

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred Senate Bill No.
3 192 entitled “An act relating to forensic facility admissions criteria and
4 processes” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 * * * Purpose and Legislative Intent * * *

9 Sec. 1. PURPOSE AND LEGISLATIVE INTENT

10 It is the purpose of this act to:

11 (1) enable the Commissioner of Mental Health to seek treatment and
12 programming for certain individuals in a forensic facility as anticipated by the
13 passage of 2023 Acts and Resolves No. 27; and

14 (2) update the civil commitment procedures for individuals with
15 intellectual disabilities.

16 * * * Human Services Community Safety Panel * * *

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

18 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

19 (a) There is hereby created the Human Services Community Safety Panel
20 within the Agency of Human Services. The Panel shall be designated as the

1 entity responsible for assessing the potential placement of individuals at a
2 forensic facility pursuant to 13 V.S.A. § 4821 for individuals who:

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

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

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

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

11 (A) the Secretary of Human Services;

12 (B) the Commissioner of Mental Health; and

13 (C) the Commissioner of Corrections.

14 (2) The Panel shall have the technical, legal, fiscal, and administrative
15 support of the Agency of Human Services and the Departments of Mental
16 Health and of Corrections.

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

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

2 § 4821. NOTICE OF HEARING; PROCEDURES

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

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

19 (2)(A) If the Panel does not initiate its own review, a party to a hearing
20 under section 4820 of this chapter may file a written motion to the court
21 requesting that the Panel conduct a review within seven days after receiving a

1 report under section 4816 of this chapter or within seven days after being
2 adjudicated not guilty by reason of insanity.

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

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

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

16 (1) clinical factors, including:

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

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

21 (2) risk of harm factors, including:

1 (A) whether the person has inflicted or attempted to inflict serious
2 bodily injury on another, attempted suicide or serious self-injury, or committed
3 an act that would constitute sexual conduct with a child as defined in section
4 2821 of this title or lewd and lascivious conduct with a child as provided in
5 section 2602 of this title, and there is reasonable probability that the conduct
6 will be repeated if admission to a forensic facility is not ordered;

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

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

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

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

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

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

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

14 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
15 least 10 days prior to the proposed discharge of any person committed under
16 this section, the Commissioner of Mental Health shall give notice of the
17 discharge to the committing court and State’s Attorney of the county where the
18 prosecution originated. In all cases requiring a hearing prior to discharge of a
19 person found incompetent to stand trial under section 4817 of this title, the
20 hearing shall be conducted by the committing court issuing the order under that
21 section. In all other cases, when the committing court orders a hearing under

1 subsection (a) of this section or when, in the discretion of the Commissioner of
2 Mental Health, a hearing should be held prior to the discharge, the hearing
3 shall be held in the Family Division of the Superior Court to determine if the
4 committed person is no longer a person in need of treatment or a patient in
5 need of further treatment as set forth in subsection (a) of this section. Notice
6 of the hearing shall be given to the Commissioner, the State’s Attorney of the
7 county where the prosecution originated, the committed person, and the
8 person’s attorney. Prior to the hearing, the State’s Attorney may enter an
9 appearance in the proceedings and may request examination of the patient by
10 an independent psychiatrist, who may testify at the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 § 7101. DEFINITIONS

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

10 * * *

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

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

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

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

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

5 § 7620. APPLICATION FOR CONTINUED TREATMENT

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

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

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

18 (d) If the Commissioner seeks to have the patient receive the further
19 treatment in a forensic facility or secure residential recovery facility, the
20 application for an order authorizing continuing treatment shall expressly state
21 that such treatment is being sought. The application shall contain, in addition

1 to the statements required by subsection (b) of this section, a statement setting
2 forth the reasons for the Commissioner’s determination that clinically
3 appropriate treatment for the patient’s condition can be provided safely only in
4 a secure residential recovery facility or forensic facility, as appropriate. An
5 application for continued treatment in a forensic facility shall include the
6 recommendation of the Human Services Community Safety Panel pursuant to
7 13 V.S.A. § 4821.

8 (e) As used in this chapter:

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

12 (2) “Secure residential recovery facility” means a residential facility,
13 licensed as a therapeutic community residence as defined in 33 V.S.A.
14 § 7102(11), for an individual who no longer requires acute inpatient care but
15 who does remain in need of treatment within a secure setting for an extended
16 period of time. A secure residential recovery facility shall not be used for any
17 purpose other than the purposes permitted by this section.

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

19 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
20 ORDERS

21 * * *

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

8 * * *

9 Sec. 8. 18 V.S.A. § 7624 is amended to read:

10 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

16 (2) has previously received treatment under an order of hospitalization
17 and is currently under an order of nonhospitalization, including a person on an
18 order of nonhospitalization who resides in a secure residential recovery
19 facility;

20 (3) has been committed to the custody of the Commissioner of
21 Corrections as a convicted felon and is being held in a correctional facility that

1 is a designated facility pursuant to section 7628 of this title and for whom the
2 Departments of Corrections and of Mental Health have determined jointly that
3 involuntary medication would be appropriate pursuant to 28 V.S.A.
4 § 907(4)(H);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 established. If the court determines that the requirements of subdivision
2 (a)~~(6)~~(7) of this section have been established, the court shall consolidate the
3 application for involuntary treatment with the application for involuntary
4 medication and hear both applications within 10 days after the date that the
5 application for involuntary medication is filed. The court shall rule on the
6 application for involuntary treatment before ruling on the application for
7 involuntary medication. Subsection 7615(b) of this title shall apply to
8 applications consolidated pursuant to this subdivision.

9 * * *

10 Sec. 9. 18 V.S.A. § 7627 is amended to read:

11 § 7627. COURT FINDINGS; ORDERS

12 * * *

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

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

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

6 **Sec. 10.** 13 V.S.A. § 4814 is amended to read:

7 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

8 * * *

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

13 * * *

14 **Sec. 11.** 13 V.S.A. § 4815 is amended to read:

15 **§ 4815. PLACE OF EXAMINATION; TEMPORARY COMMITMENT**

16 * * *

17 (b) The order for examination may provide for an examination at any jail or
18 correctional **center facility**, or at the State Hospital, or at its successor in
19 interest, or at such other place as the court shall determine, after hearing a
20 recommendation by the Commissioner of Mental Health **or the Commissioner**
21 **of Disabilities, Aging, and Independent, as appropriate.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

* * *

(d) Upon the making of a motion for examination, if the court finds sufficient facts to order an examination, the court shall order a mental health screening to be completed by a designated mental health professional or qualified intellectual disability professional, as appropriate, while the defendant is still at the court.

(e) If the screening cannot be commenced and completed at the courthouse within two hours from the time of the defendant’s appearance before the court, the court may forgo consideration of the screener’s recommendations.

(f) The court and parties shall review the recommendation of the designated mental health professional and consider the facts and circumstances surrounding the charge and observations of the defendant in court. If the court finds sufficient facts to order an examination, it may be ordered to be completed in the least restrictive environment deemed sufficient to complete the examination, consistent with subsection (a) of this section.

(g)(1) Inpatient examination at the Vermont State Hospital, or its successor in interest, or a designated hospital. The court shall not order an inpatient examination unless the a designated mental health professional determines that the defendant is a person in need of treatment as defined in 18 V.S.A. § 7101(17).

1 (2) Before ordering the inpatient examination, the court shall determine
2 what terms, if any, shall govern the defendant’s release from custody under
3 sections 7553-7554 of this title.

4 (3) An order for inpatient examination shall provide for placement of the
5 defendant in the custody and care of the Commissioner of Mental Health.

6 (A) If a Vermont State Hospital psychiatrist, or a psychiatrist of its
7 successor in interest, or a designated hospital psychiatrist determines that the
8 defendant is not in need of inpatient hospitalization prior to admission, the
9 Commissioner shall release the defendant pursuant to the terms governing the
10 defendant’s release from the Commissioner’s custody as ordered by the court.
11 The Commissioner of Mental Health shall ensure that all individuals who are
12 determined not to be in need of inpatient hospitalization receive appropriate
13 referrals for outpatient mental health services.

14 (B) If a Vermont State Hospital psychiatrist, or a psychiatrist of its
15 successor in interest, or designated hospital psychiatrist determines that the
16 defendant is in need of inpatient hospitalization:

17 (i) The Commissioner of Mental Health shall obtain an
18 appropriate inpatient placement for the defendant at the Vermont State
19 Hospital psychiatrist, or a psychiatrist of its successor in interest, or a
20 designated hospital and, based on the defendant’s clinical needs, may transfer
21 the defendant between hospitals at any time while the order is in effect. A

1 transfer to a designated hospital outside the no refusal system is subject to
2 acceptance of the patient for admission by that hospital.

3 (ii) The defendant shall be returned to court for further appearance
4 on the following business day if the defendant is no longer in need of inpatient
5 hospitalization, unless the terms established by the court pursuant to
6 subdivision (2) of this section permit the defendant to be released from
7 custody.

8 (C) The defendant shall be returned to court for further appearance
9 within two business days after the Commissioner **of Mental Health** notifies the
10 court that the examination has been completed, unless the terms established by
11 the court pursuant to subdivision (2) of this section permit the defendant to be
12 released from custody.

13 * * *

14 **Sec. 12. 13 V.S.A. § 4816 is amended to read:**

15 **§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE**

16 * * *

17 (b) A competency evaluation for an individual thought to have **a**
18 **developmental or intellectual** disability shall **include be** a current evaluation by
19 a **doctoral-level** psychologist **trained in forensic psychology and licensed under**
20 **26 V.S.A. chapter 55 who is** skilled in assessing individuals with
21 **developmental or intellectual** disabilities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

(e) The relevant portion of a psychiatrist’s **or psychologist’s** report shall be admitted into evidence as an exhibit on the issue of the person’s mental competency to stand trial and the opinion shall be conclusive on the issue if agreed to by the parties and if found by the court to be relevant and probative on the issue.

(f) Introduction of a report under subsection (d) of this section shall not preclude either party or the court from calling the psychiatrist **or psychologist** who wrote the report as a witness or from calling witnesses or introducing other relevant evidence. Any witness called by either party on the issue of the defendant’s competency shall be at the State’s expense, or, if called by the court, at the court’s expense.

Sec. 13. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

* * *

(c) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in the person’s behalf, or the State, at any time before final judgment, raises before the court before which such person is tried or is to be tried, the issue of whether such person is incompetent to stand trial, or if the court has reason to believe that such person may not be competent to stand trial, a hearing shall be held before such court at

1 which evidence shall be received and a finding made regarding the person's
2 competency to stand trial. However, in cases where the court has reason to
3 believe that such person may be incompetent to stand trial due to a mental
4 disease or mental defect, such hearing shall not be held until an examination
5 has been made and a report submitted by an examining psychiatrist **or**
6 **psychologist** in accordance with sections 4814–4816 of this title.

7 * * *

8 **Sec. 14. 13 V.S.A. § 4820 is amended to read:**

9 **§ 4820. HEARING REGARDING COMMITMENT**

10 (a) **(1)** When a person charged on information, complaint, or indictment
11 with a criminal offense:

12 ~~(1) [Repealed.]~~

13 ~~(2)(A)~~ is found upon hearing pursuant to section 4817 of this title to be
14 incompetent to stand trial due to a mental disease or mental defect;

15 ~~(3)(B)~~ is not indicted upon hearing by grand jury by reason of insanity at
16 the time of the alleged offense, duly certified to the court; or

17 ~~(4)(C)~~ upon trial by court or jury is acquitted by reason of insanity at the
18 time of the alleged offense;

19 ~~(2)~~ **The** court before which such person is tried or is to be tried for
20 such offense, shall hold a hearing for the purpose of determining whether such
21 person should be committed to the custody of the Commissioner of Mental

1 Health or Commissioner of Disabilities, Aging, and Independent Living, as
2 appropriate. Such person may be confined in jail or some other suitable place
3 by order of the court pending hearing for a period not exceeding 21 days.

4 (b) When a person is found to be incompetent to stand trial, has not been
5 indicted by reason of insanity for the alleged offense, or has been acquitted by
6 reason of insanity at the time of the alleged offense, the person shall be entitled
7 to have counsel appointed from Vermont Legal Aid to represent the person.
8 The Department of Mental Health and, if applicable, the Department of
9 Disabilities, Aging, and Independent Living shall be entitled to appear and call
10 witnesses at the proceeding.

11 (c) Notwithstanding any other provision of law, a commitment order issued
12 pursuant to this chapter shall not modify or vacate orders concerning
13 conditions of release or bail issued pursuant to chapter 229 of this title, and the
14 commitment order shall remain in place unless expressly modified, provided
15 that inpatient treatment shall be permitted if a person who is held without bail
16 is found to be in need of inpatient treatment under this chapter.

17 Sec. 15. 13 V.S.A. § 4823 is amended to read:

18 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
19 DISABILITY

20 (a) If the court finds by clear and convincing evidence that such person is a
21 person in need of custody, care, and habilitation as defined in 18 V.S.A.

1 § 8839, the court shall issue an order of commitment **for up to one year**
2 directed to the Commissioner of Disabilities, Aging, and Independent Living
3 for placement in a designated program in the least restrictive environment
4 consistent with the person’s need for custody, care, and habilitation of such
5 person for an indefinite or limited period in a designated program.

6 (b) Such order of commitment shall have the same force and effect as an
7 order issued under 18 V.S.A. **§ 8843 chapter 206, subchapter 3** and persons
8 committed under such an order shall have the same status, and the same rights,
9 including the right to receive care and habilitation, to be examined and
10 discharged, and to apply for and obtain judicial review of their cases, as
11 persons ordered committed under 18 V.S.A. **§ 8843 chapter 206, subchapter 3.**

12 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
13 ~~under this section; however, judicial proceedings shall be conducted in the~~
14 ~~Criminal Division of the Superior Court in which the person then resides,~~
15 ~~unless the person resides out of State in which case the proceedings shall be~~
16 ~~conducted in the original committing court. **[Repealed.]**~~

17 Sec. **16.** 18 V.S.A. chapter 206, subchapter 3 is amended to read:

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

19 Who Present a Danger of Harm to Others

20 § 8839. DEFINITIONS

21 As used in this subchapter:

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

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

10 (3) “Person in need of continued custody, care, and habilitation” means
11 a person who was previously found to be a person in need of custody, care, and
12 habilitation who poses a danger of harm to others. A danger of harm to others
13 shall be shown by establishing that, in the time since the last order of
14 commitment was issued, the person:

15 (A) who has inflicted or attempted to inflict serious bodily injury to
16 another or who has committed an act that would constitute sexual conduct with
17 a child as defined in section 2821 of this title or lewd and lascivious conduct
18 with a child as provided in section 2602 of this title;

19 (B) has exhibited behavior demonstrating that, absent treatment or
20 programming provided by the Commissioner, there is a substantial likelihood

1 that the person would inflict or attempt to inflict physical or sexual harm to
2 another; and

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

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

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

9 (B) who presents a danger of harm to others has inflicted or
10 attempted to inflict serious bodily injury to another or who has committed an
11 act that would constitute sexual conduct with a child as defined in section 2821
12 of this title or lewd and lascivious conduct with a child as provided in section
13 2602 of this title; and

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

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

17 § 8840. ~~JURISDICTION AND VENUE~~

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

1 § 8841. ~~PETITION; PROCEDURES~~

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

4 § 8842. ~~HEARING~~

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

7 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

17 § 8844. ~~LEGAL COMPETENCE~~

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

1 § 8845. JUDICIAL REVIEW PETITION AND ORDER FOR CONTINUED
2 CUSTODY, CARE, AND HABILITATION

3 ~~(a) A person committed under this subchapter may be discharged from~~
4 ~~custody by a Superior judge after judicial review as provided herein or by~~
5 ~~administrative order of the Commissioner.~~

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

11 ~~(c) A person committed under this subchapter shall be entitled to a judicial~~
12 ~~review annually. If no such review is requested by the person, it shall be~~
13 ~~initiated by the Commissioner. However, such person may initiate a judicial~~
14 ~~review under this subsection after 90 days after initial commitment but before~~
15 ~~the end of the first year of the commitment.~~

16 ~~(d) If at the completion of the hearing and consideration of the record, the~~
17 ~~court finds at the time of the hearing that the person is still in need of custody,~~
18 ~~care, and habilitation, commitment shall continue for an indefinite or limited~~
19 ~~period. If the court finds at the time of the hearing that the person is no longer~~
20 ~~in need of custody, care, and habilitation, it shall discharge the person from the~~

1 ~~custody of the Commissioner. An order of discharge may be conditional or~~
2 ~~absolute and may have immediate or delayed effect.~~

3 (1) If, prior to the expiration of any previous commitment order issued in
4 accordance with 13 V.S.A. § 4823, the Commissioner believes that the person
5 is a person in need of continued custody, care, and habilitation, the
6 Commissioner shall seek continued custody, care, and habilitation in the
7 Family Division of the Superior Court. The Commissioner shall, by filing a
8 written petition, commence proceedings for the continued custody, care, and
9 habilitation of a person. The petition shall state the current and relevant facts
10 upon which the person’s alleged need for continued custody, care, and
11 habilitation is predicated.

12 (2) Any commitment order for custody, care, and habilitation or
13 continued custody, care, and habilitation issued in accordance with 13 V.S.A.
14 § 4823 or this subchapter shall remain in force pending the court’s decision on
15 the petition.

16 (b) Upon receipt of the petition for the continued custody, care, and
17 habilitation, the court shall hold a hearing within 14 days after the date of
18 filing.

19 (c) If the court finds by clear and convincing evidence at the time of the
20 hearing that the person is a person in need of continued custody, care, and
21 habilitation, it shall issue an order of commitment for up to one year in a

1 designated program in the least restrictive environment consistent with the
2 person’s need for continued custody, care, and habilitation. If the court finds
3 at the time of the hearing that the person is no longer in need of continued
4 custody, care, and habilitation, it shall discharge the person from the custody of
5 the Commissioner in accordance with section 8847 of this subchapter. In
6 determining whether a person is a person in need of continued custody, care,
7 and habilitation, the court shall consider the degree to which the person has
8 previously engaged in or complied with the treatment and programming
9 provided by the Commissioner.

10 **§ 8846. RIGHT TO INITIATE REVIEW**

11 A person may initiate a judicial review in the Family Division of the
12 Superior Court **or an administrative review** under this subchapter at any time
13 after 90 days following a current order of **commitment or** continued
14 commitment **and not earlier than six months after the filing of a previous**
15 **application under this section.** If the court **or Commissioner** finds that the
16 person is not a person in need of custody, care, and habilitation or continued
17 custody, care, and habilitation, the person shall be discharged from the custody
18 of the Commissioner.

19 **§ 8847. DISCHARGE FROM COMMITMENT**

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

1 (1) by a Family Division Superior Court judge after review of an order
2 of custody, care, and habilitation or an order of continued custody, care, and
3 habilitation if the court finds that the person is not a person in need of custody,
4 care, and habilitation or continued custody, care, and habilitation, respectively;
5 or

6 (2) by administrative order of the Commissioner regarding an order of
7 custody, care, and habilitation or an order of continued custody, care, and
8 habilitation if the Commissioner determines that a person is no longer a person
9 in need of custody, care, and habilitation or continued custody, care, and
10 habilitation, respectively.

11 (b) A judicial or administrative order of discharge may be conditional or
12 absolute and may have immediate or delayed effect.

13 (c)(1) When a person is under an order of commitment pursuant to
14 13 V.S.A. § 4823 or continued commitment pursuant to this subchapter, the
15 Commissioner shall provide notice to the State’s Attorney of the county where
16 the prosecution originated or to the Office of the Attorney General if that
17 Office prosecuted the case:

18 (A) at least 10 days prior to discharging a person from commitment
19 or continued commitment;

1 (B) at least 10 days prior to the expiration of a commitment or
2 continued commitment order if the Commissioner does not seek an order of
3 continued custody, care, and habilitation; or

4 (C) any time that the person elopes from custody of the
5 Commissioner and cannot be located, and there is reason to believe the person
6 may be lost or poses a risk of harm to others.

7 (2) When the State’s Attorney or Attorney General receives notice under
8 subdivision (1) of this subsection, the Office shall provide notice of the action
9 to any victim of the offense for which the person has been charged who has not
10 opted out of receiving notice.

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

1 § ~~8846~~ 8848. RIGHT TO COUNSEL

2 Persons subject to commitment ~~or judicial review under, continued~~
3 commitment, or self-initiated review pursuant to section 8846 of this
4 subchapter shall have a right to counsel as provided in section 7111 of this
5 title.

6 * * * Proposal for Enhanced Services * * *

7 **Sec. 17. INDIVIDUALS WITH INTELLECTUAL DISABILITES;**

8 **ENHANCED SERVICES**

9 On or before December 1, 2024, the Department of Disabilities, Aging, and
10 Independent Living, in consultation with Disability Rights Vermont, Vermont
11 Legal Aid, Developmental Services State Program Standing Committee, and
12 Vermont Care Partners, shall submit an alternative proposal to the forensic
13 facility to the House Committee on Human Services and to the Senate
14 Committee on Health and Welfare for enhanced community-based services for
15 those individuals committed to the Commissioner who require custody, care,
16 and habilitation in a secure setting for brief periods of time. The proposal shall
17 address required resources, including funding and staffing, and be eligible for
18 funding through the Global Commitment Home- and Community-Based
19 Waiver.

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

2 Sec. 18. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
3 ESTIMATE

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

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

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

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

1 illness and civil commitment procedures for individuals with an intellectual
2 disability”

3

4

5

6

7 (Committee vote: _____)

8

9

Representative _____

10

FOR THE COMMITTEE