Journal of the Senate

WEDNESDAY, MARCH 29, 2023

The Senate was called to order by the President.

Devotional Exercises

Devotional exercises were conducted by the Reverend Tom Harty of Bethel.

Message from the House No. 35

A message was received from the House of Representatives by Ms. Alona Tate, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed House bills of the following titles:

H. 66. An act relating to paid family and medical leave insurance.

H. 126. An act relating to community resilience and biodiversity protection.

H. 127. An act relating to sports wagering.

H. 157. An act relating to the Vermont basic needs budget.

H. 165. An act relating to school food programs and universal school meals.

H. 481. An act relating to public health initiatives to address death by suicide.

H. 482. An act relating to Vermont Criminal Justice Council recommendations for law enforcement officer training.

In the passage of which the concurrence of the Senate is requested.

Bills Referred

House bills of the following titles were severally read the first time and referred:

H. 66.

An act relating to paid family and medical leave insurance.

To the Committee on Economic Development, Housing and General Affairs.

H. 126.

An act relating to community resilience and biodiversity protection.

To the Committee on Natural Resources and Energy.

H. 127.

An act relating to sports wagering.

To the Committee on Economic Development, Housing and General Affairs.

H. 157.

An act relating to the Vermont basic needs budget.

To the Committee on Economic Development, Housing and General Affairs.

H. 165.

An act relating to school food programs and universal school meals.

To the Committee on Education.

H. 481.

An act relating to public health initiatives to address death by suicide.

To the Committee on Health and Welfare.

H. 482.

An act relating to Vermont Criminal Justice Council recommendations for law enforcement officer training.

To the Committee on Government Operations.

Bill Amended; Third Reading Ordered

S. 89.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to establishing a forensic facility.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Admission to Forensic Facility for Persons in Need of Treatment or Continued Treatment * * *

Sec. 1. 18 V.S.A. § 7101 is amended to read:

§ 7101. DEFINITIONS

As used in this part of this title, the following words, unless the context otherwise requires, shall have the following meanings:

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(31)(A) "Forensic facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual initially committed pursuant to:

(i) 13 V.S.A. § 4822 who is in need of treatment or further treatment pursuant to chapter 181 of this title within a secure setting for an extended period of time; or

(ii) 13 V.S.A. § 4823 who is in need of custody, care, and habilitation pursuant to chapter 206 of this title, within a secure setting for an extended period of time.

(B) A forensic facility shall not be used for any purpose other than the purposes permitted by this part or chapter 206 of this title. As used in this subdivision, "secure" has the same meaning as in section 7620 of this title.

Sec. 2. 18 V.S.A. § 7612 is amended to read:

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

(d) The application shall contain:

(1) The name and address of the applicant.

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

(e) The application shall be accompanied by:

(1) a certificate of a licensed physician, which shall be executed under penalty of perjury stating that ~~he or she~~ the licensed physician has examined the proposed patient within five days ~~of~~ from the date the petition is filed and is of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances upon which the physician's opinion is based; or

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

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

(g) If the Commissioner seeks to have a person receive treatment in a forensic facility pursuant to an order of nonhospitalization, the application for an order authorizing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by this section, a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment for the person's condition can be provided safely only in a forensic facility.

Sec. 3. 18 V.S.A. § 7615 is amended to read:

§ 7615. HEARING ON APPLICATION FOR INVOLUNTARY TREATMENT

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

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a motion to expedite the hearing. The motion shall be supported by an affidavit, and the court shall

rule on the motion on the basis of the filings without holding a hearing. The court:

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

(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two 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 the person establishing a therapeutic relationship with providers or regaining competence.

(B) If the court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within ten days from the date of the order for expedited hearing.

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

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

(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two 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 the person establishing a therapeutic relationship with providers or regaining competence.

(B) If the court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within three days from the date of the order for expedited hearing. The court may grant an extension of not more than five days to allow for a psychiatric examination in accordance with section 7614 of this title.

(4) If a hearing on the application for involuntary treatment has not occurred within 60 days from the date of the court's receipt of the application, the Commissioner shall request that the court and both parties' attorneys provide the reasons for the delay. The Commissioner shall submit a report to the court, the Secretary of Human Services, and the patient's attorney that either explains why the delay was warranted or makes recommendations as to

how delays of this type can be avoided in the future.

* * *

Sec. 4. 18 V.S.A. § 7618 is amended to read:

§ 7618. ORDER; NONHOSPITALIZATION

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

(2) If the Commissioner determines that treatment at a forensic facility is appropriate, and the court finds that treatment at a forensic facility is the least restrictive setting adequate to meet the person's needs, the court shall order the person to receive treatment there for a period of 90 days. The court may at any time, on its own motion or on motion of an interested party, review the need for treatment at the forensic facility.

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

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

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

Sec. 5. 18 V.S.A. § 7620 is amended to read:

§ 7620. APPLICATION FOR CONTINUED TREATMENT

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

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

(c) Any order of treatment issued in accordance with section 7623 of this

title shall remain in force pending the court's decision on the application.

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

(e) As used in this chapter:

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

(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.

Sec. 6. 18 V.S.A. § 7621 is amended to read:

§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT; ORDERS

* * *

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

* * *

Sec. 7. 18 V.S.A. § 7624 is amended to read:

§ 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

receiving treatment.

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

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

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

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

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

* * *

Sec. 8. 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 the 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. 9. 13 V.S.A. § 4823 is amended to read:

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

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

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

(c)(1) ~~Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then resides, unless the person resides out of State in which case the proceedings shall be conducted in the original committing court~~ If the Commissioner seeks to have a person committed pursuant to this section placed in a forensic facility, the Commissioner shall provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility.

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

Sec. 10. 18 V.S.A. § 8839 is amended to read:

§ 8839. DEFINITIONS

As used in this subchapter:

(1) ~~"Danger of harm to others" means the person has inflicted or~~

~~attempted to inflict serious bodily injury to another or has committed an act that would constitute a sexual assault or lewd or lascivious conduct with a child~~ "Commissioner" means the Commissioner of Disabilities, Aging, and Independent Living.

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

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

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

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

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

(4) "Person in need of continued custody, care, and habilitation" means a person who was previously found to be a person in need of custody, care, and habilitation who poses a danger of harm to others and for whom the Commissioner has, in the Commissioner's discretion, consented to or approved the continuation of the designated program. A danger of harm to others shall be shown by establishing that, in the time since the last order of commitment was issued, the person:

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

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

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

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

§ 8840. ~~JURISDICTION AND VENUE~~

~~Proceedings brought under this subchapter for commitment to the Commissioner for custody, care, and habilitation shall be commenced by~~

~~petition in the Family Division of the Superior Court for the unit in which the respondent resides.~~ [Repealed.]

Sec. 12. 18 V.S.A. § 8841 is amended to read:

§ 8841. ~~PETITION; PROCEDURES~~

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

Sec. 13. 18 V.S.A. § 8842 is amended to read:

§ 8842. ~~HEARING~~

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

Sec. 14. 18 V.S.A. § 8843 is amended to read:

§ 8843. ~~FINDINGS AND ORDER~~

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

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

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

Sec. 15. 18 V.S.A. § 8844 is amended to read:

§ 8844. LEGAL COMPETENCE

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

Sec. 16. 18 V.S.A. § 8845 is amended to read:

§ 8845. JUDICIAL REVIEW

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

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

~~(c)~~ A person committed under 13 V.S.A. § 4823 or this subchapter shall be entitled to a judicial review of the person's need for commitment annually. The Family Division of the Superior Court shall have exclusive jurisdiction over all judicial review proceedings brought under this section. If no ~~such~~ judicial review is requested by the person within one year from the date of the last order of commitment, it shall be initiated by the Commissioner. However, such person may initiate a judicial review under this subsection after 90 days of initial commitment but before the end of the first year of the commitment, or if commitment has been continued under this subchapter, the person may petition for review after 90 days from the date of an order for continued commitment.

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

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

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

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

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

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

* * * Certificate of Need * * *

Sec. 17. 18 V.S.A. § 9435 is amended to read:

§ 9435. EXCLUSIONS

* * *

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

* * * Rulemaking * * *

Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC FACILITY

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

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

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

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

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

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

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

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

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

Sec. 19. RULEMAKING; CONFORMING AMENDMENTS

On or before July 1, 2023, 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. § 826(a)(2) to account for the establishment of the forensic facility:

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

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

* * * Effective Dates * * *

Sec. 20. EFFECTIVE DATES

This section and Secs. 18 (rulemaking; admissions criteria for forensic facility) and 19 (rulemaking; conforming amendments) shall take effect on passage. All remaining sections shall take effect on July 1, 2024.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment by the Committee on Judiciary was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senators Lyons, Gulick, Hardy, Weeks and Williams moved to amend the bill as follows:

First: By inserting a new reader assistance heading and Sec. 1 to read as follows:

* * * Purpose * * *

Sec. 1. PURPOSE

It is the purpose of this act to enable the Commissioners of Mental Health and of Disabilities, Aging, and Independent Living to seek treatment and programming for certain individuals in a forensic facility. An initial forensic facility shall be located in the nine-bed unit of the current Vermont Psychiatric Care Hospital. This unit shall be relicensed as a therapeutic community residence.

and by renumbering the existing Sec. 1 to be Sec. 1a

Second: In Sec. 8, 18 V.S.A. § 7627, subsection (o), in the first sentence, by striking out the word "the" after the phrase "the court may"

Third: By inserting a reader assistance heading and new Secs. 20 and 21 after Sec. 19 to read as follows:

* * * Presentation and Report * * *

Sec. 20. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

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

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

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

Sec. 21. REPORT; FORENSIC FACILITY

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

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

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

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

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

And by renumbering the remaining section to be numerically correct.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 91.

Senator Sears, for the Committee on Judiciary, to which was referred Senate bill entitled:

An act relating to competency to stand trial and insanity as a defense.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 13 V.S.A. § 4801 is amended to read:

§ 4801. TEST OF INSANITY IN CRIMINAL CASES

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect ~~he or she~~ the person lacks adequate capacity either to appreciate the criminality of ~~his or her~~ the person's conduct or to conform ~~his or her~~ the person's conduct to the requirements of law.

(2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise ~~anti-social~~ antisocial conduct. The terms "mental disease or defect" ~~shall include~~ includes congenital and traumatic mental conditions as well as disease.

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence. The defendant shall be responsible for hiring the defendant's own forensic evaluator for the purpose of establishing insanity provided that the State shall pay for the evaluation of an indigent defendant.

Sec. 2. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION

(a) Any court before which a criminal prosecution is pending may order the Department of Mental Health to have the defendant examined by a psychiatrist at any time before, during, or after trial, and before final judgment in any of the following cases:

(1) ~~when the defendant enters a plea of not guilty, or when such a plea is entered in the defendant's behalf, and then gives notice of the defendant's intention to rely upon the defense of insanity at the time of the alleged crime, or to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he or she had the mental state required for the offense charged;~~ [Repealed.]

(2) when the defendant, the State, or an attorney, guardian, or other person acting on behalf of the defendant, raises before such court the issue of whether the defendant is mentally competent to stand trial for the alleged offense; or

(3) ~~when the court believes that there is doubt as to the defendant's sanity at the time of the alleged offense; or~~ [Repealed.]

(4) when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(b) ~~Such~~ The order may be issued by the court on its own motion, or on motion of the State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant. The examination shall be at the expense of the moving party, provided that the State shall pay for the competency evaluation of an indigent defendant whose competency is at issue.

(c) An order issued pursuant to this section or Rule 16.1 of the Vermont Rules of Criminal Procedure shall order the release of all relevant records to the examiner, including all juvenile and adult court, mental health, and other health records.

(d) Notwithstanding any other provision of law, an examination ordered pursuant to subsection (a) of this section may be conducted by a doctoral-level psychologist trained in forensic psychology and licensed under 26 V.S.A. chapter 55. This subsection shall be repealed on July 1, 2024.

Sec. 3. 13 V.S.A. § 4815 is amended to read:

§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT

* * *

(c) A motion for examination shall be made as soon as practicable after a party or the court has good faith reason to believe that there are grounds for an

examination. A motion for an examination shall detail the facts indicating incompetency on which the motion is based and shall certify that the motion is made after the moving party has met with or personally observed the defendant. An attorney making such a motion shall be subject to the potential sanctions of Rule 11 of the Vermont Rules of Civil Procedure.

(d) Upon the making of a motion for examination, if the court finds sufficient facts to order an examination, the court shall order a mental health screening to be completed by a designated mental health professional while the defendant is still at the court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant's appearance before the court, the court may forgo consideration of the screener's recommendations.

(f) The court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the court finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

* * *

(h) ~~Except upon good cause shown, defendants~~ Defendants charged with misdemeanor offenses who are not in the custody of the Commissioner of Corrections shall be examined on an outpatient basis for mental competency unless the court makes findings on the record that there is good cause for an inpatient evaluation. Examinations occurring in the community shall be conducted at a location within 60 miles of the defendant's residence or at another location agreed to by the defendant.

* * *

Sec. 4. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

(a) Examinations provided for in section 4815 of this title shall have reference to ~~one or both of~~ the ~~following:~~

~~(1)~~ mental competency of the person examined to stand trial for the alleged offense.

~~(2) sanity of the person examined at the time of the alleged offense.~~

(b) A competency evaluation for an individual thought to have a developmental disability shall include a current evaluation by a psychologist skilled in assessing individuals with developmental disabilities.

(c)~~(1)~~ As soon as practicable after the examination has been completed, the examining psychiatrist or, if applicable under subsection (b) of this section, ~~the psychiatrist and~~ the psychologist shall prepare a report containing findings in regard to the applicable provisions of subsection (a) of this section. The report shall be transmitted to the court issuing the order for examination, and copies of the report sent to the State's Attorney, to the respondent, to the respondent's attorney if the respondent is represented by counsel, to the Commissioner of Mental Health, and, if applicable, to the Department of Disabilities, Aging, and Independent Living.

~~(2) If the court orders examination of both the person's competency to stand trial and the person's sanity at the time of the alleged offense, those opinions shall be presented in separate reports and addressed separately by the court. In such cases, the examination of the person's sanity shall only be undertaken if the psychiatrist or, if applicable under subsection (b) of this section, the psychiatrist and the psychologist are able to form the opinion that the person is competent to stand trial, unless the defendant requests that the examinations occur concurrently. If the evaluation of the defendant's sanity at the time of the alleged offense does not occur until the defendant is deemed competent to stand trial, the psychiatrist or, if applicable under subsection (b) of this section, the psychiatrist and the psychologist shall make a reasonable effort to collect and preserve any evidence necessary to form an opinion as to sanity if the person regains competence.~~

(d) No statement made in the course of the examination by the person examined, whether or not ~~he or she~~ the person has consented to the examination, shall be admitted as evidence in any criminal proceeding for the purpose of proving the commission of a criminal offense or for the purpose of impeaching testimony of the person examined.

(e) The relevant portion of a psychiatrist's report shall be admitted into evidence as an exhibit on the issue of the person's mental competency to stand trial and the opinion shall be conclusive on the issue if agreed to by the parties and if found by the court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the court from calling the psychiatrist who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant's competency shall be at the State's expense, or, if called by the court, at the court's expense.

Sec. 5. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

(a) A defendant shall be presumed to be competent and shall have the burden of proving incompetency by a preponderance of the evidence.

(b) A person shall not be tried for a criminal offense if ~~he or she~~ the person is found incompetent to stand trial by a preponderance of the evidence.

~~(b)~~(c) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in ~~his or her~~ the person's behalf, or the State, at any time before final judgment, raises before the court before which such person is tried or is to be tried, the issue of whether such person is incompetent to stand trial, or if the court has reason to believe that such person may not be competent to stand trial, a hearing shall be held before such court at which evidence shall be received and a finding made regarding ~~his or her~~ the person's competency to stand trial. However, in cases where the court has reason to believe that such person may be incompetent to stand trial due to a mental disease or mental defect, such hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814–4816 of this title.

~~(c)~~(d) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, such person is found by the court having jurisdiction of ~~his or her~~ the person's trial for the offense to have become competent to stand trial.

Sec. 6. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

(a) When a person charged on information, complaint, or indictment with a criminal offense:

(1) ~~Is reported by the examining psychiatrist following examination pursuant to sections 4814-4816 of this title to have been insane at the time of the alleged offense.~~ [Repealed.]

(2) ~~Is~~ is found upon hearing pursuant to section 4817 of this title to be incompetent to stand trial due to a mental disease or mental defect~~.~~;

(3) ~~Is~~ is not indicted upon hearing by grand jury by reason of insanity at the time of the alleged offense, duly certified to the court~~.~~; or

(4) ~~Upon~~ upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense; the court before which such person is tried or is to be tried for such offense, shall hold a hearing for the purpose of determining whether such person should be committed to the custody of the Commissioner

of Mental Health. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding ~~15~~ 21 days.

(b) When a person is found to be incompetent to stand trial, has not been indicted by reason of insanity for the alleged offense, or has been acquitted by reason of insanity at the time of the alleged offense, the person shall be entitled to have counsel appointed from Vermont Legal Aid to represent the person. The Department of Mental Health and, if applicable, the Department of Disabilities, Aging, and Independent Living shall be entitled to appear and call witnesses at the proceeding.

(c) Notwithstanding any other provision of law, a commitment order issued pursuant to this chapter shall not modify or vacate orders concerning conditions of release or bail issued pursuant to chapter 229 of this title, and the commitment order shall remain in place unless expressly modified, provided that inpatient treatment shall be permitted if a person who is held without bail is found to be in need of inpatient treatment under this chapter.

Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN

On or before November 15, 2023, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living shall report to the Governor, the Senate Committees on Judiciary and on Health and Welfare, and the House Committees on Judiciary, on Health Care, and on Human Services on whether a plan for a competency restoration program should be adopted in Vermont. If a competency restoration plan is recommended, the report shall include recommendations for best practices, any changes to law necessary to establish the program, estimated costs, and a proposal for implementing the program.

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE REVIEW; COMPETENCY AND SANITY EXAMINATIONS

(a) The Joint Legislative Justice Oversight Committee shall review whether Vermont law should permit competency and sanity examinations of defendants under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level psychologists trained in forensic psychology, by other doctoral-level mental health providers, psychiatric nurse practitioners, or any other professionals. The Committee's recommendation under subsection (b) of this section shall reflect its determination of which professionals, if any, should be permitted to conduct the competency and sanity examinations.

(b) On or before November 15, 2023, the Committee shall recommend any changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency and sanity examinations by doctoral-level psychologists trained in forensic

psychology) to the Senate and House Committees on Judiciary.

Sec. 9. EFFECTIVE DATE

This act shall take effect on July 1, 2023.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of amendment by the Committee on Judiciary was agreed to.

Thereupon, pending the question, Shall the bill be read third time?, Senators Lyons, Gulick, Hardy, Weeks and Williams moved to amend the bill as follows:

First: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new Sec. 7 to read as follows:

Sec. 7. COMPETENCY RESTORATION PROGRAM PLAN

On or before November 15, 2023, the Department of Mental Health and the Department of Disabilities, Aging, and Independent Living, in consultation with interested parties, shall report to the Governor, the Senate Committees on Judiciary and on Health and Welfare, and the House Committees on Judiciary, on Health Care, and on Human Services on whether a plan for a competency restoration program should be adopted in Vermont. If a competency restoration plan is recommended, the report shall include recommendations for best practices, any changes to law necessary to establish the program, estimated costs, and a proposal for implementing the program.

Second: By striking out Sec. 8 in its entirety and inserting in lieu thereof a new Sec. 8 to read as follows:

Sec. 8. JOINT LEGISLATIVE JUSTICE OVERSIGHT COMMITTEE REVIEW; COMPETENCY AND SANITY EXAMINATIONS

(a) The Joint Legislative Justice Oversight Committee shall review whether Vermont law should permit competency and sanity examinations of defendants under 13 V.S.A. § 4814 to be conducted, in addition to psychiatrists and doctoral-level psychologists trained in forensic psychology, by other doctoral-level mental health providers, psychiatric nurse practitioners, or any other professionals. The review shall include consideration of laws on the issue in other states and whether any changes to 13 V.S.A. § 4814 or any other Vermont laws are necessary to permit referral of the evaluation to a psychiatrist when appropriate. The Committee's recommendation under subsection (c) of this section shall reflect its determination of which

professionals, if any, should be permitted to conduct the competency and sanity examinations.

(b) The Joint Legislative Justice Oversight Committee shall conduct the review of competency and sanity evaluation procedures required by subsection (a) of this section at not more than four of its 2023 meetings. Two members of the Senate Committee on Health and Welfare appointed by the Chair of that Committee and two members of the House Committee on Health Care appointed by the Chair of that Committee shall be permitted to attend and participate in the meetings. Members of the Committees on Health and Welfare and on Health Care who attend the meetings as authorized by this section shall be permitted to participate in the Justice Oversight Committee's development of the recommendations required by subsection (c) of this section.

(c) On or before November 15, 2023, the Committee shall recommend any changes it deems advisable to 13 V.S.A. § 4814(d) (permitting competency and sanity examinations by doctoral-level psychologists trained in forensic psychology) to the Senate and House Committees on Judiciary, the Senate Committee on Health and Welfare, and the House Committee on Health Care.

Which was agreed to.

Thereupon, third reading of the bill was ordered.

Bill Amended; Third Reading Ordered

S. 32.

Senator Vyhovsky, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to ranked-choice voting for presidential primary elections.

Reported recommending that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Opt-in Ranked-Choice Voting System for Town, Cities, and Villages * * *

Sec. 1. 17 V.S.A. chapter 55, subchapter 4 is added to read:

Subchapter 4. Ranked-Choice Voting

§ 2691a. DEFINITIONS

As used in this subchapter:

(1) "Active candidate" means a candidate who has not been eliminated and who is not a withdrawn candidate.

(2) "By lot" means a method, determined by the Secretary of State, for randomly choosing between two or more active candidates.

(3) "Highest-ranked active candidate" means the active candidate assigned a higher ranking than any other active candidate.

(4) "Inactive ballots" means ballots that do not count as votes for any candidate due to one or more of the reasons listed in subdivision 2691d(c)(2) of this title.

(5) "Overvote" means an instance in which a voter assigned the same ranking to more than one candidate.

(6) "Ranking" means the number available to be assigned by a voter to a candidate to express the voter's choice for that candidate. The number "1" is the highest ranking, followed by "2" and then "3" and so on.

(7) "Round" means an instance of the sequence of voting tabulation in accordance with section 2691d of this title.

(8) "Skipped ranking" means a voter does not assign a certain available ranking to any candidate but does assign a subsequent available ranking to a candidate.

(9) "Undervote" means a ballot on which a voter does not assign any ranking to any candidate in a particular contest.

(10) "Withdrawn candidate" means any candidate who has submitted a declaration of withdrawal in writing to the presiding officer, the effectiveness of which begins when filed with the presiding officer.

§ 2691b. RANKED-CHOICE VOTING SYSTEM; APPLICATION

(a) Application. The provisions of the ranked-choice voting system described in this subchapter shall only apply to the election of a candidate running for an office in a town, city, or village if:

(1) a town, city, or village has voted to elect officers by the Australian ballot system pursuant to section 2680 of this title and is using the Australian ballot system in accordance with subsection 2680 of this title; and

(2) that town, city, or village has adopted the ranked-choice voting system described in this subchapter by either:

(A) a vote of the town, city, or village, at its annual meeting or at a special meeting called for that purpose; or

(B) a vote of the legislative body of that town, city, or village.

(b) Duration. Once a town, city, or village votes to adopt the ranked-choice voting system described in this subchapter, this ranked-choice voting

system shall be used in that manner until:

(1) the town, city, or village votes to discontinue use of the system; or

(2) the legislative body of that town, city, or village votes to discontinue use of the system, provided however, that the legislative body may not vote to discontinue use of the system if that town, city, or village had adopted the ranked-choice voting system by a vote of the town, city, or village.

§ 2691c. RANKED-CHOICE VOTING SYSTEM; BALLOTS

Notwithstanding any contrary provisions in section 2681a of this title, a ballot for an election using the ranked-choice system in a town, city, or village shall allow voters to rank candidates in order of ordinal preference.

(1) The names of all candidates on the ballot shall be listed in alphabetical order.

(2) The ballot shall allow voters to assign rankings to candidates that are equal to the number of printed candidate names and blank write-in lines.

§ 2691d. RANKED-CHOICE VOTING TABULATION

(a) Tabulation rounds. In any election of a candidate running for an office in a town, city, or village, each ballot shall count as one vote for the highest-ranked active candidate on that ballot. Tabulation shall proceed in rounds, as follows:

(1) Elections with one winner.

(A) If there are two or fewer active candidates, then tabulation is complete, and the candidate with the most votes is declared the winner of the election.

(B) If there are more than two active candidates, the active candidate with the fewest votes is eliminated, the votes for the eliminated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins.

(2) Elections with multiple winners.

(A) If the number of active candidates is equal to the number of seats available plus one, then tabulation is complete, and the candidates with the most votes are declared the winners of the election.

(B) If the number of active candidates is more than the number of seats available plus one, then the active candidate with the fewest votes is eliminated, the votes for the eliminated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins.

(3) Ties.

(A) If there is a tie between two active candidates with the fewest votes, the tie shall be resolved by lot to determine which candidate is defeated. The result of the tie resolution must be recorded and reused in the event of a recount.

(B) If there is a tie between the final active candidates, the presiding officer shall notify each active candidate involved in the tie, or the candidate's designee, to be present at the presiding officer's office or at the polling place at a certain time. At that time, the presiding officer shall select the winner of the tabulation by lot.

(b) Withdrawn candidates. Ranking orders containing withdrawn candidates shall be treated the same as ranking orders containing candidates who have been eliminated from tabulation.

(c) Inactive ballots and undervotes.

(1) In any round of tabulation, an inactive ballot does not count for any candidate and is not considered a vote for the purposes of determining which active candidate has the majority of the active votes in the final round of tabulation pursuant to subsection (a) of this section.

(2) A ballot is an inactive ballot if any of the following is true:

(A) The ballot does not rank any active candidates and is not an undervote.

(B) The ballot has reached an overvote.

(C) The ballot has reached two consecutive skipped rankings.

(3) An undervote does not count as either an active or inactive ballot in any round of tabulation.

§ 2691e. RANKED-CHOICE VOTING RESULTS REPORTING

In addition to any other information required by law to be reported with final results, the following shall be made public:

(1) the total number of votes each candidate received in each round of the official tabulation, including votes for withdrawn candidates; and

(2) the total number of ballots that became inactive in each round because they did not contain any active candidates, reached an overvote, or reached two consecutive skipped rankings, reported as separate figures.

§ 2691f. MUNICIPAL ORDINANCES

Municipalities shall have the power to adopt ordinances pursuant to 24 V.S.A. chapter 59 for the purpose of the proper and efficient administration of the ranked-choice voting system in towns, cities, and villages, provided

such ordinances do not controvert the provisions of this subchapter.

Sec. 2. FIRST PERMISSIBLE ELECTION USING RANKED-CHOICE VOTING SYSTEM

A town, city, or village may only use the ranked-choice voting system described in 17 V.S.A. chapter 55, subchapter 4 beginning at the 2024 annual meeting of that town, city, or village and then thereafter. A town, city, or village may nevertheless adopt pursuant to 17 V.S.A. § 2691b(a) a ranked-choice voting system in advance of the 2024 annual meeting.

* * * Voter and Presiding Officer Education * * *

Sec. 3. VOTER AND PRESIDING OFFICER EDUCATION; SECRETARY OF STATE'S OFFICE

The Secretary of State shall make available to voters in a town, city, or village that has adopted ranked-choice voting pursuant to 17 V.S.A. § 2691b information regarding the ranked-choice process and provide to presiding officers in those towns, cities, and villages training in order to assist them in implementing that process.

* * * Appropriation * * *

Sec. 4. APPROPRIATION; UPGRADE OF SECRETARY OF STATE ELECTION MANAGEMENT SYSTEM AND VOTE TABULATORS

The sum of $100,000.00 is appropriated from the General Fund to the Office of the Secretary of State in fiscal year 2024 to provide assistance and grants to those towns, cities, and villages that have adopted ranked-choice voting pursuant to 17 V.S.A. § 2691b.

* * * Ranked-Choice Voting Study Committee * * *

Sec. 5. RANKED-CHOICE VOTING; RANKED-CHOICE VOTING STUDY COMMITTEE; REPORT

(a) Creation. There is created the Ranked-Choice Voting Study Committee to examine issues in implementing ranked-choice voting in Vermont across all elections for state and federal office.

(b) Membership. The Ranked-Choice Voting Study Committee shall be composed of the following members:

(1) two current members of the House of Representatives, not from the same political party, who shall be appointed by the Speaker of the House;

(2) two current members of the Senate, not from the same political party, who shall be appointed by the Committee on Committees;

(3) one designee, appointed by the Secretary of State;

(4) three designees, appointed by the Vermont Municipal Clerks' and Treasurers' Association, from different-sized towns, cities, and villages, different regions, and at least one shall be from a town, city, or village that use a hand count in elections;

(5) one designee, appointed by the Vermont League of Cities and Towns;

(6) a member of an organization focused on the conduct of elections, who shall be appointed by the Speaker of the House; and

(7) a member of a different organization focused on the conduct of elections, who shall be appointed by the Senate Committee on Committees.

(c) Powers and duties. The Ranked-Choice Voting Study Committee shall study ranked-choice voting systems with the goals of having recommendations implemented for all primary and general elections for state and federal office occurring in 2026, including the following issues:

(1) education of voters;

(2) training of town clerks, presiding officers, and election staff;

(3) election integrity, security, and transportation of ballots;

(4) technological requirements in tabulators, hardware, and software;

(5) methodology of ranked-choice voting systems;

(6) canvassing of votes and roles of canvassing committees;

(7) post-election processes and reporting; and

(8) other items relating to the design and implementation of ranked-choice voting systems.

(d) Assistance. The Ranked-Choice Voting Study Committee shall have the administrative, technical, and legal assistance of the Vermont Office of Legislative Counsel and the Vermont Legislative Joint Fiscal Office.

(e) Report. On or before January 15, 2024, the Ranked-Choice Voting Study Committee shall report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations with its findings and any recommendations for legislative action.

(f) Meetings.

(1) A member of the House of Representatives designated by the Speaker of the House shall call the first meeting of the Ranked-Choice Voting Study Committee to occur on or before July 1, 2023.

(2) The Ranked-Choice Voting Study Committee shall select a chair from among its members at the first meeting.

(3) A majority of the members of the Ranked-Choice Voting Study Committee shall constitute a quorum.

(4) The Ranked-Choice Voting Study Committee shall cease to exist on November 1, 2024.

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Ranked-Choice Voting Study Committee serving in the legislator's capacity as a legislator shall be entitled to per diem compensation and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than four meetings. These payments shall be made from monies appropriated to the General Assembly.

(2) Other members of the Ranked-Choice Voting Study Committee who are not paid for their services by the organization for which the member is representing on the Ranked-Choice Voting Study Committee shall be entitled to per diem compensation as permitted under 32 V.S.A. § 1010 for not more than four meetings. These payments shall be made from monies appropriated to the Office of the Secretary of State.

(h) Appropriation. The sum of $1,000.00 is appropriated to the Office of the Secretary of State from the General Fund in fiscal year 2024 for per diem compensation for members of the Committee.

* * * Ranked-Choice Voting for Presidential Primary Elections * * *

Sec. 6. REDESIGNATION

17 V.S.A. §§ 2705 and 2706 are redesignated as 17 V.S.A. §§ 2710 and 2711.

Sec. 7. 17 V.S.A. chapter 57, subchapter 1 is amended to read:

Subchapter 1. Presidential Primary

§ 2700. DEFINITIONS

As used in this subchapter:

(1) "Active candidate" means a candidate who has not been eliminated and who is not a withdrawn candidate as set forth in subdivision (12) of this section.

(2) "By lot" means a method, determined by the Secretary of State, for randomly choosing between two or more active candidates.

(3) "Highest-ranked active candidate" means the active candidate

assigned a higher ranking than any other active candidate.

(4) "Inactive ballots" means ballots that do not count as votes for any candidate due to one or more of the reasons listed in subdivision 2706(c)(2) of this title.

(5) "Major political party" has the same meaning as in subdivision 2103(23)(A) of this title.

(6) "Overvote" means an instance in which a voter assigned the same ranking to more than one candidate.

(7) "Ranking" means the number available to be assigned by a voter to a candidate to express the voter's choice for that candidate. The number "1" is the highest ranking, followed by "2," and then "3," and so on.

(8) "Round" means an instance of the sequence of voting tabulation in accordance with section 2706 of this title.

(9) "Skipped ranking" means a voter does not assign a certain available ranking to any candidate but does assign a subsequent available ranking to a candidate.

(10) "Threshold for receiving delegates" means the number of votes necessary for a candidate to receive delegates in a presidential primary election conducted in accordance with subdivision 2705(a)(2) of this title.

(11) "Undervote" means a ballot on which a voter does not assign any ranking to any candidate in a particular contest.

(12) "Withdrawn candidate" means any candidate who has submitted a declaration of withdrawal in writing to the Secretary of State, the effectiveness of which begins when filed with the Secretary of State.

§ 2701. PRESIDENTIAL PRIMARY; TIME OF HOLDING; FORM OF BALLOT

In presidential election years, a presidential primary for each major political party shall be held in all municipalities on the first Tuesday in March. The Secretary of State shall prepare and distribute for use at the primary an official ranked-choice ballot for each party for which one or more candidates qualify for the placing of their names on the ballot under section 2702 of this title. Ballots shall be printed on index stock and configured to be readable by vote tabulators.

* * *

§ 2704. RANKED-CHOICE VOTING; BALLOTS

(a) A presidential primary election for a major political party shall be

conducted by ranked-choice voting.

(b) A person voting at the primary shall be required to ask for the ranked-choice ballot of the party in which the voter wishes to vote, and an election official shall record the voter's choice of ballot by marking the entrance checklist with a letter code, as designated by the Secretary of State, to indicate the voter's party choice.

(1) The ballot shall allow voters to rank candidates in order of choice. The names of all candidates on the ballot shall be listed in alphabetical order. ~~Each voter may vote for one candidate for the presidential nomination of one party, either by placing a mark opposite the printed name of a candidate as in other primaries, or by writing in the name of the candidate of the voter's choice.~~

(2) The ballot shall allow voters to assign rankings to candidates that are equal to the number of printed candidate names and blank write-in lines, except to the extent established by the Secretary pursuant to section 2709 of this title.

§ 2705. TYPE OF RANKED-CHOICE VOTING

(a) At least 150 days before the date of the presidential primary election, the State committee of each major political party shall confirm in writing with the Secretary of State whether the party will award delegates either:

(1) on a winner-take-all basis in accordance with subsection 2706(d) of this title; or

(2) on a proportional basis in accordance with subsection 2706(e) of this title, in which case the party shall also indicate the applicable threshold or thresholds for receiving delegates.

(b) If a party fails to provide notice, or its notice does not specify how the party will award its delegates, the presidential primary election for that party shall be tabulated on a winner-take-all basis in accordance with subsection 2706(d) of this title.

(c) At least 120 days before the date of the presidential primary election, the Secretary of State shall confirm with the State committee of each political party that the State is capable of implementing the party's preferences as declared under subsection (a) of this section or shall notify the State committee of any feasibility constraints that could prevent the State from implementing the party's preferences.

§ 2706. RANKED-CHOICE VOTING TABULATION

(a) Tabulation rounds. In any presidential primary election for a major

political party, each ballot shall count as one vote for the highest-ranked active candidate on that ballot. Tabulation shall proceed in rounds. Each round proceeds sequentially as described in subsection (d) or (e) of this section, as applicable.

(b) Withdrawn candidates. Ranking orders containing withdrawn candidates shall be treated the same as ranking orders containing candidates who have been eliminated from tabulation.

(c) Inactive ballots and undervotes.

(1) In any round of tabulation, an inactive ballot does not count for any candidate and is not considered a vote for the purposes of determining either which active candidate has majority of the active votes in the final round of tabulation pursuant to subsection (d) of this section or which active candidates possess a vote total above the threshold for receiving delegates pursuant to subsection (e) of this section.

(2) A ballot is an inactive ballot if any of the following is true:

(A) The ballot does not rank any active candidates and is not an undervote.

(B) The ballot has reached an overvote.

(C) The ballot has reached two consecutive skipped rankings.

(3) An undervote does not count as either an active or inactive ballot in any round of tabulation.

(d) Award of delegates on winner-take-all basis. If a major political party awards all of the State's delegates to a single candidate on a winner-take-all basis, tabulation shall proceed as follows:

(1) If there are two or fewer active candidates, then tabulation is complete and the candidate with the most votes is declared the winner of the election.

(2) If there are more than two active candidates, the active candidate with the fewest votes is eliminated, the votes for the eliminated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins.

(3) If there is a tie between two active candidates with the fewest votes, the tie shall be resolved by lot to determine which candidate is defeated. The result of the tie resolution must be recorded and reused in the event of a recount.

(4) If there is a tie between the final two active candidates, the Secretary

of State shall notify each active candidate involved in the tie, or the candidate's designee, to be present at the Secretary of State's office at a certain time. At that time, the Secretary of State shall select the winner of the tabulation by lot.

(e) Award of delegates on proportional basis. If a major political party awards the State's delegates to multiple candidates on a proportional basis, tabulation shall proceed as follows:

(1) If the vote total of every active candidate is above the threshold for receiving delegates as confirmed by the major political party pursuant to subdivision 2705(a)(2) of this title, then tabulation is complete.

(2) If any active candidate is below the threshold for receiving delegates, then the active candidate with the fewest votes is eliminated, votes for the eliminated candidate are transferred to each ballot's next-ranked active candidate, and a new round begins.

(3) If there is a tie between two active candidates with the fewest votes and tabulation is not yet complete, the tie shall be resolved by lot to determine which candidate is defeated. The result of the tie resolution must be recorded and reused in the event of a recount.

(f) Certification of tabulation rounds. The Secretary of State shall certify the results of each round tabulated pursuant to subsection (d) or (e) of this section, as applicable, along with any other information required under section 2707 of this title, to the State chairperson and the national committee of each political party that had at least one candidate on the State-administered presidential primary election ballot to allocate national delegate votes in accordance with the party's State and national rules.

(g) Nothing in this act shall be construed to preclude a political party from allocating delegates according to its own rules for allocating such delegates.

§ 2707. RANKED-CHOICE VOTING RESULTS REPORTING

(a) Unofficial preliminary round-by-round results shall be released as soon as feasible after the polls close and at regular intervals thereafter until the counting of ballots is complete. Unofficial preliminary round-by-round results shall be clearly labeled as preliminary and, to the extent feasible, shall include the percent of ballots counted to date.

(b) In addition to any other information required by law to be reported with final results, the following shall be made public:

(1) the total number of votes each candidate received in each round of the official tabulation, including votes for withdrawn candidates; and

(2) the total number of ballots that became inactive in each round because they did not contain any active candidates, reached an overvote, or reached two consecutive skipped rankings, reported as separate figures.

(c) If a major political party allocates delegates by geographical unit or district, round-by-round results by geographical unit or district shall be made public in addition to state-wide results.

§ 2708. CANVASSING COMMITTEE CERTIFICATES

When the canvassing committee provided for in section 2592 of this title prepares its certificate of election for a presidential primary election for a major political party, the canvass shall state the number of final round votes received by each candidate who has received votes in the final round of tabulation.

Sec. 8. 17 V.S.A. § 2709 is added to read:

§ 2709. RULEMAKING

The Secretary of State shall adopt rules pursuant to 3 V.S.A. chapter 25 for the proper and efficient administration of presidential primary elections, including procedures for ensuring that voting tabulators, voting tabulator memory cards, and related software are able to tabulate rank-choice voting when necessary; procedures for ensuring that the number of rankings allowed to voters be uniform across the State for any given contest, that the number of rankings allowed in any given contest be the maximum number allowed by the equipment, and that the number of rankings allowed be not fewer than three in any event; procedures for the release of round-by-round results; procedures for requesting and conducting recounts of the results of presidential primary elections for major candidates; and procedures for filing returns in accordance with section 2588 of this title.

* * * Vote Tabulators; Returns * * *

Sec. 9. TALLY SHEETS; SUMMARY SHEETS; RETURNS

The Secretary of State shall ensure that on or before January 1, 2028, all tally sheets, summary sheets, and returns described in 17 V.S.A. § 2586 are designed to record ranked-choice voting results in accordance with this act.

* * * Effective Dates * * *

Sec. 10. EFFECTIVE DATES

This act shall take effect on passage, except that Secs. 6 (redesignation) and 7 (amending 17 V.S.A. chapter 57, subchapter 1) shall take effect on January 1, 2027 and Secs. 8 (rulemaking) and 9 (tally sheets; summary sheets; returns) shall take effect on January 1, 2025.

And that when so amended the bill ought to pass.

Senator Perchlik, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendment thereto:

By striking out Sec. 4, appropriation; upgrade of Secretary of State election management system and vote tabulators, and its reader assistance heading in their entireties and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. [Deleted.]

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended? was agreed to.

Thereupon, third reading of the bill was ordered, on a roll call, Yeas 23, Nays 7.

Senator Vyhovsky having demanded the yeas and nays, they were taken and are as follows:

Roll Call

Those Senators who voted in the affirmative were: Baruth, Bray, Campion, Chittenden, Clarkson, Cummings, Gulick, Hardy, Harrison, Hashim, Kitchel, Lyons, MacDonald, Mazza, McCormack, Norris, Perchlik, Ram Hinsdale, Sears, Vyhovsky, Watson, White, Wrenner.

Those Senators who voted in the negative were: Brock, Collamore, Ingalls, Starr, Weeks, Westman, Williams.

Bill Amended; Third Reading Ordered

S. 42.

Senator Clarkson, for the Committee on Government Operations, to which was referred Senate bill entitled:

An act relating to divestment of State pension funds of investments in the fossil fuel industry.

Reported recommending that the bill be amended by striking out all after

the enacting clause and inserting in lieu thereof the following:

Sec. 1. PUBLIC PENSION FUNDS; FOSSIL FUELS; VERMONT PENSION INVESTMENT COMMISSION; PLAN AND REPORT

(a) Intent. It is the intent of the General Assembly that, on or before December 31, 2030, the Vermont Pension Investment Commission, consistent with sound fiduciary practice and subject to any exceptions, divest the holdings of the Vermont State Employees' Retirement System, the Vermont Teachers' Retirement System, and the Vermont Municipal Employees' Retirement System from the fossil fuel industry. It is also the intent of the General Assembly that the Vermont Pension Investment Commission establish a long-term goal to divest from any private investments that contain assets in the fossil fuel industry on or before December 31, 2040, if the Commission determines that such divestment is consistent with sound fiduciary practice.

(b) Definitions. As used in this section:

(1) "Carbon footprint" means the extent to which holdings are invested in stocks, securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or parent of any fossil fuel company.

(2) "De minimis exposure" means the aggregate amount of all fossil fuel holdings in the portfolio amounting to less than two percent of the aggregate amount of all funds invested.

(c) Review. On or before December 15, 2023, the Vermont Pension Investment Commission, in consultation with the Office of the State Treasurer, shall complete a review of the carbon footprint of the holdings of the Vermont State Employees' Retirement System, the Vermont State Teachers' Retirement System, and the Vermont Municipal Employees' Retirement System.

(d) Plan.

(1) Divestment. Except as provided in subdivision (2) of this subsection, the Commission, in accordance with sound investment criteria and consistent with fiduciary obligations, shall develop a plan to divest any holdings identified in the review described in subsection (c) of this section on or before December 31, 2030. The Commission shall include in the plan consideration of the State's long-term goal of divestment from any investments that are exempt from the plan pursuant to subdivision (2) of this subsection on or before December 31, 2040.

(2) Exemptions. Until such time as the Commission deems divestment to be prudent and consistent with sound fiduciary practice, the following holdings are exempt from the plan:

(A) de minimis exposure of any funds held by the Commission to the stocks, securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or parent of any fossil fuel company; and

(B) private investments that contain fossil fuel company stocks, securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or parent of any fossil fuel company.

(3) Definitions and methodology. The Commission shall include in the plan described in this subsection:

(A) a definition for "fossil fuel company"; and

(B) a method for determining the metric of the portfolio's carbon footprint that allows for an exemption of private investments for the purpose of determining the de minimis exposure.

(e) Report.

(1) On or before February 15, 2024, the Commission shall submit a report on the review described in subsections (c) of this section to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations and to the Joint Pension Oversight Committee. The report shall include any recommendations for legislative action, if necessary, to implement the divestment plan.

(2)(A) On or before September 1, 2024, the Commission shall submit a report on the plan described in subsections (d) of this section to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations and to the Joint Pension Oversight Committee. The report shall include any recommendations for legislative action, if necessary, to implement the divestment plan.

(B) Pursuant to 2 V.S.A. § 23, with approval of the Speaker of the House and the President Pro Tempore, as appropriate, the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations may each meet up to one time when the General Assembly is not in session to evaluate the report described in subdivision (A) of this subdivision (e)(2).

(3) Beginning on January 15, 2025, and annually thereafter until January 15, 2040, the Commission shall submit a report to the House Committee on Government Operations and Military Affairs, the Senate Committee on Government Operations, and the Joint Pension Oversight Committee on the progress of divestment described in this section. The report shall also include:

(A) an update on the composition and percentage of exposure of any

investments exempt from the divestment plan pursuant to subdivision (c)(2) of this section; and

(B) a summary of the fee impacts and any instance of excessive charges or demands related to the rebalancing of the funds consistent with the implementation of this act.

(4) On or before January 15, 2041, the Commission shall make a final report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations and the Joint Pension Oversight Committee regarding completion of divestment described in this section.

Sec. 2. DIVESTMENT PLAN; VERMONT PENSION INVESTMENT COMMISSION; APPROPRIATION

In FY 2024, the amount of:

(1) $100,000.00 in general funds is appropriated to the Vermont Pension Investment Commission to conduct the review and develop the plan described in Sec. 1 of this act.

(2) $127,000.00 is appropriated to the Vermont Pension Investment Commission to establish one staff position to support improvements and efficiencies in the administration of the Commission and to meet the review, planning, and reporting requirements of this act. The appropriation to the Commission shall be distributed from the following funding sources pursuant to the allocations set forth below:

(A) 40.86 percent from the Vermont State Retirement Fund, established in 3 V.S.A. § 473;

(B) 44.01 percent from the Vermont Teachers' Retirement Fund, established in 16 V.S.A. § 1944; and

(C) 15.13 percent from the Vermont Municipal Employees' Retirement Fund, established in 24 V.S.A. § 5064.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.

And that when so amended the bill ought to pass.

Senator Perchlik, for the Committee on Appropriations, to which the bill was referred, reported recommending that the bill be amended as recommended by the Committee on Government Operations with the following amendments thereto:

First: In Sec. 1, public pension funds; fossil fuels; Vermont Pension Investment Commission; plan and report, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) Intent.

(1) It is the intent of the General Assembly that the Vermont Pension Investment Commission build upon its effective efforts to manage the State's financial risks to climate change, including investing in low carbon indexes, successfully engaging with fossil fuel and other companies, and supporting initial studies and reviews on climate change.

(2) It is also the intent of the General Assembly that, on or before December 31, 2030, the Vermont Pension Investment Commission shall, consistent with sound fiduciary practice, including consideration of any expected increased funding requirements for the actuarially determined employer contribution (ADEC) and administrative costs, and subject to any exceptions, divest the holdings of the Vermont State Employees' Retirement System, the Vermont Teachers' Retirement System, and the Vermont Municipal Employees' Retirement System from the fossil fuel industry.

(3) The General Assembly also intends that that the Vermont Pension Investment Commission establish a long-term goal to divest from any private investments that contain assets in the fossil fuel industry on or before December 31, 2040, if the Commission determines that such divestment is consistent with sound fiduciary practice.

Second: In Sec. 1, public pension funds; fossil fuels; Vermont Pension Investment Commission; plan and report, by striking out subdivision (d)(1) in its entirety and inserting in lieu thereof the following:

(1) Divestment. Except as provided in subdivision (2) of this subsection, the Commission, in accordance with sound investment criteria and consistent with fiduciary obligations, including consideration of any expected increased funding requirements for the actuarially determined employer contribution (ADEC) and administrative costs, shall develop a plan to divest any holdings identified in the review described in subsection (c) of this section on or before December 31, 2030. The Commission shall include in the plan consideration of the State's long-term goal of divestment from any investments that are exempt from the plan pursuant to subdivision (2) of this subsection on or before December 31, 2040.

Third: By striking out Sec. 2, divestment plan; Vermont Pension Investment Commission; appropriation, in its entirety and inserting in lieu thereof the following:

Sec. 2. DIVESTMENT PLAN; VERMONT PENSION INVESTMENT COMMISSION; APPROPRIATION

In FY 2024, the amount of $127,000.00 is appropriated to the Vermont Pension Investment Commission to establish one staff position to support improvements and efficiencies in the administration of the Commission and to meet the review, planning, and reporting requirements of this act. The appropriation to the Commission shall be distributed from the following funding sources pursuant to the allocations set forth below:

(1) 40.86 percent from the Vermont State Retirement Fund, established in 3 V.S.A. § 473;

(2) 44.01 percent from the Vermont Teachers' Retirement Fund, established in 16 V.S.A. § 1944; and

(3) 15.13 percent from the Vermont Municipal Employees' Retirement Fund, established in 24 V.S.A. § 5064.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and the recommendation of the Committee on Government Operations was amended as recommended by the Committee on Appropriations.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Government Operations, as amended? was agreed to and third reading of the bill was ordered.

Adjournment

On motion of Senator Baruth, the Senate adjourned until one o'clock in the afternoon on Thursday, March 30, 2023.