

1 S.193

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

4 The House proposes to the Senate to amend the bill by striking out all after
5 the enacting clause and inserting in lieu thereof the following:

6 Sec. 1. LEGISLATIVE INTENT

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

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

17 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN

18 FORENSIC FACILITY

19 (a) A person shall be placed at the forensic facility established in section
20 4826 of this title if the person:

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

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

3 or

4 (B) if the person is not held without bail pursuant to section 7553 of

5 this title, has a qualifying condition and it has been determined that the

6 person's release would create a substantial risk of bodily injury to another

7 person;

8 (3) is not currently:

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

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

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

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

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

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

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

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

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

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

19 (c)(1) At the request of a party or the Agency of Human Services Medical
20 Director, the court may order that a competency evaluation conducted pursuant
21 to subsection (b) of this section include an opinion on whether the person's

1 competency can be restored. If a request is made pursuant to this subsection,
2 the forensic facility shall cause the person to be evaluated for restorability to
3 competence prior to the hearing.

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

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

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

13 (i) the person's history and present dangerousness;

14 (ii) a description of any tests that were employed and the results of
15 the tests;

16 (iii) the examiner's findings;

17 (iv) the examiner's opinion as to whether the person's release
18 would create a substantial risk of bodily injury to another person;

19 (v) recommendations for evidence-based treatment and
20 supervision, including in a community-based placement, that would support
21 the person's success and mitigate risk of aggression and violence;

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

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

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

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

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

1 (i) every 12 months;

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

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

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

16 (i) order the release of the person under a prescribed regimen of
17 medical, psychiatric, or psychological care or treatment, housing, and
18 supervision by the Commissioner of Mental Health; the Department of
19 Disabilities, Aging, and Independent Living; or the Department of Health, that
20 the Agency of Human Services Medical Director has certified as appropriate;
21 and

1 (ii) order, as an explicit condition of supervision, that the person
2 comply with the prescribed regimen of medical, psychiatric, or psychological
3 care or treatment, housing, and supervision by the Commissioner of Mental
4 Health; the Department of Disabilities, Aging, and Independent Living; or the
5 Department of Health, together with any other conditions appropriate to protect
6 the public.

7 (B) A person's release pursuant to this subdivision (5) shall be
8 reviewed by the court every 12 months. The person shall be released from the
9 supervision of the Commissioner of Mental Health; the Department of
10 Disabilities, Aging, and Independent Living; or the Department of Health
11 unless the State's Attorney demonstrates by clear and convincing evidence at
12 the hearing that continued treatment and supervision is necessary to prevent the
13 person from becoming a substantial risk of bodily injury to another person.

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

18 (ii) At any hearing under this subdivision (5), the court shall ask if
19 the victim is present and, if so, shall offer the victim the opportunity to be
20 heard. The court may consider any views offered at the hearing by the victim,
21 including the victim's views concerning the offense and preferences for the

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

5 (6)(A) If the court finds that the person's competency cannot be
6 restored, and finds by clear and convincing evidence that the person is a person
7 in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the
8 court shall issue an order of commitment for up to one year directed to the
9 Commissioner of Disabilities, Aging, and Independent Living for placement in
10 a designated program in the least restrictive environment consistent with the
11 person's need for custody, care, and habilitation. The order of commitment
12 shall have the same force and effect as an order issued under 18 V.S.A. chapter
13 206, subchapter 3 and persons committed under the order shall have the same
14 status, and the same rights, including the right to receive care and habilitation,
15 to be examined and discharged, and to apply for and obtain judicial review of
16 their cases, as persons ordered committed under 18 V.S.A. chapter 206,
17 subchapter 3.

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

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

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

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

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

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

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

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

7 (e) The person shall receive competency restoration services while at the
8 forensic facility according to a plan approved by the Agency of Human
9 Services Medical Director. Such services shall include any appropriate
10 combination of medication, education, accommodations, habilitation, or other
11 services identified as necessary or proper to achieve and maintain competency
12 to stand trial. The person’s refusal to receive competency restoration services
13 shall not be grounds for release or dismissal from the forensic facility.

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

18 (g)(1) As appropriate for the needs of the person, the Commissioner of
19 Mental Health; of Health; or of Disabilities, Aging, and Independent Living
20 shall actively monitor compliance with orders issued pursuant to subdivision
21 (c)(5) of this section. Upon request from the commissioner monitoring the

1 person, the court shall immediately order return of a person to the forensic
2 facility if:

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

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

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

20 (h) The Agency of Human Services Medical Director shall receive prior
21 approval of the Criminal Division of the Superior Court where the person's

1 underlying criminal charge is pending for any competency restoration plan
2 involving involuntary medication. The court shall not approve involuntary
3 medication unless the State’s Attorney establishes by clear and convincing
4 evidence that:

5 (1) the involuntary medication is medically appropriate;

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

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

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

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

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

18 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

19 DISMISSAL

20 * * *

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

8 (2)(A) If the offense is not a qualifying crime under subdivision 7601(4)
9 of this title, the court shall hold a hearing prior to dismissing a case under this
10 subsection (e). The State's Attorney shall make a reasonable effort to provide
11 the victim with prior notice of the hearing, and the court may continue the
12 hearing if the victim has not been provided with the notice required by this
13 subdivision (2)(A).

14 (B) At the hearing, the court shall ask if the victim is present and, if
15 so, shall offer the victim the opportunity to be heard. The court may consider
16 any views offered at the hearing by the victim, including the victim's views
17 concerning the offense and the interests of justice. If the victim is not present
18 at the hearing, the court shall ask whether the victim has expressed oral or
19 written views concerning the offense and the interests of justice, and, if so, the
20 court may consider those views.

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

2 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

3 NOT GUILTY BY REASON OF INSANITY FOR CERTAIN

4 CRIMES

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

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

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

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

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

19 (B) a description of any tests that were employed and the results of
20 the tests;

1 (C) the examiner's findings;

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

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

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

9 (4)(A) At the hearing, the court shall order the person committed to the
10 forensic facility if the State's Attorney establishes 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.

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

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

20 (c) A person committed to the forensic facility pursuant to this section shall
21 not be released until the court finds pursuant to subsection (e) of this section

1 that the person no longer has a qualifying condition that, upon the person's
2 release, would create a substantial risk of bodily injury to another person.

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

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

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

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

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

19 (IV) at any time upon certification at any time to the Secretary
20 of Human Services by the Agency of Human Services Medical Director that

1 the person no longer has a qualifying condition that, upon the person's release,
2 would create a substantial risk of bodily injury to another person.

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

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

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

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

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

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

20 (3) If the State's Attorney does not establish by clear and convincing
21 evidence that the person has a qualifying condition that, upon the person's

1 release, would create a substantial risk of bodily injury to another person, the
2 court shall:

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

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

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

1 convincing evidence that the person was noncompliant with the court's order
2 for conditional release and that the noncompliance creates a risk of bodily
3 injury to another person.

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

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

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

16 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

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

8 (ii) a person is transferred pursuant to subsections 4815a(a) and
9 4819a(a) of this title.

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

13 (i) incompetent to stand trial; or

14 (ii) not guilty by reason of insanity.

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

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

1 (b) The Secretary of Human Services shall establish and operate a locked
2 secure forensic facility for the competency restoration, evaluation,
3 stabilization, treatment, and care of persons who have been transferred
4 pursuant to subsections 4815a(a) and 4819a(a) of this title. The forensic
5 facility's clinical, forensic, and competency restoration services shall be
6 overseen by the Agency of Human Services Medical Director. The
7 Department of Corrections shall not play a role in the forensic facility's
8 operation, the provision of services, or internal security, except to provide
9 security services for the facility at the admitting area and around the outside
10 perimeter if the facility is co-located on the grounds of a correctional facility.

11 The forensic facility shall:

12 (1) be designed and operated in a manner that supports therapeutic,
13 recovery-oriented, and trauma-informed programming in a therapeutic
14 community residence, while maintaining appropriate levels of safety and
15 security;

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

18 (3) provide for the safe competency restoration, evaluation, treatment,
19 stabilization, and care of persons, including the ability to separate the
20 population by sex or gender and to otherwise address clinical, safety, or

1 operational considerations as appropriate, including the possible operation of
2 multiple facilities;

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

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

11 (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter
12 28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available
13 to provide care to transferred persons as clinically necessary;

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

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

1 (9) continue to provide evaluation, treatment, stabilization, and care of a
2 resident who has regained competency while the resident awaits and
3 participates in the resident’s trial;

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

5 (11) implement grievance and appeals procedures; and

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

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

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

14 (2) the person’s health care providers may, with the person’s
15 permission, view forensic facility records of the person’s psychiatric
16 assessments at the facility, including assessments of the person’s competency
17 to stand trial and criminal responsibility.

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

1 submit a feasibility plan for the development and operation of a forensic
2 facility to the House Committees on Appropriations, on Corrections and
3 Institutions, on Health Care, on Human Services, and on Judiciary and to the
4 Senate Committees on Appropriations, on Health and Welfare, on Institutions,
5 and on Judiciary. The feasibility plan shall assume that operation, staffing, and
6 programming at the forensic facility shall be provided by the Agency of
7 Human Services or its departments, with the exception that the Department of
8 Corrections shall not play a role in its operation, the provision of services, or
9 internal security, other than the provision of security services for the facility at
10 the admitting area and around the outside perimeter if the facility is co-located
11 on the grounds of a correctional facility. The feasibility plan shall address the
12 following:

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

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

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

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

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

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

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

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

10 (9) the proposed staffing levels, staff qualifications, and potential
11 contracting needs necessary to establish a multidisciplinary clinical team at the
12 forensic facility that reflects best practices, including required evidence-based,
13 trauma-informed staff training and multiple potential staffing strategies;

14 (10) the physical and staff security plan within and around the perimeter
15 of a forensic facility, including therapeutic design and clinical supervision that
16 reflect best practices, which shall not involve the Department of Corrections,
17 with the exception that employees of the Department of Corrections may
18 provide security services for the facility at the admitting area and around the
19 outside perimeter of the facility if it is co-located on the grounds of a
20 correctional facility;

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

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

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

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

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

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

20 (c)(1) Funds appropriated to the Agency of Human Services and its
21 departments in fiscal year 2027 shall be used to complete the feasibility plan

1 required by this section and any other planning activities necessary to
2 implement this act, but absent further legislative enactment by the General
3 Assembly, the Agency and its departments shall not expend funds in fiscal year
4 2027 for the construction or fit-up of a forensic facility.

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

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

11 RULE 1101. APPLICABILITY OF RULES

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

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

16 * * *

17 (3) Miscellaneous Proceedings. Proceedings for extradition or
18 rendition; inquest proceedings; except as otherwise provided by statute or rule
19 promulgated by the Supreme Court, sentencing or granting or revoking
20 probation; proceedings concerning competency restoration; granting or
21 revoking conditional release from a forensic facility; finding probable cause

1 for arrests without warrant and issuance of citations, warrants for arrest,
2 criminal summonses, and search warrants.

3 * * *

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

5 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN
6 FORENSIC FACILITY

7 (a) A person shall be placed at the forensic facility established in section
8 4826 of this title if the person:

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

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

11 or

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

16 (3) is not currently:

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

19 (B) subject to an order of commitment to the Commissioner of
20 Disabilities, Aging, and Independent Living issued under 18 V.S.A. § 8845 or

1 section 4823 of this title, unless the person is detained in a correctional facility
2 pending trial; and

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) the person's history and present dangerousness;

20 (ii) a description of any tests that were employed and the results of
21 the tests;

1 (iii) the examiner’s findings;

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

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

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

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

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

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

4 (i) every 12 months;

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

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

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

19 (i) order the release of the person under a prescribed regimen of
20 medical, psychiatric, or psychological care or treatment, housing, and
21 supervision by the Department of Corrections in collaboration with the

1 Commissioner of Mental Health; the Department of Disabilities, Aging, and
2 Independent Living; or the Department of Health, that the Agency of Human
3 Services Medical Director has certified as appropriate; and

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

10 (B) A person's release pursuant to this subdivision (5) shall be
11 reviewed by the court every 12 months. The person shall be released from the
12 supervision of the Commissioner of Corrections unless the State's Attorney
13 demonstrates by clear and convincing evidence at the hearing that continued
14 treatment and supervision is necessary to prevent the person from becoming a
15 substantial risk of bodily injury to another person.

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

20 (ii) At any hearing under this subdivision (5), the court shall ask if
21 the victim is present and, if so, shall offer the victim the opportunity to be

1 heard. The court may consider any views offered at the hearing by the victim,
2 including the victim's views concerning the offense and preferences for the
3 person's placement and care. If the victim is not present at the hearing, the
4 court shall ask whether the victim has expressed oral or written views
5 concerning the offense and preferences for the person's placement and care,
6 and, if so, the court may consider those views.

7 (6)(A) If the court finds that the person's competency cannot be
8 restored, and finds by clear and convincing evidence that the person is a person
9 in need of custody, care, and habilitation as defined in 18 V.S.A. § 8839, the
10 court shall issue an order of commitment for up to one year directed to the
11 Commissioner of Disabilities, Aging, and Independent Living for placement in
12 a designated program in the least restrictive environment consistent with the
13 person's need for custody, care, and habilitation. The order of commitment
14 shall have the same force and effect as an order issued under 18 V.S.A. chapter
15 206, subchapter 3 and persons committed under the order shall have the same
16 status, and the same rights, including the right to receive care and habilitation,
17 to be examined and discharged, and to apply for and obtain judicial review of
18 their cases, as persons ordered committed under 18 V.S.A. chapter 206,
19 subchapter 3.

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

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

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

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

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

20 (D) The Commissioner may at any time certify to the court that
21 appropriate custody, care, and habilitation can be provided to the person in a

1 designated program, and after such a certification the court shall vacate the
2 order for continued treatment and order the person committed to the custody of
3 the Commissioner pursuant to subdivision (A) of this subdivision (6).

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

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

10 (e) The person shall receive competency restoration services while at the
11 forensic facility according to a plan approved by the Agency of Human
12 Services Medical Director. Such services shall include any appropriate
13 combination of medication, education, accommodations, habilitation, or other
14 services identified as necessary or proper to achieve and maintain competency
15 to stand trial. The person’s refusal to receive competency restoration services
16 shall not be grounds for release or dismissal from the forensic facility.

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

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

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

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

14 (2) The Agency of Human Services Medical Director shall notify the
15 court where the person was committed upon return of the person to the forensic
16 facility. Upon readmission, the court shall hold a hearing at which the State's
17 Attorney shall have the burden of establishing by clear and convincing
18 evidence that the person has a qualifying condition and that the person's
19 continued release would create a substantial risk of bodily injury to another
20 person. If the State's Attorney meets its burden, the court shall order the
21 person readmitted to the forensic facility for treatment pursuant to this section.

1 If the State's Attorney does not meet its burden, the court shall order the
2 person restored to the status the person had when the person was returned to
3 the facility.

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

10 (1) the involuntary medication is medically appropriate;

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

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

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

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

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

2 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

3 NOT GUILTY BY REASON OF INSANITY FOR CERTAIN

4 CRIMES

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

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

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

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

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

19 (B) a description of any tests that were employed and the results of
20 the tests;

1 (C) the examiner's findings;

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

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

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

9 (4)(A) At the hearing, the court shall order the person committed to the
10 forensic facility if the State's Attorney establishes 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.

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

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

20 (c) A person committed to the forensic facility pursuant to this section shall
21 not be released until the court finds pursuant to subsection (e) of this section

1 that the person no longer has a qualifying condition that, upon the person's
2 release, would create a substantial risk of bodily injury to another person.

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

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

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

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

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

19 (IV) at any time upon certification at any time to the Secretary
20 of Human Services by the Agency of Human Services Medical Director that

1 the person no longer has a qualifying condition that, upon the person's release,
2 would create a substantial risk of bodily injury to another person.

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

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

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

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

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

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

20 (3) If the State's Attorney does not establish by clear and convincing
21 evidence that the person has a qualifying condition that, upon the person's

1 release, would create a substantial risk of bodily injury to another person, the
2 court shall:

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

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

11 (f) As appropriate for the needs of the person, the Agency of Human
12 Services Medical Director, in consultation with the Commissioner of Mental
13 Health; of Health; or of Disabilities, Aging, and Independent Living, shall
14 actively monitor compliance with orders issued pursuant to subdivision (e)(2)
15 of this section. Upon request from the Agency of Human Services Medical
16 Director, the court shall immediately order the return of the person to the
17 forensic facility if the Medical Director determines that the person is
18 noncompliant with the order and that the noncompliance may create a risk of
19 bodily injury to another person. The Agency of Human Services Medical
20 Director shall notify the court where the person was committed upon return of
21 the person to the forensic facility. Upon readmission, the court shall hold a

1 hearing at which the State’s Attorney shall have the burden of establishing by
2 clear and convincing evidence that the person was noncompliant with the
3 court’s order for conditional release and that the noncompliance creates a risk
4 of bodily injury to another person.

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

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

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

17 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

1 (B) “Forensic facility” means the interim forensic and competency
2 restoration program established by emergency rules adopted pursuant to Sec.
3 12 of this act, which shall be a locked secure facility where:

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

8 (ii) a person is transferred pursuant to subsections 4815a(a) and
9 4819a(a) of this title.

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

13 (i) incompetent to stand trial; or

14 (ii) not guilty by reason of insanity.

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

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

1 (b) The Secretary of Human Services shall establish and operate a locked
2 secure forensic facility for the competency restoration, evaluation,
3 stabilization, treatment, and care of persons who have been transferred
4 pursuant to subsections 4815a(a) and 4819a(a) of this title. The forensic
5 facility's clinical, forensic, and competency restoration services shall be
6 overseen by the Agency of Human Services Medical Director. The forensic
7 facility shall:

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

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

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

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

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

6 (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter
7 28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available
8 to provide care to transferred persons as clinically necessary;

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

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

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

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

20 (11) implement grievance and appeals procedures; and

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

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

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

9 (2) the person's health care providers may, with the person's
10 permission, view forensic facility records of the person's psychiatric
11 assessments at the facility, including assessments of the person's competency
12 to stand trial and criminal responsibility.

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

17 (e) The Secretary of Human Services shall regularly consult with the
18 Agency of Human Services Medical Director and the Commissioners of
19 Corrections; of Mental Health; of Health; and of Disabilities, Aging, and
20 Independent Living when performing the duties required by this chapter for
21 operating the forensic facility.

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

4 Sec. 12. EMERGENCY RULEMAKING; INTERIM FORENSIC
5 AND COMPETENCY RESTORATION PROGRAM

6 (a) On or before December 31, 2026, the Secretary of Human Services, in
7 consultation with the Departments of Corrections; of Health; of Mental Health;
8 and of Disabilities, Aging, and Independent Living, shall adopt emergency
9 rules pursuant to 3 V.S.A. chapter 25 to establish an interim forensic and
10 competency restoration program that shall be effective on July 1, 2027 and
11 shall operate pending the completion of a permanent forensic facility. The
12 emergency rules shall establish for the interim forensic and competency
13 restoration program and consistent with the standards and procedures of Secs.
14 9, 10, and 11 of this act:

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

1 (2) standards for quality assurance and improvement, clinical oversight,
2 documentation and reporting requirements; safety and risk management
3 protocols, and mechanisms for monitoring compliance;

4 (3) the manner in which the Department of Corrections would cooperate
5 with and obtain necessary information from other departments about persons
6 released under supervision from the forensic and competency restoration
7 program;

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

13 (5) victim notification procedures, including:

14 (A) which events within the program will trigger victim notification;

15 (B) who will provide victim notification and by what methods;

16 (C) how victims will be informed of their right to receive
17 notifications; and

18 (D) the processes that will permit victims to opt in and opt out of
19 receiving notifications; and

20 (6) any other provisions necessary to ensure the safe, effective, and
21 clinically appropriate implementation of Secs. 9, 10, and 11 of this act,

1 including potentially requiring the provision of forensic services in a unit that
2 is separate from other correctional populations.

3 (b) The emergency rules adopted pursuant to this section shall:

4 (1) be deemed to have met the standard for emergency rulemaking set
5 forth in 3 V.S.A. § 844(a);

6 (2) notwithstanding 3 V.S.A. § 844(b), remain in effect until July 1,
7 2029, and

8 (3) be repealed on July 1, 2029.

9 Sec. 13. REPEALS

10 Sec. 9–11 shall be repealed on July 1, 2029.

11 Sec. 14. EFFECTIVE DATES

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

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