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S.192

An act relating to forensic facility admissions criteria and processes
It is hereby enacted by the General Assembly of the State of Vermont:

* * * Purpose and Legislative Intent * * *

Sec. 1. PURPOSE AND LEGISLATIVE INTENT

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 as anticipated by the passage of 2023 Acts and Resolves No. 27.

* * * Human Services Community Safety Panel * * *

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

§ 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

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

(1) present a significant risk of danger to self or others if not held in a secure setting; and

(2)(A) are charged with a crime for which there is no right to bail pursuant to 13 V.S.A. §§ 7553 and 7553a and are found not competent to stand trial due to mental illness or intellectual disability; or

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

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

4 (A) the Secretary of Human Services;

5 (B) the Commissioner of Mental Health;

6 (C) the Commissioner of Disabilities, Aging, and Independent
7 Living; and

8 (D) the Commissioner of Corrections.

9 (2) The Panel shall have the technical, legal, fiscal, and administrative
10 support of the Agency of Human Services and the Departments of Mental
11 Health; of Disabilities, Aging, and Independent Living; and of Corrections.

12 (c) As used in this section, “forensic facility” has the same meaning as in
13 18 V.S.A. § 7101.

14 Sec. 3. 13 V.S.A. § 4821 is amended to read:

15 § 4821. NOTICE OF HEARING; PROCEDURES

16 (a) The person who is the subject of the proceedings, ~~his or her~~, the
17 person’s attorney; the person’s legal guardian, if any; the Commissioner of
18 Mental Health or the Commissioner of Disabilities, Aging, and Independent
19 Living; and the State’s Attorney or other prosecuting officer representing the
20 State in the case shall be given notice of the time and place of a hearing under
21 section 4820 of this title. Procedures for hearings for persons with a mental

1 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
2 for persons with an intellectual disability shall be as provided in 18 V.S.A.
3 chapter 206, subchapter 3.

4 (b)(1) Once a report concerning competency or sanity is completed or
5 disclosed to the opposing party, the Human Services Community Safety Panel
6 established in 3 V.S.A. § 3098 may conduct a review on its own initiative
7 regarding whether placement of the person who is the subject of the report is
8 appropriate in a forensic facility. The review shall inform either the
9 Commissioner of Mental Health's or Commissioner of Disabilities, Aging, and
10 Independent Living's decision as to whether to seek placement of the person in
11 a forensic facility.

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

17 (B) A motion filed pursuant to this subdivision (2) shall specify that
18 the person who is the subject of the proceedings is charged with a crime for
19 which there is no right to bail pursuant to sections 7553 and 7553a of this title,
20 and may include a person adjudicated not guilty by reason of insanity, and that

1 the person presents a significant risk of danger to themselves or the public if
2 not held in a secure setting.

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

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

10 (1) clinical factors, including:

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

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

15 (2) risk of harm factors, including:

16 (A) whether the person has inflicted or attempted to inflict serious
17 bodily injury on another, attempted suicide or serious self-injury, or committed
18 an act that would constitute sexual conduct with a child as defined in section
19 2821 of this title or lewd and lascivious conduct with a child as provided in
20 section 2602 of this title, and there is reasonable probability that the conduct
21 will be repeated if admission to a forensic facility is not ordered;

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

4 (C) whether the results of any applicable evidence-based violence
5 risk assessment tool indicates that the person’s behavior is deemed a
6 significant risk to others;

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

9 (E) any other factors the Human Services Community Safety Panel
10 determines to be relevant to the assessment of risk.

11 (d) As used in this chapter, “forensic facility” has the same meaning as in
12 18 V.S.A. § 7101.

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

14 Continued Treatment * * *

15 Sec. 4. 13 V.S.A. § 4822 is amended to read:

16 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

17 (a)(1) If the court finds that the person is a person in need of treatment or a
18 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
19 shall issue an order of commitment directed to the Commissioner of Mental
20 Health that shall admit the person to the care and custody of the Department of
21 Mental Health for an ~~indefinite~~ indefinite a period of 90 days. In any case involving

1 personal injury or threat of personal injury, the committing court may issue an
2 order requiring a court hearing before a person committed under this section
3 may be discharged from custody.

4 (2) If the Commissioner seeks to have a person receive treatment in a
5 forensic facility pursuant to an order of nonhospitalization under subdivision
6 (1) of this subsection, the Commissioner shall submit a petition to the court
7 expressly stating that such treatment is being sought, including:

8 (A) a statement setting forth the reasons for the Commissioner's
9 determination that clinically appropriate treatment for the person's condition
10 can be provided safely only in a forensic facility; and

11 (B) the recommendation of the Human Services Community Safety
12 Panel pursuant to section 4821 of this title.

13 (3) If the Commissioner determines that treatment at a forensic facility
14 is appropriate, and the court finds that treatment at a forensic facility is the
15 least restrictive setting adequate to meet the person's needs, the court shall
16 order the person to receive treatment at a forensic facility for a period of 90
17 days. The court may, at any time following the issuance of an order, on its
18 own motion or on motion of an interested party, review whether treatment at
19 the forensic facility continues to be the least restrictive treatment option.

20 (b) An order of commitment issued pursuant to this section shall have the
21 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a

1 person committed under this order shall have the same status and the same
2 rights, including the right to receive care and treatment, to be examined and
3 discharged, and to apply for and obtain judicial review of ~~his or her~~ the
4 person's case, as a person ordered committed under 18 V.S.A. §§ 7611–7622.

5 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
6 least 10 days prior to the proposed discharge of any person committed under
7 this section, the Commissioner of Mental Health shall give notice of the
8 discharge to the committing court and State's Attorney of the county where the
9 prosecution originated. In all cases requiring a hearing prior to discharge of a
10 person found incompetent to stand trial under section 4817 of this title, the
11 hearing shall be conducted by the committing court issuing the order under that
12 section. In all other cases, when the committing court orders a hearing under
13 subsection (a) of this section or when, in the discretion of the Commissioner of
14 Mental Health, a hearing should be held prior to the discharge, the hearing
15 shall be held in the Family Division of the Superior Court to determine if the
16 committed person is no longer a person in need of treatment or a patient in
17 need of further treatment as set forth in subsection (a) of this section. Notice
18 of the hearing shall be given to the Commissioner, the State's Attorney of the
19 county where the prosecution originated, the committed person, and the
20 person's attorney. Prior to the hearing, the State's Attorney may enter an

1 appearance in the proceedings and may request examination of the patient by
2 an independent psychiatrist, who may testify at the hearing.

3 (2)(A) This subdivision (2) shall apply when a person is committed to
4 the care and custody of the Commissioner of Mental Health under this section
5 after having been found:

6 (i) not guilty by reason of insanity; or

7 (ii) incompetent to stand trial, provided that the person's criminal
8 case has not been dismissed.

9 (B)(i) When a person has been committed under this section, the
10 Commissioner shall provide notice to the State's Attorney of the county where
11 the prosecution originated or to the Office of the Attorney General if that office
12 prosecuted the case:

13 (I) at least 10 days prior to discharging the person from:

14 (aa) the care and custody of the Commissioner; or

15 (bb) a hospital, a forensic facility, or a secure residential
16 recovery facility to the community on an order of nonhospitalization pursuant
17 to 18 V.S.A. § 7618;

18 (II) at least 10 days prior to the expiration of a commitment
19 order issued under this section if the Commissioner does not seek continued
20 treatment; or

1 (III) any time that the person elopes from the custody of the
2 Commissioner.

3 (ii) When the State’s Attorney or Attorney General receives notice
4 under subdivision (i) of this subdivision (B), the Office shall provide notice of
5 the action to any victim of the offense for which the person has been charged
6 who has not opted out of receiving notice. A victim receiving notice pursuant
7 to this subdivision (ii) has the right to submit a victim impact statement to the
8 Family Division of the Superior Court in writing or through the State’s
9 Attorney or Attorney General’s office.

10 (iii) As used in this subdivision (B), “victim” has the same
11 meaning as in section 5301 of this title.

12 (d) The court may continue the hearing provided in subsection (c) of this
13 section for a period of 15 additional days upon a showing of good cause.

14 (e) If the court determines that commitment shall no longer be necessary, it
15 shall issue an order discharging the patient from the custody of the Department
16 of Mental Health.

17 (f) The court shall issue its findings and order not later than 15 days from
18 the date of hearing.

1 Sec. 5. 18 V.S.A. § 7101 is amended to read:

2 § 7101. DEFINITIONS

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

5 * * *

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

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

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

15 (B) A forensic facility shall not be used for any purpose other than
16 the purposes permitted by this part or chapter 206 of this title. As used in this
17 subdivision (31), “secure” has the same meaning as in section 7620 of this title.

18 Sec. 6. 18 V.S.A. § 7620 is amended to read:

19 § 7620. APPLICATION FOR CONTINUED TREATMENT

20 (a) If, prior to the expiration of any order issued in accordance with section
21 7623 of this title, the Commissioner believes that the condition of the patient is

1 such that the patient continues to require treatment, the Commissioner shall
2 apply to the court for a determination that the patient is a patient in need of
3 further treatment and for an order of continued treatment.

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

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

11 (d) If the Commissioner seeks to have the patient receive the further
12 treatment in a forensic facility or secure residential recovery facility, the
13 application for an order authorizing continuing treatment shall expressly state
14 that such treatment is being sought. The application shall contain, in addition
15 to the statements required by subsection (b) of this section, a statement setting
16 forth the reasons for the Commissioner's determination that clinically
17 appropriate treatment for the patient's condition can be provided safely only in
18 a secure residential recovery facility or forensic facility, as appropriate. An
19 application for continued treatment in a forensic facility shall include the
20 recommendation of the Human Services Community Safety Panel pursuant to
21 13 V.S.A. § 4821.

1 (e) As used in this chapter:

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

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

11 Sec. 7. 18 V.S.A. § 7621 is amended to read:

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

14 * * *

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

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Sec. 8. 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 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(4)(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;

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

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

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

6 (6) has been placed under an order of nonhospitalization in a forensic
7 facility; or

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

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

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

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

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

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

5 (B) the court shall consolidate the application for involuntary
6 treatment with the application for involuntary medication and rule on the
7 application for involuntary treatment before ruling on the application for
8 involuntary medication.

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

12 (4) Within 72 hours of the filing of an application for involuntary
13 medication pursuant to subdivision ~~(a)(6)~~(7) of this section, the court shall
14 determine, based solely upon a review of the psychiatrist's certification and
15 any other filings, whether the requirements of that subdivision have been
16 established. If the court determines that the requirements of subdivision
17 ~~(a)(6)~~(7) of this section have been established, the court shall consolidate the
18 application for involuntary treatment with the application for involuntary
19 medication and hear both applications within 10 days after the date that the
20 application for involuntary medication is filed. The court shall rule on the
21 application for involuntary treatment before ruling on the application for

1 involuntary medication. Subsection 7615(b) of this title shall apply to
2 applications consolidated pursuant to this subdivision.

3 * * *

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

5 § 7627. COURT FINDINGS; ORDERS

6 * * *

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

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

2 Custody, Care, and Habilitation * * *

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

4 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
5 DISABILITY

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

13 (b) ~~Such order of commitment shall have the same force and effect as an~~
14 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
15 ~~order shall have the same status, and the same rights, including the right to~~
16 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
17 ~~and obtain judicial review of their cases, as persons ordered committed under~~
18 ~~18 V.S.A. § 8843~~ Commitment procedures for an order initially issued
19 pursuant to subsection (a) of this section and for discharge from an order of
20 commitment or continued commitment shall occur in accordance with
21 18 V.S.A. §§ 8845–8847.

1 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
2 ~~under this section; however, judicial proceedings shall be conducted in the~~
3 ~~Criminal Division of the Superior Court in which the person then resides,~~
4 ~~unless the person resides out of State in which case the proceedings shall be~~
5 ~~conducted in the original committing court~~ In accordance with 18 V.S.A.
6 § 8845, if the Commissioner seeks to have a person committed pursuant to this
7 section placed in a forensic facility, the Commissioner shall provide a
8 statement setting forth the reasons for the Commissioner’s determination that
9 clinically appropriate treatment and programming can be provided safely only
10 in a forensic facility, including the recommendation of the Human Services
11 Community Safety Panel pursuant to section 4821 of this title.

12 Sec. 10. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

13 Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability

14 Who Present a Danger of Harm to Others

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) “Forensic facility” has the same meaning as in section 7101 of this
6 title.

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

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

16 (B) by the person’s threats or actions, has placed another person in
17 reasonable fear of physical or sexual harm; or

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

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

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

5 (B) who ~~presents a danger of harm to others~~ has inflicted or
6 attempted to inflict serious bodily injury to another or who has committed an
7 act that would constitute sexual conduct with a child as defined in section 2821
8 of this title or lewd and lascivious conduct with a child as provided in section
9 2602 of this title; and

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

12 (6) “Victim” has the same meaning as in 13 V.S.A. § 5301(4).

13 § 8840. ~~JURISDICTION AND VENUE~~

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

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 § 8842. HEARING

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

4 § 8843. FINDINGS AND ORDER

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

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

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

14 § 8844. LEGAL COMPETENCE

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

18 § 8845. JUDICIAL REVIEW INITIAL ORDER FOR CUSTODY,
19 CARE, AND HABILITATION

20 ~~(a)(1) A person committed under this subchapter may be discharged from~~
21 ~~custody by a Superior judge after judicial review as provided herein or by~~

1 ~~administrative order of the Commissioner~~ If a person is found incompetent to
2 stand trial pursuant to 13 V.S.A. § 4820, the Criminal Division of the Superior
3 Court shall automatically schedule a hearing to determine whether the person
4 is a person in need of custody, care, and habilitation and requiring
5 commitment.

6 (2) The Commissioner's recommendation that a person be placed in a
7 forensic facility, if applicable, shall be filed with the court in advance of the
8 commitment hearing and shall:

9 (A) expressly state the reasons for the Commissioner's determination
10 that clinically appropriate treatment and programming can be provided safely
11 only in a forensic facility; and

12 (B) include the recommendation of the Human Services Community
13 Safety Panel pursuant to 13 V.S.A. § 4821.

14 ~~(b) Procedures for judicial review of persons committed under this~~
15 ~~subchapter shall be as provided in section 8834 of this title, except that~~
16 ~~proceedings shall be brought in the Criminal Division of the Superior Court in~~
17 ~~the unit in which the person resides or, if the person resides out of state, in the~~
18 ~~unit that issued the original commitment order~~ The Commissioner or designee
19 shall attend a commitment hearing for custody, care, and habilitation and be
20 available to testify. All persons to whom notice is given may attend the

1 commitment hearing and testify, except that the court may exclude those
2 persons not necessary for the conduct of the hearing.

3 ~~(c) A person committed under this subchapter shall be entitled to a judicial~~
4 ~~review annually. If no such review is requested by the person, it shall be~~
5 ~~initiated by the Commissioner. However, such person may initiate a judicial~~
6 ~~review under this subsection after 90 days after initial commitment but before~~
7 ~~the end of the first year of the commitment~~ The Vermont Rules of Evidence
8 shall apply in all judicial proceedings brought under this subchapter.

9 ~~(d)(1) If at the completion of the hearing and consideration of the record,~~
10 ~~the court finds at the time of the hearing that the person is still in need of~~
11 ~~custody, care, and habilitation, commitment shall continue for an indefinite or~~
12 ~~limited period. If the court finds at the time of the hearing that the person is no~~
13 ~~longer in need of custody, care, and habilitation, it shall discharge the person~~
14 ~~from the custody of the Commissioner. An order of discharge may be~~
15 ~~conditional or absolute and may have immediate or delayed effect. If the court~~
16 finds by clear and convincing evidence that the person is a person in need of
17 custody, care, and habilitation, the court shall order that the person be
18 committed to the Commissioner and receive appropriate treatment and
19 programming in a designated program that provides the least restrictive
20 environment consistent with the person's need for custody, care, and
21 habilitation for up to one year.

1 (2) Notwithstanding subdivision (1) of this subsection, a person may
2 initiate a judicial review in the Family Division of the Superior Court under
3 this subchapter at any time after 90 days following a current order of
4 commitment.

5 (e) If the Commissioner has recommended to the court that a person be
6 placed in a forensic facility, the court, after determining that the person is a
7 person in need of custody, care, and habilitation, shall determine whether
8 placement at a forensic facility is both appropriate and the least restrictive
9 setting adequate to meet the person's needs. If so determined, the court shall
10 order the person placed in a forensic facility for a term not to exceed the
11 duration of the initial commitment order. The committing court shall
12 automatically review any placement at a forensic facility 90 days after
13 commitment to ensure that the placement remains the least restrictive setting
14 adequate to meet the person's needs.

15 § 8846. PETITION AND ORDER FOR CONTINUED CUSTODY, CARE,

16 AND HABILITATION

17 (a)(1) If, prior to the expiration of any previous commitment order issued
18 in accordance with 13 V.S.A. § 4823 or this subchapter, the Commissioner
19 believes that the person is a person in need of continued custody, care, and
20 habilitation, the Commissioner shall initiate a judicial review in the Family
21 Division of the Superior Court. The Commissioner shall, by filing a written

1 petition, commence proceedings for the continued custody, care, and
2 habilitation of a person. The petition shall include:

3 (A) the name and address of the person alleged to need continued
4 custody, care, and habilitation; and

5 (B) a statement of the current and relevant facts upon which the
6 person's alleged need for continued custody, care, and habilitation is
7 predicated.

8 (2) Any commitment order for custody, care, and habilitation or
9 continued custody, care, and habilitation issued in accordance with 13 V.S.A.
10 § 4823 or this subchapter shall remain in force pending the court's decision on
11 the petition.

12 (3) If the Commissioner seeks placement for the person alleged to need
13 continued custody, care, and habilitation at a forensic facility, the petition for
14 continued custody, care, and habilitation shall:

15 (A) expressly state the reasons for the Commissioner's determination
16 that clinically appropriate treatment and programming can be provided safely
17 only in a forensic facility; and

18 (B) include a renewed recommendation of the Human Services
19 Community Safety Panel pursuant to 13 V.S.A. § 4821.

1 (b) Upon receipt of the petition, the court shall set a date for the hearing
2 within 10 days after the date of filing, which shall be held in accordance with
3 subsections 8845(b) and (c) of this subchapter.

4 (c)(1) If at the completion of the hearing and consideration of the record,
5 the court finds by clear and convincing evidence at the time of the hearing that
6 the person is still in need of continued custody, care, and habilitation, it shall
7 issue an order of commitment for up to one year in a designated program in the
8 least restrictive environment consistent with the person's need for continued
9 custody, care, and habilitation. If the court finds at the time of the hearing that
10 the person is no longer in need of continued custody, care, and habilitation, it
11 shall discharge the person from the custody of the Commissioner in accordance
12 with section 8847 of this subchapter. In determining whether a person is a
13 person in need of continued custody, care, and habilitation, the court shall
14 consider the degree to which the person has previously engaged in or complied
15 with the treatment and programming provided by the Commissioner. Nothing
16 in this section shall prohibit the Commissioner from seeking, nor the court
17 from ordering, consecutive commitment orders when the criteria for
18 commitment are otherwise met.

19 (2) In a petition in which placement at a forensic facility is sought, a
20 court shall first determine whether an order for continued custody, care, and
21 habilitation is appropriate. If the court grants the petition for continued

1 custody, care, and habilitation, it shall then determine whether placement at a
2 forensic facility is appropriate and the least restrictive setting adequate to meet
3 the person's needs. If so determined, the court shall order the person placed in
4 a forensic facility for a term not exceed the duration of the order for continued
5 custody, care, and habilitation. The committing court shall automatically
6 review any placement at a forensic facility 90 days after commitment to ensure
7 that the placement remains the least restrictive setting adequate to meet the
8 person's needs.

9 (d) Notwithstanding subdivision (1) of subsection (a), a person may initiate
10 a judicial review in the Family Division of the Superior Court under this
11 subchapter at any time after 90 days following a current order of continued
12 commitment.

13 § 8847. DISCHARGE FROM COMMITMENT OR PLACEMENT IN A
14 FORENSIC FACILITY

15 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
16 discharged as follows:

17 (1) by a Criminal Division Superior Court judge after an automatic 90-
18 day review of placement at a forensic facility pursuant to subsection 8845(e) of
19 this subchapter;

20 (2) by a Family Division Superior Court judge after judicial review of
21 an order of custody, care, and habilitation; an order of continued custody, care,

1 and habilitation; or placement at a forensic facility pursuant to subsection (b)
2 of this section; or

3 (3) by administrative order of the Commissioner regarding an order of
4 custody, care, and habilitation; an order of continued custody, care, and
5 habilitation; or placement at a forensic facility pursuant to subsection (c) of
6 this section.

7 (b)(1) A person under a commitment order for custody, care, and
8 habilitation under 13 V.S.A. § 4823 or a commitment order for continued
9 custody, care, and habilitation under this subchapter shall be entitled to a
10 judicial review of the person's need for continued custody, care, and
11 habilitation pursuant to sections 8845(d)(2) and 8846(d) of this subchapter. If
12 the court finds that the person is not a person in need of custody, care, and
13 habilitation or continued custody, care, and habilitation, the person shall be
14 discharged from the custody of the Commissioner. A judicial order of
15 discharge may be conditional or absolute and may have immediate or delayed
16 effect.

17 (2)(A) In reviewing the placement of a person receiving treatment and
18 programming at a forensic facility, the court may determine that while the
19 placement at a forensic facility is no longer appropriate or that the setting is no
20 longer the least restrictive setting adequate to meet the person's needs, the
21 person is still a person in need of continued custody, care, and habilitation. In

1 this instance, the court shall discharge the person from placement at the
2 forensic facility while maintaining the person's order of commitment or
3 continued commitment.

4 (B) When a person subject to judicial review pursuant to this
5 subsection (b) is receiving treatment or programming at a forensic facility,
6 either the State's Attorney of the county where the person's prosecution
7 originated, or the Office of the Attorney General if that office prosecuted the
8 person's case, or the victim, or both, may file a position with the court as an
9 interested person concerning whether the person's discharge from placement at
10 the forensic facility is appropriate.

11 (c)(1)(A) If the Commissioner determines that a person is no longer a
12 person in need of custody, care, and habilitation; of continued custody, care,
13 and habilitation; or of placement at a forensic facility, the Commissioner shall
14 issue an administrative discharge from commitment or from placement at a
15 forensic facility, or both. An administrative discharge from commitment or
16 from placement at a forensic facility may be conditional or absolute and may
17 have immediate or delayed effect. At least 10 days prior to the effective date
18 of any administrative discharge by the Commissioner from commitment or
19 placement at a forensic facility, or 10 days prior to the expiration of a current
20 commitment order for which the Commissioner has decided not to seek
21 continued commitment, the Commissioner shall give notice of the pending

1 discharge to the committing court and to either the State's Attorney of the
2 county where the prosecution originated or to the Office of the Attorney
3 General if that Office prosecuted the case.

4 (B) In reviewing the placement of a person receiving treatment and
5 programming at a forensic facility, the Commissioner may determine that
6 while the placement at a forensic facility is no longer appropriate or that the
7 setting is no longer the least restrictive setting adequate to meet the person's
8 needs, the person is still a person in need of continued custody, care, and
9 habilitation. In this instance, the Commissioner shall discharge the person
10 from placement at the forensic facility while maintaining the person's order of
11 commitment or continued commitment.

12 (2)(A) When a person subject to administrative discharge pursuant to
13 this subsection (c) is receiving treatment and programming at a forensic
14 facility, the State's Attorney or Office of the Attorney General shall provide
15 notice of the pending administrative discharge from placement at a forensic
16 facility and from commitment, if applicable, to any victim of the offense for
17 which the person has been charged who has not opted out of receiving notice.

18 (B) During the period in which the Commissioner gives notice of the
19 pending administrative discharge pursuant to subdivision (1)(A) of this
20 subsection (c) and the anticipated date of administrative discharge, which shall
21 not be less than 10 days, the State's Attorney or the Office of the Attorney

1 General or the victim, or both, may request a hearing in the Family Division of
2 the Superior Court on whether the person's pending administrative discharge
3 from placement at a forensic facility is appropriate, which shall be held within
4 10 days after the request. The pending administrative discharge from
5 placement at the forensic facility shall be stayed until the hearing has
6 concluded and any subsequent orders are issued, but in no event shall a
7 subsequent order be issued more than five days after the hearing.

8 (d) Whenever a person is subject to a judicial or administrative discharge
9 from commitment, the Criminal Division of the Superior Court shall retain
10 jurisdiction over the person's underlying charge and any orders holding the
11 person without bail or concerning bail, and conditions of release shall remain
12 in place. Those orders shall be placed on hold while a person is in the custody,
13 care, and habilitation of the Commissioner. When a person is discharged from
14 the Commissioner's custody, care, and habilitation to a correctional facility,
15 the custody of the Commissioner shall cease when the person enters the
16 correctional facility.

17 § ~~8846~~ 8848. RIGHT TO COUNSEL

18 Persons subject to commitment or ~~judicial review~~ continued commitment
19 under this subchapter shall have a right to counsel as provided in section 7111
20 of this title.

1 * * * Competency Examination * * *

2 Sec. 11. 13 V.S.A. § 4814 is amended to read:

3 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

4 * * *

5 (d) Notwithstanding any other provision of law, an examination ordered
6 pursuant to subsection (a) of this section may be conducted by a doctoral-level
7 psychologist trained in forensic psychology and licensed under 26 V.S.A.
8 chapter 55. ~~This subsection shall be repealed on July 1, 2024.~~

9 * * *

10 * * * Fiscal Estimate of Competency Restoration Program * * *

11 Sec. 12. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
12 ESTIMATE

13 On or before November 1, 2024, the Agency of Human Services shall
14 submit a report to the House Committees on Appropriations, on Health Care,
15 and on Human Services and to the Senate Committees on Appropriations and
16 on Health and Welfare that provides a fiscal estimate for the implementation of
17 a competency restoration program operated or under contract with the
18 Department of Mental Health. The estimate shall include:

19 (1) whether and how to serve individuals with an intellectual disability
20 in a competency restoration program;

1 (2) varying options dependent upon which underlying charges are
2 eligible for court-ordered competency restoration; and
3 (3) costs associated with establishing a residential program where court-
4 ordered competency restoration programming may be performed on an
5 individual who is neither in the custody of the Commissioner of Mental Health
6 pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of
7 Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

8 * * * Rulemaking * * *

9 Sec. 13. RULEMAKING; CONFORMING AMENDMENTS

10 On or before November 1, 2024, the Commissioner of Disabilities, Aging,
11 and Independent Living, in consultation with the Commissioner of Mental
12 Health, shall file initial proposed rule amendments with the Secretary of State
13 pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and
14 Independent Living, Licensing and Operating Regulations for Therapeutic
15 Community Residences (CVR 13-110-12) for the purpose of:

16 (1) adding a forensic facility section of the rule that includes allowing
17 the use of emergency involuntary procedures and the administration of
18 involuntary medication at a forensic facility; and

19 (2) amending the secure residential recovery facility section of the rule
20 to allow the use of emergency involuntary procedures and the administration of
21 involuntary medication at the secure residential recovery facility.

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* * * Effective Dates * * *

Sec. 14. EFFECTIVE DATES

This section, Sec. 12 (report; competency restoration program; fiscal estimate), and Sec. 13 (rulemaking; conforming amendments) shall take effect on passage. All remaining sections shall take effect on July 1, 2025.