Group serving in the  
12        member's capacity as a legislator shall be entitled to per diem compensation  
13        and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 14  
14        meetings. These payments shall be made from monies appropriated to the  
15        General Assembly.

16            (2) Members of the Working Group not otherwise compensated for their  
17        participation in the Working Group shall be entitled to per diem compensation  
18        and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not  
19        more than 14 meetings. These payments shall be made from monies  
20        appropriated to the Department of Disabilities, Aging, and Independent Living.

21        (h) Definitions.



1           (1) As used in this section, “forensic facility” means a residential  
2 facility, licensed as a therapeutic community residence as defined in 33 V.S.A.  
3 § 7102(11), for an individual:

4                   (A) with a mental health condition or intellectual disability, if the  
5 General Assembly determines that commitment to a forensic facility is  
6 appropriate for an individual with an intellectual disability;

7                   (B) who is charged with a crime of violence against another person  
8 and the individual is assessed not competent to stand trial or was adjudicated  
9 not guilty by reason of insanity; and

10                  (C) who requires treatment or programming within a secure setting  
11 for an extended period of time.

12           (2) As used in this subsection, “secure” has the same meaning as in 18  
13 V.S.A. § 7620.

14                                   \* \* \* Effective Date \* \* \*

15           Sec. 7. EFFECTIVE DATE

16           This act shall take effect on passage.

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3 (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE