

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 Sec. 1. LEGISLATIVE INTENT

8 It is the intent of the General Assembly that an initial forensic facility be
9 authorized and operational beginning on July 1, 2024 in the nine-bed wing of
10 the current Vermont Psychiatric Care Hospital. This wing shall be relicensed
11 as a therapeutic community residence and shall provide a safe environment for
12 both clients and staff. Any comingling of staff between the psychiatric
13 hospital wings and the forensic facility shall be consistent with the
14 requirements of any applicable collective bargaining agreements.

15 Sec. 2. CERTIFICATE OF NEED; EXCLUSION

16 Notwithstanding any law to the contrary, the Department of Mental Health
17 and the Department of Disabilities, Aging, and Independent Living’s joint
18 establishment of a nine-bed forensic facility within a wing of the existing
19 Vermont Psychiatric Care Hospital is excluded from the certificate of need
20 process prescribed in 18 V.S.A. chapter 221, subchapter 5.

21 Sec. 3. RULEMAKING; CONFORMING AMENDMENTS

1 (a) On or before August 1, 2023, the Commissioner of Mental Health shall
2 file an initial proposed rule amendment with the Secretary of State pursuant to
3 3 V.S.A. 836(a)(2) to amend the Department of Mental Health, Rules for the
4 Administration of Nonemergency Involuntary Psychiatric Medications (CVR
5 13-150-11) for the purpose of allowing the administration of involuntary
6 medication at a forensic facility.

7 (b) On or before September 1, 2023, the Commissioners of Mental Health
8 and of Disabilities, Aging, and Independent Living shall begin to draft
9 proposed amendments to Department of Disabilities, Aging, and Independent
10 Living, Licensing and Operating Regulations for Therapeutic Community
11 Residences (CVR 13-110-12) for the purposes of creating a forensic facility
12 section of the rule that includes allowing the use of emergency involuntary
13 procedures and the administration of involuntary medication.

14 Sec. 4. PRESENTATION; FORENSIC FACILITY PROGRAMMING

15 On or before February 1, 2024, the Agency of Human Services shall present
16 the following information to the House Committees on Corrections and
17 Institutions, on Health Care, on Human Services, and on Judiciary and to the
18 Senate Committees on Health and Welfare, on Institutions, and on Judiciary:

19 (1) a plan for staffing and programming at the forensic facility,
20 including whether any specialized training will be required for staff members

1 and whether any services provided at the forensic facility will be contracted to
2 third parties;

3 (2) whether any additional resources are needed for the operation of the
4 forensic facility; and

5 (3) an assessment of laws, regulations, rules, and policies governing
6 psychiatric hospitals and therapeutic community residences to determine
7 whether there are any conflicts with serving two populations in the same
8 facility.

9 Sec. 5. REPORT; FORENSIC FACILITY

10 Annually, on or before January 15 between 2025 and 2030, the Departments
11 of Mental Health and of Disabilities, Aging, and Independent Living shall
12 submit a report to the House Committees on Human Services and on Judiciary
13 and to the Senate Committees on Health and Welfare and on Judiciary
14 containing:

15 (1) the average daily census at the forensic facility, including trends
16 over time;

17 (2) the number of individuals waitlisted for the forensic facility and
18 where these individuals receive treatment or programming while waiting for a
19 bed at the forensic facility;

20 (3) aggregated demographic data about the individuals served at the
21 forensic facility; and

1 (4) an account of the number and types of emergency involuntary
2 procedures used at the forensic facility.

3 Sec. 6. WORKING GROUP ON POLICIES PERTAINING TO

4 INDIVIDUALS WITH INTELLECTUAL DISABILITY WHO ARE
5 CRIMINAL-JUSTICE INVOLVED

6 (a) Creation. There is created the Working Group on Policies Pertaining to
7 Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved.
8 The Working Group shall assess whether a forensic level of care is needed for
9 individuals with intellectual disabilities who are charged with a crime of
10 violence against another person, have been determined incompetent to stand
11 trial or adjudicated not guilty by reason of insanity, and are committed to the
12 custody of the Commissioner of Disabilities, Aging, and Independent Living.
13 If it is determined that forensic-level care is needed for such individuals, the
14 Working Group shall propose legislation establishing the process and criteria
15 for committing such individuals to a forensic facility. In developing
16 legislation, the Working Group shall refer to earlier drafts of this act discussed
17 by the General Assembly in 2023.

18 (b) Membership.

19 (1) The Working Group shall be composed of the following members:

20 (A) a representative, appointed by the Disability Law Project of
21 Vermont Legal Aid;

1 (B) a representative, appointed by the Developmental Disabilities

2 Council;

3 (C) a representative, appointed by the Green Mountain Self-

4 Advocates;

5 (D) a representative, appointed by Vermont Care Partners;

6 (E) a representative, appointed by the Vermont Crisis Intervention

7 Network;

8 (F) the Commissioner of Disabilities, Aging, and Independent Living

9 or designee;

10 (G) the Commissioner of Mental Health or designee;

11 (H) two members of the House of Representatives, one of whom is

12 from the House Committee on Human Services and one of whom is from the

13 House Committee on Judiciary, appointed by the Speaker; and

14 (I) two members of the Senate, one of whom is from the Senate

15 Committee on Health and Welfare and one of whom is from the Senate

16 Committee on Judiciary, appointed by the Committee on Committees.

17 (2) In completing its duties pursuant to this section, the Working Group,

18 to the extent feasible, shall consult with the following individuals:

19 (A) a psychologist with experience conducting competency

20 evaluations under 1987 Acts and Resolves No. 248;

1 (B) individuals with lived experience of a intellectual disability who
2 have previous experience in the criminal justice system or civil commitment
3 system, or both;

4 (C) family members of individuals with an intellectual disability who
5 have experience in the criminal justice system or 1987 Acts and Resolves No.
6 248;

7 (D) the Executive Director of the Department of State’s Attorneys
8 and Sheriffs;

9 (E) the Defender General;

10 (F) a representative of the Center for Crime Victim Services;

11 (G) the Commissioner of Corrections;

12 (H) the State Program Standing Committee for Developmental
13 Services; and

14 (I) the President of the Vermont State Employees’ Association.

15 (c) Powers and duties. The Working Group shall assess the need for a
16 forensic level of care for individuals with an intellectual disability, including:

17 (1) the extent to which a forensic facility addresses any unmet needs or
18 gaps in resources for individuals with intellectual disabilities;

19 (2) if the Working Group determines there is a need for individuals with
20 an intellectual disability to receive programming in a forensic facility, the
21 specific circumstances under which an individual committed to the custody of

1 the Commissioner of Disabilities, Aging, and Independent Living could be
2 placed in a forensic facility;

3 (3) any amendments to 18 V.S.A. chapter 206, including amendments
4 needed to ensure due process prior to and during the commitment process,
5 regardless of whether the Working Group determines that a need for forensic-
6 level care exists;

7 (4) the roles of Vermont Legal Aid, an ombudsman, or Disability Rights
8 Vermont in serving individuals with intellectual disabilities placed in a
9 forensic facility;

10 (5) necessary changes to 13 V.S.A. chapter 157; and

11 (6) investments, policies, and programmatic options for high-quality
12 community-based supports for at-risk individuals committed to the custody of
13 the Commissioner of Disabilities, Aging, and Independent Living.

14 (d) Assistance. The Working Group shall have the administrative,
15 technical, and legal assistance of the Department of Disabilities, Aging, and
16 Independent Living.

17 (e) Report. On or before December 1, 2023, the Working Group shall
18 submit a written report to the House Committees on Human Services and on
19 Judiciary and to the Senate Committees on Health Welfare and on Judiciary
20 with its findings and any recommendations for legislative action, including
21 proposed legislative language.

1 (f) Meetings.

2 (1) The representative of the Department of Disabilities, Aging, and
3 Independent Living shall call the first meeting of the Working Group to occur
4 on or before July 10, 2023.

5 (2) The Committee shall select a chair from among its members at the
6 first meeting.

7 (3) A majority of the membership shall constitute a quorum.

8 (4) The Working Group shall cease to exist on July 1, 2024.

9 (g) Compensation and reimbursement.

10 (1) For attendance at meetings during adjournment of the General
11 Assembly, a legislative member of the Working Group serving in the
12 member’s capacity as a legislator shall be entitled to per diem compensation
13 and reimbursement of expenses pursuant to 2 V.S.A. § 23 for not more than 14
14 meetings. These payments shall be made from monies appropriated to the
15 General Assembly.

16 (2) Members of the Working Group not otherwise compensated for their
17 participation in the Working Group shall be entitled to per diem compensation
18 and reimbursement of expenses as permitted under 32 V.S.A. § 1010 for not
19 more than 14 meetings. These payments shall be made from monies
20 appropriated to the Department of Disabilities, Aging, and Independent Living.

21 (h) Definitions.

1 (1) As used in this section, “forensic facility” means a residential
2 facility, licensed as a therapeutic community residence as defined in 33 V.S.A.
3 § 7102(11), for an individual:

4 (A) with a mental health condition or intellectual disability, if the
5 General Assembly determines that commitment to a forensic facility is
6 appropriate for an individual with an intellectual disability;

7 (B) who is charged with a crime of violence against another person
8 and the individual is assessed not competent to stand trial or was adjudicated
9 not guilty by reason of insanity; and

10 (C) who requires treatment or programming within a secure setting
11 for an extended period of time.

12 (2) As used in this subsection, “secure” has the same meaning as in 18
13 V.S.A. § 7620.

14 * * * Effective Date * * *

15 Sec. 7. EFFECTIVE DATE

16 This act shall take effect on passage.

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3 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE