

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 forensic facility
12 established in section 4826 of this title if the person:

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

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

15 or

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

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

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

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

3 (i) every six months; or

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

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

8 (2) If the court finds after an evaluation conducted pursuant to
9 subdivision (1) of this subsection that the person may be found likely is
10 competent to stand trial, the court shall immediately notify the State's Attorney
11 and the person's counsel in the criminal case.

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

15 (c)(2)(A)(1)(A) At the request of a party, the court may order that a second
16 or subsequent competency evaluation conducted pursuant to subsection (b) of
17 this subsection include an opinion on whether the person's competency can be
18 restored. If a request is made pursuant to this subsection, the forensic facility
19 shall cause the person to be evaluated for restorability to competence prior to
20 the hearing. If the court finds that the person may be found likely competent to

1 stand trial, the court shall immediately notify the State's Attorney and the
2 person's counsel in the criminal case.

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

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

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

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

12 (ii) a description of any tests that were employed and the results of
13 the tests;

14 (iii) the examiner's findings;

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

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

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

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

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

12 (I) every 12 months; or

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

17 (5) ~~If the court finds~~ If the State's Attorney does not demonstrate by
18 clear and convincing evidence at a hearing held pursuant to subdivision (3)(A)
19 or (4)(B) of this subsection that ~~the person cannot be restored to competency,~~
20 the court shall order continued commitment of the person, taking into account
21 the least restrictive conditions applicable, unless subdivision (B) of this

1 subdivision (2) applies. (B) If the court finds that the release of a person who
2 cannot be restored to competency the person suffers from a qualifying
3 condition that, upon the person's release, would not create a substantial risk of
4 bodily injury to another person, the court shall:

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

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

13 (c) The Except as provided in subdivision (c)(5) of this section, person
14 shall remain at the forensic facility until the person is restored to competency
15 or until there is a final disposition of the charges against the person.

16 (d) The person shall receive competency restoration services while at the
17 forensic facility according to a plan approved by the forensic facility's clinical
18 services director. Such services shall include any appropriate combination of
19 medication, education, accommodations, habilitation, or other services
20 identified as necessary or proper to achieve and maintain competency to stand

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

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

7 (f)(1) The Commissioner shall actively monitor compliance with orders
8 issued pursuant to subdivision (c)(5) and shall immediately return a person to
9 the forensic facility if:

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

12 (B) the Commissioner has reason to believe that the person is again
13 incompetent; and (C) due to a qualifying condition the person's continued
14 release would create a substantial risk of bodily injury to another person.

15 (2) The Commissioner shall notify the court where the person was
16 committed upon return of the person to the forensic facility. Upon
17 readmission, the court shall hold a hearing at which the State's Attorney shall
18 have the burden of establishing by clear and convincing evidence that the
19 person is not competent is suffering from a qualifying condition that, if the
20 person's release continues, would create a substantial risk of bodily injury to
21 another person. If the court finds that the person is not competent State's

1 Attorney meets its burden, the court shall order the person readmitted to the
2 forensic facility for treatment pursuant to this section. If the court finds that
3 the person is competent State's Attorney does not meet its burden, the court
4 shall order the person restored to the status the person had when the person
5 was returned to the facility.

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

10 (1) the involuntary medication is medically appropriate;

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

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

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

19 Sec. 2. 13 V.S.A. § 4817 is amended to read:

20 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

21 DISMISSAL

* * *

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

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

§ 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

ACQUITTED OF NOT GUILTY BY REASON OF INSANITY

FOR CERTAIN CRIMES

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

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

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

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

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

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

9 (C) the examiner's findings; and

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

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

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

19 (B) If the court finds that the State's Attorney has not established by
20 clear and convincing evidence that the person is suffering from a qualifying
21 condition that, upon the person's release, would create a substantial risk of

1 bodily injury to another person, the court shall enter an order releasing the
2 person pursuant to subdivision ~~(e)(2)~~ (e)(3)(A) and (B) of this section.

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

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

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

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

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

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

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

7 (IV) upon certification at any time to the Commissioner of
8 Corrections by the forensic facility's clinical services director that the person is
9 no longer suffering from a qualifying condition that, upon the person's release,
10 would 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)(i) A person committed pursuant to subdivision ~~(b)(3)(A)~~
15 (b)(4)(A) of this section may petition the committing court for release on the
16 grounds that the person is no longer suffering from a qualifying condition that,
17 upon the person's release, would create a substantial risk of bodily injury to
18 another person.

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

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

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

3 (3)(2) If the court finds that the person is suffering from a qualifying
4 condition that, upon the person's release, would create a substantial risk of
5 bodily injury to another person, the court shall deny the petition and order the
6 person committed to the forensic facility for continued treatment pursuant to
7 this section.

8 (2)(3) If the reviewing court finds state's attorney establishes by clear
9 and convincing evidence that the person is no longer suffering from a
10 qualifying condition that, upon the person's release, would create a substantial
11 risk of bodily injury to another person, the court shall:

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

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

20 (3) If the court finds that the person is suffering from a qualifying
21 condition that, upon the person's release, would create a substantial risk of

1 ~~bodily injury to another person, the court shall deny the petition and order the~~
2 ~~person committed to the forensic facility for continued treatment pursuant to~~
3 ~~this section.~~

4 (f) The Commissioner shall actively monitor compliance with orders issued
5 pursuant to subdivision (e)(2) of this section and shall immediately return the
6 person to the forensic facility if the Commissioner determines that the person
7 is noncompliant with the order and that the noncompliance may create a risk of
8 bodily injury to another person. The Commissioner shall notify the court
9 where the person was committed upon return of the person to the forensic
10 facility. Upon readmission, the court shall hold a hearing at which the State’s
11 Attorney shall have the burden of establishing by a preponderance of the clear
12 and convincing evidence that the person was noncompliant with the court’s
13 order for conditional release and that the noncompliance creates a risk of
14 bodily injury to another person.

15 (g) At any hearing under this section, the victim may express the victim’s
16 views concerning the offense and preferences for the person’s placement and
17 care, and the court may consider the victim’s testimony.

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

19 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

4 (ii) is required for the custody, control, correctional treatment, and
5 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
6 4819a(a) of this title.

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

10 (i) incompetent to stand trial; or

11 (ii) not guilty by reason of insanity.

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

15 (b) The Commissioner of Corrections shall establish and operate a locked
16 secure forensic facility for the secure evaluation, treatment, and care of
17 individuals who have been transferred pursuant to subsections 4815a(a) and
18 4819a(a) of this title. The forensic facility shall:

19 (1) be designed and operated in a manner that supports a therapeutic,
20 recovery-oriented, and trauma-informed environment comparable to a

1 community-based residential treatment setting, while maintaining appropriate
2 levels of safety and security;

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

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

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

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

16 (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter
17 28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available
18 to provide care to transferred persons 24 hours a day, seven days a week; and

19 (7) ensure that persons receive clinically appropriate assessment and
20 treatment planning, including the development of an initial person-specific

1 treatment plan within 72 hours following transfer, which shall be reviewed
2 periodically as clinically indicated.

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

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

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

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

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

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

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

§ 4826. FORENSIC FACILITY; DEFINITIONS

* * *

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

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

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

Sec. 5. RULEMAKING; FORENSIC FACILITY

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

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

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

RULE 1101. APPLICABILITY OF RULES

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

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

* * *

Sec. 7. INTERIM REPORT; FORENSIC FACILITY

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

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

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

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

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

Sec. 8. EFFECTIVE DATES

1 (a) This section, Sec. 2 (13 V.S.A. § 4817), Sec. 5 (rulemaking; forensic
2 facility), and Sec. 7 (interim report; forensic facility) shall take effect on July
3 1, 2026.

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

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

6

7

8

9 (Committee vote: _____)

10

11

Representative _____

12

FOR THE COMMITTEE