

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 at the admitting area of and around the outside perimeter of a
17 forensic facility if it is co-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, unless the person is detained in a correctional facility
15 pending trial; and

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

17 (b)(1) The forensic facility shall cause the person to be evaluated for
18 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) At the request of a party or the Agency of Human Services Medical
2 Director, the court may order that a competency evaluation conducted pursuant
3 to subsection (b) of this section include an opinion on whether the person’s
4 competency can be restored. If a request is made pursuant to this subsection,
5 the forensic facility shall cause the person to be evaluated for restorability to
6 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
11 the victim with prior notice of any hearing held pursuant to this subdivision
12 (5). The court may continue the hearing if the victim has not been provided
13 with 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 (e)(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
2 licensed as a therapeutic community residence as defined in 33 V.S.A.
3 § 7102(11) where:

4 (i) the Agency of Human Services provides for the secure
5 competency restoration, evaluation, stabilization, treatment, and care of
6 persons with a ~~mental health condition~~ qualifying condition who are involved
7 in the legal system and who do not require a 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, or internal security, except to provide
13 security services for the facility at the admitting area and around the outside
14 perimeter if the facility is co-located on the grounds of a correctional facility.
15 The forensic facility shall:

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

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

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

8 (4) follow the direction of the Agency of Human Services Medical
9 Director, who shall oversee all forensic, clinical, and competency restoration
10 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;

19 (7) ensure that persons receive clinically appropriate assessment and
20 treatment planning and competency restoration plans, as appropriate, including

1 the development of an initial person-specific treatment plan within 72 hours
2 following transfer, which shall be reviewed periodically as clinically indicated;

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

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

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

10 (11) implement grievance and appeals procedures; and

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

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

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

19 (2) the person’s health care providers may, with the person’s
20 permission, view forensic facility records of the person’s psychiatric

1 assessments at the facility, including assessments of the person’s competency
2 to stand trial and criminal responsibility.

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

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

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

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

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

17 § 4826. FORENSIC FACILITY; DEFINITIONS

18 * * *

19 (g) Annually, on or before January 15, the Department of Corrections, in
20 consultation with the Departments of Health, of Mental Health, and of
21 Disabilities, Aging, and Independent Living, shall submit a written report to

1 ~~the House Committees on Corrections and Institutions, on Human Services,~~
2 ~~and on Judiciary and to the Senate Committees on Institutions, on Health and~~
3 ~~Welfare, and on Judiciary addressing:~~

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

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

8 ~~Sec. 5. RULEMAKING; FORENSIC FACILITY~~

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

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

17 ~~(2) standards for quality assurance and improvement; clinical oversight;~~
18 ~~documentation and reporting requirements; safety and risk management~~
19 ~~protocols; and mechanisms for monitoring compliance; and~~

20 ~~(3) victim notification procedures, including:~~

1 ~~(A) which events within the forensic facility will trigger victim~~

2 ~~notification;~~

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

4 ~~(C) how victims will be informed of their right to receive~~

5 ~~notifications; and~~

6 ~~(D) the processes that will permit victims to opt in and opt out of~~

7 ~~receiving notifications; and~~

8 ~~(4) any other provisions necessary to ensure safe, effective, and~~

9 ~~clinically appropriate implementation of Secs. 1, 3, and 4 of this act, including~~

10 ~~potentially requiring the provision of forensic facility services in a unit that is~~

11 ~~separate from other correctional populations.~~

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

13 **§ 7257. REPORTABLE ADVERSE EVENTS**

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

20 * * *

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

1 (a) On or before January 15, 2027, the Secretary of Human Services, in
2 consultation with the Department of Buildings and General Services, shall
3 submit a feasibility plan for the development and operation of a forensic
4 facility to the House Committees on Appropriations, on Corrections and
5 Institutions, on Health Care, on Human Services, and on Judiciary and to the
6 Senate Committees on Appropriations, on Health and Welfare, on Institutions,
7 and on Judiciary. The feasibility plan shall assume that operation, staffing, and
8 programming at the forensic facility shall be provided by the Agency of
9 Human Services or its departments, with the exception that the Department of
10 Corrections shall not play a role in its operation, the provision of services, or
11 internal security, other than the provision of security services for the facility at
12 the admitting area and around the outside perimeter if the facility is co-located
13 on the grounds of a correctional facility. The feasibility plan shall address the
14 following:

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

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

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

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

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

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

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

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

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

16 (10) the physical and staff security plan within and around the perimeter
17 of a forensic facility, including therapeutic design and clinical supervision that
18 reflect best practices, which shall not involve the Department of Corrections,
19 with the exception that employees of the Department of Corrections may
20 provide security services for the facility at the admitting area and around the

1 outside perimeter of a forensic the facility if it is co-located on the grounds of a
2 correctional facility;

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

7 (12) opportunities and cost estimates for persons who would be eligible
8 for placement at the forensic facility population to receive the following
9 services while the development of a forensic facility in Vermont is pending:

10 (A) placement in an out-of-state residence where clinically
11 appropriate programming can be provided; and

12 (B) a competency restoration services program within a Vermont
13 correctional facility, provided by an entity that is not under contract with the
14 Department of Corrections;

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

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

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

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

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

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

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

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

18 **Sec. 9. SUNSET**

19 Subdivision (a)(12) (interim competency restoration program) of Sec. 7 of
20 this act shall be repealed on January 1, 2028.

21 **Sec. 10. EFFECTIVE DATES**

1 (a) This section, Sec. 3 (13 V.S.A. § 4817), Sec. 7 (feasibility plan; forensic
2 facility), and Sec. 9 (sunset of interim competency restoration program) shall
3 take effect on July 1, 2026.

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

5

6

7

8 (Committee vote: _____)

9

10

11

Representative _____

FOR THE COMMITTEE