

1 TO THE HONORABLE SENATE:

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 bill be amended by
5 striking out all after the enacting clause and inserting in lieu thereof the
6 following:

7 * * * Admission to Forensic Facility for Persons in Need of Treatment or
8 Continued Treatment * * *

9 Sec. 1. 18 V.S.A. § 7101 is amended to read:

10 § 7101. DEFINITIONS

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

13 ***

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

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

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, “secure” has the same meaning as in section 7620 of this title.

7 Sec. 2. 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.

8 Sec. 3. 18 V.S.A. § 7615 is amended to read:

9 § 7615. HEARING ON APPLICATION FOR INVOLUNTARY

10 TREATMENT

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

16 (2)(A) The applicant or a person who is certified as a person in need of
17 treatment pursuant to section 7508 of this title may file a motion to expedite
18 the hearing. The motion shall be supported by an affidavit, and the court shall
19 rule on the motion on the basis of the filings without holding a hearing. The
20 court:

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

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

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

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

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

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

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

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

19 * * *

20 Sec. 4. 18 V.S.A. § 7618 is amended to read:
21 § 7618. ORDER; NONHOSPITALIZATION

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

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

11 (b) If at any time during the specified period it comes to the attention of the
12 court either that the patient is not complying with the order or that the
13 alternative treatment has not been adequate to meet the patient’s treatment
14 needs, the court may, after proper hearing:

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

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

20 Sec. 5. 18 V.S.A. § 7620 is amended to read:

21 § 7620. APPLICATION FOR CONTINUED TREATMENT

1 (a) If, prior to the expiration of any order issued in accordance with section
2 7623 of this title, the Commissioner believes that the condition of the patient is
3 such that the patient continues to require treatment, the Commissioner shall
4 apply to the court for a determination that the patient is a patient in need of
5 further treatment and for an order of continued treatment.

6 (b) An application for an order authorizing continuing treatment shall
7 contain a statement setting forth the reasons for the Commissioner’s
8 determination that the patient is a patient in need of further treatment, a
9 statement describing the treatment program provided to the patient, and the
10 results of that course of treatment.

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

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

21 (e) As used in this chapter:

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

4 (2) “Secure residential recovery facility” means a residential facility,
5 licensed as a therapeutic community residence as defined in 33 V.S.A.
6 § 7102(11), for an individual who no longer requires acute inpatient care but
7 who does remain in need of treatment within a secure setting for an extended
8 period of time. A secure residential recovery facility shall not be used for any
9 purpose other than the purposes permitted by this section.

10 Sec. 6. 18 V.S.A. § 7621 is amended to read:

11 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;

12 ORDERS

13 * * *

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

21 * * *

1 Sec. 7. 18 V.S.A. § 7624 is amended to read:

2 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

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

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

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

12 (3) has been committed to the custody of the Commissioner of
13 Corrections as a convicted felon and is being held in a correctional facility
14 ~~which~~ that is a designated facility pursuant to section 7628 of this title and for
15 whom the Departments of Corrections and of Mental Health have determined
16 jointly that involuntary medication would be appropriate pursuant to 28 V.S.A.
17 § 907(4)(H);

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

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

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

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

5 (6) has been placed under an order of nonhospitalization in a forensic
6 facility or has an application for involuntary treatment at a forensic facility
7 pending for which the court has granted a motion to expedite pursuant to
8 subdivision 7615(a)(3)(A)(i) of this title, regardless of whether the person has
9 previously been under an order of hospitalization; or

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

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

17 (B) serious deterioration of the person's mental condition is
18 occurring.

19 (b)(1) Except as provided in subdivisions (2), (3), and (4) of this
20 subsection, an application for involuntary medication shall be filed in the

1 Family Division of the Superior Court in the county in which the person is
2 receiving treatment.

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

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

7 (B) the court shall consolidate the application for involuntary
8 treatment with the application for involuntary medication and rule on the
9 application for involuntary treatment before ruling on the application for
10 involuntary medication.

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

14 (4) Within 72 hours of the filing of an application for involuntary
15 medication pursuant to subdivision ~~(a)(6)~~(7) of this section, the court shall
16 determine, based solely upon a review of the psychiatrist's certification and
17 any other filings, whether the requirements of that subdivision have been
18 established. If the court determines that the requirements of subdivision
19 ~~(a)(6)~~(7) of this section have been established, the court shall consolidate the
20 application for involuntary treatment with the application for involuntary
21 medication and hear both applications within ten days of the date that the

1 application for involuntary medication is filed. The court shall rule on the
2 application for involuntary treatment before ruling on the application for
3 involuntary medication. Subsection 7615(b) of this title shall apply to
4 applications consolidated pursuant to this subdivision.

5 * * *

6 Sec. 8. 18 V.S.A. § 7627 is amended to read:

7 § 7627. COURT FINDINGS; ORDERS

8 * * *

9 (o) For a person who is receiving treatment pursuant to an order of
10 nonhospitalization in a forensic facility, if the court finds that without an order
11 for involuntary medication there is a substantial probability that the person
12 would continue to refuse medication and as a result would pose a danger of
13 harm to self or others, the court may the order administration of involuntary
14 medications at a forensic facility for up to 90 days, unless the court finds that
15 an order is necessary for a longer period of time. An order for involuntary
16 medication pursuant to this subsection shall not be longer than the duration of
17 the current order of nonhospitalization. If at any time the treating psychiatrist
18 finds that a person subject to an order for involuntary medication has become
19 competent pursuant to subsection 7625(c) of this title, the order shall no longer
20 be in effect.

1 * * * Persons in Need of Custody, Care, and Habilitation or Continued
2 Custody, Care, and Habilitation * * *

3 Sec. 9. 13 V.S.A. § 4823 is amended to read:

4 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL
5 DISABILITY

6 (a) If the court finds that such person is a person in need of custody, care,
7 and habilitation as defined in 18 V.S.A. § 8839, the court shall issue an order
8 of commitment directed to the Commissioner of Disabilities, Aging, and
9 Independent Living for placement in a designated program in the least
10 restrictive environment consistent with the person’s need for custody, care, and
11 habilitation of such person for an indefinite or limited period in a designated
12 program for an indefinite or limited period.

13 (b) ~~Such order of commitment shall have the same force and effect as an~~
14 ~~order issued under 18 V.S.A. § 8843 and persons committed under such an~~
15 ~~order shall have the same status, and the same rights, including the right to~~
16 ~~receive care and habilitation, to be examined and discharged, and to apply for~~
17 ~~and obtain judicial review of their cases, as persons ordered committed under~~
18 ~~18 V.S.A. § 8843~~ Judicial review procedures for an order issued pursuant to
19 subsection (a) of this section and for discharge from an order of commitment
20 shall occur in accordance with 18 V.S.A. § 8845.

1 (c)(1) ~~Section 4822 of this title shall apply to persons proposed for~~
2 ~~discharge under this section; however, judicial proceedings shall be conducted~~
3 ~~in the Criminal Division of the Superior Court in which the person then~~
4 ~~resides, unless the person resides out of State in which case the proceedings~~
5 ~~shall be conducted in the original committing court~~ If the Commissioner seeks
6 to have a person committed pursuant to this section placed in a forensic
7 facility, the Commissioner shall provide a statement setting forth the reasons
8 for the Commissioner’s determination that clinically appropriate treatment and
9 programming can be provided safely only in a forensic facility.

10 (2) As used in this subchapter, “forensic facility” has the same meaning
11 as in section 7101 of this title.

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

13 § 8839. DEFINITIONS

14 As used in this subchapter:

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

20 (2) “Designated program” means a program designated by the
21 Commissioner as adequate to provide in an individual manner appropriate

1 custody, care, and habilitation to persons with intellectual disabilities receiving
2 services under this subchapter.

3 (3) “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 (4) “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 Sec. 11. 18 V.S.A. § 8840 is amended to read:

8 § 8840. ~~JURISDICTION AND VENUE~~

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

13 Sec. 12. 18 V.S.A. § 8841 is amended to read:

14 § 8841. ~~PETITION; PROCEDURES~~

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

17 Sec. 13. 18 V.S.A. § 8842 is amended to read:

18 § 8842. ~~HEARING~~

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

21 Sec. 14. 18 V.S.A. § 8843 is amended to read:

1 § 8843. ~~FINDINGS AND ORDER~~

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

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

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

11 Sec. 15. 18 V.S.A. § 8844 is amended to read:

12 § 8844. LEGAL COMPETENCE

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

16 Sec. 16. 18 V.S.A. § 8845 is amended to read:

17 § 8845. JUDICIAL REVIEW

18 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
19 discharged from custody by a Superior judge after judicial review as provided
20 herein in accordance with this subchapter or by administrative order of the
21 Commissioner. At least 10 days prior to the effective date of any

1 administrative order for discharge by the Commissioner, the Commissioner
2 shall give notice of the discharge to the committing court and to the State's
3 Attorney of the county where the prosecution occurred.

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

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

20 ~~(d)~~(c) 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.

4 (d) The Vermont rules of evidence and procedure applicable in civil cases
5 shall apply in all judicial review proceedings brough under this subchapter.

6 (e) The Commissioner or the Commissioner’s designee shall attend the
7 commitment hearing and be available to testify. All persons to whom notice is
8 given may attend the commitment hearing and testify, except that the court
9 may exclude those persons not necessary for the conduct of the hearing.

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

20 (g) In determining whether a person is in need of continued custody, care,
21 and habilitation, the court shall consider the degree to which the person has

1 engaged in or complied with the treatment and supervision provided by the
2 Commissioner.

3 * * * Certificate of Need * * *

4 Sec. 17. 18 V.S.A. § 9435 is amended to read:

5 § 9435. EXCLUSIONS

6 * * *

7 (g) Excluded from this subchapter is any forensic facility, as defined in 18
8 V.S.A. section 7101, that is supervised and operated by the Commissioner of
9 Mental Health or the Commissioner of Disabilities, Aging, and Independent
10 Living, or both.

11 * * * Rulemaking * * *

12 Sec. 18. RULEMAKING; ADMISSIONS CRITERIA FOR FORENSIC
13 FACILITY

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

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

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

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

9 (A) inflicting or attempting to inflict serious bodily injury on another,
10 attempting suicide or serious self-injury, or committing an act that would
11 constitute a sexual assault or lewd and lascivious conduct with a child, and
12 there is reasonable probability that the conduct will be repeated if admission to
13 a forensic facility is not ordered;

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

17 (C) obtaining results on any applicable evidence-based violence risk-
18 assessment tool showing that the individual’s behavior is deemed a significant
19 risk to others; or

1 (D) being charged with a felony offense involving an act of violence
2 against another person for which bail may be withheld pursuant to 13 V.S.A.
3 § 7553 or 7553a.

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

6 Sec. 19. RULEMAKING; CONFORMING AMENDMENTS

7 On or before July 1, 2023, the Commissioners of Mental Health and of
8 Disabilities, Aging, and Independent Living, respectively, shall file initial
9 proposed rule amendments with the Secretary of State pursuant to 3 V.S.A.
10 § 826(a)(2) to account for the establishment of the forensic facility:

11 (1) Department of Disabilities, Aging, and Independent Living,
12 Licensing and Operating Regulations for Therapeutic Community Residences
13 (CVR 13-110-12) for the purpose of allowing the use of emergency
14 involuntary procedures and the administration of involuntary medication at a
15 forensic facility; and

16 (2) Department of Mental Health, Rules for the Administration of
17 Nonemergency Involuntary Psychiatric Medications (CVR 13-150-11) for the
18 purpose of allowing the administration of involuntary medication at a forensic
19 facility.

20 * * * Effective Dates * * *

21 Sec. 20. EFFECTIVE DATES

1 This section and Secs. 18 (rulemaking; admissions criteria for forensic
2 facility) and 19 (rulemaking; conforming amendments) shall take effect on
3 passage. All remaining sections shall take effect on July 1, 2024.

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11 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE