

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 193
3 entitled “An act relating to establishing a forensic facility for certain criminal
4 justice involved persons” respectfully reports that it has considered the same
5 and recommends that the House propose to the Senate that the bill be amended
6 by striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. 13 V.S.A. § 4815a is added to read:

9 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN

10 FORENSIC FACILITY

11 (a) A person shall be ~~transferred~~ remanded to the Commissioner of
12 Corrections for placement at the forensic facility established in section 4826 of
13 this title if the person:

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

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

16 or

17 (B) if the person is not held without bail pursuant to section 7553 of
18 this title, the person suffers from a qualifying condition that, upon the person’s
19 release, would create a substantial risk of bodily injury to another person;

20 (3) is not currently receiving treatment through an order of
21 hospitalization pursuant to 18 V.S.A. § 7619 or section 4822 of this title; and

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

2 (b)(1) Upon admission, The forensic facility shall cause the person to be
3 evaluated for competency to stand trial not less often than the shorter of either:

4 (A) every six months from the date of admission; or

5 (B) upon the determination by the forensic facility’s clinical
6 services director that the person is likely competent to stand trial.

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 may be found
11 likely is competent to stand trial, the court shall immediately notify the State’s
12 Attorney and the 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)(2)(A)(1)(A) At the request of a party, the court may order that a second
20 or subsequent competency evaluation conducted pursuant to subsection (b) of
21 this subsection include an opinion on whether the person’s competency can be

1 restored. If a request is made pursuant to this subsection, the forensic facility
2 shall cause the person to be evaluated for restorability to competence prior to
3 the hearing. If the court finds that the person may be found likely competent to
4 stand trial, the court shall immediately notify the State's Attorney and the
5 person's counsel in the criminal case.

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

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

12 (B) Prior to the date of the hearing, the court shall order that a
13 forensic risk assessment of the person be conducted that includes:

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

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

17 (iii) the examiner's findings;

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

20 (v) the examiner's opinion as to whether the person is competent
21 to stand trial.

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

3 (4)(A) If the State’s Attorney demonstrates by clear and convincing
4 evidence at a hearing held pursuant to subdivision (3)(A) or (4)(B) of this
5 subsection that the person suffers from a qualifying condition that, upon the
6 person’s release, would create a substantial risk of bodily injury to another
7 person, the court shall order continued commitment of the person consistent
8 with the person’s forensic risk assessment. The court shall order treatment of
9 the person in the least restrictive setting consistent with the person’s forensic
10 risk assessment and treatment needs.

11 (B)(i) If continued commitment is ordered pursuant to subdivision
12 (c)(4)(A), the person’s commitment shall be reviewed not less often than the
13 shorter of either:

14 (I) every 12 months; or

15 (II) upon the determination by the forensic facility’s clinical
16 services director that the person is no longer suffering from a qualifying
17 condition that, upon the person’s release, would create a substantial risk of
18 bodily injury to another person.

19 (5)(i) ~~If the court finds~~ If the State’s Attorney does not demonstrate by
20 clear and convincing evidence at a hearing held pursuant to subdivision (3)(A)
21 or (4)(B) of this subsection that ~~the person cannot be restored to competency,~~

1 ~~the court shall order continued commitment of the person, taking into account~~
2 ~~the least restrictive conditions applicable, unless subdivision (B) of this~~
3 ~~subdivision (2) applies.~~(B) ~~If the court finds that the release of a person who~~
4 ~~cannot be restored to competency the person suffers from a qualifying~~
5 ~~condition that, upon the person's release, would not create a substantial risk of~~
6 ~~bodily injury to another person, the court shall:~~

7 (I) ~~order the release of the person under a prescribed regimen~~
8 ~~of medical, psychiatric, or psychological care or treatment that the forensic~~
9 ~~facility's clinical services director has certified as appropriate and that has been~~
10 ~~found by the court to be appropriate; and~~

11 (II) ~~order, as an explicit condition of release supervision, that~~
12 ~~the person comply with the prescribed regimen of medical, psychiatric, or~~
13 ~~psychological care or treatment together with any other conditions appropriate~~
14 ~~to protect the public.~~

15 (ii)(I) ~~The State's Attorney shall provide the victim with prior~~
16 ~~notice of any hearing held pursuant to this subdivision (5). The court may~~
17 ~~continue the hearing if the victim has not been provided with the notice~~
18 ~~required by this subdivision.~~

19 (II) ~~At any hearing under this subdivision (5), the court shall~~
20 ~~ask if the victim is present and, if so, shall offer the victim the opportunity to~~
21 ~~be heard. The court may consider any views offered at the hearing by the~~

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

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

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

17 (e) 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 (f)(1) The Commissioner shall actively monitor compliance with orders
2 issued pursuant to ~~subdivision (c)(5)~~ and shall immediately return a person to
3 the forensic facility if:

4 (A) the person was ~~previously restored to competence pursuant to~~
5 ~~this section and~~ released from the facility ~~pursuant to subdivision (c)(5); and~~

6 (B) the Commissioner has reason to believe that ~~the person is again~~
7 ~~incompetent; and (C) due to a qualifying condition~~ the person’s continued
8 release would create a substantial risk of bodily injury to another person.

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

1 (g) The Commissioner shall receive prior approval of the Criminal Division
2 of the Superior Court where the person’s underlying criminal charge is pending
3 for any competency restoration plan involving involuntary medication. The
4 court shall not approve involuntary medication unless the court finds 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 Sec. 2. 13 V.S.A. § 4817 is amended to read:

15 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

16 DISMISSAL

17 * * *

18 (e) When a person has been found incompetent to stand trial for an alleged
19 misdemeanor offense, the charges against the person shall be dismissed
20 without prejudice if, after the finding of incompetence, the case remains
21 inactive for a continuous period of time equal to or greater than the maximum

1 sentence for the offense. Dismissal under this section shall not be required if
2 the court finds that dismissing the case would be contrary to the interests of
3 justice.

4 Sec. 3. 13 V.S.A § 4819a is added to read:

5 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

6 ACQUITTED OF NOT GUILTY BY REASON OF INSANITY

7 FOR CERTAIN CRIMES

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

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

16 (b)(1) A hearing shall be held by the court where the person was tried
17 within ~~48 hours~~ 60 days following admission to the forensic facility, unless
18 that period is extended by the court.

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

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

1 (B) a description of any tests that were employed and the results of
2 the tests;

3 (C) the examiner’s findings; and

4 (D) the examiner’s opinion as to whether the person’s release would
5 create a substantial risk of bodily injury to another person.

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

8 (4)(A) At the hearing, the court shall order the person committed to the
9 forensic facility if the State’s Attorney establishes by clear and convincing
10 evidence that the person is suffering from a qualifying condition that, upon the
11 person’s release, would create a substantial risk of bodily injury to another
12 person.

13 (B) If the court finds that the State’s Attorney has not established by
14 clear and convincing evidence that the person is suffering from a qualifying
15 condition that, upon the person’s release, would create a substantial risk of
16 bodily injury to another person, the court shall enter an order releasing the
17 person pursuant to subdivision ~~(e)(2)~~ (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 is no longer suffering from a qualifying condition that, upon the
2 person's release, would create a substantial risk of bodily injury to another
3 person.

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

12 (e)(1)(A)(i) The State's Attorney shall petition the committing court for
13 evaluation review of the person's commitment not less often than the shorter of
14 either:

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

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

19 (III) every fifth year after a commitment order issued following
20 a review under subdivision (II) of this subdivision (i); ~~or~~ and

1 (IV) upon certification at any time to the Commissioner of
2 Corrections by the forensic facility’s clinical services director that the person is
3 no longer suffering from a qualifying condition that, upon the person’s release,
4 would create a substantial risk of bodily injury to another person.

5 (ii) The Commissioner of Corrections shall provide all reports
6 required under this section to the State’s Attorney, who shall file them with the
7 petition.

8 (B)(i) A person committed pursuant to subdivision ~~(b)(3)(A)~~
9 ~~(b)(4)(A)~~ of this section may petition the committing court for release on the
10 grounds that the person is no longer suffering from a qualifying condition that,
11 upon the person’s release, would create a substantial risk of bodily injury to
12 another person.

13 (ii) A petition shall not be filed pursuant to this subdivision (B):
14 (I) until at least 90 days after the issuance of the commitment
15 order pursuant to subdivision ~~(b)(4)(A)~~; and

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

18 ~~(3)(2)~~ If the court finds that the person is suffering from a qualifying
19 condition that, upon the person’s release, would create a substantial risk of
20 bodily injury to another person, the court shall deny the petition and order the

1 person committed to the forensic facility for continued treatment pursuant to
2 this section.

3 ~~(2)(3)~~ If the ~~reviewing court finds state's attorney establishes~~ by clear
4 and convincing evidence that the person is no longer suffering from a
5 qualifying condition that, upon the person's release, would create a substantial
6 risk of bodily injury to another person, the court shall:

7 (A) order the release of the person under a prescribed regimen of
8 medical, psychiatric, or psychological care or treatment that the forensic
9 facility's clinical services director has certified as appropriate and that has been
10 found by the court to be appropriate; and

11 (B) order, as an explicit condition of release supervision, that the
12 person comply with the prescribed regimen of medical, psychiatric, or
13 psychological care or treatment together with any other conditions appropriate
14 to protect the public.

15 ~~(3) If the court finds that the person is suffering from a qualifying~~
16 ~~condition that, upon the person's release, would create a substantial risk of~~
17 ~~bodily injury to another person, the court shall deny the petition and order the~~
18 ~~person committed to the forensic facility for continued treatment pursuant to~~
19 ~~this section.~~

20 (f) The Commissioner shall actively monitor compliance with orders issued
21 pursuant to subdivision (e)(2) of this section and shall immediately return the

1 person to the forensic facility if the Commissioner determines that the person
2 is noncompliant with the order and that the noncompliance may create a risk of
3 bodily injury to another person. The Commissioner shall notify the court
4 where the person was committed upon return of the person to the forensic
5 facility. Upon readmission, the court shall hold a hearing at which the State’s
6 Attorney shall have the burden of establishing by a ~~preponderance of the clear~~
7 and convincing evidence that the person was noncompliant with the court’s
8 order for conditional release and that the noncompliance creates a risk of
9 bodily injury to another person.

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

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

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

2 § 4826. FORENSIC FACILITY; DEFINITIONS

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

4 (A) “Forensic facility” means a locked facility or placement that:

5 (i) the Department of Corrections provides for the secure
6 evaluation, treatment, and care of persons involved in the legal system who do
7 not require a hospitalization level of care; and

8 (ii) is required for the custody, control, correctional treatment, and
9 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
10 4819a(a) of this title.

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

14 (i) incompetent to stand trial; or

15 (ii) not guilty by reason of insanity.

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

19 (b) The Commissioner of Corrections shall establish and operate a locked
20 secure forensic facility for the secure evaluation, treatment, and care of

1 individuals who have been transferred pursuant to subsections 4815a(a) and
2 4819a(a) of this title. The forensic facility shall:

3 (1) be designed and operated in a manner that supports a therapeutic,
4 recovery-oriented, and trauma-informed environment comparable to a
5 community-based residential treatment setting, while maintaining appropriate
6 levels of safety and 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 housing and management of persons, including
10 the ability to separate the population by sex or gender and to otherwise address
11 clinical, safety, or operational considerations as appropriate, including the
12 possible operation of multiple facilities;

13 (4) employ a clinical services director to oversee all forensic, clinical,
14 and competency restoration services provided to transferred persons;

15 (5) implement staff qualifications, licensure, training, and supervision
16 requirements that are sufficient to ensure that persons transferred to the
17 forensic facility have access to clinically appropriate care, treatment, services,
18 and supports consistent with individual needs and with applicable professional
19 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 24 hours a day, seven days a week; and

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

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

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

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

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

1 (e) The Commissioner of Corrections shall regularly consult with the
2 Commissioner of Mental Health when performing the duties required by this
3 chapter for operating the forensic facility.

4 (f) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
5 implement this section.

6 Sec. 4a. 13 V.S.A. § 4826 is amended to read:

7 § 4826. FORENSIC FACILITY; DEFINITIONS

8 * * *

9 (g) Annually, on or before January 15, the Department of Corrections, in
10 consultation with the Departments of Health, of Mental Health, and of
11 Disabilities, Aging, and Independent Living, shall submit a written report to
12 the House Committees on Corrections and Institutions, on Human Services,
13 and on Judiciary and to the Senate Committees on Institutions, on Health and
14 Welfare, and on Judiciary addressing:

15 (1) the number of persons served at the forensic facility during the
16 previous calendar year; and

17 (2) the types of clinical services and treatment provided during the
18 previous calendar year.

19 Sec. 5. RULEMAKING; FORENSIC FACILITY

20 The Commissioner of Corrections, in consultation with the Departments of
21 Health, of Mental Health, and of Disabilities, Aging, and Independent Living,

1 shall adopt rules pursuant to 3 V.S.A. chapter 25 to implement the provisions
2 of Secs. 1, 3, and 4 of this act. Specifically, the rules shall establish:

3 (1) clinically appropriate standards governing the provision of services
4 at the forensic facility, including requirements related to staffing patterns and
5 ratios; staff qualifications; licensure and training; clinical supervision; and the
6 delivery of safe, effective, evidence-informed care;

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

10 (3) victim notification procedures, including:

11 (A) which events within the forensic facility will trigger victim
12 notification;

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

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

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

18 (4) any other provisions necessary to ensure safe, effective, and
19 clinically appropriate implementation of Secs. 1, 3, and 4 of this act, including
20 potentially requiring the provision of forensic facility services in a unit that is
21 separate from other correctional populations.

1 Sec. 6. Rule 1101 of the Vermont Rules of Evidence is amended to read:

2 RULE 1101. APPLICABILITY OF RULES

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

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

7 * * *

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

15 * * *

16 Sec. 7. INTERIM REPORT; FORENSIC FACILITY

17 On or before October 1, 2026, the Department of Corrections, in
18 collaboration with the Departments of Health, of Mental Health, and of
19 Disabilities, Aging, and Independent Living, shall submit a written interim
20 report to the House Committees on Corrections and Institutions, on Human
21 Services, and on Judiciary and to the Senate Committees on Institutions, on

1 Health and Welfare, and on Judiciary containing draft rules required pursuant
2 to Sec. 5 of this act. The interim report shall also address:

3 (1) the status of and anticipated timeline for the adoption of rules under
4 this act;

5 (2) forensic facility planning, including the specific proposed location of
6 the forensic facility, space considerations and design elements necessary to
7 support the provision of therapeutic services and security at the proposed
8 location, and the timeline for any necessary fit-up of the forensic facility;

9 (3) initial staffing considerations, including anticipated staffing levels,
10 required qualifications, and potential contracting needs; and

11 (4) an anticipated timeline for the development of a forensic facility,
12 including preliminary cost estimates and initial operations.

13 Sec. 8. EFFECTIVE DATES

14 (a) This section, Sec. 2 (13 V.S.A. § 4817), Sec. 5 (rulemaking; forensic
15 facility), and Sec. 7 (interim report; forensic facility) shall take effect on July
16 1, 2026.

17 (b) Sec. 4a (13 V.S.A. § 4826) shall take effect on July 1, 2029.

18 (c) All remaining sections shall take effect on January 1, 2028.

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1 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE