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S.193

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

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

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

§ 4815a. COMPETENCY RESTORATION SERVICES WITHIN
FORENSIC FACILITY

(a) A person shall be transferred to the forensic facility established in section 4826 of this title if the person:

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

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

or

(B) if the person is not held without bail pursuant to section 7553 of this title, the person's release would create a substantial risk of bodily injury to another person;

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

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

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

1 (i) every six months; or

2 (ii) upon the determination by the forensic facility's clinical
3 services director that the person is likely competent to stand trial.

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

6 (2)(A) At the request of a party, the court may order that a second or
7 subsequent evaluation include an opinion on whether the person's competency
8 can be restored. If the court finds that the person may be found likely
9 competent to stand trial, the court shall immediately notify the State's Attorney
10 and the person's counsel in the criminal case. If the court finds by clear and
11 convincing evidence that the person cannot be restored to competency, the
12 court shall order continued commitment of the person, taking into account the
13 least restrictive conditions applicable, unless subdivision (B) of this
14 subdivision (2) applies.

15 (B) If the court finds that the release of a person who cannot be
16 restored to competency would not create a substantial risk of bodily injury to
17 another person, the court shall:

18 (i) order the release of the person under a prescribed regimen of
19 medical, psychiatric, or psychological care or treatment that the forensic
20 facility's clinical services director has certified as appropriate and that has been
21 found by the court to be appropriate; and

1 (ii) order, as an explicit condition of release, that the person
2 comply with the prescribed regimen of medical, psychiatric, or psychological
3 care or treatment together with any other conditions appropriate to protect the
4 public.

5 (c) The person shall remain at the forensic facility until the person is
6 restored to competency or until there is a final disposition of the charges
7 against the person.

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

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

19 (f)(1) The Commissioner shall actively monitor compliance with orders
20 issued pursuant to subdivision (2)(B) of subsection (b) and shall immediately
21 return a person to the forensic facility if:

1 (A) the person was previously restored to competence pursuant to
2 this section and released from the facility;

3 (B) the Commissioner has reason to believe that the person is again
4 incompetent; and

5 (C) the person's continued release would create a substantial risk of
6 bodily injury to another person.

7 (2) The Commissioner shall notify the court where the person was
8 committed upon return of the person to the forensic facility. Upon
9 readmission, the court shall hold a hearing at which the State's Attorney shall
10 have the burden of establishing by clear and convincing evidence that the
11 person is not competent. If the court finds that the person is not competent, the
12 court shall order the person readmitted to the forensic facility for competency
13 restoration treatment pursuant to this section. If the court finds that the person
14 is competent, the court shall order the person restored to the status the person
15 had when the person was returned to the facility.

16 (g) The Commissioner shall receive prior approval of the Criminal Division
17 of the Superior Court where the person's underlying criminal charge is pending
18 for any competency restoration plan involving involuntary medication. The
19 court shall not approve involuntary medication unless the court finds that:

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

2 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

3 ACQUITTED OF CERTAIN CRIMES

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

10 (b)(1) A hearing shall be held by the court where the person was tried
11 within 48 hours following admission to the forensic facility, unless that period
12 is extended by the court.

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

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

16 (B) a description of any tests that were employed and the results of
17 the tests;

18 (C) the examiner's findings; and

19 (D) the examiner's opinion as to whether the person's release would
20 create a substantial risk of bodily injury to another person.

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

6 (B) If the court finds that the State’s Attorney has not established by
7 clear and convincing evidence that the person is suffering from a qualifying
8 condition that, upon the person’s release, would create a substantial risk of
9 bodily injury to another person, the court shall enter an order releasing the
10 person pursuant to subdivision (e)(2) of this section.

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

16 (d) The Commissioner of Corrections shall, taking into account the least
17 restrictive conditions applicable, provide adequate care and individualized
18 treatment at the forensic facility to persons ordered committed pursuant to this
19 section. In order that the Commissioner may adequately determine the nature
20 of the person’s condition and needs, all persons committed pursuant to this

1 section shall be promptly examined by qualified personnel in order to provide
2 a proper evaluation, diagnosis, and treatment plan.

3 (e)(1)(A)(i) The State's Attorney shall petition the committing court for
4 evaluation of the person not less often than the shorter of either:

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

7 (II) certification to the Commissioner of Corrections by the
8 forensic facility's clinical services director that the person is no longer
9 suffering from a qualifying condition that, upon the person's release, would
10 create a substantial risk of bodily injury to another person.

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

14 (B) A person committed pursuant to subdivision (b)(3)(A) of this
15 section may petition the committing court for release on the grounds that the
16 person is no longer suffering from a qualifying condition that, upon the
17 person's release, would create a substantial risk of bodily injury to another
18 person. A petition shall not be filed pursuant to this subdivision (B) until at
19 least 90 days after the issuance of the commitment order.

20 (2) If the reviewing court finds by clear and convincing evidence that
21 the person is no longer suffering from a qualifying condition that, upon the

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

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

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

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

15 (f) The Commissioner shall actively monitor compliance with orders issued
16 pursuant to subdivision (e)(2) of this section and shall immediately return the
17 person to the forensic facility if the Commissioner determines that the person
18 is noncompliant with the order and that the noncompliance may create a risk of
19 bodily injury to another person. The Commissioner shall notify the court
20 where the person was committed upon return of the person to the forensic
21 facility. Upon readmission, the court shall hold a hearing at which the State's

1 Attorney shall have the burden of establishing by a preponderance of the
2 evidence that the person was noncompliant with the court's order for
3 conditional release and that the noncompliance creates a risk of bodily injury
4 to another person.

5 (g) At any hearing under this section, the victim may express the victim's
6 views concerning the offense and preferences for the person's placement and
7 care, and the court may consider the victim's testimony.

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

9 § 4826. FORENSIC FACILITY; DEFINITIONS

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

11 (A) "Forensic facility" means a locked facility or placement that:

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

15 (ii) is required for the custody, control, correctional treatment, and
16 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
17 4819a(a) of this title.

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

1 (i) incompetent to stand trial; or

2 (ii) not guilty by reason of insanity.

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

6 (b) The Commissioner of Corrections shall establish and operate a locked
7 secure forensic facility for the secure evaluation, treatment, and care of
8 individuals who have been transferred pursuant to subsections 4815a(a) and
9 4819a(a) of this title. The forensic facility shall:

10 (1) be designed and operated in a manner that supports a therapeutic,
11 recovery-oriented, and trauma-informed environment comparable to a
12 community-based residential treatment setting, while maintaining appropriate
13 levels of safety and security;

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

16 (3) provide for the safe housing and management of persons, including
17 the ability to separate the population by sex or gender and to otherwise address
18 clinical, safety, or operational considerations as appropriate, including the
19 possible operation of multiple facilities;

20 (4) employ a clinical services director to oversee all forensic, clinical,
21 and competency restoration 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 24 hours a day, seven days a week; and

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

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

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

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

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

3 Sec. 5. RULEMAKING; FORENSIC FACILITY

4 The Commissioner of Corrections, in consultation with the Departments of
5 Health, of Mental Health, and of Disabilities, Aging, and Independent Living,
6 shall adopt rules pursuant to 3 V.S.A. chapter 25 to implement the provisions
7 of Secs. 1, 3, and 4 of this act. Specifically, the rules shall establish:

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

12 (2) standards for quality assurance and improvement; clinical oversight;
13 documentation and reporting requirements; safety and risk management
14 protocols; and mechanisms for monitoring compliance; and

15 (3) any other provisions necessary to ensure safe, effective, and
16 clinically appropriate implementation of Secs. 1, 3, and 4 of this act, including
17 potentially requiring the provision of forensic facility services in a unit that is
18 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.