

1 S.89

2 Introduced by Senators Baruth, Lyons and Sears

3 Referred to Committee on

4 Date:

5 Subject: Health; human services; mental health; developmental disabilities;  
6 forensic facility

7 Statement of purpose of bill as introduced: This bill proposes to establish a  
8 forensic facility.

9 An act relating to establishing a forensic facility

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

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

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

14 § 7101. DEFINITIONS

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

17 \*\*\*

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

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

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

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

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

11                  § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

1 (d) The application shall contain:

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

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

6 (e) The application shall be accompanied by:

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

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

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

1 inappropriate, including information on the availability of any appropriate  
2 alternatives.

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

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

11 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY  
12 TREATMENT

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

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

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

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

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

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

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

19 (i) shall grant the motion if it finds that the person demonstrates a  
20 significant risk of causing the person or others serious bodily injury as defined

1 in 13 V.S.A. § 1021 even while in custody, and clinical interventions have  
2 failed to address the risk of harm to the person or others;

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

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

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

21 \* \* \*

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

2 § 7618. ORDER; NONHOSPITALIZATION

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

7 (2) If the Commissioner determines that treatment at a forensic facility  
8 is appropriate, the court shall order the person to receive treatment there for a  
9 period of 90 days. The court may at any time, on its own motion or on motion  
10 of an interested party, review the need for treatment at the forensic facility.

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

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

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

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

21 § 7620. APPLICATION FOR CONTINUED TREATMENT

1 (a) If, prior to the expiration of any order issued in accordance with section  
2 7623 of this title, the Commissioner believes that the condition of the patient is  
3 such that the patient continues to require treatment, the Commissioner shall  
4 apply to the court for a determination that the patient is a patient in need of  
5 further treatment and for an order of continued treatment.

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

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

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

21 (e) As used in this chapter:





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

2 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

12 (3) has been committed to the custody of the Commissioner of  
13 Corrections as a convicted felon and is being held in a correctional facility  
14 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for  
15 whom the Departments of Corrections and of Mental Health have determined  
16 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.  
17 § 907(4)(H);

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

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

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

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

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

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

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

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

19 (b)(1) Except as provided in subdivisions (2), (3), and (4) of this  
20 subsection, an application for involuntary medication shall be filed in the

1 Family Division of the Superior Court in the county in which the person is  
2 receiving treatment.

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

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

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

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

14 (4) Within 72 hours of the filing of an application for involuntary  
15 medication pursuant to subdivision ~~(a)(6)~~(7) of this section, the court shall  
16 determine, based solely upon a review of the psychiatrist's certification and  
17 any other filings, whether the requirements of that subdivision have been  
18 established. If the court determines that the requirements of subdivision  
19 ~~(a)(6)~~(7) of this section have been established, the court shall consolidate the  
20 application for involuntary treatment with the application for involuntary  
21 medication and hear both applications within ten days of the date that the

1 application for involuntary medication is filed. The court shall rule on the  
2 application for involuntary treatment before ruling on the application for  
3 involuntary medication. Subsection 7615(b) of this title shall apply to  
4 applications consolidated pursuant to this subdivision.

5 \* \* \*

6 Sec. 8. 18 V.S.A. § 7627 is amended to read:

7 § 7627. COURT FINDINGS; ORDERS

8 \* \* \*

9 (o) For a person who is receiving treatment pursuant to an order of  
10 nonhospitalization in a forensic facility, if the court finds that without an order  
11 for involuntary medication there is a substantial probability that the person  
12 would continue to refuse medication and as a result would pose a danger of  
13 harm to self or others, the court may the order administration of involuntary  
14 medications at a forensic facility for up to 90 days, unless the court finds that  
15 an order is necessary for a longer period of time. An order for involuntary  
16 medication pursuant to this subsection shall not be longer than the duration of  
17 the current order of nonhospitalization. If at any time the treating psychiatrist  
18 finds that a person subject to an order for involuntary medication has become  
19 competent pursuant to subsection 7625(c) of this title, the order shall no longer  
20 be in effect.



1 ~~resides, unless the person resides out of State in which case the proceedings~~  
2 ~~shall be conducted in the original committing court~~ If the Commissioner seeks  
3 to have a person committed pursuant to this section placed in a forensic  
4 facility, the Commissioner shall provide a statement setting forth the reasons  
5 for the Commissioner's determination that clinically appropriate treatment and  
6 programming can be provided safely only in a forensic facility.

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

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

10 § 8839. DEFINITIONS

11 As used in this subchapter:

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

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

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

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

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

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

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

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

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



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

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

6           § 8840. ~~JURISDICTION AND VENUE~~

7           ~~Proceedings brought under this subchapter for commitment to the~~  
8           ~~Commissioner for custody, care, and habilitation shall be commenced by~~  
9           ~~petition in the Family Division of the Superior Court for the unit in which the~~  
10          ~~respondent resides. [Repealed.]~~

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

12          § 8841. ~~PETITION; PROCEDURES~~

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

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

16          § 8842. ~~HEARING~~

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

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

20          § 8843. ~~FINDINGS AND ORDER~~

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

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

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

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

11      § 8844. LEGAL COMPETENCE

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

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

16      § 8845. JUDICIAL REVIEW

17           (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be  
18      discharged from custody by a Superior judge after judicial review as provided  
19      ~~herein~~ in accordance with this subchapter or by administrative order of the  
20      Commissioner. At least 10 days prior to the effective date of any  
21      administrative order for discharge by the Commissioner, the Commissioner

1 shall give notice of the discharge to the committing court and to the State's  
2 Attorney of the county where the prosecution occurred.

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

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

19 (d)(c) If the Commissioner seeks to place the person committed pursuant to  
20 this subchapter in a forensic facility, the petition shall expressly state that such  
21 placement is being sought. The petition shall set forth the reasons for the

1 Commissioner's determination that clinically appropriate treatment and  
2 programming can be provided safely only in a forensic facility.

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

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

9 (f) If at the completion of the hearing and consideration of the record, the  
10 court finds by clear and convincing evidence that at the time of the hearing that  
11 the person is still in need of continued custody, care, and habilitation,  
12 commitment shall continue for an indefinite or limited period. If the court  
13 finds at the time of the hearing that the person is no longer in need of  
14 continued custody, care, and habilitation, it shall discharge the person from the  
15 custody of the Commissioner. An order of discharge may be conditional or  
16 absolute and may have immediate or delayed effect.

17 \* \* \* Certificate of Need \* \* \*

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

19 § 9435. EXCLUSIONS

20 \* \* \*

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

5                                   \* \* \* Rulemaking \* \* \*

6       Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC  
7                                   FACILITY

8       (a) On or before July 1, 2023, the Secretary of Human Services, in  
9       consultation with the Departments of Mental Health and of Disabilities, Aging,  
10       and Independent Living, shall file an initial proposed rule with the Secretary of  
11       State pursuant to 3 V.S.A. § 826(a)(2) specifying the criteria that the  
12       Departments shall use to determine admission to the forensic facility and the  
13       process used by the Commissioners to determine appropriate admissions.

14       (b) The Departments shall not admit residents to the forensic facility until a  
15       permanent rule has been adopted.

16       Sec. 19. RULEMAKING; CONFORMING AMENDMENTS

17       On or before July 1, 2023, the Commissioners of Mental Health and of  
18       Disabilities, Aging, and Independent Living, respectively, shall file initial  
19       proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.  
20       § 826(a)(2) to account for the establishment of the forensic facility:

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

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

10 \* \* \* Effective Dates \* \* \*

11 Sec. 20. EFFECTIVE DATES

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