

No. 27. An act relating to establishing a forensic facility.

(S.89)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. LEGISLATIVE INTENT

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

Sec. 2. CERTIFICATE OF NEED; EXCLUSION

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

Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

(a) On or before August 1, 2023, the Commissioner of Mental Health shall file an initial proposed rule amendment with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to amend the 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.

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

Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

(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) whether any additional resources are needed for the operation of the forensic facility; and

(3) an assessment of laws, regulations, rules, and policies governing psychiatric hospitals and therapeutic community residences to determine

whether there are any conflicts with serving two populations in the same facility.

Sec. 5. 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 submit a report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary 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.

Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO

INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE
CRIMINAL-JUSTICE INVOLVED

(a) Creation. There is created the Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved.

The Working Group shall assess whether a forensic level of care is needed for individuals with intellectual disabilities who are charged with a crime of violence against another person, have been determined incompetent to stand trial or adjudicated not guilty by reason of insanity, and are committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living. If it is determined that forensic-level care is needed for such individuals, the Working Group shall propose legislation establishing the process and criteria for committing such individuals to a forensic facility. In developing legislation, the Working Group shall refer to earlier drafts of this act discussed by the General Assembly in 2023.

(b) Membership.

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

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

(B) a representative, appointed by the Developmental Disabilities Council;

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

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

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

(F) the Commissioner of Disabilities, Aging, and Independent Living or designee;

(G) the Commissioner of Mental Health or designee;

(H) a representative, appointed by the Center for Crime Victim Services;

(I) the President of the Vermont State Employees' Association or designee;

(J) the Executive Director of the Office of Racial Equity or designee;

(K) the Chief Superior Judge or designee;

(L) two members of the House of Representatives, one of whom is from the House Committee on Human Services and one of whom is from the House Committee on Judiciary, appointed by the Speaker; and

(M) two members of the Senate, one of whom is from the Senate Committee on Health and Welfare and one of whom is from the Senate Committee on Judiciary, appointed by the Committee on Committees.

(2) In completing its duties pursuant to this section, the Working Group, to the extent feasible, shall consult with the following individuals:

(A) a psychiatrist or psychologist with experience conducting competency evaluations under 1987 Acts and Resolves No. 248;

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

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

(D) the Executive Director of the Department of State's Attorneys and Sheriffs;

(E) the Defender General;

(F) the Commissioner of Corrections; and

(G) the State Program Standing Committee for Developmental Services.

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

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

(2) if the Working Group determines there is a need for individuals with an intellectual disability to receive programming in a forensic facility, the specific circumstances under which an individual committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living could be placed in a forensic facility;

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

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

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

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

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

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

(f) Meetings.

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

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

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

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

(g) Compensation and reimbursement.

(1) For attendance at meetings during adjournment of the General Assembly, a legislative member of the Working Group serving in the member'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 14 meetings. These payments shall be made from monies appropriated to the General Assembly.

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

(h) Definitions.

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

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

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

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

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

* * * Effective Date * * *

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 30, 2023