

1 S.192

2 Introduced by Senators Lyons and Sears

3 Referred to Committee on

4 Date:

5 Subject: Health; human services; mental health; developmental disabilities;

6 forensic facility

7 Statement of purpose of bill as introduced: This bill proposes to establish the
8 admissions criteria and processes for a forensic facility.

9 An act relating to forensic facility admissions criteria and processes

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

11 * * * Purpose and Legislative Intent * * *

12 Sec. 1. PURPOSE AND LEGISLATIVE INTENT

13 It is the purpose of this act to enable the Commissioners of Mental Health
14 and of Disabilities, Aging, and Independent Living to seek treatment and
15 programming for certain individuals in a forensic facility as anticipated by the
16 passage of 2023 Acts and Resolves No. 27. It is the intent of the General
17 Assembly that an initial forensic facility be authorized and operational
18 beginning on July 1, 2024 in the nine-bed wing of the current Vermont
19 Psychiatric Care Hospital.

1 * * * Human Services Community Safety Panel * * *

2 Sec. 2. 3 V.S.A. § 3098 is added to read:

3 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

4 (a) There is hereby created the Human Services Community Safety Panel
5 within the Agency of Human Services. The Panel shall be designated as the
6 entity responsible for assessing the potential placement of individuals at a
7 forensic facility pursuant to 13 V.S.A. § 4821 for individuals who:

8 (1) present a significant risk of danger if not held in a secure setting;

9 and

10 (2)(A) are charged with a crime for which there is no right to bail
11 pursuant to 13 V.S.A. §§ 7553 and 7553a; or

12 (B) were charged with a crime for which bail is not available and
13 adjudicated not guilty by reason of insanity.

14 (b)(1) The Panel shall comprise the following members:

15 (A) the Secretary of Human Services;

16 (B) the Commissioner of Mental Health;

17 (C) the Commissioner of Disabilities, Aging, and Independent

18 Living; and

19 (D) the Commissioner of Corrections.

1 Commissioner of Mental Health's or Commissioner of Disabilities, Aging, and
2 Independent Living's decision as to whether to seek placement of the person
3 in a forensic facility.

4 (2)(A) If the Panel does not initiate its own review, a party to a hearing
5 under section 4820 of this chapter may file a written motion to the court
6 requesting that the Panel conduct a review within seven days after receiving a
7 report under section 4816 of this chapter or within seven days after being
8 adjudicated not guilty by reason of insanity.

9 (B) A motion filed pursuant to this subdivision (2) shall specify that
10 the person who is the subject of the proceedings is charged with a crime for
11 which there is no right to bail pursuant to sections 7553 and 7553a of this title,
12 and may include a person adjudicated not guilty by reason of insanity, and that
13 the person presents a significant risk of danger to themselves or the public if
14 not held in a secure setting.

15 (C) The court shall rule on a motion filed pursuant to this subdivision
16 (2) within five days. A Panel review ordered pursuant to this subdivision (2)
17 shall be completed and submitted to the court at least three days prior to a
18 hearing under section 4820 of this title.

19 (c) In conducting a review as whether to seek placement of a person in a
20 forensic facility, the Human Services Community Safety Panel shall consider
21 the following criteria:

1 (1) clinical factors, including:

2 (A) that the person is served in the least restrictive setting necessary
3 to meet the needs of the person; and

4 (B) that the person's treatment and programming needs dictate that
5 the treatment or programming be provided at an intensive residential level; and

6 (2) dangerousness factors, including:

7 (A) whether the person has inflicted or attempted to inflict serious
8 bodily injury on another, attempted suicide or serious self-injury, or
9 committed an act that would constitute sexual conduct with a child as defined
10 in section 2821 of this title or lewd and lascivious conduct with a child as
11 provided in section 2602 of this title, and there is reasonable probability that
12 the conduct will be repeated if admission to a forensic facility is not ordered;

13 (B) whether the person has threatened to inflict serious bodily injury
14 to the person or others and there is reasonable probability that the conduct will
15 occur if admission to a forensic facility is not ordered;

16 (C) whether the results of any applicable evidence-based violence
17 risk assessment tool indicates that the person's behavior is deemed a
18 significant risk to others;

19 (D) the position of the parties to the criminal case as well as that of
20 any victim as defined in subdivision 5301(4) of this title; and

1 Sec. 5. 18 V.S.A. § 7612 is amended to read:

2 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

13 (d) The application shall contain:

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

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

18 (e) The application shall be accompanied by:

19 (1) a certificate of a licensed physician, which shall be executed under
20 penalty of perjury stating that the physician has examined the proposed patient
21 within five days after the date the petition is filed and is of the opinion that the

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

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

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

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

1 recommendation of the Human Services Community Safety Panel pursuant to
2 13 V.S.A. § 4821.

3 Sec. 6. 18 V.S.A. § 7615 is amended to read:

4 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY
5 TREATMENT

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

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

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

20 (ii) may grant the motion if it finds that the person has received
21 involuntary medication pursuant to section 7624 of this title during the past

1 two years and, based upon the person's response to previous and ongoing
2 treatment, there is good cause to believe that additional time will not result in
3 the person establishing a therapeutic relationship with providers or regaining
4 competence.

5 (B) If the court grants the motion for expedited hearing pursuant to
6 this subdivision (2), the hearing shall be held within 10 days from the date of
7 the order for expedited hearing.

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

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

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

1 least restrictive setting adequate to meet the person's needs, the court shall
2 order the person to receive treatment there for a period of 90 days. The court
3 may at any time, on its own motion or on motion of an interested party, review
4 the need for treatment at the forensic facility.

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

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

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

14 Sec. 8. 18 V.S.A. § 7620 is amended to read:

15 § 7620. APPLICATION FOR CONTINUED TREATMENT

16 (a) If, prior to the expiration of any order issued in accordance with section
17 7623 of this title, the Commissioner believes that the condition of the patient is
18 such that the patient continues to require treatment, the Commissioner shall
19 apply to the court for a determination that the patient is a patient in need of
20 further treatment and for an order of continued treatment.

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

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

8 (d) If the Commissioner seeks to have the patient receive the further
9 treatment in a forensic facility or secure residential recovery facility, the
10 application for an order authorizing continuing treatment shall expressly state
11 that such treatment is being sought. The application shall contain, in addition
12 to the statements required by subsection (b) of this section, a statement setting
13 forth the reasons for the Commissioner's determination that clinically
14 appropriate treatment for the patient's condition can be provided safely only in
15 a secure residential recovery facility or forensic facility, as appropriate. An
16 application for continued treatment in a forensic facility shall include the
17 recommendation of the Human Services Community Safety Panel pursuant to
18 13 V.S.A. § 4821.

19 (e) As used in this chapter:

1 Sec. 10. 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 that
14 is a designated facility pursuant to section 7628 of this title and for whom the
15 Departments of Corrections and of Mental Health have determined jointly that
16 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 10 days after 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. 11. 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 order administration of involuntary
14 medications at a forensic facility for up to 90 days, unless the court finds that
15 an order is necessary for a longer period of time. An order for involuntary
16 medication pursuant to this subsection shall not be longer than the duration of
17 the current order of nonhospitalization. If at any time the treating psychiatrist
18 finds that a person subject to an order for involuntary medication has become
19 competent pursuant to subsection 7625(c) of this title, the order shall no longer
20 be in effect.

1 (c)(1) ~~Section 4822 of this title shall apply to persons proposed for~~
2 ~~discharge under this section; however, judicial proceedings shall be conducted~~
3 ~~in the Criminal Division of the Superior Court in which the person then~~
4 ~~resides, unless the person resides out of State in which case the proceedings~~
5 ~~shall be conducted in the original committing court~~ If the Commissioner seeks
6 to have a person committed pursuant to this section placed in a forensic
7 facility, the Commissioner shall provide a statement setting forth the reasons
8 for the Commissioner’s determination that clinically appropriate treatment and
9 programming can be provided safely only in a forensic facility, including the
10 recommendation of the Human Services Community Safety Panel pursuant to
11 13 V.S.A. § 4821

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

14 Sec. 13. 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
7 significantly subaverage intellectual functioning existing concurrently with
8 deficits in 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 sexual conduct with a child as defined in 18 V.S.A.
12 § 2821 or lewd and lascivious conduct with a child as provided 18 V.S.A.
13 § 2602; and

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

16 (4) “Person in need of continued custody, care, and habilitation” means
17 a person who was previously found to be a person in need of custody, care,
18 and habilitation who poses a danger of harm to others and for whom the
19 Commissioner has, in the Commissioner’s discretion, consented to or
20 approved the continuation of the designated program. A danger of harm to

1 others shall be shown by establishing that, in the time since the last order of
2 commitment was issued, the person:

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

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

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

11 Sec. 14. 18 V.S.A. § 8840 is amended to read:

12 § 8840. ~~JURISDICTION AND VENUE~~

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

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

18 § 8841. ~~PETITION; PROCEDURES~~

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

1 Sec. 16. 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. 17. 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~~
14 ~~restrictive environment consistent with the respondent's need for custody,~~
15 ~~care, and habilitation for an indefinite or a limited period. [Repealed.]~~

16 Sec. 18. 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
20 authorizing commitment shall lead to a presumption of legal incompetence.

1 Sec. 19. 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,
2 or 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, including the
10 recommendation of the Human Services Community Safety Panel pursuant to
11 13 V.S.A. § 4821.

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

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

18 (f) If at the completion of the hearing and consideration of the record, the
19 court finds by clear and convincing evidence that at the time of the hearing
20 that the person is still in need of continued custody, care, and habilitation,
21 commitment shall continue in a designated program in the least restrictive

1 environment consistent with the person’s need for custody, care, and
2 habilitation for an indefinite or limited period. If the court finds at the time of
3 the hearing that the person is no longer in need of continued custody, care, and
4 habilitation, it shall discharge the person from the custody of the
5 Commissioner. An order of discharge may be conditional or absolute and may
6 have immediate or delayed effect.

7 (g) In determining whether a person is in need of continued custody,
8 care, and habilitation, the court shall consider the degree to which the person
9 has engaged in or complied with the treatment and supervision provided by the
10 Commissioner, as well as the recommendation of the Human Services
11 Community Safety Panel pursuant to 13 V.S.A. § 4821.

12 * * * Rulemaking * * *

13 Sec. 20. RULEMAKING; CONFORMING AMENDMENTS

14 On or before April 1, 2024, the Commissioners of Mental Health and of
15 Disabilities, Aging, and Independent Living, respectively, shall file initial
16 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
17 § 826(a)(2) to the Department of Disabilities, Aging, and Independent Living,
18 Licensing and Operating Regulations for Therapeutic Community Residences
19 (CVR 13-110-12) for the purpose of creating a forensic facility section of the
20 rule that includes allowing the use of emergency involuntary procedures and
21 the administration of involuntary medication at a forensic facility.

1

* * * Effective Dates * * *

2

Sec. 21. EFFECTIVE DATES

3

This section and Sec. 20 (rulemaking; conforming amendments) shall take

4

effect on passage. All remaining sections shall take effect on July 1, 2024.