

No. 137. An act relating to civil commitment procedures at a secure residential recovery facility and a psychiatric residential treatment facility for youth and civil commitment procedures for individuals with an intellectual disability.

(S.192)

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

* * * Purpose * * *

Sec. 1. PURPOSE

It is the purpose of this act to:

(1) enable the Commissioner of Mental Health to seek treatment for individuals at a secure residential recovery facility, regardless of a previous order of hospitalization, and at a psychiatric residential treatment facility for youth, without precluding the future development of a forensic facility;

(2) update the civil commitment procedures for individuals with intellectual disabilities; and

(3) authorize the Department of Disabilities, Aging, and Independent Living to propose alternative options for a secure community-based residence or residences to treat individuals who have been charged with a crime and found incompetent to stand trial or adjudicated not guilty by reason of insanity, who are in the Commissioner's custody, and who require a more secure level of care than is currently available, without precluding the future development of a forensic facility.

* * * Involuntary Commitment of Individuals with Mental Illness * * *

Sec. 2. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

(a) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department of Mental Health for ~~an indeterminate~~ a period of 90 days. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

* * *

(c)(1) Notwithstanding the provisions of subsection (b) of this section, at least 10 days prior to the proposed discharge of any person committed under this section, the Commissioner of Mental Health shall give notice of the discharge to the committing court and State's Attorney of the county where the prosecution originated. In all cases requiring a hearing prior to discharge of a person found incompetent to stand trial under section 4817 of this title, the hearing shall be conducted by the committing court issuing the order under that section. In all other cases, when the committing court orders a hearing under subsection (a) of this section or when, in the discretion of the Commissioner of Mental Health, a hearing should be held prior to the

discharge, the hearing shall be held in the Family Division of the Superior Court to determine if the committed person is no longer a person in need of treatment or a patient in need of further treatment as set forth in subsection (a) of this section. Notice of the hearing shall be given to the Commissioner, the State's Attorney of the county where the prosecution originated, the committed person, and the person's attorney. Prior to the hearing, the State's Attorney may enter an appearance in the proceedings and may request examination of the patient by an independent psychiatrist, who may testify at the hearing.

(2)(A) This subdivision (2) shall apply when a person is committed to the care and custody of the Commissioner of Mental Health under this section after having been found:

(i) not guilty by reason of insanity; or

(ii) incompetent to stand trial, provided that the person's criminal case has not been dismissed.

(B)(i) When a person has been committed under this section, the Commissioner shall provide notice to the State's Attorney of the county where the prosecution originated or to the Office of the Attorney General if that office prosecuted the case:

(I) at least 10 days prior to discharging the person from:

(aa) the care and custody of the Commissioner; or

(bb) a hospital or a secure residential recovery facility to the community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;

(II) at least 10 days prior to the expiration of a commitment order issued under this section if the Commissioner does not seek continued treatment; or

(III) any time that the person elopes from the custody of the Commissioner.

(ii) When the State’s Attorney or Attorney General receives notice under subdivision (i) of this subdivision (B), the Office shall provide notice of the action to any victim of the offense for which the person has been charged who has not opted out of receiving notice. A victim receiving notice pursuant to this subdivision (ii) has the right to submit a victim impact statement to the Family Division of the Superior Court in writing or through the State’s Attorney or Attorney General’s office.

(iii) As used in this subdivision (B), “victim” has the same meaning as in section 5301 of this title.

* * *

Sec. 3. 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:

* * *

(31) “Department” means the Department of Mental Health.

(32) “Psychiatric residential treatment facility for youth” means a non-hospital inpatient facility that serves individuals between 12 and 21 years of age with complex mental health conditions under the direction of a physician.

(33) “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 in need of treatment within a secure setting for an extended period of time. “Secure,” when describing a secure residential recovery facility, means that the residents can be physically prevented from leaving the facility by means of locking devices or other mechanical or physical mechanisms.

Sec. 4. 18 V.S.A. § 7253 is amended to read:

§ 7253. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

The Commissioner of Mental Health, in consultation with health care providers as defined in section 9432 of this title, including designated hospitals, designated agencies, individuals with mental conditions or psychiatric disabilities, and other stakeholders, shall design and implement a clinical resource management system that ensures the highest quality of care and facilitates long-term, sustained recovery for individuals in the custody of the Commissioner.

(1) For the purpose of coordinating the movement of individuals across the continuum of care to the most appropriate services, the clinical resource management system shall:

* * *

(J) Ensure that individuals under the custody of the Commissioner being served in ~~a designated hospital~~ hospital, an intensive residential recovery facilities facility, a psychiatric residential treatment facility for youth, and ~~the~~ a secure residential recovery facility shall have access to a mental health patient representative. The patient representative shall advocate for persons receiving services and shall also foster communication between persons receiving services and health care providers. The Department of Mental Health shall contract with an independent, peer-run organization to staff the full-time equivalent of a representative of persons receiving services.

* * *

Sec. 5. 18 V.S.A. § 7255 is amended to read:

§ 7255. SYSTEM OF CARE

The Commissioner of Mental Health shall coordinate a geographically diverse system and continuum of mental health care throughout the State that shall include at least the following:

(1) comprehensive and coordinated community services, including prevention, to serve children, families, and adults at all stages of mental condition or psychiatric disability;

- (2) peer services, which may include:
 - (A) a warm line;
 - (B) peer-provided transportation services;
 - (C) peer-supported crisis services; and
 - (D) peer-supported hospital diversion services;
- (3) alternative treatment options for individuals seeking to avoid or reduce reliance on medications;
- (4) recovery-oriented housing programs;
- (5) intensive residential recovery facilities;
- (6) appropriate and adequate psychiatric inpatient capacity for voluntary patients;
- (7) appropriate and adequate psychiatric inpatient capacity for involuntary inpatient treatment services, including persons receiving treatment through court order from a civil or criminal court; ~~and~~
- (8) a secure residential recovery facility; and
- (9) a psychiatric residential treatment facility for youth.

Sec. 6. 18 V.S.A. § 7256 is amended to read:

§ 7256. REPORTING REQUIREMENTS

Notwithstanding 2 V.S.A. § 20(d), the Department of Mental Health shall report annually on or before January 15 to the Senate Committee on Health and Welfare and the House Committee on ~~Human Services~~ Health Care regarding the extent to which individuals with a mental health condition or

psychiatric disability receive care in the most integrated and least restrictive setting available. The Department shall consider measures from a variety of sources, including the Joint Commission, the National Quality Forum, the Centers for Medicare and Medicaid Services, the National Institute of Mental Health, and the Substance Abuse and Mental Health Services Administration. The report shall address:

- (1) use of services across the continuum of mental health services;
- (2) adequacy of the capacity at each level of care across the continuum of mental health services;
- (3) individual experience of care and satisfaction;
- (4) individual recovery in terms of clinical, social, and legal results;
- (5) performance of the State's mental health system of care as compared to nationally recognized standards of excellence;
- (6) ways in which patient autonomy and self-determination are maximized within the context of involuntary treatment and medication;
- (7) the number of petitions for involuntary medication filed by the State pursuant to section 7624 of this title and the outcome in each case;
- (8) barriers to discharge from mental health inpatient and secure residential levels of care, including recommendations on how to address those barriers;
- (9) performance measures that demonstrate results and other data on individuals for whom petitions for involuntary medication are filed; and

~~(8)~~(10) progress on alternative treatment options across the system of care for individuals seeking to avoid or reduce reliance on medications, including supported withdrawal from medications.

Sec. 7. 18 V.S.A. § 7257 is amended to read:

§ 7257. REPORTABLE ADVERSE EVENTS

(a) An acute inpatient hospital, an intensive residential recovery facility, a designated agency, a psychiatric residential treatment facility for youth, or a secure residential recovery facility shall report to the Department of Mental Health instances of death or serious bodily injury to individuals with a mental condition or psychiatric disability in the custody or temporary custody of the Commissioner.

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Sec. 7a. 18 V.S.A. § 7259 is amended to read:

§ 7259. MENTAL HEALTH CARE OMBUDSMAN

* * *

(d) The Department of Mental Health shall provide any reportable adverse events reported pursuant to section 7257 of this title and a copy of the certificate of need for all emergency involuntary procedures performed on a person in the custody or temporary custody of the Commissioner to the Office of the Mental Health Care Ombudsman on a monthly basis.

Sec. 8. 18 V.S.A. § 7260 is added to read:

§ 7260. PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY FOR
YOUTH

(a) A person or governmental entity shall not establish, maintain, or operate a psychiatric residential treatment facility for youth without first obtaining a license from the Department of Health in accordance with this section.

(b) Upon receipt of the application for a license, the Department of Health shall issue a license if it determines that the applicant and the proposed psychiatric residential treatment facility for youth meet the following minimum standards:

(1) The applicant shall be a nonprofit entity that demonstrates the capacity to operate a psychiatric residential treatment facility for youth in accordance with rules adopted by the Department of Health and in a manner that ensures person-centered care and resident dignity.

(2) The applicant shall maintain certification from the Centers for Medicare and Medicaid Services under 42 C.F.R. §§ 441.151–182.

(3) The applicant shall maintain accreditation by the Joint Commission or other accrediting organization with comparable standards recognized by the Commissioner of Mental Health.

(4) The applicant shall fully comply with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.

(5) Residents admitted to a psychiatric residential treatment facility for youth shall be under the care of physician licensed pursuant to 26 V.S.A. chapter 23 or 33.

(6) The psychiatric residential treatment facility for youth, including the buildings and grounds, shall be subject to inspection by the Department of Disabilities, Aging, and Independent Living, its designees, and other authorized entities at all times.

(7) The applicant shall have a clear process for responding to resident complaints, including:

(A) the designation of patient representative pursuant to section 7352 of this title;

(B) a method by which each patient shall be made aware of the compliant procedure;

(C) an appeals mechanism within a psychiatric residential treatment facility for youth;

(D) a published time frame for processing and resolving complaints and appeals within a psychiatric residential treatment facility for youth; and

(E) periodic reporting to the Department of Health of the nature of complaints filed and action taken.

(c) A license is not transferable or assignable and shall be issued only for the premises named in the application.

(d) Once licensed, a psychiatric residential treatment facility for youth shall be among the placement options for individuals committed to the custody of the Commissioner under an order of nonhospitalization.

(e) The Department of Health shall adopt rules pursuant to 3 V.S.A. chapter 25 to carry out the purposes of this section. Rules pertaining to emergency involuntary procedures shall:

(1) be identical to those rules adopted by the Department of Mental Health governing the use of emergency involuntary procedures in psychiatric inpatient units;

(2) require that a certificate of need for all emergency involuntary procedures performed at the psychiatric residential treatment facility for youth be submitted to the Department and the Mental Health Care Ombudsman in the same manner and time frame as required for hospitals; and

(3) require that data regarding the use of emergency involuntary procedures be submitted in accordance with the requirements of the Department.

(f) The Department of Health, after notice and opportunity for a hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this section. The notice shall be

served by registered mail or by personal service setting forth the reasons for the proposed action and fixing a date not less than 60 days from the date of the mailing or service, at which the applicant or licensee shall be given an opportunity for a hearing. After the hearing, or upon default of the applicant of licensee, the Department of Health shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by the section shall be in accordance with the usual and customary rules for hearing.

Sec. 9. 18 V.S.A. § 7503 is amended to read:

§ 7503. APPLICATION FOR VOLUNTARY ADMISSION

(a) Any person 14 years of age or over may apply for voluntary admission to a designated hospital or psychiatric residential treatment facility for youth for examination and treatment.

(b) Before the person may be admitted as a voluntary patient, the person shall give consent in writing on a form adopted by the Department. The consent shall include a representation that:

(1) the person understands that treatment will involve inpatient status or residence at a psychiatric residential treatment facility for youth;

(2) the person desires to be admitted to ~~the~~ a hospital or a psychiatric residential treatment facility for youth, respectively;

(3) the person consents to admission voluntarily, without any coercion or duress; and

(4) the person understands that inpatient treatment or residence at a psychiatric residential treatment facility for youth may be on a locked unit, and a requested discharge may be deferred if the treating physician determines that the person is a person in need of treatment pursuant to section 7101 of this title.

(c) If the person is under 14 years of age, ~~he or she~~ the person may be admitted as a voluntary patient if ~~he or she~~ the person consents to admission, as provided in subsection (b) of this section, and if a parent or guardian makes written application.

Sec. 9a. 18 V.S.A. § 7509 is amended to read:

§ 7509. TREATMENT; RIGHT OF ACCESS

(a) Upon admission to ~~the a~~ hospital, secure residential recovery facility, or psychiatric residential treatment facility for youth pursuant to section 7503, 7508, 7617, or 7624 of this title, the person shall be treated with dignity and respect and shall be given such medical and psychiatric treatment as is indicated.

* * *

(c) The person shall be requested to furnish the names of persons ~~he or she~~ that the person may want notified of ~~his or her~~ the person's hospitalization or residence and kept informed of ~~his or her~~ the person's status. The head of the

hospital shall see that such persons are notified of the status of the ~~patient~~ person, how ~~he or she~~ the person may be contacted and visited, and how they may obtain information concerning ~~him or her~~ the person.

Sec. 9b. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any ~~inpatient setting~~ hospital, secure residential recovery facility, or psychiatric residential treatment facility for youth under the jurisdiction of the Commissioner in any manner that:

- (1) prevents physical and psychological trauma;
- (2) respects the privacy of the individual; and
- (3) represents the least restrictive means necessary for the safety of the

patient.

* * *

Sec. 10. 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.

* * *

(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 the physician has examined the proposed patient within five days after 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 the patient receive treatment in a secure residential recovery facility or a psychiatric residential treatment

facility for youth, 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 subsections (d) and (e) 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 a psychiatric residential treatment facility for youth, respectively.

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

§ 7618. ORDER; NONHOSPITALIZATION

(a) 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. If the treatment plan proposed by the Commissioner is for a secure residential recovery facility or a psychiatric residential treatment facility for youth, the court may at any time, on its own motion or on a motion of an interested party, review the need for treatment at the secure residential recovery facility or the psychiatric residential treatment facility for youth, respectively.

(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 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 a new order directing that the patient be hospitalized for the remainder of the 90-day period.

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

§ 7620. APPLICATION FOR CONTINUED TREATMENT

* * *

(d) If the Commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility or a psychiatric residential treatment facility for youth, 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 a psychiatric residential treatment facility for youth, respectively.

~~(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. 13. 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 psychiatric residential treatment facility for youth, 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 the psychiatric residential treatment facility for youth, respectively.

* * *

Sec. 14. 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 on an order of nonhospitalization and has been placed at a secure residential recovery facility;

(4) has been committed to the custody of the Commissioner of Corrections as a convicted felon and is being held in a correctional facility 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)~~(5) 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)~~(6)(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~~ the person is a person in need of treatment; or

~~(6)~~(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)~~(4), and ~~(4)~~(5) 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)~~ (a)(5) 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)(6)~~ 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 10 days after 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. 15. 18 V.S.A. § 7628 is amended to read:

§ 7628. PROTOCOL

The Department of Mental Health shall develop and adopt by rule a strict protocol to ensure the health, safety, dignity, and respect of patients subject to administration of involuntary psychiatric medications in any designated hospital or secure residential recovery facility. This protocol shall be followed by all designated hospitals and secure residential recovery facilities administering involuntary psychiatric medications.

Sec. 15a. 18 V.S.A. § 7701 is amended to read:

§ 7701. NOTICE OF RIGHTS

~~The head of a~~ A hospital, secure residential recovery facility, and psychiatric residential treatment facility for youth shall provide reasonable means and arrangements, including the posting of excerpts from relevant statutes, for informing patients of their right to discharge and other rights and for assisting them in making and presenting requests for discharge or for application to have the patient's status changed from involuntary to voluntary.

Sec. 16. 18 V.S.A. § 7703 is amended to read:

§ 7703. TREATMENT

* * *

(b) The Department shall establish minimum standards for adequate treatment as provided in this section, including requirements that, when possible, psychiatric unit staff be used as the primary source to implement emergency involuntary procedures such as seclusion and restraint. The Department shall oversee and collect information and report on data regarding the use of emergency involuntary procedures for patients admitted to a psychiatric unit, a secure residential recovery facility, or a psychiatric residential treatment facility for youth, regardless of whether the patient is under the care and custody of the Commissioner.

* * * Policies Applicable to the Secure Residential Recovery Facility * * *

Sec. 17. RULEMAKING; SECURE RESIDENTIAL RECOVERY

FACILITY

On or before August 1, 2024, the Commissioner of Disabilities, Aging, and Independent Living, in consultation with the Commissioner of Mental Health, shall file permanent proposed rule amendments with the Secretary of State pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and Independent Living, Licensing and Operating Regulations for Therapeutic Community Residences (CVR 13-110-12) for the purpose of amending the secure residential recovery facility section of the rule. Prior to the permanent rules taking effect, the Department shall adopt similar emergency rules that shall be deemed to have met the standard for emergency rulemaking in 3 V.S.A. § 844. Both the permanent and emergency rules shall:

(1) authorize the use of emergency involuntary procedures at a secure residential recovery facility in a manner identical to that required in rules adopted by the Department of Mental Health governing the use of emergency involuntary procedures in psychiatric inpatient units;

(2) require that a certificate of need for all emergency involuntary procedures performed at a secure residential recovery facility be submitted to the Department and the Mental Health Care Ombudsman in the same manner and time frame as required for hospitals; and

(3) authorize the administration of involuntary medication at a secure residential recovery facility in a manner identical to that required in rules adopted by the Department of Mental Health governing the use of the administration of involuntary medication in psychiatric inpatient units.

Sec. 17a. JUDICIAL REVIEW; RESIDENTS OF SECURE RESIDENTIAL
RECOVERY FACILITY

Between July 1, 2024 and July 1, 2025, an individual who has been committed to the custody of the Commissioner at the secure residential recovery facility continuously since June 30, 2024 or earlier may apply to the Family Division of the Superior Court for a review as to whether the secure residential recovery facility continues to be the most appropriate and least restrictive setting necessary to serve the individual.

Sec. 18. 2021 Acts and Resolves No. 50, Sec. 3(c) is amended to read:

(c) The amount appropriated in subdivision (a)(1) of this section shall be used to construct a 16-bed Secure Residential Recovery Facility on Parcel ID# 200-5-003-001 as designated on the Town of Essex's Tax Parcel Maps for transitional support for individuals who are being discharged from inpatient psychiatric care. Through interior fit-up, versus building redesign, the 16-bed facility shall include two eight-bed wings designed with the capability to allow for separation of one wing from the main section of the facility, if necessary. Both wings shall be served by common clinical and activity spaces. ~~Neither wing shall include a locked seclusion area, and the facility shall not use emergency involuntary procedures.~~ Outdoor space shall be adequate for exercise and other activities but not less than 10,000 square feet.

Sec. 19. CERTIFICATE OF NEED

Notwithstanding the requirements of 18 V.S.A. chapter 221, subchapter 5, or any prior certificates of need issued pursuant to that subchapter, the secure residential recovery facility shall be authorized to:

- (1) use emergency involuntary procedures; and
- (2) accept patients under an initial commitment order.

Sec. 20. REPEAL; INVOLUNTARY MEDICATION REPORT

1998 Acts and Resolves No. 114, Sec. 5 (report) is repealed on July 1, 2024.

* * * Persons in Need of Custody, Care, and Habilitation or Continued
Custody, Care, and Habilitation * * *

Sec. 21. 13 V.S.A. § 4814 is amended to read:

§ 4814. ORDER FOR EXAMINATION OF COMPETENCY

* * *

(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. 22. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

* * *

(b) A competency evaluation for an individual thought to have a developmental disability shall ~~include~~ be a current evaluation by a doctoral-level psychologist trained in forensic psychology and skilled in assessing individuals with developmental disabilities.

* * *

Sec. 23. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

* * *

(c) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in 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 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 or psychologist in accordance with sections 4814–4816 of this title.

* * *

Sec. 24. 13 V.S.A. § 4820 is amended to read:

§ 4820. HEARING REGARDING COMMITMENT

(a)(1) When a person charged on information, complaint, or indictment with a criminal offense:

~~(1) [Repealed.]~~

~~(2)~~(A) 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)~~(B) 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)(C)~~ upon trial by court or jury is acquitted by reason of insanity at the time of the alleged offense;

(2) ~~the~~ 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 or Commissioner of Disabilities, Aging, and Independent Living, as appropriate. Such person may be confined in jail or some other suitable place by order of the court pending hearing for a period not exceeding 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. 25. 13 V.S.A. § 4823 is amended to read:

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

(a) If the court finds by clear and convincing evidence 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 for up to one year 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.

(b) Such order of commitment shall have the same force and effect as an order issued under 18 V.S.A. § ~~8843~~ chapter 206, subchapter 3 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~~ chapter 206, subchapter 3.

(c) ~~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. [Repealed.]~~

Sec. 26. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability
Who Present a Danger of Harm to Others

§ 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)(A) “Person in need of continued custody, care, and habilitation” means a person:

(i) who was previously found to be a person in need of custody, care, and habilitation;

(ii) who poses a danger of harm to others; and

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

(B) As used in this subdivision (3), 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:

(i) has inflicted or attempted to inflict serious bodily injury to another or has committed an act that would constitute sexual conduct with a child as defined in 13 V.S.A. § 2821 or lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602 of this title; or

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

(4) “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 sexual conduct with a child as defined in 13 V.S.A. § 2821 or lewd and lascivious conduct with a child as provided in 13 V.S.A. § 2602; and

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

(5) “Victim” has the same meaning as in 13 V.S.A. § 5301(4).

§ 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.]~~

§ 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.]~~

§ 8842. ~~HEARING~~

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

§ 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.]~~

§ 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.

§ 8845. JUDICIAL REVIEW PETITION AND ORDER FOR CONTINUED CUSTODY, CARE, AND HABILITATION

~~(a) A person committed under this subchapter may be discharged from custody by a Superior judge after judicial review as provided herein or by administrative order of the Commissioner.~~

~~(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 that issued the original commitment order.~~

~~(c) A person committed under this subchapter shall be entitled to a judicial review annually. If no such review is requested by the person, it shall be initiated by the Commissioner. However, such person may initiate a judicial review under this subsection after 90 days after initial commitment but before the end of the first year of the commitment.~~

~~(d) If at the completion of the hearing and consideration of the record, the court finds at the time of the hearing that the person is still in need of custody, care, and habilitation, commitment shall continue 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 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.~~

(1) If, prior to the expiration of any previous commitment order issued in accordance with 13 V.S.A. § 4823 or this subchapter, the Commissioner believes that the person is a person in need of continued custody, care, and habilitation, the Commissioner shall seek continued custody, care, and habilitation in the Family Division of the Superior Court. The Commissioner shall, by filing a written petition, commence proceedings for the continued custody, care, and habilitation of a person. The petition shall state the current and relevant facts upon which the person’s alleged need for continued custody, care, and habilitation is predicated.

(2) Any commitment order for custody, care, and habilitation or continued custody, care, and habilitation issued in accordance with 13 V.S.A. § 4823 or this subchapter shall remain in force pending the court’s decision on the petition.

(b) Upon receipt of the petition for the continued custody, care, and habilitation, the court shall hold a hearing within 14 days after the date of filing. The hearing may be continued for good cause shown.

(c) If the court finds by clear and convincing evidence at the time of the hearing that the person is a person in need of continued custody, care, and

habilitation, it shall issue an order of commitment for up to one year in a designated program in the least restrictive environment consistent with the person's need for continued custody, care, and habilitation. 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 in accordance with section 8847 of this subchapter. In determining whether a person is a person in need of continued custody, care, and habilitation, the court shall consider the degree to which the person has previously engaged in or complied with the treatment and programming provided by the Commissioner.

§ 8846. RIGHT TO INITIATE REVIEW

A person may initiate a judicial review in the Family Division of the Superior Court or an administrative review under this subchapter at any time after 90 days following a current order of commitment or continued commitment and not earlier than six months after the filing of a previous application under this section. If the court or Commissioner finds that the person is not a person in need of custody, care, and habilitation or continued custody, care, and habilitation, the person shall be discharged from the custody of the Commissioner pursuant to section 8847 of this subchapter.

§ 8847. DISCHARGE FROM COMMITMENT

(a) A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged as follows:

(1) by a Family Division Superior Court judge after review of an order of custody, care, and habilitation or an order of continued custody, care, and habilitation if the court finds that a person is not a person in need of custody, care, and habilitation or continued custody, care, and habilitation, respectively;

or

(2) by administrative order of the Commissioner regarding an order of custody, care, and habilitation or an order of continued custody, care, and habilitation if the Commissioner determines that a person is no longer a person in need of custody, care, and habilitation or continued custody, care, and habilitation, respectively.

(b) A judicial or administrative order of discharge may be conditional or absolute.

(c)(1) When a person is under an order of commitment pursuant to 13 V.S.A. § 4823 or continued commitment pursuant to this subchapter, the Commissioner shall provide notice to the State's Attorney of the county where the prosecution originated or to the Office of the Attorney General if that Office prosecuted the case:

(A) at least 10 days prior to discharging a person from commitment or continued commitment;

(B) at least 10 days prior to the expiration of a commitment or continued commitment order if the Commissioner does not seek an order of continued custody, care, and habilitation; or

(C) any time that the person elopes from custody of the Commissioner and cannot be located, and there is reason to believe the person may be lost or poses a risk of harm to others.

(2) When the State's Attorney or Attorney General receives notice under subdivision (1) of this subsection, the Office shall provide notice of the action to any victim of the offense for which the person has been charged who has not opted out of receiving notice. A victim receiving notice pursuant to this subdivision has the right to submit a victim impact statement to the Family Division of the Superior Court in writing or through the State's Attorney's or Attorney General's Office.

(d) Whenever a person is subject to a judicial or administrative discharge from commitment, the Criminal Division of the Superior Court shall retain jurisdiction over the person's underlying charge and any orders holding the person without bail or concerning bail, and conditions of release shall remain in place. Those orders shall be placed on hold while a person is in the custody, care, and habilitation or continued custody, care, and habilitation of the Commissioner. When a person is discharged from the Commissioner's custody, care, and habilitation to a correctional facility, the custody of the Commissioner shall cease when the person enters the correctional facility.

§ ~~8846~~ 8848. RIGHT TO COUNSEL

Persons subject to commitment ~~or judicial review under~~, continued commitment, or self-initiated review pursuant to section 8846 of this

subchapter shall have a right to counsel as provided in section 7111 of this title.

* * * Proposal for Enhanced Services * * *

Sec. 27. INDIVIDUALS WITH INTELLECTUAL DISABILITIES;

SECURE, COMMUNITY-BASED RESIDENCES

(a) The Department of Disabilities, Aging, and Independent Living shall propose alternative options, including building and staffing cost estimates, for a secure community-based residence or residences to treat individuals who have been charged with a crime and found incompetent to stand trial or adjudicated not guilty by reason of insanity, who are in the Commissioner's custody, and who require a more secure level of care than is currently available. The Commissioner shall ensure that a secure community-based residence proposed under this section would provide appropriate custody, care, and habilitation in a designated program that provides appropriate staffing and services levels in the least restrictive setting. The alternative options shall be developed in consultation with interested parties, including Disability Rights Vermont, Vermont Legal Aid, Developmental Services State Program Standing Committee, Vermont Care Partners, and Green Mountain Self Advocates with final placement determinations made by the Commissioner. The alternative options may be eligible for funding through the Global Commitment Home- and Community-Based Services Waiver. Prior to seeking funding for constructing, purchasing, or contracting for a secure

community-based residence for individuals in the Commissioner's custody, the Department shall propose to the House Committees on Human Services and on Judiciary and the Senate Committees on Health and Welfare and on Judiciary any necessary statutory modifications to uphold due process requirements.

(b) As used in this section:

(1) "Designated program" has the same meaning as in 18 V.S.A. § 8839.

(2) "Secure" means that residents may be physically prevented from leaving the residence by means of locking devices or other mechanical or physical mechanisms.

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

Sec. 28. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
ESTIMATE

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

(1) whether and how to serve individuals with an intellectual disability in a competency restoration program;

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

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

* * * Effective Date * * *

Sec. 29. EFFECTIVE DATE

This act shall take effect on July 1, 2024.

Date Governor signed bill: May 30, 2024