

1 S.193

2 An act relating to establishing a forensic facility for certain criminal justice-  
3 involved persons

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 Sec. 1. LEGISLATIVE INTENT

6 It is the intent of the General Assembly that the Secretary of Human  
7 Services shall establish and operate a locked secure forensic facility by July 1,  
8 2029, for the competency restoration, evaluation, stabilization, treatment, and  
9 care of persons who have been found not competent to stand trial or not guilty  
10 by reason of insanity for serious criminal offenses. The Department of  
11 Corrections shall not operate or staff the forensic facility, with the exception  
12 that employees of the Department of Corrections may provide security services  
13 for the facility at the admitting area of and around the outside perimeter of a  
14 forensic facility if it is colocated on the grounds of a correctional facility.

15 Sec. 2. 13 V.S.A. § 4815a is added to read:

16 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN

17 FORENSIC FACILITY

18 (a) A person shall be placed at the forensic facility established in section  
19 4826 of this title if the person:

20 (1) has been charged with an offense punishable by a life sentence;

21 (2)(A) has been held without bail pursuant to section 7553 of this title;

22 or

1           (B) if the person is not held without bail pursuant to section 7553 of  
2           this title, has a qualifying condition and it has been determined that the  
3           person's release would create a substantial risk of bodily injury to another  
4           person;

5           (3) is not currently:

6           (A) receiving treatment through an order of hospitalization pursuant  
7           to 18 V.S.A. § 7619 or section 4822 of this title; or

8           (B) subject to an order of commitment to the Commissioner of  
9           Disabilities, Aging, and Independent Living issued under 18 V.S.A. § 8845 or  
10           section 4823 of this title, unless the person is detained in a correctional facility  
11           pending trial; and

12           (4) has been found not competent to stand trial.

13           (b)(1) The forensic facility shall cause the person to be evaluated for  
14           competency to stand trial:

15           (A) six months from the date of admission, and thereafter every  
16           six months from the issuance of an order for continued competency restoration  
17           treatment under subdivision (3)(B) of this subsection (b); and

18           (B) at any time upon the determination by the Agency of Human  
19           Services Medical Director that the person is likely competent to stand trial or  
20           that it is unlikely that the person's competency can be restored.

1           (2) The court shall hold a hearing after the competency evaluation, and,  
2           prior to the hearing, the results of all evaluations shall be supplied to the court  
3           and the parties to the underlying criminal action.

4           (3)(A) If the court finds after the hearing that the person is competent to  
5           stand trial, the court shall immediately notify the State's Attorney and the  
6           person's counsel in the criminal case.

7           (B) If the court finds after the hearing that the person is not  
8           competent to stand trial, the court shall order continued competency restoration  
9           treatment at the facility pursuant to this section.

10          (4) Notwithstanding any other provision of law or rule, witnesses at  
11          hearings held pursuant to this section shall be permitted to provide testimony  
12          remotely.

13          (c)(1) At the request of a party or the Agency of Human Services Medical  
14          Director, the court may order that a competency evaluation conducted pursuant  
15          to subsection (b) of this section include an opinion on whether the person's  
16          competency can be restored. If a request is made pursuant to this subsection,  
17          the forensic facility shall cause the person to be evaluated for restorability to  
18          competence prior to the hearing.

19          (2) If the court finds that the person's competency can be restored, the  
20          court shall order continued competency restoration treatment at the facility  
21          pursuant to this section.

1           (3)(A) If the court finds that the person’s competency cannot be  
2           restored, the court shall hold a hearing within 60 days unless that period is  
3           extended by the court for good cause.

4           (B) Prior to the date of the hearing, the court shall order that a  
5           forensic risk assessment of the person be conducted by an evaluator  
6           appropriately qualified for the qualifying condition of the person that includes:

7                   (i) the person’s history and present dangerousness;

8                   (ii) a description of any tests that were employed and the results of  
9           the tests;

10                   (iii) the examiner’s findings;

11                   (iv) the examiner’s opinion as to whether the person’s release  
12           would create a substantial risk of bodily injury to another person;

13                   (v) recommendations for evidence-based treatment and  
14           supervision, including in a community-based placement, that would support  
15           the person’s success and mitigate risk of aggression and violence;

16                   (vi) the examiner’s opinion as to whether the person is a person in  
17           need of custody, care, and habilitation as defined in 18 V.S.A. § 8839; and

18                   (vii) the examiner’s opinion as to whether the person is competent  
19           to stand trial.

20           (C) The results of all evaluations shall be supplied to the court and  
21           the parties to the underlying criminal action.

1           (4)(A) If the State’s Attorney demonstrates by clear and convincing  
2           evidence at a hearing held pursuant to subdivision (3)(A) of this subsection (c)  
3           or (B) of this subdivision (4) that the person has a qualifying condition that,  
4           upon the person’s release, would create a substantial risk of bodily injury to  
5           another person, the court shall order continued commitment of the person  
6           consistent with the person’s forensic risk assessment. The court shall order  
7           treatment of the person, which may include appropriate supervision and  
8           supervised housing, including a community-based placement, in the least  
9           restrictive setting consistent with the person’s forensic risk assessment and  
10           treatment needs.

11           (B) If continued commitment is ordered pursuant to subdivision (A)  
12           of this subdivision (4), the person’s commitment shall be reviewed by the  
13           court:

14                   (i) every 12 months;

15                   (ii) at any time upon the determination by the Agency of Human  
16           Services Medical Director that the person no longer has a qualifying condition  
17           and the person’s release would not create a substantial risk of bodily injury to  
18           another person; and

19                   (iii) upon petition of the person filed at any time after 90 days  
20           following an order of continued commitment issued pursuant to subdivision  
21           (A) of this subdivision (4), and thereafter not earlier than six months from the

1 issuance of an order for continued commitment under subdivision (4)(A) of  
2 this subsection (c).

3 (5)(A) If the State's Attorney does not demonstrate by clear and  
4 convincing evidence at a hearing held pursuant to subdivision (3)(A) or (4)(B)  
5 of this subsection (c) that the person has a qualifying condition and the  
6 person's release would create a substantial risk of bodily injury to another  
7 person, the court shall:

8 (i) order the release of the person under a prescribed regimen of  
9 medical, psychiatric, or psychological care or treatment, housing, and  
10 supervision by the Commissioner of Mental Health; the Department of  
11 Disabilities, Aging, and Independent Living; or the Department of Health, that  
12 the Agency of Human Services Medical Director has certified as appropriate;  
13 and

14 (ii) order, as an explicit condition of supervision, that the person  
15 comply with the prescribed regimen of medical, psychiatric, or psychological  
16 care or treatment, housing, and supervision by the Commissioner of Mental  
17 Health; the Department of Disabilities, Aging, and Independent Living; or the  
18 Department of Health, together with any other conditions appropriate to protect  
19 the public.

20 (B) A person's release pursuant to this subdivision (5) shall be  
21 reviewed by the court every 12 months. The person shall be released from the

1 supervision of the Commissioner of Mental Health; the Department of  
2 Disabilities, Aging, and Independent Living; or the Department of Health  
3 unless the State's Attorney demonstrates by clear and convincing evidence at  
4 the hearing that continued treatment and supervision is necessary to prevent the  
5 person from becoming a substantial risk of bodily injury to another person.

6 (C)(i) The State's Attorney shall make a reasonable effort to provide  
7 the victim with prior notice of any hearing held pursuant to this subdivision  
8 (5). The court may continue the hearing if the victim has not been provided  
9 with the notice required by this subdivision (C)(i).

10 (ii) At any hearing under this subdivision (5), the court shall ask if  
11 the victim is present and, if so, shall offer the victim the opportunity to be  
12 heard. The court may consider any views offered at the hearing by the victim,  
13 including the victim's views concerning the offense and preferences for the  
14 person's placement and care. If the victim is not present at the hearing, the  
15 court shall ask whether the victim has expressed oral or written views  
16 concerning the offense and preferences for the person's placement and care,  
17 and, if so, the court may consider those views.

18 (6)(A) If the court finds that the person's competency cannot be  
19 restored, and finds by clear and convincing evidence that the person is a person  
20 in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the  
21 court shall issue an order of commitment for up to one year directed to the

1 Commissioner of Disabilities, Aging, and Independent Living for placement in  
2 a designated program in the least restrictive environment consistent with the  
3 person's need for custody, care, and habilitation. The order of commitment  
4 shall have the same force and effect as an order issued under 18 V.S.A. chapter  
5 206, subchapter 3 and persons committed under the order shall have the same  
6 status, and the same rights, including the right to receive care and habilitation,  
7 to be examined and discharged, and to apply for and obtain judicial review of  
8 their cases, as persons ordered committed under 18 V.S.A. chapter 206,  
9 subchapter 3.

10 (B)(i) The Commissioner shall provide appropriate custody, care, and  
11 habilitation in a designated program to a person committed under subdivision  
12 (A) of this subdivision (6).

13 (ii) The court may order continued treatment at the forensic  
14 facility for a period not to exceed one year if the court finds that the  
15 Commissioner is not currently able to provide appropriate custody, care, and  
16 habilitation in a designated program. For good cause shown, the court may  
17 extend the one-year period by an additional period not to exceed six months.

18 (C)(i) The court shall review an order of continued treatment issued  
19 pursuant to subdivision (B)(ii) of this subdivision (6) every 90 days.

20 (ii) If the court finds at the review that appropriate custody, care,  
21 and habilitation can be provided to the person in a designated program, the

1 court shall vacate the order for continued treatment and order the person  
2 committed to the custody of the Commissioner pursuant to subdivision (A) of  
3 this subdivision (6).

4 (iii) If the court finds at the review that appropriate custody, care,  
5 and habilitation cannot be provided to the person in a designated program, the  
6 court shall order continued treatment at the forensic facility pursuant to  
7 subdivision (B)(ii) of this subdivision (6).

8 (D) The Commissioner may at any time certify to the court that  
9 appropriate custody, care, and habilitation can be provided to the person in a  
10 designated program, and after such a certification the court shall vacate the  
11 order for continued treatment and order the person committed to the custody of  
12 the Commissioner pursuant to subdivision (A) of this subdivision (6).

13 (E) As used in this subdivision (6), “Commissioner” means the  
14 Commissioner of Disabilities, Aging, and Independent Living.

15 (d) Except as provided in subdivisions (c)(4)(A), (c)(5), and (c)(6)(A) of  
16 this section, the person shall remain at the forensic facility until the person is  
17 restored to competency or until there is a final disposition of the charges  
18 against the person.

19 (e) The person shall receive competency restoration services while at the  
20 forensic facility according to a plan approved by the Agency of Human  
21 Services Medical Director. Such services shall include any appropriate

1 combination of medication, education, accommodations, habilitation, or other  
2 services identified as necessary or proper to achieve and maintain competency  
3 to stand trial. The person's refusal to receive competency restoration services  
4 shall not be grounds for release or dismissal from the forensic facility.

5 (f) Competency restoration services shall be provided to the person at the  
6 forensic facility, or at another location as part of a discharge plan, until the  
7 person is restored to competency or until there is a final disposition of the  
8 charges against the person.

9 (g)(1) As appropriate for the needs of the person, the Commissioner of  
10 Mental Health; of Health; or of Disabilities, Aging, and Independent Living  
11 shall actively monitor compliance with orders issued pursuant to subdivision  
12 (c)(5) of this section. Upon request from the commissioner monitoring the  
13 person, the court shall immediately order return of a person to the forensic  
14 facility if:

15 (A) the person was released from the facility pursuant to subdivision  
16 (c)(5) of this section; and

17 (B) the Agency of Human Services Medical Director has reason to  
18 believe that the person continues to have a qualifying condition and that the  
19 person's continued release would create a substantial risk of bodily injury to  
20 another person.

1           (2) The commissioner monitoring the person shall notify the court  
2           where the person was committed upon return of the person to the forensic  
3           facility. Upon readmission, the court shall hold a hearing at which the State's  
4           Attorney shall have the burden of establishing by clear and convincing  
5           evidence that the person has a qualifying condition and that the person's  
6           continued release would create a substantial risk of bodily injury to another  
7           person. If the State's Attorney meets its burden, the court shall order the  
8           person readmitted to the forensic facility for treatment pursuant to this section.  
9           If the State's Attorney does not meet its burden, the court shall order the  
10           person restored to the status the person had when the person was returned to  
11           the facility.

12           (h) The Agency of Human Services Medical Director shall receive prior  
13           approval of the Criminal Division of the Superior Court where the person's  
14           underlying criminal charge is pending for any competency restoration plan  
15           involving involuntary medication. The court shall not approve involuntary  
16           medication unless the State's Attorney establishes by clear and convincing  
17           evidence that:

18                   (1) the involuntary medication is medically appropriate;

19                   (2) the involuntary medication serves the important governmental  
20           interests of bringing to trial an individual accused of a serious crime and  
21           ensuring a fair, timely prosecution;

1           (3) the involuntary medication significantly furthers these important  
2           governmental interests by making it substantially likely to render the defendant  
3           competent to stand trial; and

4           (4) any alternative, less intrusive treatments are unlikely to achieve the  
5           same results.

6           (i) When an evaluation is required of the person's competency or  
7           restorability under this section, the defense shall be entitled to conduct an  
8           independent evaluation and introduce the results at the hearing.

9           Sec. 3. 13 V.S.A. § 4817 is amended to read:

10          § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

11                   DISMISSAL

12   \* \* \*

13           (e)(1) When a person has been found incompetent to stand trial for an  
14           alleged misdemeanor offense, the charges against the person shall be dismissed  
15           without prejudice if, after the finding of incompetence, the case remains  
16           inactive for a continuous period of time equal to or greater than the maximum  
17           sentence for the offense. Dismissal under this section shall not be required if  
18           the court finds that dismissing the case would be contrary to the interests of  
19           justice.

20           (2)(A) If the offense is not a qualifying crime under subdivision 7601(4)  
21           of this title, the court shall hold a hearing prior to dismissing a case under this

1 subsection (e). The State's Attorney shall make a reasonable effort to provide  
2 the victim with prior notice of the hearing, and the court may continue the  
3 hearing if the victim has not been provided with the notice required by this  
4 subdivision (2)(A).

5 (B) At the hearing, the court shall ask if the victim is present and, if  
6 so, shall offer the victim the opportunity to be heard. The court may consider  
7 any views offered at the hearing by the victim, including the victim's views  
8 concerning the offense and the interests of justice. If the victim is not present  
9 at the hearing, the court shall ask whether the victim has expressed oral or  
10 written views concerning the offense and the interests of justice, and, if so, the  
11 court may consider those views.

12 Sec. 4. 13 V.S.A § 4819a is added to read:

13 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

14 NOT GUILTY BY REASON OF INSANITY FOR CERTAIN  
15 CRIMES

16 (a)(1) A person who is charged with an offense punishable by a life  
17 sentence and is found not guilty only by reason of insanity at the time of the  
18 offense charged shall be committed to a forensic facility pursuant to this  
19 section. This section shall not be construed to prohibit the temporary transfer  
20 of a person requiring inpatient treatment through an order of hospitalization  
21 pursuant to 18 V.S.A. § 7619 or section 4822 of this title.

1           (2) The committing court shall retain jurisdiction over the person for all  
2 proceedings under this section.

3           (b)(1) A hearing shall be held by the court where the person was tried  
4 within 60 days following admission to the forensic facility, unless that period  
5 is extended by the court.

6           (2) Prior to the date of the hearing, the court shall order that a forensic  
7 risk assessment of the person be conducted that includes:

8                   (A) the person's history and present dangerousness;

9                   (B) a description of any tests that were employed and the results of  
10 the tests;

11                   (C) the examiner's findings;

12                   (D) the examiner's opinion as to whether the person's release would  
13 create a substantial risk of bodily injury to another person; and

14                   (E) recommendations for evidence-based treatment and supervision  
15 that would support the individual's success and mitigate risk of aggression and  
16 violence.

17           (3) The results of all evaluations shall be supplied to the court and the  
18 parties to the underlying criminal action.

19           (4)(A) At the hearing, the court shall order the person committed to the  
20 forensic facility if the State's Attorney establishes by clear and convincing

1 evidence that the person has a qualifying condition that, upon the person's  
2 release, would create a substantial risk of bodily injury to another person.

3 (B) If the State's Attorney does not establish by clear and convincing  
4 evidence that the person has a qualifying condition that, upon the person's  
5 release, would create a substantial risk of bodily injury to another person, the  
6 court shall enter an order releasing the person pursuant to subdivisions  
7 (e)(3)(A) and (B) of this section.

8 (C) Notwithstanding any other provision of law or rule, witnesses at  
9 the hearing shall be permitted to provide testimony remotely.

10 (c) A person committed to the forensic facility pursuant to this section shall  
11 not be released until the court finds pursuant to subsection (e) of this section  
12 that the person no longer has a qualifying condition that, upon the person's  
13 release, would create a substantial risk of bodily injury to another person.

14 (d) The Agency of Human Services Medical Director shall, taking into  
15 account public safety and the least restrictive conditions applicable, provide  
16 adequate care and individualized treatment at the forensic facility to persons  
17 ordered committed pursuant to this section. In order that the Medical Director  
18 may adequately determine the nature of the person's condition and needs, all  
19 persons committed pursuant to this section shall be promptly examined by  
20 qualified personnel in order to provide a proper evaluation, diagnosis, and  
21 treatment plan.

1       (e)(1)(A)(i) The State’s Attorney shall petition the committing court for  
2       review of the person’s commitment:

3               (I) six months after the date that the person is committed  
4       pursuant to subdivision (b)(4)(A) of this section;

5               (II) three years after a commitment order issued following a  
6       review under subdivision (I) of this subdivision (i);

7               (III) every fifth year after a commitment order issued following  
8       a review under subdivision (II) of this subdivision (i); and

9               (IV) at any time upon certification at any time to the Secretary  
10       of Human Services by the Agency of Human Services Medical Director that  
11       the person no longer has a qualifying condition that, upon the person’s release,  
12       would create a substantial risk of bodily injury to another person.

13               (ii) The Secretary of Human Services shall provide all reports  
14       required under this section to the State’s Attorney, who shall file them with the  
15       petition.

16               (B)(i) A person committed pursuant to subdivision (b)(4)(A) of this  
17       section may petition the committing court for release on the grounds that the  
18       person no longer has a qualifying condition that, upon the person’s release,  
19       would create a substantial risk of bodily injury to another person.

20               (ii) A petition shall not be filed pursuant to this subdivision (B):

1                   (I) until at least 90 days after the issuance of the commitment  
2                   order pursuant to subdivision (b)(4)(A) of this section; and

3                   (II) more frequently than once during each applicable period  
4                   set forth in subdivision (A)(i) of this subdivision (e)(1).

5                   (2) If the State's Attorney establishes by clear and convincing evidence  
6                   that the person has a qualifying condition that, upon the person's release,  
7                   would create a substantial risk of bodily injury to another person, the court  
8                   shall deny the petition and order the person committed to the forensic facility  
9                   for continued treatment pursuant to this section.

10                  (3) If the State's Attorney does not establish by clear and convincing  
11                  evidence that the person has a qualifying condition that, upon the person's  
12                  release, would create a substantial risk of bodily injury to another person, the  
13                  court shall:

14                  (A) order the release of the person under a prescribed regimen of  
15                  medical, psychiatric, or psychological care or treatment, including supervision  
16                  and housing, that the Agency of Human Services Medical Director has  
17                  certified as appropriate; and

18                  (B) order, as an explicit condition of supervision, that the person  
19                  comply with the prescribed regimen of evidence-informed medical,  
20                  psychiatric, or psychological care or treatment, including supervision and  
21                  housing, together with any other conditions appropriate to protect the public.

1       (f) As appropriate for the needs of the person, the Commissioner of Mental  
2       Health; of Health; or of Disabilities, Aging, and Independent Living shall  
3       actively monitor compliance with orders issued pursuant to subdivision (e)(2)  
4       of this section. Upon request from the commissioner monitoring the person,  
5       the court shall immediately order return of the person to the forensic facility if  
6       the Agency of Human Services Medical Director determines that the person is  
7       noncompliant with the order and that the noncompliance may create a risk of  
8       bodily injury to another person. The commissioner monitoring the person shall  
9       notify the court where the person was committed upon return of the person to  
10       the forensic facility. Upon readmission, the court shall hold a hearing at which  
11       the State's Attorney shall have the burden of establishing by clear and  
12       convincing evidence that the person was noncompliant with the court's order  
13       for conditional release and that the noncompliance creates a risk of bodily  
14       injury to another person.

15       (g)(1) The State's Attorney shall provide the victim with prior notice of any  
16       hearing held pursuant to this section. The court may continue the hearing if the  
17       victim has not been provided with the notice required by this subdivision.

18       (2) At any hearing under this section, the court shall ask if the victim is  
19       present and, if so, shall offer the victim the opportunity to be heard. The court  
20       may consider any views offered at the hearing by the victim, including the  
21       victim's views concerning the offense and preferences for the person's

1 placement and care. If the victim is not present at the hearing, the court shall  
2 ask whether the victim has expressed oral or written views concerning the  
3 offense and preferences for the person’s placement and care, and, if so, the  
4 court may consider those views.

5 Sec. 5. 13 V.S.A. § 4826 is added to read:

6 § 4826. FORENSIC FACILITY; DEFINITIONS

7 (a)(1) As used in this chapter:

8 (A) “Competency can be restored” means a substantial probability  
9 that in the foreseeable future the person will attain the capacity to permit the  
10 proceedings to go forward.

11 (B) “Forensic facility” means a locked secure facility that provides a  
12 suitable clinical setting and is licensed as a therapeutic community residence as  
13 defined in 33 V.S.A. § 7102(11) where:

14 (i) the Agency of Human Services provides for the secure  
15 competency restoration, evaluation, stabilization, treatment, and care of  
16 persons with a qualifying condition who are involved in the legal system and  
17 who do not require a hospitalization level of care; and

18 (ii) a person is transferred pursuant to subsections 4815a(a) and  
19 4819a(a) of this title.

1           (C) “Qualifying condition” means any condition whether mental,  
2           congenital, or traumatic, however acquired or developed, or any other  
3           circumstance that resulted in the person being determined:

4                     (i) incompetent to stand trial; or

5                     (ii) not guilty by reason of insanity.

6           (2) The evaluations required by this chapter may be conducted pursuant  
7           to contracts entered into between the Commissioner of Buildings and General  
8           Services and evaluation providers.

9           (3) Prior to any hearing under section 4815a or 4819a of this title, the  
10           person shall be required, at the request of a party, to permit an expert  
11           assessment of the person’s competency, forensic risk, or restorability to  
12           competency.

13           (b) The Secretary of Human Services shall establish and operate a locked  
14           secure forensic facility for the competency restoration, evaluation,  
15           stabilization, treatment, and care of persons who have been transferred  
16           pursuant to subsections 4815a(a) and 4819a(a) of this title. The forensic  
17           facility’s clinical, forensic, and competency restoration services shall be  
18           overseen by the Agency of Human Services Medical Director. The  
19           Department of Corrections shall not play a role in the forensic facility’s  
20           operation, the provision of services, or internal security, except to provide  
21           security services for the facility at the admitting area and around the outside

1 perimeter if the facility is colocated on the grounds of a correctional facility.

2 The forensic facility shall:

3 (1) be designed and operated in a manner that supports therapeutic,  
4 recovery-oriented, and trauma-informed programming in a therapeutic  
5 community residence, while maintaining appropriate levels of safety and  
6 security;

7 (2) not refuse any persons it is ordered to admit and shall not require any  
8 clinical or diagnostic prerequisites for admission;

9 (3) provide for the safe competency restoration, evaluation, treatment,  
10 stabilization, and care of persons, including the ability to separate the  
11 population by sex or gender and to otherwise address clinical, safety, or  
12 operational considerations as appropriate, including the possible operation of  
13 multiple facilities;

14 (4) follow the direction of the Agency of Human Services Medical  
15 Director, who shall oversee all forensic, clinical, and competency restoration  
16 services provided to transferred persons;

17 (5) implement staff qualifications, licensure, training, and supervision  
18 requirements that are sufficient to ensure that persons transferred to the  
19 forensic facility have access to clinically appropriate care, treatment, services,  
20 and supports consistent with individual needs and with applicable professional  
21 standards;

1           (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter  
2           28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available  
3           to provide care to transferred persons as clinically necessary;

4           (7) ensure that persons receive clinically appropriate assessment and  
5           treatment planning and competency restoration plans, as appropriate, including  
6           the development of an initial person-specific treatment plan within 72 hours  
7           following transfer, which shall be reviewed periodically as clinically indicated;

8           (8) ensure that clinical services and programming include psychiatric  
9           care, management of medications, education about court procedures,  
10          habilitation, and trauma-informed care, as appropriate;

11          (9) continue to provide evaluation, treatment, stabilization, and care of a  
12          resident who has regained competency while the resident awaits and  
13          participates in the resident's trial;

14          (10) provide residents with interpreters, as appropriate;

15          (11) implement grievance and appeals procedures; and

16          (12) implement a process for reporting instances of death or serious  
17          bodily injury to residents of the forensic facility to the Agency of Human  
18          Services Medical Director.

19          (c) Any records related to a person placed at the forensic facility shall be  
20          exempt from public inspection and copying under the Public Records Act and  
21          shall be kept confidential, except that:

1           (1) the records shall be made available to the parties in the underlying  
2           criminal case upon request; and

3           (2) the person's health care providers may, with the person's  
4           permission, view forensic facility records of the person's psychiatric  
5           assessments at the facility, including assessments of the person's competency  
6           to stand trial and criminal responsibility.

7           (d) Persons shall be admitted to and maintained at the forensic facility  
8           pursuant to sections 4815a and 4819a of this title, and in proceedings under  
9           those sections shall be entitled to have counsel appointed from Vermont Legal  
10          Aid to represent them.

11          (e) The Secretary of Human Services shall regularly consult with the  
12          Commissioners of Corrections; of Mental Health; of Health; and of  
13          Disabilities, Aging, and Independent Living when performing the duties  
14          required by this chapter for operating the forensic facility.

15          (f) The Agency of Human Services Medical Director and an evaluator  
16          submitting a report pursuant to sections 4815a and 4819a of this title shall  
17          testify at any hearing under those sections if requested by the court or a party.

18          (g) The Secretary of Human Services shall adopt rules pursuant to 3 V.S.A.  
19          chapter 25 to implement this section.

20          Sec. 6. 18 V.S.A. § 7257 is amended to read:

21          § 7257. REPORTABLE ADVERSE EVENTS

1 (a) An acute inpatient hospital, an intensive residential recovery facility, a  
2 designated agency, a psychiatric residential treatment facility for youth, a  
3 forensic facility, or a secure residential recovery facility shall report to the  
4 Department of Mental Health instances of death or serious bodily injury to  
5 individuals with a mental condition or psychiatric disability in the custody or  
6 temporary custody of the Commissioner.

7 \* \* \*

8 Sec. 7. FEASIBILITY PLAN; FORENSIC FACILITY

9 (a) On or before January 15, 2027, the Secretary of Human Services, in  
10 consultation with the Department of Buildings and General Services, shall  
11 submit a feasibility plan for the development and operation of a forensic  
12 facility to the House Committees on Appropriations, on Corrections and  
13 Institutions, on Health Care, on Human Services, and on Judiciary and to the  
14 Senate Committees on Appropriations, on Health and Welfare, on Institutions,  
15 and on Judiciary. The feasibility plan shall assume that operation, staffing, and  
16 programming at the forensic facility shall be provided by the Agency of  
17 Human Services or its departments, with the exception that the Department of  
18 Corrections shall not play a role in its operation, the provision of services, or  
19 internal security, other than the provision of security services for the facility at  
20 the admitting area and around the outside perimeter if the facility is colocated

1 on the grounds of a correctional facility. The feasibility plan shall address the  
2 following:

3 (1) the proposed location of a forensic facility, which shall be  
4 independent from a correctional facility, and, if on the same grounds as a  
5 correctional facility, shall be separated by sight and sound;

6 (2) the proposed design plans for a forensic facility that allows for the  
7 ability to separate residents by sex or gender and clinical need;

8 (3) the number of beds within a forensic facility;

9 (4) the entity or entities responsible for operating and providing services  
10 in a forensic facility;

11 (5) the timeline for constructing a stand-alone forensic facility or fitting  
12 up an existing stand-alone facility to operate as a forensic facility;

13 (6) the estimated cost of constructing or fitting up and operating a  
14 forensic facility;

15 (7) which aspects of the therapeutic community residence rule would  
16 need to be modified to operate the forensic facility as a therapeutic community  
17 residence;

18 (8) the clinical services available at a forensic facility, including on-site  
19 competency restoration services;

20 (9) the proposed staffing levels, staff qualifications, and potential  
21 contracting needs necessary to establish a multidisciplinary clinical team at the

1 forensic facility that reflects best practices, including required evidence-based,  
2 trauma-informed staff training and multiple potential staffing strategies;

3 (10) the physical and staff security plan within and around the perimeter  
4 of a forensic facility, including therapeutic design and clinical supervision that  
5 reflect best practices, which shall not involve the Department of Corrections,  
6 with the exception that employees of the Department of Corrections may  
7 provide security services for the facility at the admitting area and around the  
8 outside perimeter of the facility if it is colocated on the grounds of a  
9 correctional facility;

10 (11) a resident discharge and community monitoring plan from each  
11 department with custody of individuals in the forensic facility, developed in  
12 consultation with the Department of Corrections, that prioritizes community  
13 safety and provides residential, clinical, and case management services;

14 (12) opportunities and cost estimates for persons who would be eligible  
15 for placement at the forensic facility to receive, while the development of a  
16 forensic facility in Vermont is pending, placement in an out-of-state residence  
17 where clinically appropriate programming can be provided;

18 (13) a plan for the expansion of 1988 Acts and Resolves No. 248 to  
19 include individuals with a cognitive disability;

20 (14) annual reporting metrics on the demographics, outcomes, and  
21 staffing at the forensic facility; and

1           (15) any recommendations for legislative action to effectuate the  
2           development of a therapeutic, trauma-informed forensic facility.

3           (b) At the August and November 2026 meetings of the Joint Legislative  
4           Justice Oversight Committee, the Secretary of Human Services or designee  
5           shall provide an interim status update on the development of the feasibility  
6           plan required pursuant to subsection (a) of this section and on the emergency  
7           rulemaking required by Sec. 12 of this act.

8           (c)(1) Funds appropriated to the Agency of Human Services and its  
9           departments in fiscal year 2027 shall be used to complete the feasibility plan  
10           required by this section and any other planning activities necessary to  
11           implement this act, but absent further legislative enactment by the General  
12           Assembly, the Agency and its departments shall not expend funds in fiscal year  
13           2027 for the construction or fit-up of a forensic facility.

14           (2) No further legislative enactment by the General Assembly shall be  
15           required to implement the interim forensic and competency restoration  
16           program established by emergency rules adopted pursuant to Sec. 12 of this  
17           act. The interim forensic and competency restoration program is contingent on  
18           the availability of sufficient resources, including appropriate staffing levels.

19           Sec. 8. Rule 1101 of the Vermont Rules of Evidence is amended to read:

20           RULE 1101. APPLICABILITY OF RULES

1 (a) Rules applicable. Except as otherwise provided in subdivision (b),  
2 these rules apply to all actions and proceedings in the courts of this state.

3 (b) Rules inapplicable. The rules other than those with respect to privileges  
4 do not apply in the following situations:

5 \* \* \*

6 (3) Miscellaneous Proceedings. Proceedings for extradition or  
7 rendition; inquest proceedings; except as otherwise provided by statute or rule  
8 promulgated by the Supreme Court, sentencing or granting or revoking  
9 probation; proceedings concerning competency restoration; granting or  
10 revoking conditional release from a forensic facility; finding probable cause  
11 for arrests without warrant and issuance of citations, warrants for arrest,  
12 criminal summonses, and search warrants.

13 \* \* \*

14 Sec. 9. 13 V.S.A. § 4815a is added to read:

15 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN

16 FORENSIC FACILITY

17 (a) A person shall be placed at the forensic facility established in section  
18 4826 of this title if the person:

19 (1) has been charged with an offense punishable by a life sentence;

20 (2)(A) has been held without bail pursuant to section 7553 of this title;

21 or

1           (B) if the person is not held without bail pursuant to section 7553 of  
2           this title, has a qualifying condition and it has been determined that the  
3           person's release would create a substantial risk of bodily injury to another  
4           person;

5           (3) is not currently:

6           (A) receiving treatment through an order of hospitalization pursuant  
7           to 18 V.S.A. § 7619 or section 4822 of this title; or

8           (B) subject to an order of commitment to the Commissioner of  
9           Disabilities, Aging, and Independent Living issued under 18 V.S.A. § 8845 or  
10           section 4823 of this title, unless the person is detained in a correctional facility  
11           pending trial; and

12           (4) has been found not competent to stand trial.

13           (b)(1) The forensic facility shall cause the person to be evaluated for  
14           competency to stand trial:

15           (A) six months from the date of admission, and thereafter every six  
16           months from the issuance of an order for continued competency restoration  
17           treatment under subdivision (3)(B) of this subsection (b); and

18           (B) at any time upon the determination by the Agency of Human  
19           Services Medical Director that the person is likely competent to stand trial or  
20           that it is unlikely that the person's competency can be restored.

1           (2) The court shall hold a hearing after the competency evaluation, and,  
2           prior to the hearing, the results of all evaluations shall be supplied to the court  
3           and the parties to the underlying criminal action.

4           (3)(A) If the court finds after the hearing that the person is competent to  
5           stand trial, the court shall immediately notify the State's Attorney and the  
6           person's counsel in the criminal case.

7           (B) If the court finds after the hearing that the person is not  
8           competent to stand trial, the court shall order continued competency restoration  
9           treatment at the facility pursuant to this section.

10          (4) Notwithstanding any other provision of law or rule, witnesses at  
11          hearings held pursuant to this section shall be permitted to provide testimony  
12          remotely.

13          (c)(1) At the request of a party or the Agency of Human Services Medical  
14          Director, the court may order that a competency evaluation conducted pursuant  
15          to subsection (b) of this section include an opinion on whether the person's  
16          competency can be restored. If a request is made pursuant to this subsection,  
17          the forensic facility shall cause the person to be evaluated for restorability to  
18          competence prior to the hearing.

19          (2) If the court finds that the person's competency can be restored, the  
20          court shall order continued competency restoration treatment at the facility  
21          pursuant to this section.

1           (3)(A) If the court finds that the person’s competency cannot be  
2           restored, the court shall hold a hearing within 60 days unless that period is  
3           extended by the court for good cause.

4           (B) Prior to the date of the hearing, the court shall order that a  
5           forensic risk assessment of the person be conducted by an evaluator  
6           appropriately qualified for the qualifying condition of the person that includes:

7                   (i) the person’s history and present dangerousness;

8                   (ii) a description of any tests that were employed and the results of  
9           the tests;

10                   (iii) the examiner’s findings;

11                   (iv) the examiner’s opinion as to whether the person’s release  
12           would create a substantial risk of bodily injury to another person;

13                   (v) recommendations for evidence-based treatment and  
14           supervision, including in a community-based placement, that would support  
15           the person’s success and mitigate risk of aggression and violence; and

16                   (vi) the examiner’s opinion as to whether the person is a person in  
17           need of custody, care, and habilitation as defined in 18 V.S.A. § 8839.

18           (C) The results of all evaluations shall be supplied to the court and  
19           the parties to the underlying criminal action.

20           (4)(A) If the State’s Attorney demonstrates by clear and convincing  
21           evidence at a hearing held pursuant to subdivision (3)(A) of this subsection (c)

1 or subdivision (B) of this subdivision (4) that the person has a qualifying  
2 condition that, upon the person's release, would create a substantial risk of  
3 bodily injury to another person, the court shall order continued commitment of  
4 the person consistent with the person's forensic risk assessment. The court  
5 shall order treatment of the person, which may include appropriate supervision  
6 and supervised housing, including in a community-based placement, in the  
7 least restrictive setting consistent with the person's forensic risk assessment  
8 and treatment needs.

9 (B) If continued commitment is ordered pursuant to subdivision (A)  
10 of this subdivision (4), the person's commitment shall be reviewed by the  
11 court:

12 (i) every 12 months;

13 (ii) at any time upon the determination by the Agency of Human  
14 Services Medical Director that the person no longer has a qualifying condition  
15 and the person's release would not create a substantial risk of bodily injury to  
16 another person; and

17 (iii) upon petition of the person filed at any time after 90 days  
18 following an order of continued commitment issued pursuant to subdivision  
19 (A) of this subdivision (4), and thereafter not earlier than six months from the  
20 issuance of an order for continued commitment under subdivision (4)(A) of  
21 this subsection (c).

1           (5)(A) If the State’s Attorney does not demonstrate by clear and  
2           convincing evidence at a hearing held pursuant to subdivision (3)(A) or (4)(B)  
3           of this subsection (c) that the person has a qualifying condition and the  
4           person’s release would create a substantial risk of bodily injury to another  
5           person, the court shall:

6                   (i) order the release of the person under a prescribed regimen of  
7                   medical, psychiatric, or psychological care or treatment, housing, and  
8                   supervision by the Department of Corrections in collaboration with the  
9                   Commissioner of Mental Health; the Department of Disabilities, Aging, and  
10                  Independent Living; or the Department of Health that the Agency of Human  
11                  Services Medical Director has certified as appropriate; and

12                   (ii) order, as an explicit condition of supervision, that the person  
13                  comply with the prescribed regimen of medical, psychiatric, or psychological  
14                  care or treatment, housing, and supervision by the Department of Corrections  
15                  in collaboration with the Commissioner of Mental Health; the Department of  
16                  Disabilities, Aging, and Independent Living; or the Department of Health,  
17                  together with any other conditions appropriate to protect the public.

18                  (B) A person’s release pursuant to this subdivision (5) shall be  
19                  reviewed by the court every 12 months. The person shall be released from the  
20                  supervision of the Commissioner of Corrections unless the State’s Attorney  
21                  demonstrates by clear and convincing evidence at the hearing that continued

1 treatment and supervision is necessary to prevent the person from becoming a  
2 substantial risk of bodily injury to another person.

3 (C)(i) The State's Attorney shall make a reasonable effort to provide  
4 the victim with prior notice of any hearing held pursuant to this subdivision  
5 (5). The court may continue the hearing if the victim has not been provided  
6 with the notice required by this subdivision (C)(i).

7 (ii) At any hearing under this subdivision (5), the court shall ask if  
8 the victim is present and, if so, shall offer the victim the opportunity to be  
9 heard. The court may consider any views offered at the hearing by the victim,  
10 including the victim's views concerning the offense and preferences for the  
11 person's placement and care. If the victim is not present at the hearing, the  
12 court shall ask whether the victim has expressed oral or written views  
13 concerning the offense and preferences for the person's placement and care,  
14 and, if so, the court may consider those views.

15 (6)(A) If the court finds that the person's competency cannot be  
16 restored, and finds by clear and convincing evidence that the person is a person  
17 in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the  
18 court shall issue an order of commitment for up to one year directed to the  
19 Commissioner of Disabilities, Aging, and Independent Living for placement in  
20 a designated program in the least restrictive environment consistent with the  
21 person's need for custody, care, and habilitation. The order of commitment

1 shall have the same force and effect as an order issued under 18 V.S.A. chapter  
2 206, subchapter 3 and persons committed under the order shall have the same  
3 status, and the same rights, including the right to receive care and habilitation,  
4 to be examined and discharged, and to apply for and obtain judicial review of  
5 their cases, as persons ordered committed under 18 V.S.A. chapter 206,  
6 subchapter 3.

7 (B)(i) The Commissioner shall provide appropriate custody, care, and  
8 habilitation in a designated program to a person committed under subdivision  
9 (A) of this subdivision (6).

10 (ii) The court may order continued treatment at the forensic  
11 facility for a period not to exceed one year if the court finds that the  
12 Commissioner is not currently able to provide appropriate custody, care, and  
13 habilitation in a designated program. For good cause shown, the court may  
14 extend the one-year period by an additional period not to exceed six months.

15 (C)(i) The court shall review an order of continued treatment issued  
16 pursuant to subdivision (B)(ii) of this subdivision (6) every 90 days.

17 (ii) If the court finds at the review that appropriate custody, care,  
18 and habilitation can be provided to the person in a designated program, the  
19 court shall vacate the order for continued treatment and order the person  
20 committed to the custody of the Commissioner pursuant to subdivision (A) of  
21 this subdivision (6).

1           (iii) If the court finds at the review that appropriate custody, care,  
2           and habilitation cannot be provided to the person in a designated program, the  
3           court shall order continued treatment at the forensic facility pursuant to  
4           subdivision (B)(ii) of this subdivision (6).

5           (D) The Commissioner may at any time certify to the court that  
6           appropriate custody, care, and habilitation can be provided to the person in a  
7           designated program, and after such a certification the court shall vacate the  
8           order for continued treatment and order the person committed to the custody of  
9           the Commissioner pursuant to subdivision (A) of this subdivision (6).

10           (E) As used in this subdivision (6), "Commissioner" means the  
11           Commissioner of Disabilities, Aging, and Independent Living.

12           (d) Except as provided in subdivisions (c)(4)(A), (c)(5), and (c)(6)(A) of  
13           this section, the person shall remain at the forensic facility until the person is  
14           restored to competency or until there is a final disposition of the charges  
15           against the person.

16           (e) The person shall receive competency restoration services while at the  
17           forensic facility according to a plan approved by the Agency of Human  
18           Services Medical Director. Such services shall include any appropriate  
19           combination of medication, education, accommodations, habilitation, or other  
20           services identified as necessary or proper to achieve and maintain competency

1 to stand trial. The person's refusal to receive competency restoration services  
2 shall not be grounds for release or dismissal from the forensic facility.

3 (f) Competency restoration services shall be provided to the person at the  
4 forensic facility, or at another location as part of a discharge plan, until the  
5 person is restored to competency or until there is a final disposition of the  
6 charges against the person.

7 (g)(1) As appropriate for the needs of the person, the Agency of Human  
8 Services Medical Director, in consultation with the Commissioner of Mental  
9 Health; of Health; or of Disabilities, Aging, and Independent Living, shall  
10 actively monitor compliance with orders issued pursuant to subdivision (c)(5)  
11 of this section. Upon request from the Agency of Human Services Medical  
12 Director, the court shall immediately order the return of a person to the  
13 forensic facility if:

14 (A) the person was released from the facility pursuant to subdivision  
15 (c)(5) of this section; and

16 (B) the Agency of Human Services Medical Director has reason to  
17 believe that the person has a qualifying condition and that the person's  
18 continued release would create a substantial risk of bodily injury to another  
19 person.

20 (2) The Agency of Human Services Medical Director shall notify the  
21 court where the person was committed upon return of the person to the forensic

1 facility. Upon readmission, the court shall hold a hearing at which the State's  
2 Attorney shall have the burden of establishing by clear and convincing  
3 evidence that the person has a qualifying condition and that the person's  
4 continued release would create a substantial risk of bodily injury to another  
5 person. If the State's Attorney meets its burden, the court shall order the  
6 person readmitted to the forensic facility for treatment pursuant to this section.  
7 If the State's Attorney does not meet its burden, the court shall order the  
8 person restored to the status the person had when the person was returned to  
9 the facility.

10 (h) The Agency of Human Services Medical Director shall receive prior  
11 approval of the Criminal Division of the Superior Court where the person's  
12 underlying criminal charge is pending for any competency restoration plan  
13 involving involuntary medication. The court shall not approve involuntary  
14 medication unless the State's Attorney establishes by clear and convincing  
15 evidence that:

16 (1) the involuntary medication is medically appropriate;

17 (2) the involuntary medication serves the important governmental  
18 interests of bringing to trial an individual accused of a serious crime and  
19 ensuring a fair, timely prosecution;

1           (3) the involuntary medication significantly furthers these important  
2           governmental interests by making it substantially likely to render the defendant  
3           competent to stand trial; and

4           (4) any alternative, less intrusive treatments are unlikely to achieve the  
5           same results.

6           (i) When an evaluation of the person's competency or restorability is  
7           required under this section, the defense shall be entitled to conduct an  
8           independent evaluation and introduce the results at the hearing.

9           Sec. 10. 13 V.S.A § 4819a is added to read:

10          § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

11                   NOT GUILTY BY REASON OF INSANITY FOR CERTAIN

12                   CRIMES

13           (a)(1) A person who is charged with an offense punishable by a life  
14           sentence and is found not guilty only by reason of insanity at the time of the  
15           offense charged shall be committed to a forensic facility pursuant to this  
16           section. This section shall not be construed to prohibit the temporary transfer  
17           of a person requiring inpatient treatment through an order of hospitalization  
18           pursuant to 18 V.S.A. § 7619 or section 4822 of this title.

19           (2) The committing court shall retain jurisdiction over the person for all  
20           proceedings under this section.

1       (b)(1) A hearing shall be held by the court where the person was tried  
2       within 60 days following admission to the forensic facility, unless that period  
3       is extended by the court.

4       (2) Prior to the date of the hearing, the court shall order that a forensic  
5       risk assessment of the person be conducted that includes:

6               (A) the person's history and present dangerousness;

7               (B) a description of any tests that were employed and the results of  
8       the tests;

9               (C) the examiner's findings;

10              (D) the examiner's opinion as to whether the person's release would  
11       create a substantial risk of bodily injury to another person; and

12              (E) recommendations for evidence-based treatment and supervision  
13       that would support the individual's success and mitigate risk of aggression and  
14       violence.

15              (3) The results of all evaluations shall be supplied to the court and the  
16       parties to the underlying criminal action.

17              (4)(A) At the hearing, the court shall order the person committed to the  
18       forensic facility if the State's Attorney establishes by clear and convincing  
19       evidence that the person has a qualifying condition that, upon the person's  
20       release, would create a substantial risk of bodily injury to another person.

1           (B) If the State’s Attorney does not establish by clear and convincing  
2           evidence that the person has a qualifying condition that, upon the person’s  
3           release, would create a substantial risk of bodily injury to another person, the  
4           court shall enter an order releasing the person pursuant to subdivisions  
5           (e)(3)(A) and (B) of this section.

6           (C) Notwithstanding any other provision of law or rule, witnesses at  
7           the hearing shall be permitted to provide testimony remotely.

8           (c) A person committed to the forensic facility pursuant to this section shall  
9           not be released until the court finds pursuant to subsection (e) of this section  
10           that the person no longer has a qualifying condition that, upon the person’s  
11           release, would create a substantial risk of bodily injury to another person.

12           (d) The Agency of Human Services Medical Director shall, taking into  
13           account public safety and the least restrictive conditions applicable, provide  
14           adequate care and individualized treatment at the forensic facility to persons  
15           ordered committed pursuant to this section. In order that the Medical Director  
16           may adequately determine the nature of the person’s condition and needs, all  
17           persons committed pursuant to this section shall be promptly examined by  
18           qualified personnel in order to provide a proper evaluation, diagnosis, and  
19           treatment plan.

20           (e)(1)(A)(i) The State’s Attorney shall petition the committing court for  
21           review of the person’s commitment:

1                   (I) six months after the date that the person is committed  
2                   pursuant to subdivision (b)(4)(A) of this section;

3                   (II) three years after a commitment order issued following a  
4                   review under subdivision (I) of this subdivision (i);

5                   (III) every fifth year after a commitment order issued following  
6                   a review under subdivision (II) of this subdivision (i); and

7                   (IV) at any time upon certification at any time to the Secretary  
8                   of Human Services by the Agency of Human Services Medical Director that  
9                   the person no longer has a qualifying condition that, upon the person's release,  
10                  would create a substantial risk of bodily injury to another person.

11                  (ii) The Secretary of Human Services shall provide all reports  
12                  required under this section to the State's Attorney, who shall file them with the  
13                  petition.

14                  (B)(i) A person committed pursuant to subdivision (b)(4)(A) of this  
15                  section may petition the committing court for release on the grounds that the  
16                  person no longer has a qualifying condition that, upon the person's release,  
17                  would create a substantial risk of bodily injury to another person.

18                  (ii) A petition shall not be filed pursuant to this subdivision (B):

19                         (I) until at least 90 days after the issuance of the commitment  
20                         order pursuant to subdivision (b)(4)(A) of this section; and

1                   (II) more frequently than once during each applicable period  
2 set forth in subdivision (A)(i) of this subdivision (e)(1).

3                   (2) If the State's Attorney establishes by clear and convincing evidence  
4 that the person has a qualifying condition that, upon the person's release,  
5 would create a substantial risk of bodily injury to another person, the court  
6 shall deny the petition and order the person committed to the forensic facility  
7 for continued treatment pursuant to this section.

8                   (3) If the State's Attorney does not establish by clear and convincing  
9 evidence that the person has a qualifying condition that, upon the person's  
10 release, would create a substantial risk of bodily injury to another person, the  
11 court shall:

12                   (A) order the release of the person under a prescribed regimen of  
13 medical, psychiatric, or psychological care or treatment, including supervision  
14 and housing, that the Agency of Human Services Medical Director has  
15 certified as appropriate; and

16                   (B) order, as an explicit condition of supervision, that the person  
17 comply with the prescribed regimen of evidence-informed medical,  
18 psychiatric, or psychological care or treatment, including supervision and  
19 housing, together with any other conditions appropriate to protect the public.

20                   (f) As appropriate for the needs of the person, the Agency of Human  
21 Services Medical Director, in consultation with the Commissioner of Mental

1 Health; of Health; or of Disabilities, Aging, and Independent Living, shall  
2 actively monitor compliance with orders issued pursuant to subdivision (e)(2)  
3 of this section. Upon request from the Agency of Human Services Medical  
4 Director, the court shall immediately order the return of the person to the  
5 forensic facility if the Medical Director determines that the person is  
6 noncompliant with the order and that the noncompliance may create a risk of  
7 bodily injury to another person. The Agency of Human Services Medical  
8 Director shall notify the court where the person was committed upon return of  
9 the person to the forensic facility. Upon readmission, the court shall hold a  
10 hearing at which the State's Attorney shall have the burden of establishing by  
11 clear and convincing evidence that the person was noncompliant with the  
12 court's order for conditional release and that the noncompliance creates a risk  
13 of bodily injury to another person.

14 (g)(1) The State's Attorney shall provide the victim with prior notice of any  
15 hearing held pursuant to this section. The court may continue the hearing if the  
16 victim has not been provided with the notice required by this subdivision.

17 (2) At any hearing under this section, the court shall ask if the victim is  
18 present and, if so, shall offer the victim the opportunity to be heard. The court  
19 may consider any views offered at the hearing by the victim, including the  
20 victim's views concerning the offense and preferences for the person's  
21 placement and care. If the victim is not present at the hearing, the court shall

1 ask whether the victim has expressed oral or written views concerning the  
2 offense and preferences for the person's placement and care, and, if so, the  
3 court may consider those views.

4 Sec. 11. 13 V.S.A. § 4826 is added to read:

5 § 4826. FORENSIC FACILITY; DEFINITIONS

6 (a)(1) As used in this chapter:

7 (A) "Competency can be restored" means a substantial probability  
8 that in the foreseeable future the person will attain the capacity to permit the  
9 proceedings to go forward.

10 (B) "Forensic facility" means the interim forensic and competency  
11 restoration program established by emergency rules adopted pursuant to Sec.  
12 12 of this act, which shall be a locked secure facility where:

13 (i) the Agency of Human Services provides for the secure  
14 competency restoration, evaluation, stabilization, treatment, and care of  
15 persons with a qualifying condition who are involved in the legal system and  
16 who do not require a hospitalization level of care; and

17 (ii) a person is transferred pursuant to subsections 4815a(a) and  
18 4819a(a) of this title.

19 (C) "Qualifying condition" means any condition whether mental,  
20 congenital, or traumatic, however acquired or developed, or any other  
21 circumstance that resulted in the person being determined:

1                   (i) incompetent to stand trial; or

2                   (ii) not guilty by reason of insanity.

3                   (2) The evaluations required by this chapter may be conducted pursuant  
4 to contracts entered into between the Commissioner of Buildings and General  
5 Services and evaluation providers.

6                   (3) Prior to any hearing under section 4815a or 4819a of this title, the  
7 person shall be required, at the request of a party, to permit an expert  
8 assessment of the person's competency, forensic risk, or restorability to  
9 competency.

10                  (b) The Secretary of Human Services shall establish and operate a locked  
11 secure forensic facility for the competency restoration, evaluation,  
12 stabilization, treatment, and care of persons who have been transferred  
13 pursuant to subsections 4815a(a) and 4819a(a) of this title. The forensic  
14 facility's clinical, forensic, and competency restoration services shall be  
15 overseen by the Agency of Human Services Medical Director. The forensic  
16 facility shall:

17                   (1) be designed and operated in a manner that supports therapeutic,  
18 recovery-oriented, and trauma-informed programming while maintaining  
19 appropriate levels of safety and security;

20                   (2) not refuse any persons it is ordered to admit and shall not require any  
21 clinical or diagnostic prerequisites for admission;

1           (3) provide for the safe competency restoration, evaluation, treatment,  
2           stabilization, and care of persons, including the ability to separate the  
3           population by sex or gender and to otherwise address clinical, safety, or  
4           operational considerations as appropriate, including the possible operation of  
5           multiple facilities;

6           (4) follow the direction of the Agency of Human Services Medical  
7           Director, who shall oversee all forensic, clinical, and competency restoration  
8           services provided to transferred persons;

9           (5) implement staff qualifications, licensure, training, and supervision  
10          requirements that are sufficient to ensure that persons transferred to the  
11          forensic facility have access to clinically appropriate care, treatment, services,  
12          and supports consistent with individual needs and with applicable professional  
13          standards;

14          (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter  
15          28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available  
16          to provide care to transferred persons as clinically necessary;

17          (7) ensure that persons receive clinically appropriate assessment and  
18          treatment planning and competency restoration plans, as appropriate, including  
19          the development of an initial person-specific treatment plan within 72 hours  
20          following transfer, which shall be reviewed periodically as clinically indicated;

1           (8) ensure that clinical services and programming include psychiatric  
2           care, management of medications, education about court procedures,  
3           habilitation, and trauma-informed care, as appropriate;

4           (9) continue to provide evaluation, treatment, stabilization, and care of a  
5           resident who has regained competency while the resident awaits and  
6           participates in the resident's trial;

7           (10) provide residents with interpreters, as appropriate;

8           (11) implement grievance and appeals procedures; and

9           (12) implement a process for reporting instances of death or serious  
10          bodily injury to residents of the forensic facility to the Agency of Human  
11          Services Medical Director.

12          (c) Any records related to a person placed at the forensic facility shall be  
13          exempt from public inspection and copying under the Public Records Act and  
14          shall be kept confidential, except that:

15               (1) the records shall be made available to the parties in the underlying  
16               criminal case upon request; and

17               (2) the person's health care providers may, with the person's  
18               permission, view forensic facility records of the person's psychiatric  
19               assessments at the facility, including assessments of the person's competency  
20               to stand trial and criminal responsibility.

1       (d) Persons shall be admitted to and maintained at the forensic facility  
2       pursuant to sections 4815a and 4819a of this title and in proceedings under  
3       those sections shall be entitled to have counsel appointed from Vermont Legal  
4       Aid to represent them.

5       (e) The Secretary of Human Services shall regularly consult with the  
6       Agency of Human Services Medical Director and the Commissioners of  
7       Corrections; of Mental Health; of Health; and of Disabilities, Aging, and  
8       Independent Living when performing the duties required by this chapter for  
9       operating the forensic facility.

10       (f) The Agency of Human Services Medical Director and an evaluator  
11       submitting a report pursuant to sections 4815a and 4819a of this title shall  
12       testify at any hearing under those sections if requested by the court or a party.

13       Sec. 12. EMERGENCY RULEMAKING; INTERIM FORENSIC

14                   AND COMPETENCY RESTORATION PROGRAM

15       (a) On or before December 31, 2026, the Secretary of Human Services, in  
16       consultation with the Departments of Corrections; of Health; of Mental Health;  
17       and of Disabilities, Aging, and Independent Living, shall adopt emergency  
18       rules pursuant to 3 V.S.A. chapter 25 to establish an interim forensic and  
19       competency restoration program that shall be effective on July 1, 2027, and  
20       shall operate pending the completion of a permanent forensic facility. The  
21       emergency rules shall establish for the interim forensic and competency

1 restoration program, consistent with the standards and procedures of Secs. 9,  
2 10, and 11 of this act:

3 (1) clinically appropriate standards governing the provision of services  
4 in the forensic and competency restoration program, including requirements  
5 related to staffing patterns and ratios; staff qualifications; where the person is  
6 placed within a Department of Corrections facility; licensure and training;  
7 clinical supervision; and the delivery of safe, effective, evidence-informed  
8 care;

9 (2) standards for quality assurance and improvement; clinical oversight;  
10 documentation and reporting requirements; safety and risk management  
11 protocols; and mechanisms for monitoring compliance;

12 (3) the manner in which the Department of Corrections would cooperate  
13 with and obtain necessary information from other departments about persons  
14 released under supervision from the forensic and competency restoration  
15 program;

16 (4) opportunities and cost estimates for persons who would be eligible  
17 for placement at the forensic facility to receive, while the development of a  
18 forensic facility in Vermont is pending, competency restoration services within  
19 a Vermont correctional facility, provided that the entity that provides the  
20 services shall not be under contract with the Department of Corrections;

- 1           (5) victim notification procedures, including:
- 2                   (A) which events within the program will trigger victim notification;
- 3                   (B) who will provide victim notification and by what methods;
- 4                   (C) how victims will be informed of their right to receive
- 5 notifications; and
- 6                   (D) the processes that will permit victims to opt in and opt out of
- 7 receiving notifications; and
- 8           (6) any other provisions necessary to ensure the safe, effective, and
- 9 clinically appropriate implementation of Secs. 9, 10, and 11 of this act,
- 10 including potentially requiring the provision of forensic services in a unit that
- 11 is separate from other correctional populations.
- 12           (b) The emergency rules adopted pursuant to this section shall:
- 13                   (1) be deemed to have met the standard for emergency rulemaking set
- 14 forth in 3 V.S.A. § 844(a);
- 15                   (2) notwithstanding 3 V.S.A. § 844(b), remain in effect until July 1,
- 16 2029; and
- 17                   (3) be repealed on July 1, 2029.

18       Sec. 13. REPEALS

19           Secs. 9–11 shall be repealed on July 1, 2029.

1       Sec. 14. EFFECTIVE DATES

2           (a) This section, Sec. 1, Sec. 3, and Secs. 6–13 shall take effect on July 1,  
3           2026.

4           (b) Secs. 2, 4, and 5 shall take effect on July 1, 2029.