

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 * * * Purpose * * *

5 Sec. 1. PURPOSE

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

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

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

15 § 7101. DEFINITIONS

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

18 * * *

19 (31)(A) “Forensic facility” means a residential facility, licensed as a
20 therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an
21 individual initially 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, and the court finds that treatment at a forensic facility is the
9 least restrictive setting adequate to meet the person's needs, the court shall
10 order the person to receive treatment there for a period of 90 days. The court
11 may at any time, on its own motion or on motion of an interested party, review
12 the need for treatment at the forensic facility.

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

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

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

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

2 § 7620. APPLICATION FOR CONTINUED TREATMENT

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

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

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

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

1 appropriate treatment for the patient’s condition can be provided safely only in
2 a secure residential recovery facility or forensic facility, as appropriate.

3 (e) As used in this chapter:

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

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

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

14 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
15 ORDERS

16 * * *

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

1 on motion of an interested party, review the need for treatment at the secure
2 residential recovery facility or forensic facility, as applicable.

3 * * *

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

5 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

15 (3) has been committed to the custody of the Commissioner of
16 Corrections as a convicted felon and is being held in a correctional facility
17 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for
18 whom the Departments of Corrections and of Mental Health have determined
19 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.
20 § 907(4)(H);

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

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

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

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

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

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

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

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

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

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

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

11 (B) the court shall consolidate the application for involuntary
12 treatment with the application for involuntary medication and rule on the
13 application for involuntary treatment before ruling on the application for
14 involuntary medication.

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

18 (4) Within 72 hours of the filing of an application for involuntary
19 medication pursuant to subdivision ~~(a)(6)~~(7) of this section, the court shall
20 determine, based solely upon a review of the psychiatrist's certification and
21 any other filings, whether the requirements of that subdivision have been

1 established. If the court determines that the requirements of subdivision
2 (a)~~(6)~~(7) of this section have been established, the court shall consolidate the
3 application for involuntary treatment with the application for involuntary
4 medication and hear both applications within ten days of the date that the
5 application for involuntary medication is filed. The court shall rule on the
6 application for involuntary treatment before ruling on the application for
7 involuntary medication. Subsection 7615(b) of this title shall apply to
8 applications consolidated pursuant to this subdivision.

9 * * *

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

11 § 7627. COURT FINDINGS; ORDERS

12 * * *

13 (o) For a person who is receiving treatment pursuant to an order of
14 nonhospitalization in a forensic facility, if the court finds that without an order
15 for involuntary medication there is a substantial probability that the person
16 would continue to refuse medication and as a result would pose a danger of
17 harm to self or others, the court may order administration of involuntary
18 medications at a forensic facility for up to 90 days, unless the court finds that
19 an order is necessary for a longer period of time. An order for involuntary
20 medication pursuant to this subsection shall not be longer than the duration of
21 the current order of nonhospitalization. If at any time the treating psychiatrist

1 finds that a person subject to an order for involuntary medication has become
2 competent pursuant to subsection 7625(c) of this title, the order shall no longer
3 be in effect.

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

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

7 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
8 DISABILITY

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

16 (b) ~~Such order of commitment shall have the same force and effect as an~~
17 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
18 ~~order shall have the same status, and the same rights, including the right to~~
19 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
20 ~~and obtain judicial review of their cases, as persons ordered committed under~~
21 18 V.S.A. § 8843 Judicial review procedures for an order issued pursuant to

1 subsection (a) of this section and for discharge from an order of commitment
2 shall occur in accordance with 18 V.S.A. § 8845.

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

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

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

15 § 8839. DEFINITIONS

16 As used in this subchapter:

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

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

5 (3) “Person in need of custody, care, and habilitation” means a person:

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

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

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

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

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

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

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

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

10 § 8840. ~~JURISDICTION AND VENUE~~

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

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

16 § 8841. ~~PETITION; PROCEDURES~~

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

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

2 § 8842. ~~HEARING~~

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

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

6 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

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

17 § 8844. LEGAL COMPETENCE

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

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

2 § 8845. JUDICIAL REVIEW

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

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

15 (c) A person committed under 13 V.S.A. § 4823 or this subchapter shall be
16 entitled to a judicial review of the person's need for commitment annually.
17 The Family Division of the Superior Court shall have exclusive jurisdiction
18 over all judicial review proceedings brought under this section. If no ~~such~~
19 judicial review is requested by the person within one year from the date of the
20 last order of commitment, it shall be initiated by the Commissioner. However,
21 such person may initiate a judicial review under this subsection after 90 days

1 of initial commitment but before the end of the first year of the commitment, or
2 if commitment has been continued under this subchapter, the person may
3 petition for review after 90 days from the date of an order for continued
4 commitment.

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

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

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

16 (f) If at the completion of the hearing and consideration of the record, the
17 court finds by clear and convincing evidence that at the time of the hearing that
18 the person is still in need of continued custody, care, and habilitation,
19 commitment shall continue in a designated program in the least restrictive
20 environment consistent with the person's need for custody, care, and
21 habilitation for an indefinite or limited period. If the court finds at the time of

1 the hearing that the person is no longer in need of continued custody, care, and
2 habilitation, it shall discharge the person from the custody of the
3 Commissioner. An order of discharge may be conditional or absolute and may
4 have immediate or delayed effect.

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

9 * * * Certificate of Need * * *

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

11 § 9435. EXCLUSIONS

12 * * *

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

17 * * * Rulemaking * * *

18 Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC

19 FACILITY

20 (a) On or before July 1, 2023, the Secretary of Human Services, in
21 consultation with the Departments of Mental Health and of Disabilities, Aging,

1 and Independent Living, shall file an initial proposed rule with the Secretary of
2 State pursuant to 3 V.S.A. § 836(a)(2) specifying the criteria that the
3 Departments shall use to determine admission to a forensic facility and the
4 process used by the Commissioners to determine appropriate admissions. The
5 admission criteria and process shall ensure that:

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

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

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

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

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

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

4 (D) being charged with a felony offense involving an act of violence
5 against another person for which bail may be withheld pursuant to 13 V.S.A.
6 § 7553 or 7553a.

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

9 Sec. 19. RULEMAKING; CONFORMING AMENDMENTS

10 On or before July 1, 2023, the Commissioners of Mental Health and of
11 Disabilities, Aging, and Independent Living, respectively, shall file initial
12 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
13 § 826(a)(2) to account for the establishment of the forensic facility:

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

19 (2) Department of Mental Health, Rules for the Administration of
20 Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the

1 purpose of allowing the administration of involuntary medication at a forensic
2 facility.

3 * * * Presentation and Report * * *

4 Sec. 20. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

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

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

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

17 Sec. 21. REPORT; FORENSIC FACILITY

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

- 1 (1) the average daily census at the forensic facility, including trends
2 over time;
3 (2) the number of individuals waitlisted for the forensic facility, and
4 where these individuals receive treatment or programming while waiting for a
5 bed at the forensic facility;
6 (3) aggregated demographic data about the individuals served at the
7 forensic facility; and
8 (4) an account of the number and types of emergency involuntary
9 procedures used at the forensic facility.

10 * * * Effective Dates * * *

11 Sec. 22. 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.