

1 S.89

2 Introduced by Senators Baruth, Lyons and Sears

3 Referred to Committee on Judiciary

4 Date: February 16, 2023

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 ~~\*\*\*~~

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

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

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

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

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

14 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

19 (c) If the application is filed under section 7508 or 7620 of this title, it shall  
20 be filed in the unit of the Family Division of the Superior Court in which the  
21 ~~hospital is located. In all other cases, it shall be filed in the unit in which the~~

1 ~~proposed patient resides. In the case of a nonresident, it may be filed in any~~  
2 unit. The court may change the venue of the proceeding to the unit in which  
3 the proposed patient is located at the time of the trial.

4 (d) The application shall contain:

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

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

9 (e) The application shall be accompanied by:

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

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

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

1 ~~the certificate the specific alternative forms of care and treatment that he or she~~  
2 the examining physician considered and why those alternatives were deemed  
3 inappropriate, including information on the availability of any appropriate  
4 alternatives.

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

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

13 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY  
14 TREATMENT

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

20 (2)(A) The applicant or a person who is certified as a person in need of  
21 treatment pursuant to section 7508 of this title may file a motion to expedite

1 ~~the hearing. The motion shall be supported by an affidavit, and the court shall~~  
2 rule on the motion on the basis of the filings without holding a hearing. The  
3 court:

4 (i) shall grant the motion if it finds that the person demonstrates a  
5 significant risk of causing the person or others serious bodily injury as defined  
6 in 13 V.S.A. § 102, even while hospitalized, and clinical interventions have  
7 failed to address the risk of harm to the person or others;

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

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

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

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

1 in 12 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  
12 the 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 (1) "Secure," when describing a residential facility, means that the  
2 residents can be physically prevented from leaving the facility by means of  
3 locking devices or other mechanical or physical mechanisms.

4 (2) "Secure residential recovery facility" means a residential facility,  
5 licensed as a therapeutic community residence as defined in 33 V.S.A. §  
6 7102(11), for an individual who no longer requires acute inpatient care but  
7 who does remain in need of treatment within a secure setting for an extended  
8 period of time. A secure residential recovery facility shall not be used for any  
9 purpose other than the purposes permitted by this section.

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

11 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;  
12 ORDERS

13 \* \* \*

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

21

1 ~~See 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  
20 7615(a)(2)(A)(i) 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  
4 without 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.

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

Custody, Care, and Habilitation \*\*\*

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

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

(a) If the court finds that such person is a person in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order of commitment directed to the Commissioner of Disabilities, Aging, and Independent Living for 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 and persons committed under such an order shall have the same status, and the same rights, including the right to receive care and habilitation, to be examined and discharged, and to apply for and obtain judicial review of their cases, as persons ordered committed under 18 V.S.A. § 8843~~ Judicial review procedures for an order issued pursuant to subsection (a) of this section and for discharge from an order of commitment shall occur in accordance with 18 V.S.A. § 8845.

~~(c)(1) Section 4822 of this title shall apply to persons proposed for discharge under this section; however, judicial proceedings shall be conducted in the Criminal Division of the Superior Court in which the person then~~

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~~  
8 ~~restrictive environment consistent with the respondent's need for custody, care,~~  
9 ~~and 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,  
16 or 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~~  
11 ~~that 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 ~~(c) Excluded from this subchapter is any forensic facility as defined in 19~~  
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.~~

~~\* \* \* Purpose \* \* \*~~

~~Sec. 1. PURPOSE~~

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

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

~~Sec. 1a. 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)(A) “Forensic facility” means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual initially committed pursuant to:~~

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

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

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

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

~~§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT~~

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

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

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

~~(d) The application shall contain:~~

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

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

~~(e) The application shall be accompanied by:~~

~~(1) a certificate of a licensed physician, which shall be executed under penalty of perjury stating that he or she the licensed physician has examined the proposed patient within five days of from the date the petition is filed and is~~

~~of the opinion that the proposed patient is a person in need of treatment, including the current and relevant facts and circumstances upon which the physician's opinion is based; or~~

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

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

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

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

~~§ 7615. HEARING ON APPLICATION FOR INVOLUNTARY  
TREATMENT~~

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

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

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

~~(ii) may grant the motion if it finds that the person has received~~



~~involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.~~

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

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

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

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

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

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

~~\* \* \*~~

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

~~§ 7618. ORDER; NONHOSPITALIZATION~~

~~(a)(1) If the court finds that a treatment program other than hospitalization is adequate to meet the person's treatment needs, the court shall order the~~

~~person to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.~~

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

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

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

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

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

~~§ 7620. APPLICATION FOR CONTINUED TREATMENT~~

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

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

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

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

~~secure residential recovery facility or forensic facility, as appropriate.~~

~~(e) As used in this chapter:~~

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

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

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

~~§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;  
ORDERS~~

~~\* \* \*~~

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

~~\* \* \*~~

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

~~§ 7624. APPLICATION FOR INVOLUNTARY MEDICATION~~

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

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

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

~~(3) has been committed to the custody of the Commissioner of Corrections as a convicted felon and is being held in a correctional facility;~~

~~which that is a designated facility pursuant to section 7628 of this title and for whom the Departments of Corrections and of Mental Health have determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(A)(H);~~

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

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

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

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

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

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

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

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

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

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

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

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

~~involuntary medication.~~

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

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

~~\*\*\*~~

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

~~§ 7627. COURT FINDINGS; ORDERS~~

~~\*\*\*~~

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

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

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

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

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

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

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

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

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

~~§ 8839. DEFINITIONS~~

~~As used in this subchapter:~~

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

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



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

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

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

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

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

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

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

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

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

~~§ 8840. JURISDICTION AND VENUE~~

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

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

~~§ 8841. PETITION; PROCEDURES~~

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

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

~~§ 8842. HEARING~~

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

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

~~§ 8843. FINDINGS AND ORDER~~

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

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

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

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

~~§ 8844. LEGAL COMPETENCE~~

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

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

~~§ 8845. JUDICIAL REVIEW~~

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

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

~~(c) A person committed under 13 V.S.A. § 4823 or this subchapter shall be entitled to a judicial review of the person's need for commitment annually. The Family Division of the Superior Court shall have exclusive jurisdiction~~



~~over all judicial review proceedings brought under this section. If no such judicial review is requested by the person within one year from the date of the last order of commitment, it shall be initiated by the Commissioner. However, such person may initiate a judicial review under this subsection after 90 days of initial commitment but before the end of the first year of the commitment, or if commitment has been continued under this subchapter, the person may petition for review after 90 days from the date of an order for continued commitment.~~

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

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

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

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

~~(g) In determining whether a person is in need of continued custody, care, and habilitation, the court shall consider the degree to which the person has engaged in or complied with the treatment and supervision provided by the Commissioner.~~

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

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

§ 9435. EXCLUSIONS

\* \* \*

~~(g) Excluded from this subchapter is any forensic facility, as defined in 1~~

V.S.A. section 7101, that is supervised and operated by the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living, or both.

*\* \* \* Rulemaking \* \* \**

*Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC FACILITY*

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

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

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

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

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

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

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

(D) being charged with a felony offense involving an act of violence against another person for which bail may be withheld pursuant to 15 V.S.A. § 7553 or 7553a.

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

~~Sec. 19. RULEMAKING; CONFORMING AMENDMENTS~~

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

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

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

~~\*\*\* Presentation and Report \*\*\*~~

~~Sec. 20. PRESENTATION; FORENSIC FACILITY PROGRAMMING~~

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

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

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

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

~~Sec. 21. REPORT; FORENSIC FACILITY~~

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

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

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

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

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

~~\*\*\* Effective Dates \*\*\*~~

~~Sec. ~~20~~ 22. EFFECTIVE DATES~~

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

~~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) 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*

*(I) 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 a 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 1987 Acts and Resolves No. 248;~~

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

~~(E) the Defender General;~~

~~(F) a representative of the Center for Crime Victim Services;~~

~~(G) the Commissioner of Corrections;~~

~~(H) the State Program Standing Committee for Developmental Services; and~~

~~(I) the President of the Vermont State Employees' Association.~~

~~(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.*