

1 S.192

2 Introduced by Senators Lyons and Sears

3 Referred to Committee on Health and Welfare

4 Date: January 3, 2024

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.

~~*** 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 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; or

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

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

(A) the Secretary of Human Services;

(B) the Commissioner of Mental Health;

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

~~(D) the Commissioner of Corrections.~~

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

4 * * * Admission to Forensic Facility for Persons in Need of Treatment or
5 Continued Treatment * * *

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

7 § 4821. NOTICE OF HEARING; PROCEDURES

8 (a) The person who is the subject of the proceedings, his or her, the
9 person's attorney,; the legal guardian, if any,; the Commissioner of Mental
10 Health or the Commissioner of Disabilities, Aging, and Independent Living,;
11 and the State's Attorney or other prosecuting officer representing the State in
12 the case shall be given notice of the time and place of a hearing under
13 section 4820 of this title. Procedures for hearings for persons with a mental
14 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
15 for persons with an intellectual disability shall be as provided in 18 V.S.A.
16 chapter 206, subchapter 3.

17 (b)(1) Once a report concerning competency or sanity is completed or
18 disclosed to the opposing party, the Human Services Community Safety Panel
19 established in 3 V.S.A. § 3098 may conduct a review on its own initiative
20 regarding whether placement of the person who is the subject of the report is
21 appropriate in a forensic facility. The review shall inform either the

1 ~~Commissioner of Mental Health's or Commissioner of Disabilities, Aging,~~
2 and Independent Living's decision as to whether to seek placement of the
3 person 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
16 subdivision (2) within five days. A Panel review ordered pursuant to this
17 subdivision (2) shall be completed and submitted to the court at least three
18 days prior to a 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;
6 and
- 7 (2) dangerousness factors, including:
- 8 (A) whether the person has inflicted or attempted to inflict serious
9 bodily injury on another, attempted suicide or serious self-injury, or
10 committed an act that would constitute sexual conduct with a child as defined
11 in section 2821 of this title or lewd and lascivious conduct with a child as
12 provided in section 2602 of this title, and there is reasonable probability that
13 the conduct will be repeated if admission to a forensic facility is not ordered;
- 14 (B) whether the person has threatened to inflict serious bodily injury
15 to the person or others and there is reasonable probability that the conduct will
16 occur if admission to a forensic facility is not ordered;
- 17 (C) whether the results of any applicable evidence-based violence
18 risk assessment tool indicates that the person’s behavior is deemed a
19 significant risk to others;
- 20 (D) the position of the parties to the criminal case as well as that of
21 any victim as defined in subdivision 5501(4) of this title, and

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

3 Sec. 4. 18 V.S.A. § 7101 is amended to read:

4 § 7101. DEFINITIONS

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

7 * * *

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

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

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

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

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 proceeding 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
8 shall be filed in the unit of the Family Division of the Superior Court in which
9 the hospital is located. In all other cases, it shall be filed in the unit in which
10 the proposed patient resides. In the case of a nonresident, it may be filed in
11 any unit. The court may change the venue of the proceeding to the unit in
12 which 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
5 refused 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
17 being sought. The application shall contain, in addition to the statements
18 required by this section, a statement setting forth the reasons for the
19 Commissioner's determination that clinically appropriate treatment for the
20 ~~person's condition can be provided safely only in a forensic facility, including~~

1 ~~the recommendation of the Human Services Community Safety Panel pursuant~~
2 ~~to 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 ~~(B) If the court grants the motion for expedited hearing pursuant to~~
2 this subdivision (3), the hearing shall be held within three days from the date
3 of the order for expedited hearing. The court may grant an extension of not
4 more than five days to allow for a psychiatric examination in accordance with
5 section 7614 of this title.

6 (4) If a hearing on the application for involuntary treatment has not
7 occurred within 60 days from the date of the court's receipt of the application,
8 the Commissioner shall request that the court and both parties' attorneys
9 provide the reasons for the delay. The Commissioner shall submit a report to
10 the court, the Secretary of Human Services, and the patient's attorney that
11 either explains why the delay was warranted or makes recommendations as to
12 how delays of this type can be avoided in the future.

13 * * *

14 Sec. 7. 18 V.S.A. § 7618 is amended to read:

15 § 7618. ORDER; NONHOSPITALIZATION

16 (a)(1) If the court finds that a treatment program other than hospitalization
17 is adequate to meet the person's treatment needs, the court shall order the
18 person to receive whatever treatment other than hospitalization is appropriate
19 for a period of 90 days.

20 (2) If the Commissioner determines that treatment at a forensic facility
21 is appropriate, and the court finds that treatment at a forensic facility is the

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

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

10 Sec. 9. 18 V.S.A. § 7621 is amended to read:

11 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
12 ORDERS

13 * * *

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

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 23 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
20 longer be in effect.

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

~~Custody, Care, and Habilitation ***~~

~~Sec. 12. 13 V.S.A. § 4823 is amended to read:~~

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

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

~~(b) Such order of commitment shall have the same force and effect as an
order issued under 18 V.S.A. § 8843 and persons committed under such an
order shall have the same status, and the same rights, including the right to
receive care and habilitation, to be examined and discharged, and to apply for
and obtain judicial review of their cases, as persons ordered committed under
18 V.S.A. § 8843 Judicial review procedures for an order issued pursuant to
subsection (a) of this section and for discharge from an order of commitment
shall occur in accordance with 18 V.S.A. § 8843.~~

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~~
13 ~~of 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~~
6 ~~to this subchapter in a forensic facility, the petition shall expressly state that~~
7 ~~such 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
10 the 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.

~~*** Effective Dates ***~~

Sec. 21. EFFECTIVE DATES

~~This section and Sec. 20 (rulemaking; conforming amendments) shall take effect on passage. All remaining sections shall take effect on July 1, 2024.~~

**** 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. ~~It is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning on July 1, 2025.~~

**** 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

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

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

(A) the Secretary of Human Services;

(B) the Commissioner of Mental Health;

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

(D) the Commissioner of Corrections.

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

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

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

§ 4821. NOTICE OF HEARING; PROCEDURES

(a) The person who is the subject of the proceedings, ~~his or her~~; the person's attorney; the person's legal guardian, if any; the Commissioner of Mental Health or the Commissioner of Disabilities, Aging, and Independent Living; and the State's Attorney or other prosecuting officer representing the State in the case shall be given notice of the time and place of a hearing under section 4820 of this title. Procedures for hearings for persons with a mental illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3.

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

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

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

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

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

(1) clinical factors, including:

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

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

(2) risk of harm factors, including:

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

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

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

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

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

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

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

~~See 18 V.S.A. § 4822 is amended to read:~~

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

~~(a)(1) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department~~

~~of Mental Health for an indeterminate a period of 90 days. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.~~

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

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

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

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

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

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

(a)(1) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department of Mental Health for ~~an indeterminate a period of 90 days~~. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

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

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

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

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

(b) An order of commitment issued pursuant to this section shall have the same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a person committed under this order shall have the same status and the same rights, including the right to receive care and treatment, to be examined and discharged, and to apply for and obtain judicial review of ~~his or her~~ the person's case, as a person ordered committed under 18 V.S.A. §§ 7611–7622.

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

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

(i) not guilty by reason of insanity; or

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7101. DEFINITIONS

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

** * **

(31)(A) “Forensic facility” means a residential facility, licensed as a

therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual initially committed pursuant to:

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

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

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

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

§ 7620. APPLICATION FOR CONTINUED TREATMENT

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

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

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

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

(e) As used in this chapter:

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

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

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

*§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
ORDERS*

** * **

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

** * **

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;

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

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

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

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

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

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

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

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

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

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

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

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

(4) Within 72 hours of the filing of an application for involuntary medication pursuant to subdivision (a)(6)(7) of this section, the court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the court determines that the requirements of subdivision (a)(6)(7) of this section have been established, the court shall consolidate the application for involuntary treatment with the application for involuntary medication and hear both applications within 10 days after the date that the application for involuntary medication is filed. The court shall rule on the application for involuntary treatment before ruling on the application for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.

* * *

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

§ 7627. COURT FINDINGS; ORDERS

* * *

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

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

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

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

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

~~habilitation of such person for an indefinite or limited period in a designated program up to one year.~~

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

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

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

Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability
Who Present a Danger of Harm to Others

§ 8839. DEFINITIONS

As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

~~§ 8840. JURISDICTION AND VENUE~~

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

~~§ 8841. PETITION; PROCEDURES~~

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

~~§ 8842. HEARING~~

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

~~§ 8843. FINDINGS AND ORDER~~

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

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

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

~~§ 8844. LEGAL COMPETENCE~~

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

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

~~(a)(1) A person committed under this subchapter may be discharged from custody by a Superior judge after judicial review as provided herein or by administrative order of the Commissioner. If a person is found incompetent to stand trial pursuant to 13 V.S.A. § 4820, the Criminal Division of the Superior Court shall automatically schedule a hearing to determine whether the person is a person in need of custody, care, and habilitation and requiring commitment.~~

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

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

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

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

~~unit that issued the original commitment order. The Commissioner or designee shall attend a commitment hearing for custody, care, and habilitation and be available to testify. All persons to whom notice is given may attend the commitment hearing and testify, except that the court may exclude those persons not necessary for the conduct of the hearing.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(c)(1) If at the completion of the hearing and consideration of the record, the court finds by clear and convincing evidence at the time of the hearing that the person is still in need of continued custody, care, and habilitation, it shall issue an order of commitment for up to one year in a designated program in the least restrictive environment consistent with the person's need for continued custody, care, and habilitation. If the court finds at the time of the hearing that the person is no longer in need of continued custody, care, and habilitation, it shall discharge the person from the custody of the Commissioner in accordance with section 8847 of this subchapter. In determining whether a person is a person in need of continued custody, care, and habilitation, the court shall consider the degree to which the person has previously engaged in or complied with the treatment and programming

provided by the Commissioner. Nothing in this section shall prohibit the Commissioner from seeking, nor the court from ordering, consecutive commitment orders when the criteria for commitment are otherwise met.

(2) In a petition in which placement at a forensic facility is sought, a court shall first determine whether an order for continued custody, care, and habilitation is appropriate. If the court grants the petition for continued custody, care, and habilitation, it shall then determine whether placement at a forensic facility is appropriate and the least restrictive setting adequate to meet the person's needs. If so determined, the court shall order the person placed in a forensic facility for a term not exceed the duration of the order for continued custody, care, and habilitation. The committing court shall automatically review any placement at a forensic facility 90 days after commitment to ensure that the placement remains the least restrictive setting adequate to meet the person's needs.

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

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

~~(a) A person committed under 13 V.S.A. § 4823 or this subchapter may be discharged from an order of custody, care, and habilitation; an order of continued custody, care, and habilitation; or placement at a forensic facility by:~~

~~(1) a Family Division Superior judge after judicial review pursuant to subsection (b) of this section; or~~

~~(2) administrative order of the Commissioner pursuant to subsection (c) of this section.~~

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

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

(2) by a Family Division Superior Court judge after judicial review of an order of custody, care, and habilitation; an order of continued custody, care, and habilitation; or placement at a forensic facility pursuant to subsection (b) of this section; or

(3) by administrative order of the Commissioner regarding an order of

custody, care, and habilitation; an order of continued custody, care, and habilitation; or placement at a forensic facility pursuant to subsection (c) of this section.

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

(2)(A) In reviewing the placement of a person receiving treatment and programming at a forensic facility, the court may determine that while the placement at a forensic facility is no longer appropriate or that the setting is no longer the least restrictive setting adequate to meet the person's needs, the person is still a person in need of continued custody, care, and habilitation. In this instance, the court shall discharge the person from placement at the forensic facility while maintaining the person's order of commitment or continued commitment.

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

(c)(1)(A) If the Commissioner determines that a person is no longer a person in need of custody, care, and habilitation; of continued custody, care, and habilitation; or of placement at a forensic facility, the Commissioner shall issue an administrative discharge from commitment or from placement at a forensic facility, or both. An administrative discharge from commitment or from placement at a forensic facility may be conditional or absolute and may have immediate or delayed effect. At least 10 days prior to the effective date of any administrative discharge by the Commissioner from commitment or placement at a forensic facility, or 10 days prior to the expiration of a current commitment order for which the Commissioner has decided not to seek continued commitment, the Commissioner shall give notice of the pending discharge to the committing court and to either the State's Attorney of the

county where the prosecution originated or to the Office of the Attorney General if that Office prosecuted the case.

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

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

(B) During the period in which the Commissioner gives notice of the pending administrative discharge pursuant to subdivision (1)(A) of this subsection (c) and the anticipated date of administrative discharge, which shall not be less than 10 days, the State's Attorney or the Office of the Attorney General or the victim, or both, may request a hearing in the Family Division of the Superior Court on whether the person's pending administrative discharge from placement at a forensic facility is appropriate, which shall be held within 10 days after the request. The pending administrative discharge from placement at the forensic facility shall be stayed until the hearing has concluded and any subsequent orders are issued, but in no event shall a subsequent order be issued more than five days after the hearing.

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

§ 8846 ~~8848~~. RIGHT TO COUNSEL

Persons subject to commitment or ~~judicial review~~ continued commitment under this subchapter shall have a right to counsel as provided in section 7111

of this title.

** * * Competency Examination * * **

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

§ 4814. ORDER FOR EXAMINATION OF COMPETENCY

** * **

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

** * **

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

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

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

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

(2) varying options dependent upon which underlying charges are eligible for court-ordered competency restoration; and

(3) costs associated with establishing a residential program where court-ordered competency restoration programming may be performed on an individual who is neither in the custody of the Commissioner of Mental Health pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

** * * Rulemaking * * **

Sec. 13. RULEMAKING; CONFORMING AMENDMENTS

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

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

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

** * * 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.