

1 S.89

2 An act relating to establishing a forensic facility

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

4 Sec. 1. LEGISLATIVE INTENT

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

12 Sec. 2. CERTIFICATE OF NEED; EXCLUSION

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

18 Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

19 (a) On or before August 1, 2023, the Commissioner of Mental Health shall
20 file an initial proposed rule amendment with the Secretary of State pursuant to
21 3 V.S.A. § 836(a)(2) to amend the Department of Mental Health, Rules for the
22 Administration of Nonemergency Involuntary Psychiatric Medications (CVR

1 13-150-11) for the purpose of allowing the administration of involuntary
2 medication at a forensic facility.

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

10 Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

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

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

1 (3) an assessment of laws, regulations, rules, and policies governing
2 psychiatric hospitals and therapeutic community residences to determine
3 whether there are any conflicts with serving two populations in the same
4 facility.

5 Sec. 5. REPORT; FORENSIC FACILITY

6 Annually, on or before January 15 between 2025 and 2030, the Departments
7 of Mental Health and of Disabilities, Aging, and Independent Living shall
8 submit a report to the House Committees on Human Services and on Judiciary
9 and to the Senate Committees on Health and Welfare and on Judiciary
10 containing:

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

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

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

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

1 Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO
2 INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE
3 CRIMINAL-JUSTICE INVOLVED

4 (a) Creation. There is created the Working Group on Policies Pertaining to
5 Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved.
6 The Working Group shall assess whether a forensic level of care is needed for
7 individuals with intellectual disabilities who are charged with a crime of
8 violence against another person, have been determined incompetent to stand
9 trial or adjudicated not guilty by reason of insanity, and are committed to the
10 custody of the Commissioner of Disabilities, Aging, and Independent Living.
11 If it is determined that forensic-level care is needed for such individuals, the
12 Working Group shall propose legislation establishing the process and criteria
13 for committing such individuals to a forensic facility. In developing
14 legislation, the Working Group shall refer to earlier drafts of this act discussed
15 by the General Assembly in 2023.

16 (b) Membership.

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

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

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

- 1 (C) a representative, appointed by the Green Mountain Self-
2 Advocates;
- 3 (D) a representative, appointed by Vermont Care Partners;
- 4 (E) a representative, appointed by the Vermont Crisis Intervention
5 Network;
- 6 (F) the Commissioner of Disabilities, Aging, and Independent Living
7 or designee;
- 8 (G) the Commissioner of Mental Health or designee;
- 9 (H) a representative, appointed by the Center for Crime Victim
10 Services;
- 11 (I) the President of the Vermont State Employees' Association or
12 designee;
- 13 (J) the Executive Director of the Office of Racial Equity or designee;
- 14 (K) the Chief Superior Judge or designee;
- 15 (L) two members of the House of Representatives, one of whom is
16 from the House Committee on Human Services and one of whom is from the
17 House Committee on Judiciary, appointed by the Speaker; and
- 18 (M) two members of the Senate, one of whom is from the Senate
19 Committee on Health and Welfare and one of whom is from the Senate
20 Committee on Judiciary, appointed by the Committee on Committees.

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

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

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

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

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

13 (E) the Defender General;

14 (F) the Commissioner of Corrections; and

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

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

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

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

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

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

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

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

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

20 (e) Report. On or before December 1, 2023, the Working Group shall
21 submit a written report to the House Committees on Human Services and on

1 Judiciary and to the Senate Committees on Health and Welfare and on
2 Judiciary with its findings and any recommendations for legislative action,
3 including proposed legislative language.

4 (f) Meetings.

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

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

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

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

12 (g) Compensation and reimbursement.

13 (1) For attendance at meetings during adjournment of the General
14 Assembly, a legislative member of the Working Group serving in the
15 member's capacity as a legislator shall be entitled to per diem compensation
16 and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than
17 14 meetings. These payments shall be made from monies appropriated to the
18 General Assembly.

19 (2) Members of the Working Group not otherwise compensated for their
20 participation in the Working Group shall be entitled to per diem compensation
21 and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not

1 more than 14 meetings. These payments shall be made from monies
2 appropriated to the Department of Disabilities, Aging, and Independent Living.

3 (h) Definitions.

4 (1) As used in this section, “forensic facility” means a residential
5 facility, licensed as a therapeutic community residence as defined in 33 V.S.A.
6 § 7102(11), for an individual:

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

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

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

15 (2) As used in this subsection, “secure” has the same meaning as in
16 18 V.S.A. § 7620.

17 * * * Effective Date * * *

18 Sec. 7. EFFECTIVE DATE

19 This act shall take effect on passage.