

**S.192: An act relating to forensic facility admissions criteria and processes**  
as Introduced

\* \* \* PURPOSE AND LEGISLATIVE INTENT \* \* \*

**Sec. 1. Purpose and Legislative Intent**

- States that the purpose of act is to enable the Commissioners of DMH and DAIL to seek treatment and programming for certain individuals in a forensic facility (consistent with the work done in 2023 A & R No. 27)
- States that it is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning 7/1/24 by repurposing the nine-bed unit of the VPCH

\* \* \* HUMAN SERVICES COMMUNITY SAFETY PANEL \* \* \*

**Sec. 2. Human Services Community Safety Panel (3 V.S.A. § 3098)**

- Establishes the Human Services Community Safety Panel within AHS, which shall be the entity responsible for assessing the potential placement of certain individuals with a mental health condition or intellectual disability in a forensic facility to the extent individuals:
  - Present a significant risk of danger if not held in a secure setting; and
  - Are charged with a crime for which there is no right to bail (under 13 V.S.A. §§ 7553 and 7533a)
- Lists the Secretary of AHS, and Commissioners of DOC, DMH, and DAIL as Panel members
- Provides Panel with the technical, legal, fiscal, and administrative support of AHS, DOC, DMH, and DAIL

\* \* \* ADMISSION TO FORENSIC FACILITY FOR PERSONS IN NEED OF TREATMENT OR CONTINUED TREATMENT \* \* \*

**Sec. 3. Notice of Hearing; Procedures (13 V.S.A. § 4821)**

- Specifies that once a report addressing defendant's competency or sanity is completed or disclosed, the Panel may conduct a review on its own initiative regarding the placement of the individual in a forensic facility
  - If the Panel does not initiate its own review, a party to a commitment hearing under 13 V.S.A. § 4820 may file a written motion requesting that the Panel conduct a review within 7 days of receiving the competency or sanity report or within 7 days of the individual being adjudicated not guilty by reason of insanity
  - Such a motion must specify that the individual who is the subject of the proceedings is: (1) charged with a crime for which there is no right to bail (under 13 V.S.A. §§ 7553 and 7533a) and may include an individual adjudicated not guilty by reason of insanity; and (2) a significant risk of danger to self or the public if not held in a secure setting

- Requires the court to rule on the motion within 5 days; if Panel review is ordered it must be completed and submitted to the court at least three days prior to a commitment hearing under 13 V.S.A. § 4820
- Requires Panel review to consider the following:
  - Clinical factors, including whether:
    - Individual is served in the least restrictive setting necessary to meet individual’s needs; and
    - Individual’s treatment and programming needs dictate that the treatment or programming be provided at an intensive residential level; and
  - Dangerousness factors, including:
    - Whether individual has inflicted or attempted to inflict serious bodily injury on another, attempted suicide or serious self-injury, or committed an act that constitutes sexual conduct with a child or lewd and lascivious conduct with a child, and there is reasonable probability that the conduct will be repeated if admission to a forensic facility is not ordered;
    - Whether the individual has threatened to inflict serious bodily injury to the individual or others and there is reasonable probability that the conduct will occur if admission to a forensic facility is not ordered;
    - Whether the results of any applicable evidence-based violence risk assessment tool indicates that the person’s behavior is deemed a significant risk to others;
    - The position of the victim and parties to the criminal case; and
    - Any other factors the Panel seems relevant to the assessment of risk

#### **Sec. 4. Definitions (18 V.S.A. § 7101)**

- Adds a definition of “forensic facility” to mean a residential facility licensed as a therapeutic community residence for an individual initially committed under:
  - 13 V.S.A. § 4822 (insanity as a defense; persons with a mental illness) who is in need of treatment or further treatment in a secure setting for an extended period of time; or
  - 13 V.S.A. § 4823 (insanity as a defense; persons with an intellectual disability) who is in need of custody, care, and habilitation in a secure setting for an extended period of time

#### **Sec. 5. Application for Involuntary Treatment (18 V.S.A. § 7612)**

- Updates gender neutral language
- Adds subsec. (g): Requires Commissioner of MH to specify in the application for involuntary treatment if the Commissioner seeks to have the person treated in a forensic facility, including the reasons why this placement is clinically appropriate and why treatment can be provided safely only in a forensic facility, including the recommendation of the Panel

**Sec. 6. Hearing on Application for Involuntary Treatment (18 V.S.A. § 7615)**

- Adds a new subdiv. (a)(3) allowing the applicant or person for whom an order of nonhospitalization at a forensic facility is sought to file a motion for an expedited hearing
  - The court shall grant an expedited motion if it finds the person demonstrates a significant risk of causing the person or others serious bodily injury, and clinical interventions have failed to address the risk of harm to the person or others
  - The court may grant an expedited hearing if it finds the person has received involuntary medication in the past 2 years and based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in regaining competence
- If the court grants an expedited hearing, it will occur within 3 days of the order; court may grant an extension to allow for a psychiatric exam

**Sec. 7. Order; Nonhospitalization (18 V.S.A. § 7618)**

- Adds a new subdiv. (a)(2): If the Commissioner of MH determines that treatment at a forensic facility is appropriate, and the court finds it is the least restrictive setting adequate to meet the individual's needs, the court shall issue an order for nonhospitalization at the forensic facility for 90 days; court may review need for treatment prior to expiration of the order

**Sec. 8. Application for Continued Treatment (18 V.S.A. § 7620)**

- Specifies that an application for continued treatment at a forensic facility must expressly state where treatment is being sought and why the Commissioner of MH has determined that clinically appropriate treatment for the individual's condition can only be provided for safely in a forensic facility
- Directs that an application for continued treatment must include the Panel's recommendation

**Sec. 9. Hearing on Application for Continued Treatment; Orders (18 V.S.A. § 7621)**

- Authorizes the court to place an individual in need of further treatment on an order of nonhospitalization at a forensic facility

**Sec. 10. Application for Involuntary Medication (18 V.S.A. § 7624)**

- Allows the Commissioner of MH to seek involuntary medication for an individual refusing to accept psychiatric medication who has been placed under an order of nonhospitalization at forensic facility OR who has an application for involuntary treatment at a forensic facility pending for which the court has granted an expedited hearing

**Sec. 11. Court Findings; Orders (18 V.S.A. § 7627)**

- Adds a new subsection (o): If the court finds that w/o an order for involuntary medication there is a substantial probability that the individual would continue to refuse medication and as a result would pose a danger of harm to self or other, the

court may order administration of medication at a forensic facility for up to 90 days or longer if necessary

- If the individual becomes competent, the order is no longer in effect

\* \* \* PERSONS IN NEED OF CUSTODY, CARE, AND HABILITATION OR CONTINUED CUSTODY, CARE, AND HABILITATION \* \* \*

**Sec. 12. Findings and Order; Persons with Intellectual Disability (13 V.S.A. § 4823)**

- Specifies that if an individual is committed to the Commissioner of DAIL that the placement must be in a designated program in the least restrictive environment consistent with the individual's need for custody for an indefinite or limited period of time
- Replaces language that cross-references sections repealed by this bill with provisions specifying that:
  - judicial review procedures for an order issued under this section and for discharge from a commitment order must be in accordance with 18 V.S.A. § 8845 (judicial review)
  - if the Commissioner is seeking to have an individual placed at a forensic facility, the Commissioner must provide a statement setting forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only at the forensic facility, including the recommendation of the Panel

**Sec. 13. Definitions (18 V.S.A. § 8839)**

- Removes the definition of "danger of harm to others"
- Adds a definition of "Commissioner" and "Person in need of continued custody, care, and habilitation"
- Amends the definition of "Person in need of custody, care, and habilitation"

**Sec. 14. Jurisdiction and Venue (18 V.S.A. § 8840)**

**Sec. 15. Petition; Procedures (18 V.S.A. § 8841)**

**Sec. 16. Hearing (18 V.S.A. § 8842)**

**Sec. 17. Findings and Order (18 V.S.A. § 8843)**

Secs. 14-17 propose to repeal 18 V.S.A. §§ 8840-8843 as they are "form without substance". 18 V.S.A. chapter 206, subchapters 1 and 2 were repealed in 1995. A portion of 18 V.S.A. chapter 206, subchapter 3 (18 V.S.A. §§ 8840-8843), which used to provide a separate mechanism for an interested person to petition the court for state supervision of a person with an intellectual disability who presented a danger of harm to others was not repealed, however, and remains intact. Despite its apparent structure, subchapter 3 does not provide an independent avenue for seeking civil commitment in the absence of subchapters 1 and 2, and it does not make sense to retain 18 V.S.A. §§ 8840-8843.

**Sec. 18. Legal Competence (18 V.S.A. § 8844)**

- Specifies that a determination that an individual is "in need of continued custody, care, and habilitation" does not lead to a presumption of legal incompetence

**Sec. 19. Judicial Review (18 V.S.A. § 8845)**

- Subsec. (a): Specifies that individuals committed to the custody of the Commissioner of DAIL under 13 V.S.A. § 4823 (insanity as a defense; persons with intellectual disability) may be discharged from custody after judicial review by a Superior judge in accordance with this subchapter
- Subsec. (a): Directs that at least 10 days prior to the effective date of any administrative order for discharge by the Commissioner that the Commissioner gives notice to the committing court and the State's attorney of the county where the prosecution occurred
- Subsec. (b): Specifies that individuals committed to the custody of the Commissioner of DAIL under 13 V.S.A. § 4823 (insanity as a defense; persons with intellectual disability) are entitled to a judicial review of the person's need for commitment annually and that the Family Division of the Superior Court has exclusive jurisdiction over these judicial reviews
  - If a judicial review is not requested by the individual within one year from the date of the last review, it will be initiated by the Commissioner
  - An individual may initiate a judicial review after 90 days of initial commitment and after 90 days of an order for continued commitment
- Subsec. (c) specifies that if the Commissioner of DAIL seeks to place a person committed under the subchapter in a forensic facility, the petition must: (1) expressly state that the placement is being sought, (2) set forth the reasons for the Commissioner's determination that clinically appropriate treatment and programming can be provided safely only in a forensic facility; and (3) the recommendation of the Panel
- Subsec. (d): Directs that VT rules of evidence and procedure applicable to civil cases apply in all judicial review proceedings under this subchapter
- Subdiv. (e): Directs Commissioner of DAIL (or designee) to attend commitment hearing and be available to testify
  - Specifies that all persons to whom notice is given may attend the commitment hearing and testify, except that the court can exclude those persons not necessary for conduct of hearing
- Subsec. (f): Requires that if the court finds by clear and convincing evidence at the time of hearing that the individual is in need of continued custody, care, and habilitation, commitment shall continue in a designated program in the least restrictive environment consistent with the individual's need for custody, care, and habilitation for an indefinite or limited period of time; otherwise the individual is discharged
- Subsec. (g): Determining whether an individual is in need of continued custody, care, and habilitation requires the court to consider the degree to which an individual has engaged in or complied with treatment and supervision provided by the Commissioner, and well as the Panel's recommendation

\* \* \* RULEMAKING \* \* \*

**Sec. 20. Rulemaking; Conforming Amendments**

- By 4/1/24, directs Commissioners of MH and of DAIL to file initial proposed rule amendments that account for the establishment of a forensic facility with regard to the Licensing and Operating Regulations for Therapeutic Community Residences (to allow the use of emergency involuntary procedures and administration of involuntary medication at a forensic facility)

\* \* \* EFFECTIVE DATES \* \* \*

**Sec. 21. Effective Dates**

- Secs. 20 (effective dates) & 21 (rulemaking conforming amendments) take effect on passage, all remaining sections take effect 7/1/24