

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 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 bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 * * * Purpose and Legislative Intent * * *

8 Sec. 1. PURPOSE AND LEGISLATIVE INTENT

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 as anticipated by the
12 passage of 2023 Acts and Resolves No. 27. It is the intent of the General
13 Assembly that an initial forensic facility be authorized and operational
14 beginning on July 1, 2025.

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 to self or others if not held in a
2 secure setting; and

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

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

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

9 (A) the Secretary of Human Services;

10 (B) the Commissioner of Mental Health;

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

13 (D) 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; of Disabilities, Aging, and Independent Living; and of Corrections.

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

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

20 § 4821. NOTICE OF HEARING; PROCEDURES

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

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

18 (2)(A) If the Panel does not initiate its own review, a party to a hearing
19 under section 4820 of this chapter may file a written motion to the court
20 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 (ii) 13 V.S.A. § 4823 who is in need of custody, care, and
2 habilitation or continued custody, care, and habilitation pursuant to chapter 206
3 of this title within a secure setting for an 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. 6. 18 V.S.A. § 7620 is amended to read:

8 § 7620. APPLICATION FOR CONTINUED TREATMENT

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

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

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

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

12 (e) As used in this chapter:

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

16 (2) “Secure residential recovery facility” means a residential facility,
17 licensed as a therapeutic community residence as defined in 33 V.S.A.
18 § 7102(11), for an individual who no longer requires acute inpatient care but
19 who does remain in need of treatment within a secure setting for an extended
20 period of time. A secure residential recovery facility shall not be used for any
21 purpose other than the purposes permitted by this section.

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

2 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
3 ORDERS

4 * * *

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

12 * * *

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

14 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

20 (2) has previously received treatment under an order of hospitalization
21 and is currently under an order of nonhospitalization, including a person on an

1 order of nonhospitalization who resides in a secure residential recovery
2 facility;

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

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

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

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

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

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

19 (7) has had an application for involuntary treatment pending pursuant to
20 subdivision 7615(a)(1) of this title for more than 26 days without a hearing
21 having occurred and the treating psychiatrist certifies, based on specific

1 behaviors and facts set forth in the certification, that in ~~his or her~~ the
2 psychiatrist's professional judgment there is good cause to believe that:

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

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

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

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

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

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

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

1 Independent Living for placement in a designated program in the least
2 restrictive environment consistent with the person’s need for custody, care, and
3 habilitation of such person for an indefinite or limited period in a designated
4 program up to one year.

5 (b) ~~Such order of commitment shall have the same force and effect as an~~
6 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
7 ~~order shall have the same status, and the same rights, including the right to~~
8 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
9 ~~and obtain judicial review of their cases, as persons ordered committed under~~
10 ~~18 V.S.A. § 8843~~ Commitment procedures for an order initially issued
11 pursuant to subsection (a) of this section and for discharge from an order of
12 commitment or continued commitment shall occur in accordance with
13 18 V.S.A. §§ 8845–8847.

14 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
15 ~~under this section; however, judicial proceedings shall be conducted in the~~
16 ~~Criminal Division of the Superior Court in which the person then resides,~~
17 ~~unless the person resides out of State in which case the proceedings shall be~~
18 ~~conducted in the original committing court~~ In accordance with 18 V.S.A.
19 § 8845, if the Commissioner seeks to have a person committed pursuant to this
20 section placed in a forensic facility, the Commissioner shall provide a
21 statement setting forth the reasons for the Commissioner’s determination that

1 clinically appropriate treatment and programming can be provided safely only
2 in a forensic facility, including the recommendation of the Human Services
3 Community Safety Panel pursuant to section 4821 of this title.

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

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

7 § 8839. DEFINITIONS

8 As used in this subchapter:

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

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

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

20 (4) “Person in need of continued custody, care, and habilitation” means
21 a person who was previously found to be a person in need of custody, care, and

1 habilitation who poses a danger of harm to others and for whom the
2 Commissioner has, in the Commissioner’s discretion, consented to or approved
3 the continuation of the designated program. A danger of harm to others shall
4 be shown by establishing that, in the time since the last order of commitment
5 was issued, the person:

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

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

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

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

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

18 (B) who ~~presents a danger of harm to others~~ has inflicted or
19 attempted to inflict serious bodily injury to another or who has committed an
20 act that would constitute sexual conduct with a child as defined in section 2821

1 of this title or lewd and lascivious conduct with a child as provided in section
2 2602 of this title; and

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

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

6 § 8840. ~~JURISDICTION AND VENUE~~

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

11 § 8841. ~~PETITION; PROCEDURES~~

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

14 § 8842. ~~HEARING~~

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

17 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

6 § 8844. LEGAL COMPETENCE

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

10 § 8845. ~~JUDICIAL REVIEW~~ INITIAL ORDER FOR CUSTODY,
11 CARE, AND HABILITATION

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

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

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

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

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

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

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

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

18 (e) If the Commissioner has recommended to the court that a person be
19 placed in a forensic facility, the court, after determining that the person is a
20 person in need of custody, care, and habilitation, shall determine whether
21 placement at a forensic facility is both appropriate and the least restrictive

1 setting adequate to meet the person’s needs. If so determined, the court shall
2 order the person placed in a forensic facility for a term not to exceed the
3 duration of the initial commitment order. The committing court shall
4 automatically review any placement at a forensic facility 90 days after
5 commitment to ensure that the placement remains the least restrictive setting
6 adequate to meet the person’s needs.

7 § 8846. PETITION AND ORDER FOR CONTINUED CUSTODY, CARE,
8 AND HABILITATION

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

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

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

1 (2) Any commitment order for custody, care, and habilitation or
2 continued custody, care, and habilitation issued in accordance with 13 V.S.A.
3 § 4823 or this subchapter shall remain in force pending the court’s decision on
4 the petition.

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

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

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

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

16 (c)(1) If at the completion of the hearing and consideration of the record,
17 the court finds by clear and convincing evidence at the time of the hearing that
18 the person is still in need of continued custody, care, and habilitation, it shall
19 issue an order of commitment for up to one year in a designated program in the
20 least restrictive environment consistent with the person’s need for continued
21 custody, care, and habilitation. If the court finds at the time of the hearing that

1 the person is no longer in need of continued custody, care, and habilitation, it
2 shall discharge the person from the custody of the Commissioner in accordance
3 with section 8847 of this subchapter. In determining whether a person is a
4 person in need of continued custody, care, and habilitation, the court shall
5 consider the degree to which the person has previously engaged in or complied
6 with the treatment and programming provided by the Commissioner. Nothing
7 in this section shall prohibit the Commissioner from seeking, nor the court
8 from ordering, consecutive commitment orders when the criteria for
9 commitment are otherwise met.

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

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

5 § 8847. DISCHARGE FROM COMMITMENT OR PLACEMENT IN A
6 FORENSIC FACILITY

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

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

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

14 (b)(1) A person under a commitment order for custody, care, and
15 habilitation under 13 V.S.A. § 4823 or a commitment order for continued
16 custody, care, and habilitation under this subchapter shall be entitled to a
17 judicial review of the person's need for continued custody, care, and
18 habilitation pursuant to sections 8845(d)(2) and 8846(d) of this subchapter. If
19 the court finds that the person is not a person in need of custody, care, and
20 habilitation or continued custody, care, and habilitation, the person shall be
21 discharged from the custody of the Commissioner. A judicial order of

1 discharge may be conditional or absolute and may have immediate or delayed
2 effect.

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

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

18 (c)(1)(A) If the Commissioner determines that a person is no longer a
19 person in need of custody, care, and habilitation; of continued custody, care,
20 and habilitation; or of placement at a forensic facility, the Commissioner shall
21 issue an administrative discharge from commitment or from placement at a

1 forensic facility, or both. An administrative discharge from commitment or
2 from placement at a forensic facility may be conditional or absolute and may
3 have immediate or delayed effect. At least 10 days prior to the effective date
4 of any administrative discharge by the Commissioner from commitment or
5 placement at a forensic facility, or 10 days prior to the expiration of a current
6 commitment order for which the Commissioner has decided not to not seek
7 continued commitment, the Commissioner shall give notice of the pending
8 discharge to the committing court and to either the State’s Attorney of the
9 county where the prosecution originated or to the Office of the Attorney
10 General if that Office prosecuted the case.

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

19 (2)(A) When a person subject to administrative discharge pursuant to
20 this subsection (c) is receiving treatment and programming at a forensic
21 facility, the State’s Attorney or Office of the Attorney General shall provide

1 notice of the pending administrative discharge from placement at a forensic
2 facility and from commitment, if applicable, to any victim of the offense for
3 which the person has been charged who has not opted out of receiving notice.

4 (B) During the period in which the Commissioner gives notice of the
5 pending administrative discharge pursuant to subdivision (1)(A) of this
6 subsection (c) and the anticipated date of administrative discharge, which shall
7 not be less than 10 days, the State’s Attorney or the Office of the Attorney
8 General or the victim, or both, may request a hearing in the Family Division of
9 the Superior Court on whether the person’s pending administrative discharge
10 from placement at a forensic facility is appropriate, which shall be held within
11 10 days after the request. The pending administrative discharge from
12 placement at the forensic facility shall be stayed until the hearing has
13 concluded and any subsequent orders are issued, but in no event shall a
14 subsequent order be issued more than five days after the hearing.

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

1 the custody of the Commissioner shall cease when the person enters the
2 correctional facility.

3 § ~~8846~~ 8848. RIGHT TO COUNSEL

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

7 * * * Competency Examination * * *

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

9 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

10 * * *

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

15 * * *

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

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

19 On or before November 1, 2024, the Agency of Human Services shall
20 submit a report to the House Committees on Appropriations, on Health Care,
21 and on Human Services and to the Senate Committees on Appropriations and

1 on Health and Welfare that provides a fiscal estimate for the implementation of
2 a competency restoration program operated or under contract with the
3 Department of Mental Health. The estimate shall include:

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

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

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

13 * * * Rulemaking * * *

14 Sec. 13. RULEMAKING; CONFORMING AMENDMENTS

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

