

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. LEGISLATIVE INTENT**

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

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

19 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN

20 FORENSIC FACILITY

1           (a) A person shall be placed at the forensic facility established in section  
2           4826 of this title if the person:

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

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

5                   or

6                   (B) if the person is not held without bail pursuant to section 7553 of  
7                   this title, the person has a qualifying condition that, upon the person's release,  
8                   would create a substantial risk of bodily injury to another person;

9                   (3) is not currently

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

12                   (B) subject to an order of commitment to the Commissioner of  
13                   Disabilities, Aging, and Independent Living issued under 18 V.S.A. § 8845 or  
14                   section 4823 of this title; 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 not less often than the shorter of either:

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); ~~or~~ and

4           (B) upon the determination by the Agency of Human Services  
5           Medical Director that the person is likely competent to stand trial or that it is  
6           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, unless it finds that doing so is likely to cause the  
12          person to again become incompetent, order the person returned to the custodial  
13          status that was in place before the person was remanded to the Secretary placed  
14          at the forensic facility under subsection (a) of this section immediately notify  
15          the State’s Attorney and the person’s counsel in the criminal case.

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

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

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

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

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

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

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

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

18           (iii) the examiner’s findings;

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

1                   (v) recommendations for evidence-based treatment and  
2                   supervision that would support the person’s success and mitigate risk of  
3                   aggression and violence:

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

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

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

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

19                  (B) If continued commitment is ordered pursuant to subdivision (A)  
20                  of this subdivision (4), the person’s commitment shall be reviewed by the court  
21                  not less often than the shorter of either:

1                   (i) every 12 months; or

2                   (ii) upon the determination by the Agency of Human Services

3                   Medical Director that the person no longer has a qualifying condition that,  
4                   upon the person’s release, would create a substantial risk of bodily injury to  
5                   another person.

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

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

17                  (ii) order, as an explicit condition of supervision, that the person  
18                  comply with the prescribed regimen of medical, psychiatric, or psychological  
19                  care or treatment, housing, and supervision by the Commissioner of Mental  
20                  Health; the Department of Disabilities, Aging, and Independent Living; or the

1 Department of Health, together with any other conditions appropriate to protect  
2 the public.

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

10 (c)(i) The State’s Attorney shall make a reasonable effort to provide the  
11 victim with prior notice of any hearing held pursuant to this subdivision (5).  
12 The court may continue the hearing if the victim has not been provided with  
13 the notice required by this subdivision (c)(i).

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

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

15           (B)(i) If the The Commissioner certifies to the court that shall  
16           provide appropriate custody, care, and habilitation cannot be provided to the  
17           person in a designated program to a person committed under subdivision (A)  
18           of this subdivision (6).

19           (i) the person shall not be committed under subdivision (A) of this  
20           subdivision (6); and

1           (ii) The court ~~shall~~ may order continued treatment at the forensic  
2           facility until for a period not to exceed one year if the court finds that the  
3           Commissioner ~~has provided a~~ is not currently able to provide appropriate  
4           custody, care, and habilitation in a designated program in the least restrictive  
5           setting consistent with the person's treatment needs.

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

8                     ~~(I) every six months~~ 90 days; and

9                     ~~(II) upon a petition filed by the person subject to the order at~~  
10            ~~any time not less than 90 days after the order and not less than six months after~~  
11            ~~the filing of a previous petition.~~

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

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

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

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

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

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

20           (f) Competency restoration services shall be provided to the person at the  
21           forensic facility, or at another location as part of a discharge plan, until the

1 person is restored to competency or until there is a final disposition of the  
2 charges against the person.

3 (g)(1) As appropriate for the needs of the person, the Commissioner ~~if~~ of  
4 Mental Health; of Health; or of Disabilities, Aging and Independent Living  
5 shall actively monitor compliance with orders issued pursuant to subdivision  
6 (c)(5) of this section and shall immediately return a person to the forensic  
7 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, due to a qualifying condition, the person's continued release  
12 would create a substantial risk of bodily injury to another person.

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

1 restored to the status the person had when the person was returned to the  
2 facility.

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

9 (1) the involuntary medication is medically appropriate;

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

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

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

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

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

2 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

3 DISMISSAL

4 \* \* \*

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

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

18 (B) At the hearing, the court shall ask if the victim is present and, if  
19 so, shall offer the victim the opportunity to be heard. The court may consider  
20 any views offered at the hearing by the victim, including the victim's views  
21 concerning the offense and the interests of justice. If the victim is not present

1 at the hearing, the court shall ask whether the victim has expressed oral or  
2 written views concerning the offense and the interests of justice, and, if so, the  
3 court may consider those views.

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

5 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

6 NOT GUILTY BY REASON OF INSANITY FOR CERTAIN

7 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 60 days following admission to the forensic facility, unless that period  
18 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:

1           (A) the person’s history and present dangerousness;

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

4           (C) the examiner’s findings;

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

7           (E) recommendations for evidence-based treatment and supervision  
8 that would support the individual’s success and mitigate risk of aggression and  
9 violence.

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

12           (4)(A) At the hearing, the court shall order the person committed to the  
13 forensic facility if the State’s Attorney establishes 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19                         (2) If the State’s Attorney establishes by clear and convincing evidence  
20                         that the person has a qualifying condition that, upon the person’s release,  
21                         would create a substantial risk of bodily injury to another person, the court

1 shall deny the petition and order the person committed to the forensic facility  
2 for continued treatment pursuant to this section.

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

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

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

15 (f) As appropriate for the needs of the person, the Commissioner if of  
16 Mental Health; of Health; or of Disabilities, Aging and Independent Living  
17 shall actively monitor compliance with orders issued pursuant to subdivision  
18 (e)(2) of this section and shall immediately return the person to the forensic  
19 facility if the Agency of Human Services Medical Director determines that the  
20 person is noncompliant with the order and that the noncompliance may create a  
21 risk of bodily injury to another person. The Commissioner monitoring the

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

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

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

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

19 § 4826. FORENSIC FACILITY; DEFINITIONS

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

1           (A) “Forensic facility” means a residential locked secure facility or  
2 placement licensed as a therapeutic community residence as defined in 33  
3 V.S.A. § 7102(11) where:

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

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

11           (B) “Competency can be restored” means a substantial probability  
12 that in the foreseeable future the person will attain the capacity to permit the  
13 proceedings to go forward.

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

17           (i) incompetent to stand trial; or

18           (ii) not guilty by reason of insanity.

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

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

5           (b) The Secretary of Human Services shall establish and operate a locked  
6           secure forensic facility for the competency restoration, secure evaluation,  
7           stabilization, treatment, and care of persons who have been transferred  
8           pursuant to subsections 4815a(a) and 4819a(a) of this title. The forensic  
9           facility’s clinical, forensic, and competency restoration services shall be  
10           overseen by the Agency of Human Services Medical Director. The  
11           Department of Corrections shall not play a role in the forensic facility’s  
12           operation, the provision of services, internal security, or post-release  
13           monitoring of any former residents. The forensic facility shall:

14           (1) be designed and operated in a manner that supports a therapeutic,  
15           recovery-oriented, and trauma-informed environment comparable to a  
16           community based residential treatment setting programming in a therapeutic  
17           community residence, while maintaining appropriate levels of safety and  
18           security;

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

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

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

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

14           (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter  
15 28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available  
16 to provide care to transferred persons 24 hours a day, seven days a week;

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

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

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

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

8           (11) implement grievance and appeals procedures.

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

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

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

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

11       § 4826. FORENSIC FACILITY; DEFINITIONS

12                       \* \* \*

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

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

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) victim notification procedures, including:~~

16           ~~(A) which events within the forensic facility will trigger victim~~  
17           ~~notification;~~

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

19           ~~(C) how victims will be informed of their right to receive~~  
20           ~~notifications; and~~

1 ~~(D) the processes that will permit victims to opt in and opt out of~~  
2 ~~receiving notifications; and~~

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

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

8 **§ 7257. REPORTABLE ADVERSE EVENTS**

9 (a) An acute inpatient hospital, an intensive residential recovery facility, a  
10 designated agency, a psychiatric residential treatment facility for youth, a  
11 forensic facility, or a secure residential recovery facility shall report to the  
12 Department of Mental Health instances of death or serious bodily injury to  
13 individuals with a mental condition or psychiatric disability in the custody or  
14 temporary custody of the Commissioner.

15 \* \* \*

16 **Sec. 7. FEASIBILITY PLAN; FORENSIC FACILITY**

17 (a) On or before January 15, 2027, the Secretary of Human Services, in  
18 consultation with the Department of Buildings and General Services, shall  
19 submit a feasibility plan for the development and operation of a forensic  
20 facility to the House Committees on Appropriations, on Corrections and  
21 Institutions, on Health Care, on Human Services, and on Judiciary and to the

1 Senate Committees on Appropriations, on Health and Welfare, on Institutions,  
2 and on Judiciary. The feasibility plan shall assume that operation, staffing, and  
3 programming at the forensic facility shall be provided by the Agency of  
4 Human Services or its departments, with the exception that the Department of  
5 Corrections shall not play a role in its operation, the provision of services,  
6 internal security, or post-release monitoring of any former residents. The  
7 feasibility plan shall address the following:

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

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

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

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

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

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

1           (7) which aspects of the therapeutic community residence rule would  
2           need to be **modified** to operate the forensic facility as a therapeutic community  
3           residence;

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

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

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

16           (11) a resident discharge and community monitoring plan from each  
17           department with custody of individuals in the forensic facility that prioritizes  
18           community safety and provides residential, clinical, and case management  
19           services;



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

8 \* \* \*

9 Sec. 7. INTERIM REPORT; FORENSIC FACILITY

10 On or before October 1, 2026, the Department of Corrections, in  
11 collaboration with the Departments of Health, of Mental Health, and of  
12 Disabilities, Aging, and Independent Living, shall submit a written interim  
13 report to the House Committees on Corrections and Institutions, on Human  
14 Services, and on Judiciary and to the Senate Committees on Institutions, on  
15 Health and Welfare, and on Judiciary containing draft rules required pursuant  
16 to Sec. 5 of this act. The interim report shall also address:

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

19 (2) forensic facility planning, including the specific proposed location of  
20 the forensic facility, space considerations and design elements necessary to

1 support the provision of therapeutic services and security at the proposed  
2 location, and the timeline for any necessary fit-up of the forensic facility;

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

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

7 Sec. 9. EFFECTIVE DATES

8 (a) This section, Sec. 3 (13 V.S.A. § 4817), and Sec. 7 (feasibility plan;  
9 forensic facility) shall take effect on July 1, 2026.

10 (b) All remaining sections shall take effect on January 1, 2028.

11  
12  
13  
14 (Committee vote: \_\_\_\_\_)

15 \_\_\_\_\_

16 Representative \_\_\_\_\_

17 FOR THE COMMITTEE