

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 192 entitled “An act relating to forensic facility admissions criteria and
4 processes” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Purpose and Legislative Intent * * *

8 Sec. 1. PURPOSE AND LEGISLATIVE INTENT

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 as anticipated by the
12 passage of 2023 Acts and Resolves No. 27. It is the intent of the General
13 Assembly that an initial forensic facility be authorized and operational
14 beginning on July 1, 2024 in the nine-bed wing of the current Vermont
15 Psychiatric Care Hospital.

16 * * * Human Services Community Safety Panel * * *

17 Sec. 2. 3 V.S.A. § 3098 is added to read:

18 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

19 (a) There is hereby created the Human Services Community Safety Panel
20 within the Agency of Human Services. The Panel shall be designated as the

1 entity responsible for assessing the potential placement of individuals at a
2 forensic facility pursuant to 13 V.S.A. § 4821 for individuals who:

3 (1) present a significant risk of danger if not held in a secure setting; and

4 (2)(A) are charged with a crime for which there is no right to bail
5 pursuant to 13 V.S.A. §§ 7553 and 7553a; or

6 (B) were charged with a crime for which bail is not available and
7 adjudicated not guilty by reason of insanity.

8 (b)(1) The Panel shall comprise the following members:

9 (A) the Secretary of Human Services;

10 (B) the Commissioner of Mental Health;

11 (C) the Commissioner of Disabilities, Aging, and Independent
12 Living; and

13 (D) the Commissioner of Corrections.

14 (2) The Panel shall have the technical, legal, fiscal, and administrative
15 support of the Agency of Human Services and the Departments of Mental
16 Health; of Disabilities, Aging, and Independent Living; and of Corrections.

17 (c) As used in this section, “forensic facility” has the same meaning as in
18 18 V.S.A. § 7101.

19 Sec. 3. 13 V.S.A. § 4821 is amended to read:

20 § 4821. NOTICE OF HEARING; PROCEDURES

1 (a) The person who is the subject of the proceedings, ~~his or her~~, the
2 person’s attorney; the legal guardian, if any; the Commissioner of Mental
3 Health or the Commissioner of Disabilities, Aging, and Independent Living;
4 and the State’s Attorney or other prosecuting officer representing the State in
5 the case shall be given notice of the time and place of a hearing under
6 section 4820 of this title. Procedures for hearings for persons with a mental
7 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
8 for persons with an intellectual disability shall be as provided in 18 V.S.A.
9 chapter 206, subchapter 3.

10 (b)(1) Once a report concerning competency or sanity is completed or
11 disclosed to the opposing party, the Human Services Community Safety Panel
12 established in 3 V.S.A. § 3098 may conduct a review on its own initiative
13 regarding whether placement of the person who is the subject of the report is
14 appropriate in a forensic facility. The review shall inform either the
15 Commissioner of Mental Health’s or Commissioner of Disabilities, Aging, and
16 Independent Living’s decision as to whether to seek placement of the person in
17 a forensic facility.

18 (2)(A) If the Panel does not initiate its own review, a party to a hearing
19 under section 4820 of this chapter may file a written motion to the court
20 requesting that the Panel conduct a review within seven days after receiving a

1 report under section 4816 of this chapter or within seven days after being
2 adjudicated not guilty by reason of insanity.

3 (B) A motion filed pursuant to this subdivision (2) shall specify that
4 the person who is the subject of the proceedings is charged with a crime for
5 which there is no right to bail pursuant to sections 7553 and 7553a of this title,
6 and may include a person adjudicated not guilty by reason of insanity, and that
7 the person presents a significant risk of danger to themselves or the public if
8 not held in a secure setting.

9 (C) The court shall rule on a motion filed pursuant to this subdivision
10 (2) within five days. A Panel review ordered pursuant to this subdivision (2)
11 shall be completed and submitted to the court at least three days prior to a
12 hearing under section 4820 of this title.

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

16 (1) clinical factors, including:

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

19 (B) that the person’s treatment and programming needs dictate that
20 the treatment or programming be provided at an intensive residential level; and

21 (2) dangerousness factors, including:

1 (A) whether the person has inflicted or attempted to inflict serious
2 bodily injury on another, attempted suicide or serious self-injury, or committed
3 an act that would constitute sexual conduct with a child as defined in section
4 2821 of this title or lewd and lascivious conduct with a child as provided in
5 section 2602 of this title, and there is reasonable probability that the conduct
6 will be repeated if admission to a forensic facility is not ordered;

7 (B) whether the person has threatened to inflict serious bodily injury
8 to the person or others and there is reasonable probability that the conduct will
9 occur if admission to a forensic facility is not ordered;

10 (C) whether the results of any applicable evidence-based violence
11 risk assessment tool indicates that the person’s behavior is deemed a
12 significant risk to others;

13 (D) the position of the parties to the criminal case as well as that of
14 any victim as defined in subdivision 5301(4) of this title; and

15 (E) any other factors the Human Services Community Safety Panel
16 determines to be relevant to the assessment of risk.

17 (d) As used in this chapter, “forensic facility” has the same meaning as in
18 18 V.S.A. § 7101.

1 (a) An interested party may, by filing a written application, commence
2 proceedings for the involuntary treatment of an individual by judicial process.

3 (b) The application shall be filed in the Family Division of the Superior
4 Court.

5 (c) If the application is filed under section 7508 or 7620 of this title, it shall
6 be filed in the unit of the Family Division of the Superior Court in which the
7 hospital is located. In all other cases, it shall be filed in the unit in which the
8 proposed patient resides. In the case of a nonresident, it may be filed in any
9 unit. The court may change the venue of the proceeding to the unit in which
10 the proposed patient is located at the time of the trial.

11 (d) The application shall contain:

12 (1) The name and address of the applicant.

13 (2) A statement of the current and relevant facts upon which the
14 allegation of mental illness and need for treatment is based. The application
15 shall be signed by the applicant under penalty of perjury.

16 (e) The application shall be accompanied by:

17 (1) a certificate of a licensed physician, which shall be executed under
18 penalty of perjury stating that the physician has examined the proposed patient
19 within five days after the date the petition is filed and is of the opinion that the
20 proposed patient is a person in need of treatment, including the current and

1 relevant facts and circumstances upon which the physician’s opinion is based;
2 or

3 (2) a written statement by the applicant that the proposed patient refused
4 to submit to an examination by a licensed physician.

5 (f) Before an examining physician completes the certificate of examination,
6 ~~he or she~~ the examining physician shall consider available alternative forms of
7 care and treatment that might be adequate to provide for the person’s needs
8 without requiring hospitalization. The examining physician shall document on
9 the certificate the specific alternative forms of care and treatment that ~~he or she~~
10 the examining physician considered and why those alternatives were deemed
11 inappropriate, including information on the availability of any appropriate
12 alternatives.

13 (g) If the Commissioner seeks to have a person receive treatment in a
14 forensic facility pursuant to an order of nonhospitalization, the application for
15 an order authorizing treatment shall expressly state that such treatment is being
16 sought. The application shall contain, in addition to the statements required by
17 this section, a statement setting forth the reasons for the Commissioner’s
18 determination that clinically appropriate treatment for the person’s condition
19 can be provided safely only in a forensic facility, including the
20 recommendation of the Human Services Community Safety Panel pursuant to
21 13 V.S.A. § 4821.

1 Sec. 6. 18 V.S.A. § 7615 is amended to read:

2 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY

3 TREATMENT

4 (a)(1) Upon receipt of the application, the court shall set a date for the
5 hearing to be held within 10 days from the date of the receipt of the application
6 or 20 days from the date of the receipt of the application if a psychiatric
7 examination is ordered under section 7614 of this title unless the hearing is
8 continued by the court pursuant to subsection (b) of this section.

9 (2)(A) The applicant or a person who is certified as a person in need of
10 treatment pursuant to section 7508 of this title may file a motion to expedite
11 the hearing. The motion shall be supported by an affidavit, and the court shall
12 rule on the motion on the basis of the filings without holding a hearing. The
13 court:

14 (i) shall grant the motion if it finds that the person demonstrates a
15 significant risk of causing the person or others serious bodily injury as defined
16 in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have
17 failed to address the risk of harm to the person or others; or

18 (ii) may grant the motion if it finds that the person has received
19 involuntary medication pursuant to section 7624 of this title during the past
20 two years and, based upon the person's response to previous and ongoing
21 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 (2), the hearing shall be held within 10 days from the date of
5 the order for expedited hearing.

6 (3)(A) The applicant or a person for whom an order of
7 nonhospitalization at a forensic facility is sought may file a motion to expedite
8 the hearing. The motion shall be supported by an affidavit. The court:

9 (i) shall grant the motion if it finds that the person demonstrates a
10 significant risk of causing the person or others serious bodily injury as defined
11 in 13 V.S.A. § 1021 even while in custody, and clinical interventions have
12 failed to address the risk of harm to the person or others; or

13 (ii) may grant the motion if it finds that the person has received
14 involuntary medication pursuant to section 7624 of this title during the past
15 two years and, based upon the person’s response to previous and ongoing
16 treatment, there is good cause to believe that additional time will not result in
17 the person establishing a therapeutic relationship with providers or regaining
18 competence.

19 (B) If the court grants the motion for expedited hearing pursuant to
20 this subdivision (3), the hearing shall be held within three days from the date of
21 the order for expedited hearing. The court may grant an extension of not more

1 than five days to allow for a psychiatric examination in accordance with
2 section 7614 of this title.

3 (4) If a hearing on the application for involuntary treatment has not
4 occurred within 60 days from the date of the court’s receipt of the application,
5 the Commissioner shall request that the court and both parties’ attorneys
6 provide the reasons for the delay. The Commissioner shall submit a report to
7 the court, the Secretary of Human Services, and the patient’s attorney that
8 either explains why the delay was warranted or makes recommendations as to
9 how delays of this type can be avoided in the future.

10 * * *

11 Sec. 7. 18 V.S.A. § 7618 is amended to read:

12 § 7618. ORDER; NONHOSPITALIZATION

13 (a)(1) If the court finds that a treatment program other than hospitalization
14 is adequate to meet the person’s treatment needs, the court shall order the
15 person to receive whatever treatment other than hospitalization is appropriate
16 for a period of 90 days.

17 (2) If the Commissioner determines that treatment at a forensic facility
18 is appropriate, and the court finds that treatment at a forensic facility is the
19 least restrictive setting adequate to meet the person’s needs, the court shall
20 order the person to receive treatment there for a period of 90 days. The court

1 may at any time, on its own motion or on motion of an interested party, review
2 the need for treatment at the forensic facility.

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

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

10 (2) enter a new order directing that the patient be hospitalized for the
11 remainder of the 90-day period.

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

13 § 7620. APPLICATION FOR CONTINUED TREATMENT

14 (a) If, prior to the expiration of any order issued in accordance with section
15 7623 of this title, the Commissioner believes that the condition of the patient is
16 such that the patient continues to require treatment, the Commissioner shall
17 apply to the court for a determination that the patient is a patient in need of
18 further treatment and for an order of continued treatment.

19 (b) An application for an order authorizing continuing treatment shall
20 contain a statement setting forth the reasons for the Commissioner’s
21 determination that the patient is a patient in need of further treatment, a

1 statement describing the treatment program provided to the patient, and the
2 results of that course of treatment.

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

5 (d) If the Commissioner seeks to have the patient receive the further
6 treatment in a forensic facility or secure residential recovery facility, the
7 application for an order authorizing continuing treatment shall expressly state
8 that such treatment is being sought. The application shall contain, in addition
9 to the statements required by subsection (b) of this section, a statement setting
10 forth the reasons for the Commissioner’s determination that clinically
11 appropriate treatment for the patient’s condition can be provided safely only in
12 a secure residential recovery facility or forensic facility, as appropriate. An
13 application for continued treatment in a forensic facility shall include the
14 recommendation of the Human Services Community Safety Panel pursuant to
15 13 V.S.A. § 4821.

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 that
9 is a designated facility pursuant to section 7628 of this title and for whom the
10 Departments of Corrections and of Mental Health have determined jointly that
11 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 is a person in need of treatment; ~~or~~

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

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

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

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

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

20 (2) If the application for involuntary medication is filed pursuant to
21 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 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 10 days 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.

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~~ Commitment procedures for an order initially issued
14 pursuant to subsection (a) of this section and for discharge from an order of
15 commitment or continued commitment shall occur in accordance with 18
16 V.S.A. §§ 8845–8847.

17 (c)(1) ~~Section 4822 of this title shall apply to persons proposed for~~
18 ~~discharge under this section; however, judicial proceedings shall be conducted~~
19 ~~in the Criminal Division of the Superior Court in which the person then~~
20 ~~resides, unless the person resides out of State in which case the proceedings~~
21 ~~shall be conducted in the original committing court~~ In accordance with 18

1 V.S.A. § 8845, if the Commissioner seeks to have a person committed
2 pursuant to this section placed in a forensic facility, the Commissioner shall
3 provide a statement setting forth the reasons for the Commissioner’s
4 determination that clinically appropriate treatment and programming can be
5 provided safely only in a forensic facility, including the recommendation of the
6 Human Services Community Safety Panel pursuant to section 4821 of this title.

7 (2) As used in this subchapter, “forensic facility” has the same meaning
8 as in 18 V.S.A. § 7101.

9 Sec. 13. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

10 Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability

11 Who Present a Danger of Harm to Others

12 § 8839. DEFINITIONS

13 As used in this subchapter:

14 (1) ~~“Danger of harm to others” means the person has inflicted or~~
15 ~~attempted to inflict serious bodily injury to another or has committed an act~~
16 ~~that would constitute a sexual assault or lewd or lascivious conduct with a~~
17 ~~child~~ “Commissioner” means the Commissioner of Disabilities, Aging, and
18 Independent Living.

19 (2) “Designated program” means a program designated by the
20 Commissioner as adequate to provide in an individual manner appropriate

1 custody, care, and habilitation to persons with intellectual disabilities receiving
2 services under this subchapter.

3 (3) “Forensic facility” has the same meaning as in section 7101 of this
4 title.

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

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

9 (B) who ~~presents a danger of harm to others~~ has inflicted or
10 attempted to inflict serious bodily injury to another or who has committed an
11 act that would constitute sexual conduct with a child as defined in section 2821
12 of this title or lewd and lascivious conduct with a child as provided in section
13 2602 of this title; and

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

16 (5) “Person in need of continued custody, care, and habilitation” means
17 a person who was previously found to be a person in need of custody, care, and
18 habilitation who poses a danger of harm to others and for whom the
19 Commissioner has, in the Commissioner’s discretion, consented to or approved
20 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 (6) “Victim” has the same meaning as in 13 V.S.A. § 5301(4).

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 § 8841. ~~PETITION; PROCEDURES~~

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

1 § 8842. HEARING

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

4 § 8843. FINDINGS AND ORDER

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

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

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

14 § 8844. LEGAL COMPETENCE

15 No determination that a person is in need of custody, care, and habilitation
16 or in need of continued custody, care, and habilitation and no order authorizing
17 commitment shall lead to a presumption of legal incompetence.

18 § 8845. ~~JUDICIAL REVIEW~~ INITIAL ORDER FOR CUSTODY,
19 CARE, AND HABILITATION

20 ~~(a)(1) A person committed under this subchapter may be discharged from~~
21 ~~custody by a Superior judge after judicial review as provided herein or by~~

1 ~~administrative order of the Commissioner~~ If a person is found incompetent to
2 stand trial pursuant to 13 V.S.A. § 4820, the Criminal Division of the Superior
3 Court shall automatically schedule a hearing to determine whether the person
4 is a person in need of custody, care, and habilitation and requiring
5 commitment.

6 (2) The Commissioner’s recommendation that a person be placed in a
7 forensic facility, if applicable, shall be filed with the court in advance of the
8 commitment hearing and shall:

9 (A) expressly state the reasons for the Commissioner’s determination
10 that clinically appropriate treatment and programming can be provided safely
11 only in a forensic facility; and

12 (B) include the recommendation of the Human Services Community
13 Safety Panel pursuant to 13 V.S.A. § 4821.

14 (b) ~~Procedures for judicial review of persons committed under this~~
15 ~~subchapter shall be as provided in section 8834 of this title, except that~~
16 ~~proceedings shall be brought in the Criminal Division of the Superior Court in~~
17 ~~the unit in which the person resides or, if the person resides out of state, in the~~
18 ~~unit that issued the original commitment order~~ The Commissioner or designee
19 shall attend a commitment hearing for custody, care, and habilitation and be
20 available to testify. All persons to whom notice is given may attend the

1 commitment hearing and testify, except that the court may exclude those
2 persons not necessary for the conduct of the hearing.

3 ~~(c) A person committed under this subchapter shall be entitled to a judicial~~
4 ~~review annually. If no such review is requested by the person, it shall be~~
5 ~~initiated by the Commissioner. However, such person may initiate a judicial~~
6 ~~review under this subsection after 90 days after initial commitment but before~~
7 ~~the end of the first year of the commitment~~ The Vermont rules of evidence and
8 procedure applicable in civil cases shall apply in all judicial proceedings
9 brought under this subchapter.

10 ~~(d) If at the completion of the hearing and consideration of the record, the~~
11 ~~court finds at the time of the hearing that the person is still in need of custody,~~
12 ~~care, and habilitation, commitment shall continue for an indefinite or limited~~
13 ~~period. If the court finds at the time of the hearing that the person is no longer~~
14 ~~in need of custody, care, and habilitation, it shall discharge the person from the~~
15 ~~eustody of the Commissioner. An order of discharge may be conditional or~~
16 ~~absolute and may have immediate or delayed effect. If the court finds by clear~~
17 and convincing evidence that the person is a person in need of custody, care,
18 and habilitation, the court shall order that the person be committed to the
19 Commissioner and receive appropriate treatment and programming in a
20 designated program that provides the least restrictive environment consistent

1 with the person’s need for custody, care, and habilitation for an indefinite or
2 limited period.

3 (e) If the Commissioner has recommended to the court that a person be
4 placed in a forensic facility, the court, after determining that the person is a
5 person in need of custody, care, and habilitation, shall determine whether
6 placement at a forensic facility is both appropriate and the least restrictive
7 setting adequate to meet the person’s needs. If so determined, the court shall
8 order the person placed in a forensic facility for a term not to exceed the
9 duration of the initial commitment order.

10 § 8846. PETITION AND ORDER FOR CONTINUED CUSTODY, CARE,
11 AND HABILITATION

12 (a)(1) At least annually, the Commissioner shall initiate a judicial review in
13 the Family Division of the Superior Court as to whether a person initially
14 committed pursuant to 13 V.S.A. § 4823 is a person in need of continued
15 custody, care, and habilitation. The Commissioner shall, by filing a written
16 petition, commence proceedings for the continued custody, care, and
17 habilitation of a person. The petition shall include:

18 (A) the name and address of the person alleged to need continued
19 custody, care, and habilitation; and

1 (B) a statement of the current and relevant facts upon which the
2 person’s alleged need for continued custody, care, and habilitation is
3 predicated.

4 (2) Notwithstanding subdivision (1) of this subsection, a person may
5 initiate a judicial review under this subchapter at any time after 90 days
6 following an initial order of commitment.

7 (3) If the Commissioner seeks placement for the person alleged to need
8 continued custody, care, and habilitation at a forensic facility, the petition for
9 continued custody, care, and habilitation shall:

10 (A) expressly state the reasons for the Commissioner’s determination
11 that clinically appropriate treatment and programming can be provided safely
12 only in a forensic facility; and

13 (B) include [a recent] recommendation of the Human Services
14 Community Safety Panel pursuant to 13 V.S.A. § 4821.

15 (b) Upon receipt of the petition, the court shall set a date for the hearing
16 [time frame?], which shall be held in accordance with subsections 8845 (b) and
17 (c) of this subchapter.

18 (c)(1) If at the completion of the hearing and consideration of the record,
19 the court finds by clear and convincing evidence that at the time of the hearing
20 that the person is still in need of continued custody, care, and habilitation,
21 commitment shall continue in a designated program in the least restrictive

1 environment consistent with the person’s need for continued custody, care, and
2 habilitation for an indefinite or limited period. If the court finds at the time of
3 the hearing that the person is no longer in need of continued custody, care, and
4 habilitation, it shall discharge the person from the custody of the
5 Commissioner in accordance with section 8847 of this subchapter. In
6 determining whether a person is a person in need of continued custody, care,
7 and habilitation, the court shall consider the degree to which the person has
8 previously engaged in or complied with the treatment and programming
9 provided by the Commissioner.

10 (2) In a petition in which placement at a forensic facility is sought, a
11 court shall first determine whether an order for continued custody, care, and
12 habilitation is appropriate. If the court grants the petition for continued
13 custody, care, and habilitation, it shall then determine whether placement at a
14 forensic facility is appropriate and the least restrictive setting adequate to meet
15 the person’s needs. If so determined, the court shall order the person placed in
16 a forensic facility for a term not exceed the duration of the order for continued,
17 custody, care, and habilitation.

18 § 8847. DISCHARGE FROM COMMITMENT OR PLACEMENT IN A

19 FORENSIC FACILITY

1 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
2 discharged from an order of custody, care, and habilitation; an order of
3 continued custody, care, and habilitation; or placement at a forensic facility by:

4 (1) a Family Division Superior judge after judicial review pursuant to
5 subsection (b) of this section; or

6 (2) administrative order of the Commissioner pursuant to subsection (c)
7 of this section.

8 (b)(1) A person under a commitment order for custody, care, and
9 habilitation under 13 V.S.A. § 4823 or a commitment order for continued
10 custody, care, and habilitation under this subchapter shall be entitled to a
11 judicial review of the person’s need for continued custody, care, and
12 habilitation pursuant to section 8846 of this subchapter. If the court finds that
13 the person is not a person in need of custody, care, and habilitation or
14 continued custody, care, and habilitation, the person shall be discharged from
15 the custody of the Commissioner. A judicial order of discharge may be
16 conditional or absolute and may have immediate or delayed effect.

17 (2)(A) In reviewing the placement of a person receiving treatment and
18 programming at a forensic facility, the court may determine that while the
19 placement at a forensic facility is no longer appropriate or that the setting is no
20 longer the least restrictive setting adequate to meet the person’s needs, the
21 person is still a person in need of continued custody, care, and habilitation. In

1 this instance, the court shall discharge the person from placement at the
2 forensic facility while maintaining the person’s order of commitment or
3 continued commitment.

4 (B) When a person subject to judicial review pursuant to this
5 subsection (b) is receiving treatment or programming at a forensic facility,
6 either the State’s attorney of the county where the person’s prosecution
7 originated, or the Office of the Attorney General if that office prosecuted the
8 person’s case, or the victim, or both, may intervene to provide a position as to
9 whether the person’s discharge from placement at the forensic facility is
10 appropriate [FROM HJ DRAFT].

11 (c)(1)(A) If the Commissioner determines that a person is no longer a
12 person in need of custody, care, and habilitation or of continued custody, care,
13 and habilitation, the Commissioner shall issue an administrative order for
14 discharge of commitment. An administrative order for discharge from
15 commitment may be conditional or absolute and may have immediate or
16 delayed effect. At least 10 days prior to the effective date of any
17 administrative order for discharge by the Commissioner from commitment, the
18 Commissioner shall give notice of the pending discharge to the committing
19 court and to either the State’s Attorney of the county where the prosecution
20 originated or to the Office of the Attorney General if that Office prosecuted the
21 case.

1 (B) In reviewing the placement of a person receiving treatment and
2 programming at a forensic facility, the Commissioner may determine that
3 while the placement at a forensic facility is no longer appropriate or that the
4 setting is no longer the least restrictive setting adequate to meet the person’s
5 needs, the person is still a person in need of continued custody, care, and
6 habilitation. In this instance, the Commissioner shall discharge the person
7 from placement at the forensic facility while maintaining the person’s order of
8 commitment or continued commitment.

9 (2)(A) When a person subject to administrative discharge pursuant to
10 this subsection (c) is receiving treatment and programming at a forensic
11 facility, the State’s Attorney or Office of the Attorney General shall provide
12 notice of the pending administrative discharge from placement at a forensic
13 facility and from commitment, if applicable, to any victim of the offense for
14 which the person has been charged who has not opted out of receiving notice
15 [FROM HJ DRAFT].

16 (B) If entitled to appear and call witnesses in the underlying criminal
17 case, the State’s Attorney or the Office of the Attorney General, or the victim,
18 or both, may request a hearing on the person’s pending administrative
19 discharge from the person’s placement at a forensic facility, which shall be
20 heard 10 days after the request. Once the hearing is requested, the pending

1 administrative discharge shall be stayed until reviewed by the court [FROM HJ
2 DRAFT].

3 (d) Whenever a person is subject to a judicial or administrative discharge
4 from **commitment**, the Criminal Division of the Superior Court shall retain
5 jurisdiction over the person’s underlying charge and any orders holding the
6 person without bail or concerning bail and conditions of release shall remain in
7 place. Those orders shall be placed on hold while a person is in the **custody,**
8 **care, and habilitation of the Commissioner.** When a person is discharged **from**
9 **the Commissioner’s custody, care, and habilitation** to a correctional facility,
10 the custody of the Commissioner shall cease when the person enters the
11 correctional facility [FROM HJ DRAFT].

12 § ~~8846~~ 8848. RIGHT TO COUNSEL

13 Persons subject to commitment or ~~judicial review~~ continued commitment
14 under this subchapter shall have a right to counsel as provided in section 7111
15 of this title.

16 *** * * Competency Examination * * ***

17 **Sec. 14. 13 V.S.A. § 4814 is amended to read:**

18 **§ 4814. ORDER FOR EXAMINATION OF COMPETENCY**

19 *** * ***

20 **(d) Notwithstanding any other provision of law, an examination ordered**
21 **pursuant to subsection (a) of this section may be conducted by a doctoral-level**

1 psychologist trained in forensic psychology and licensed under 26 V.S.A.

2 chapter 55. This subsection shall be repealed on July 1, 2024.

3 * * *

4 * * * Fiscal Estimate of Competency Restoration Program * * *

5 Sec. 15. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
6 ESTIMATE

7 On or before November 1, 2024, the Agency of Human Services shall
8 submit a report to the House Committees on Appropriations, on Health Care,
9 and on Human Services and to the Senate Committees on Appropriations and
10 on Health and Welfare that provides a fiscal estimate for the implementation of
11 a competency restoration program operated or under contract with the
12 Department of Mental Health. The estimate shall include:

13 (1) varying options dependent upon which underlying charges are
14 eligible for court-ordered competency restoration; and

15 (2) costs associated with establishing a residential program where court-
16 ordered competency restoration programming may be performed on an
17 individual who is neither in the custody of the Commissioner of Mental Health
18 pursuant to 13 V.S.A. § 4822, nor in the custody of the Commissioner of
19 Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

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* * * Rulemaking * * *

Sec. 16. RULEMAKING; CONFORMING AMENDMENTS

On or before April 1, 2024, the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living, respectively, shall file initial proposed rule amendments with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and Independent Living, Licensing and Operating Regulations for Therapeutic Community Residences (CVR 13-110-12) for the purpose of creating a forensic facility section of the rule that includes allowing the use of emergency involuntary procedures and the administration of involuntary medication at a forensic facility.

* * * Effective Dates * * *

Sec. 17. EFFECTIVE DATES

This section and Sec. 16 (rulemaking; conforming amendments) shall take effect on passage. All remaining sections shall take effect on January 1, 2025.

1

2 (Committee vote: _____)

3

4

Senator _____

5

FOR THE COMMITTEE