

1 S.89

2 An act relating to establishing a forensic facility

3 The House proposes to the Senate to amend the bill by striking out all after
4 the enacting clause and inserting in lieu thereof the following:

5 Sec. 1. LEGISLATIVE INTENT

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

13 Sec. 2. CERTIFICATE OF NEED; EXCLUSION

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

19 Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

20 (a) On or before August 1, 2023, the Commissioner of Mental Health shall
21 file an initial proposed rule amendment with the Secretary of State pursuant to

1 3 V.S.A. 836(a)(2) to amend the Department of Mental Health, Rules for the
2 Administration of Nonemergency Involuntary Psychiatric Medications (CVR
3 13-150-11) for the purpose of allowing the administration of involuntary
4 medication at a forensic facility.

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

12 Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

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

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

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

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

7 Sec. 5. REPORT; FORENSIC FACILITY

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

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

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

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

20 (4) an account of the number and types of emergency involuntary
21 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) two members of the House of Representatives, one of whom is

10 from the House Committee on Human Services and one of whom is from the

11 House Committee on Judiciary, appointed by the Speaker; and

12 (I) two members of the Senate, one of whom is from the Senate

13 Committee on Health and Welfare and one of whom is from the Senate

14 Committee on Judiciary, appointed by the Committee on Committees.

15 (2) In completing its duties pursuant to this section, the Working Group,

16 to the extent feasible, shall consult with the following individuals:

17 (A) a psychiatrist or psychologist with experience conducting

18 competency evaluations under 1987 Acts and Resolves No. 248;

19 (B) individuals with lived experience of a intellectual disability who

20 have previous experience in the criminal justice system or civil commitment

21 system, or both;

1 (C) family members of individuals with an intellectual disability who
2 have experience in the criminal justice system or 1987 Acts and Resolves No.
3 248;

4 (D) the Executive Director of the Department of State’s Attorneys
5 and Sheriffs;

6 (E) the Defender General;

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

8 (G) the Commissioner of Corrections;

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

11 (I) the President of the Vermont State Employees’ Association.

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

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

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

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

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

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

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

12 (d) Assistance. The Working Group shall have the administrative,
13 technical, and legal assistance of the Department of Disabilities, Aging, and
14 Independent Living.

15 (e) Report. On or before December 1, 2023, the Working Group shall
16 submit a written report to the House Committees on Human Services and on
17 Judiciary and to the Senate Committees on Health Welfare and on Judiciary
18 with its findings and any recommendations for legislative action, including
19 proposed legislative language.

20 (f) Meetings.

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

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

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

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

8 (g) Compensation and reimbursement.

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

15 (2) Members of the Working Group not otherwise compensated for their
16 participation in the Working Group shall be entitled to per diem compensation
17 and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not
18 more than 14 meetings. These payments shall be made from monies
19 appropriated to the Department of Disabilities, Aging, and Independent Living.

20 (h) Definitions.

