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S.193

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

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

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

§ 4815a. COMPETENCY RESTORATION SERVICES WITHIN
FORENSIC FACILITY

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

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

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

or

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

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

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

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

1 (i) every six months; or

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

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

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

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

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

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

8 (B) Notwithstanding subsection (c) of this section, if the trial court finds by
9 clear and convincing evidence that the person's competency cannot be
10 restored, the person shall be subject to the procedures in section 4819a of this
11 chapter. Competency shall be reviewed periodically consistent with section
12 4819a(e)(1)(A)(i).

13 (c) With the sole exception of subsection (b)(2)(B) of this section, -tThe
14 person shall remain at the forensic facility until the person is restored to
15 competency or until there is a final disposition of the charges against the
16 person.

17 (d) The person shall receive competency restoration services while at the
18 forensic facility according to a plan approved by the forensic facility's clinical
19 services director. Such services shall include any appropriate combination of
20 medication, education, accommodations, habilitation, or other services
21 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 issued
8 pursuant to subdivision (2)(B) of subsection (b) and shall immediately return a
9 person to the forensic facility if:

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

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

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

16 (2) The Commissioner shall notify the court where the person was
17 committed upon return of the person to the forensic facility. Upon
18 readmission, the court shall hold a hearing at which the State's Attorney shall
19 have the burden of establishing by clear and convincing evidence that the
20 person is not competent. If the court finds that the person is not competent, the
21 court shall order the person readmitted to the forensic facility for competency

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1 ~~restoration treatment pursuant to this section. If the court finds that the person~~
2 ~~is competent, the court shall order the person restored to the status the person~~
3 ~~had when the person was returned to the facility.~~

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

19 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

20 DISMISSAL

21 * * *

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

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

9 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

10 ~~ACQUITTED-NOT GUILTY BY REASON OF INSANITY~~

11 ~~FORØF- CERTAIN CRIMES~~

12 (a) A person who is charged with an offense punishable by a life
13 sentence and is found not guilty only by reason of insanity at the time of the
14 offense charged shall be committed to a forensic facility pursuant to this
15 section.- This section shall not be construed to prohibit the temporary transfer
16 of a person requiring inpatient treatment through an order of hospitalization
17 pursuant to 18 V.S.A. § 7619 or section 4822 of this title. ~~There shall be a~~
18 ~~rebuttable presumption in all hearings under this section that the person is~~
19 ~~suffering from a qualifying condition that, upon the person's release, would~~
20 ~~create a substantial risk of bodily injury to another person.~~

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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 that
3 period is extended by the court.

4 (2) Prior to the date of ~~the any~~ hearing under this section, the court shall
5 order that a forensic 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 (43)(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) of this section.

3 (C) Notwithstanding any other provision of law or rule, if called as a
4 witness, the clinical director or their designee, the psychiatrist or psychologist
5 who wrote the report, or any other witness shall be permitted to provide
6 testimony remotely.

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

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

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

4 (I)- an initial review every six months after the date that the
5 person is initially committed pursuant to subdivision (b)(3)(A) of this section;

6 (II) the third year following the initial order issued under
7 subparagraph (I);

8 (III) ~~or~~every fifth year following an order under subparagraph
9 (II) or this paragraph; or

10 (III) certification at any time to the Commissioner of
11 Corrections by the forensic facility's clinical services director that the person is
12 no longer suffering from a qualifying condition that, upon the person's release,
13 would create a substantial risk of bodily injury to another person.

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

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

1 least 90 days after the issuance of the commitment order and shall not occur
2 more frequently than once during the applicable period set forth in subsection
3 (e)(1)(A)(i). A party moving under this subsection shall have the burden of
4 proof.

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

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

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

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

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

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

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

16 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

1 (ii) is required for the custody, control, correctional treatment, and
2 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
3 4819a(a) of this title.

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

7 (i) incompetent to stand trial; or

8 (ii) not guilty by reason of insanity.

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

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

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

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

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

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

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

12 (6) ensure that a registered nurse licensed pursuant to 26 V.S.A. chapter
13 28 or a physician licensed pursuant to 26 V.S.A. chapter 23 or 33 is available
14 to provide care to transferred persons 24 hours a day, seven days a week; and

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

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

1 submit a written report to the House Committees on Corrections and
2 Institutions, on Human Services, and on Judiciary and to the Senate
3 Committees on Institutions, on Health and Welfare, and on Judiciary
4 addressing:

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

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

9 Sec. 5. RULEMAKING; FORENSIC FACILITY

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

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

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

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 Agency of Human Services, shall
4 submit a written interim report to the House Committees on Corrections and
5 Institutions, on Human Services, and on Judiciary and to the Senate
6 Committees on Institutions, on Health and Welfare, and on Judiciary
7 containing draft rules required pursuant to Sec. 5 of this act. The interim
8 report shall also address:

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

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

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

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

19 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.