

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 89
3 entitled “An act relating to establishing a forensic facility” respectfully reports
4 that it has considered the same and recommends that the House propose to the
5 Senate that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Purpose * * *

8 Sec. 1. PURPOSE

9 It is the purpose of this act to enable the Commissioners of Mental Health
10 and of Disabilities, Aging, and Independent Living to seek treatment and
11 programming for certain individuals in a forensic facility. An initial forensic
12 facility shall be located in the nine-bed unit of the current Vermont Psychiatric
13 Care Hospital. This unit shall be relicensed as a therapeutic community
14 residence.

15 * * * Human Services Community Safety Panel * * *

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

17 § 3098. HUMAN SERVICES COMMUNITY SAFETY PANEL

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

1 (1) present a significant risk of danger if not held in a secure setting; and
2 (2)(A) are charged with a crime for which bail is not available; or
3 (B) were charged with a crime for which bail is not available and
4 adjudicated not guilty by reason of insanity.

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

6 (A) the Secretary of Human Services;

7 (B) the Commissioner of Mental Health;

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

10 (D) the Commissioner of Corrections.

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

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

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

17 § 4821. NOTICE OF HEARING; PROCEDURES

18 (a) The person who is the subject of the proceedings, ~~his or her~~; the
19 person's attorney; the legal guardian, if any; the Commissioner of Mental
20 Health or the Commissioner of Disabilities, Aging, and Independent Living;
21 and the State's Attorney or other prosecuting officer representing the State in

1 the case shall be given notice of the time and place of a hearing under
2 section 4820 of this title. Procedures for hearings for persons with a mental
3 illness shall be as provided in 18 V.S.A. chapter 181. Procedures for hearings
4 for persons with an intellectual disability shall be as provided in 18 V.S.A.
5 chapter 206, subchapter 3.

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

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

19 (B) A motion filed pursuant to this subdivision shall specify that the
20 person who is the subject of the proceedings is charged with a crime for which
21 there is no right to bail pursuant to sections 7553 and 7553a of this title, and

1 may include a person adjudicated not guilty by reason of insanity, and that the
2 person presents a significant risk of danger to themselves or the public if not
3 held in a secure setting.

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

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

11 (1) clinical factors, including:

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

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

16 (2) dangerousness factors, including:

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

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

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

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

8 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

19 (d) The application shall contain:

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

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

4 (e) The application shall be accompanied by:

5 (1) a certificate of a licensed physician, which shall be executed under
6 penalty of perjury stating that ~~he or she~~ the licensed physician has examined
7 the proposed patient within five days ~~of~~ from the date the petition is filed and
8 is of the opinion that the proposed patient is a person in need of treatment,
9 including the current and relevant facts and circumstances upon which the
10 physician’s opinion is based; or

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

13 (f) Before an examining physician completes the certificate of examination,
14 ~~he or she~~ the examining physician shall consider available alternative forms of
15 care and treatment that might be adequate to provide for the person’s needs
16 without requiring hospitalization. The examining physician shall document on
17 the certificate the specific alternative forms of care and treatment that ~~he or she~~
18 the examining physician considered and why those alternatives were deemed
19 inappropriate, including information on the availability of any appropriate
20 alternatives.

1 (g) If the Commissioner seeks to have a person receive treatment in a
2 forensic facility pursuant to an order of nonhospitalization, the application for
3 an order authorizing treatment shall expressly state that such treatment is being
4 sought. The application shall contain, in addition to the statements required by
5 this section, a statement setting forth the reasons for the Commissioner’s
6 determination that clinically appropriate treatment for the person’s condition
7 can be provided safely only in a forensic facility, including the
8 recommendation of the Human Services Community Safety Panel pursuant to
9 13 V.S.A. § 4821.

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

11 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY
12 TREATMENT

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

18 (2)(A) The applicant or a person who is certified as a person in need of
19 treatment pursuant to section 7508 of this title may file a motion to expedite
20 the hearing. The motion shall be supported by an affidavit, and the court shall

1 rule on the motion on the basis of the filings without holding a hearing. The
2 court:

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

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

13 (B) If the court grants the motion for expedited hearing pursuant to
14 this subdivision, the hearing shall be held within ten days from the date of the
15 order for expedited hearing.

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

19 (i) shall grant the motion if it finds that the person demonstrates a
20 significant risk of causing the person or others serious bodily injury as defined

1 in 13 V.S.A. § 1021 even while in custody, and clinical interventions have
2 failed to address the risk of harm to the person or others;

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

9 (B) If the court grants the motion for expedited hearing pursuant to
10 this subdivision (3), the hearing shall be held within three days from the date of
11 the order for expedited hearing. The court may grant an extension of not more
12 than five days to allow for a psychiatric examination in accordance with
13 section 7614 of this title.

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

21 * * *

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

2 § 7618. ORDER; NONHOSPITALIZATION

3 (a) **Order of nonhospitalization.**

4 (1) If the court finds that a treatment program other than hospitalization
5 is adequate to meet the person’s treatment needs, the court shall order the
6 person to receive whatever treatment other than hospitalization is appropriate
7 for a period of 90 days.

8 (2) If the Commissioner determines that treatment at a forensic facility
9 is appropriate, and the court finds that treatment at a forensic facility is the
10 least restrictive setting adequate to meet the person’s needs, the court shall
11 order the person to receive treatment there for a period of 90 days. The court
12 may at any time, on its own motion or on motion of an interested party, review
13 the need for treatment at the forensic facility.

14 (b) **Noncompliance with order or inadequacy of treatment.** If at any time
15 during the specified period it comes to the attention of the court either that the
16 patient is not complying with the order or that the alternative treatment has not
17 been adequate to meet the patient’s treatment needs, the court may, after
18 proper hearing:

19 (1) ~~Consider~~ consider other alternatives, modify its original order, and
20 direct the patient to undergo another program of alternative treatment for the
21 remainder of the 90-day period; or

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

3 (c) Discharge from a forensic facility.

4 (1) When a person has been committed under subdivision (a)(2) of this
5 section, the Commissioner shall provide notice at least ten days prior to
6 discharging the person from a forensic facility to either the State’s Attorney of
7 the county where the prosecution originated or to the Office of the Attorney
8 General if that office prosecuted the case.

9 (2) When the State’s Attorney or the Attorney General receives
10 notification pursuant to subdivision (1) of this subsection, the respective office
11 shall provide notice of the action to any victim of the offense for which the
12 person has been charged, unless the victim has opted not to receive notice. As
13 used in this subdivision (2), “victim” has the same meaning as in 13 V.S.A.
14 § 5301(4).

15 (3) The State’s Attorney of the county where the prosecution originated
16 or the Office of the Attorney General if that office prosecuted the case, or the
17 victim may request a discharge hearing to be held within 10 days after
18 receiving notice under this subsection. The pending discharge shall be stayed
19 during this 10-day period. The State’s Attorney, or the Attorney General’s
20 Office, and the victim shall be permitted to appear and be heard on whether the
21 person shall be discharged from a forensic facility. The prosecutor may call

1 witnesses and present evidence pursuant to section 7612 of this title. When
2 deciding whether to discharge a person from the forensic facility, the
3 Commissioner of shall have the sole discretion to take testimony or evidence
4 provided pursuant to this subdivision into consideration.

5 (4) For persons committed to a forensic facility, the Criminal Division
6 of the Superior Court shall retain jurisdiction over the person’s underlying
7 charge and any orders concerning conditions of release or bail pursuant to 13
8 V.S.A. chapter 229 shall remain in place. Those orders shall be placed on hold
9 while the person is held at the forensic facility. When a person is discharged
10 from the forensic facility to a correctional facility, the custody of the
11 Commissioner of Mental Health, shall cease upon that person entering the
12 correctional facility.

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

14 § 7620. APPLICATION FOR CONTINUED TREATMENT

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

20 (b) An application for an order authorizing continuing treatment shall
21 contain a statement setting forth the reasons for the Commissioner’s

1 determination that the patient is a patient in need of further treatment, a
2 statement describing the treatment program provided to the patient, and the
3 results of that course of treatment.

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

6 (d) If the Commissioner seeks to have the patient receive the further
7 treatment in a forensic facility or secure residential recovery facility, the
8 application for an order authorizing continuing treatment shall expressly state
9 that such treatment is being sought. The application shall contain, in addition
10 to the statements required by subsection (b) of this section, a statement setting
11 forth the reasons for the Commissioner’s determination that clinically
12 appropriate treatment for the patient’s condition can be provided safely only in
13 a secure residential recovery facility or forensic facility, as appropriate.

14 (e) As used in this chapter:

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

18 (2) “Secure residential recovery facility” means a residential facility,
19 licensed as a therapeutic community residence as defined in 33 V.S.A.
20 § 7102(11), for an individual who no longer requires acute inpatient care but
21 who does remain in need of treatment within a secure setting for an extended

1 period of time. A secure residential recovery facility shall not be used for any
2 purpose other than the purposes permitted by this section.

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

4 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
5 ORDERS

6 * * *

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

14 * * *

15 Sec. 10. 18 V.S.A. § 7624 is amended to read:

16 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

5 (3) has been committed to the custody of the Commissioner of
6 Corrections as a convicted felon and is being held in a correctional facility
7 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for
8 whom the Departments of Corrections and of Mental Health have determined
9 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.
10 § 907(4)(H);

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

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

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

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

19 (6) has been placed under an order of nonhospitalization in a forensic
20 facility or has an application for involuntary treatment at a forensic facility
21 pending for which the court has granted a motion to expedite pursuant to

1 subdivision 7615(a)(3)(A)(i) of this title, regardless of whether the person has
2 previously been under an order of hospitalization; or

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

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

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

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

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

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

20 (B) the court shall consolidate the application for involuntary
21 treatment with the application for involuntary medication and rule on the

1 application for involuntary treatment before ruling on the application for
2 involuntary medication.

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

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

18 * * *

19 Sec. 11. 18 V.S.A. § 7627 is amended to read:

20 § 7627. COURT FINDINGS; ORDERS

21 * * *

1 restrictive environment consistent with the person’s need for custody, care, and
2 habilitation of such person for an indefinite or limited period in a designated
3 program for an indefinite or limited period.

4 (b) ~~Such order of commitment shall have the same force and effect as an~~
5 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
6 ~~order shall have the same status, and the same rights, including the right to~~
7 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
8 ~~and obtain judicial review of their cases, as persons ordered committed under~~
9 ~~18 V.S.A. § 8843~~ When the Commissioner seeks to have a person committed
10 to a forensic facility, the Commissioner shall provide a statement expressly
11 stating that such placement is being sought and setting forth the reasons for the
12 Commissioner’s determination that clinically appropriate treatment and
13 programming can be provided safely only in a forensic facility, including the
14 recommendation of the Human Services Community Safety Panel pursuant to
15 section 4821 of this title. Placement at a forensic facility pursuant to this
16 section shall constitute the designated program required by subsection (a) of
17 this section and 18 V.S.A. § 8845. Nothing in this section shall be construed as
18 prohibiting the Human Services Community Safety Panel from recommending
19 additional services and habilitation at a designated program for a person
20 committed under this section.

1 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
2 ~~under this section; however, judicial proceedings shall be conducted in the~~
3 ~~Criminal Division of the Superior Court in which the person then resides,~~
4 ~~unless the person resides out of State in which case the proceedings shall be~~
5 ~~conducted in the original committing court~~ Judicial review procedures for an
6 order issued pursuant to subsection (a) of this section and for discharge from
7 an order of commitment shall occur in accordance with 18 V.S.A. § 8845.

8 (d) As used in this section, “forensic facility” has the same meaning as in
9 18 V.S.A. § 7101.

10 Sec. 13. 18 V.S.A. § 8839 is amended to read:

11 § 8839. DEFINITIONS

12 As used in this subchapter:

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

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

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

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

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

7 (B) who ~~presents a danger of harm to others~~ has inflicted or
8 attempted to inflict serious bodily injury to another or who has committed an
9 act that would constitute a sexual assault or lewd and lascivious conduct with a
10 child; and

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

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

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

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

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

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

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

9 § 8840. ~~JURISDICTION AND VENUE~~

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

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

15 § 8841. ~~PETITION; PROCEDURES~~

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

18 Sec. 16. 18 V.S.A. § 8842 is amended to read:

19 § 8842. ~~HEARING~~

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

1 Sec. 17. 18 V.S.A. § 8843 is amended to read:

2 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

12 Sec. 18. 18 V.S.A. § 8844 is amended to read:

13 § 8844. LEGAL COMPETENCE

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

17 Sec. 19. 18 V.S.A. § 8845 is amended to read:

18 § 8845. JUDICIAL REVIEW

19 (a) **Manner of discharge.** A person committed under 13 V.S.A. § 4823 or
20 this subchapter may be discharged from custody by:

1 (1) a Superior judge after judicial review as provided ~~herein in~~
2 ~~subsection (b) of this section,~~ or

3 (2) ~~by~~ administrative order of the Commissioner.

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

9 ~~(c)~~(1) ~~Commitment.~~ A person committed under 13 V.S.A. § 4823 or this
10 subchapter shall be entitled to a judicial review of the person's need for
11 commitment annually. The Family Division of the Superior Court shall have
12 exclusive jurisdiction over all judicial review proceedings brought under this
13 section. If no ~~such~~ judicial review is requested by the person within one year
14 from the date of the last order of commitment, it shall be initiated by the
15 Commissioner. However, ~~such a~~ person may initiate a judicial review under
16 this subsection ~~after beginning~~ 90 days of after initial commitment but before
17 the end of the first year of the commitment, or if commitment has been
18 continued under this subchapter, the person may petition for review after 90
19 days from the date of an order for continued commitment.

20 ~~(d)~~(2) ~~If the Commissioner seeks to place the person committed pursuant to~~
21 ~~this subchapter in a forensic facility, the petition shall expressly state that such~~

1 ~~placement is being sought. The petition shall set forth the reasons for the~~
2 ~~Commissioner's determination that clinically appropriate treatment and~~
3 ~~programming can be provided safely only in a forensic facility. Continued~~
4 ~~commitment.~~

5 (A) If, at the completion of the hearing and consideration of the
6 record, the court finds by clear and convincing evidence that at the time of the
7 hearing that the person is still in need of continued custody, care, and
8 habilitation, commitment shall continue in a designated program in the least
9 restrictive environment consistent with the person's need for custody, care, and
10 habilitation for an indefinite or limited period. If the court finds at the time of
11 the hearing that the person is no longer in need of continued custody, care, and
12 habilitation, it shall discharge the person from the custody of the
13 Commissioner. An order of discharge may be conditional or absolute and may
14 have immediate or delayed effect.

15 (B) In determining whether a person is in need of continued custody,
16 care, and habilitation, the court shall consider the degree to which the person
17 has engaged in or complied with the treatment and supervision provided by the
18 Commissioner.

19 (C) ~~When the Commissioner seeks an order of continued custody in a~~
20 ~~forensic facility, the Commissioner shall provide a statement expressly stating~~
21 ~~that such placement is being sought and setting forth the reasons for the~~

1 Commissioner’s determination that clinically appropriate treatment and
2 programming can be provided safely only in a forensic facility, including the
3 recommendation of the Human Services Community Safety Panel pursuant to
4 13 V.S.A. § 4821. Placement at a forensic facility pursuant to this section shall
5 constitute the designated program. Nothing in this section shall be construed
6 as prohibiting the Human Services Community Safety Panel from
7 recommending additional services and habilitation.

8 (3) Attendance at hearing. The Commissioner or the Commissioner’s
9 designee shall attend the commitment or continued commitment hearing and
10 be available to testify. All persons to whom notice is given may attend the
11 commitment or continued commitment hearing and testify, except that the
12 court may exclude those persons not necessary for the conduct of the hearing.

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

16 (5) Notice of discharge. Notice of judicial discharge shall be provided
17 to the prosecuting office, which shall provide notice to the victim, unless the
18 victim has opted not to receive notice.

19 (c) Discharge from forensic facility by judicial review. The State’s
20 Attorney, or the Attorney General’s Office, and the victim are entitled to
21 appear and provide their opinion as to whether the person should be discharged

1 from a forensic facility. The prosecutor may call witnesses and present
2 evidence.

3 (d) Administrative discharge.

4 (1)(A) At least 10 days prior to the effective date of any administrative
5 order for discharge by the Commissioner, the Commissioner shall give notice
6 of the discharge to the committing court and to either the State’s Attorney of
7 the county where the prosecution originated or to the Office of the Attorney
8 General if that office prosecuted the case.

9 (B) When the State’s Attorney or the Attorney General receives
10 notification pursuant to subdivision (A) of this subdivision (d)(1), the
11 respective office shall provide notice of the action to the victim of the offense
12 for which the person has been charged, unless the victim has opted not to
13 receive notice.

14 (2)(A) If the Commissioner issues a notice of discharge from the
15 forensic facility, the State’s Attorney of the county where the prosecution
16 originated, or the Office of the Attorney General if that office prosecuted the
17 case, or the victim, or any combination thereof, may request a hearing on the
18 discharge from the forensic facility to be held by the committing court within
19 10 days of receiving the notice under subdivision (1)(A) of this subsection (d).
20 The pending discharge from the facility shall be stayed during this 10-day
21 notice period.

* * * Rulemaking * * *

~~Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC
FACILITY~~

~~(a) On or before July 1, 2023, the Secretary of Human Services, in
consultation with the Departments of Mental Health and of Disabilities, Aging,
and Independent Living, shall file an initial proposed rule with the Secretary of
State pursuant to 3 V.S.A. § 836(a)(2) specifying the criteria that the
Departments shall use to determine admission to a forensic facility and the
process used by the Commissioners to determine appropriate admissions. The
admission criteria and process shall ensure that:~~

~~(1) an individual is served in the least restrictive setting necessary to
meet the needs of the individual;~~

~~(2) an individual's treatment and programming needs dictate that the
treatment or programming be provided at an intensive residential level in a
forensic facility; and~~

~~(3) an individual only receives treatment or programming within a
forensic facility if the individual has demonstrated a significant risk of
dangerousness, such as:~~

~~(A) inflicting or attempting to inflict serious bodily injury on another,
attempting suicide or serious self injury, or committing an act that would
constitute a sexual assault or lewd and lascivious conduct with a child, and~~

1 ~~there is reasonable probability that the conduct will be repeated if admission to~~
2 ~~a forensic facility is not ordered;~~

3 ~~(B) threatening to inflict serious bodily injury to the individual or on~~
4 ~~others, and there is reasonable probability that the conduct will occur if~~
5 ~~admission to a forensic facility is not ordered;~~

6 ~~(C) obtaining results on any applicable evidence based violence risk~~
7 ~~assessment tool showing that the individual's behavior is deemed a significant~~
8 ~~risk to others; or~~

9 ~~(D) being charged with a felony offense involving an act of violence~~
10 ~~against another person for which bail may be withheld pursuant to 13 V.S.A.~~
11 ~~§ 7553 or 7553a.~~

12 ~~(b) The Departments shall not admit residents to a forensic facility until a~~
13 ~~permanent rule has been adopted pursuant to this section.~~

14 Sec. 21. RULEMAKING; CONFORMING AMENDMENTS

15 On or before July 1, 2023, the Commissioners of Mental Health and of
16 Disabilities, Aging, and Independent Living, respectively, shall file initial
17 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
18 § 826(a)(2) to account for the establishment of the forensic facility:

19 (1) Department of Disabilities, Aging, and Independent Living,
20 Licensing and Operating Regulations for Therapeutic Community Residences
21 (CVR 13-110-12) for the purpose of allowing the use of emergency

1 involuntary procedures and the administration of involuntary medication at a
2 forensic facility; and

3 (2) Department of Mental Health, Rules for the Administration of
4 Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the
5 purpose of allowing the administration of involuntary medication at a forensic
6 facility.

7 * * * Presentation and Report * * *

8 Sec. 22. PRESENTATION; FORENSIC FACILITY PROGRAMMING

9 On or before February 1, 2024, the Departments of Mental Health and of
10 Disabilities, Aging, and Independent Living shall jointly present the following
11 information to the House Committee on Human Services and to the Senate
12 Committee on Health and Welfare:

13 (1) a plan for staffing and programming at the forensic facility,
14 including whether any specialized training will be required for staff members
15 and whether any services provided at the forensic facility will be contracted to
16 third parties;

17 (2) a plan for the joint management of the forensic facility by the
18 Departments; and

19 (3) whether any additional resources are needed for the operation of the
20 forensic facility.

21 Sec. 23. REPORT; FORENSIC FACILITY

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE