

S.89: An act relating to establishing a forensic facility

as Passed the Senate

* * * PURPOSE * * *

Sec. 1. Purpose

- 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 and that the initial facility will be a 9-bed unit at VPCH, which will be relicensed as a therapeutic community residence

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

Sec. 1a. 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. 2. Application for Involuntary Treatment (18 V.S.A. § 7612)

- Updates gender neutral language
- Adds subsec. (g): Requires Commissioner of MH to specify in the application for involuntary treatment if the Commissioner seeks to have the person treated in a forensic facility, including the reasons why this placement is clinically appropriate and why treatment can be provided safely only in a forensic facility

Sec. 3. Hearing on Application for Involuntary Treatment (18 V.S.A. § 7615)

- Adds a new subdiv. (a)(3) allowing the applicant or person for whom an order of nonhospitalization at a forensic facility is sought to file a motion for an expedited hearing
 - The court shall grant an expedited motion if it finds the person demonstrates a significant risk of causing the person or others serious bodily injury, and clinical interventions have failed to address the risk of harm to the person or others
 - The court may grant an expedited hearing if it finds the person has received involuntary medication in the past 2 years and based upon the person’s response to previous and ongoing treatment, there is good cause to believe that additional time will not result in regaining competence
- If the court grants an expedited hearing, it will occur within 3 days of the order; court may grant an extension to allow for a psychiatric exam

Sec. 4. Order; Nonhospitalization (18 V.S.A. § 7618)

- Adds a new subdiv. (a)(2): If the Commissioner of MH determines that treatment at a forensic facility is appropriate, and the court finds it is the least restrictive setting adequate to meet the individual's needs, the court shall issue an order for nonhospitalization at the forensic facility for 90 days; court may review need for treatment prior to expiration of the order

Sec. 5. 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

Sec. 6. 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. 7. 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 OR who has an application for involuntary treatment at a forensic facility pending for which the court has granted an expedited hearing

Sec. 8. 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 other, 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)

- 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
- Replaces language that cross-references sections repealed by this bill with a provision:
 - that judicial review procedures for an order issued under this section and for discharge from a commitment order must be in accordance with 18 V.S.A. § 8845 (judicial review)
 - 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

Sec. 10. Definitions (18 V.S.A. § 8839)

- Removes the definition of “danger of harm to others”
- Adds a definition of “Commissioner” and “Person in need of continued custody, care, and habilitation”
- Amends the definition of “Person in need of custody, care, and habilitation”

Sec. 11. Jurisdiction and Venue (18 V.S.A. § 8840)

Sec. 12. Petition; Procedures (18 V.S.A. § 8841)

Sec. 13. Hearing (18 V.S.A. § 8842)

Sec. 14. Findings and Order (18 V.S.A. § 8843)

Secs. 11-14 propose 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.

Sec. 15. 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

Sec. 16. Judicial Review (18 V.S.A. § 8845)

- Specifies that individuals committed to the custody of the Commissioner of DAIL under 13 V.S.A. § 4823 (insanity as a defense; persons with intellectual disability) may be discharged from custody after judicial review by a Superior judge in accordance with this subchapter
- Directs that at least 10 days prior to the effective date of any administrative order for discharge by the Commissioner that the Commissioner gives notice to the committing court and the State's attorney of the county where the prosecution occurred

* * * CERTIFICATE OF NEED * * *

Sec. 17. Exclusions

- Excludes a forensic facility supervised and operated by DMH or DAIL from certificate of need requirements

* * * RULEMAKING * * *

Sec. 18. Rulemaking; Admissions Criteria for Forensic Facility

- Directs the Secretary of Human Services, in consultation with DMH and DAIL, to initiate rulemaking by 7/1/23 specifying criteria that the Departments shall use to determine admission to a forensic facility and the process used by the Commissioners to determine appropriate admissions
- Admission criteria and processes must ensure that:
 - Individuals are served in the least restrictive setting necessary;
 - Individuals' treatment and programming needs dictate that the treatment or programming be provided at an intensive residential level in a forensic facility; and
 - Individuals only receive treatment and programming within a forensic facility if the individuals have demonstrated a significant risk of dangerousness
- Prohibits the Departments from admitting residents to a forensic facility prior to the adoption of a permanent rule

Sec. 19. Rulemaking; Conforming Amendments

- By 7/1/23, directs Commissioners of MH and of DAIL, to file initial proposed rule amendments that account for the establishment of the forensic facility with regard to the following rules:
 - 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
 - Rules for the Administration of Nonemergency Involuntary Psychiatric Medications (to allow the administration of involuntary medication at a forensic facility)

* * * PRESENTATION AND REPORT * * *

Sec. 20. Presentation; Forensic Facility Programming

- By 2/1/24, DMH and DAIL shall jointly present the following information to HHC/SHW:
 - A plan for staffing and programming;
 - A plan for joint management of the facility by the Departments; and
 - Whether additional resources are needed.

Sec. 21. Report; Forensic Facility

- Annually on 1/15 between 2025-2030, DMH/DAIL shall submit a joint report to HHC/SHW on:
 - Average daily census at the forensic facility;
 - # of individuals waitlisted, and where these individuals are receiving treatment or programming;
 - Aggregated demographic data about individuals served at the forensic facility; and
 - # and type of EIPs used at the forensic facility.

* * * EFFECTIVE DATES * * *

Sec. 22. Effective Dates

- Act takes effect 7/1/24, except Secs. 18 and 19 take effect on passage