

1 TO THE HONORABLE SENATE:

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 bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

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

8 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN
9 FORENSIC FACILITY

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

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

13 (2)(A) has been held without bail pursuant to 13 V.S.A. § 7553; or

14 (B) if the person is not held without bail pursuant to 13 V.S.A.

15 § 7553, the person’s release would create a substantial risk of bodily injury to

16 another person;

17 (3) is not currently receiving treatment through an order of

18 hospitalization pursuant to 18 V.S.A. § 7619 or 13 V.S.A. § 4822; and

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

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

1 (i) every six months; or

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

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

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

13 (B)(i) If a person is committed pursuant to this subdivision (2), the
14 State's Attorney shall petition the committing court for an evaluation of the
15 person upon certification to the Commissioner of Corrections by the clinical
16 services director that the person is likely competent to stand trial.

17 (ii) A person committed pursuant to this subdivision (2) may
18 petition the committing court for release on the grounds that the person is
19 likely competent to stand trial.

1 (D) If the reviewing court finds that person may be found likely
2 competent to stand trial, the court shall immediately notify the State’s Attorney
3 and the person’s counsel in the criminal case.

4 (E) If the court finds by clear and convincing evidence that the
5 person cannot be restored to competency, the court shall deny the petition and
6 order the person committed to the forensic facility for continued treatment
7 pursuant to this subdivision (2). If the court denies a petition filed under this
8 subdivision (2), no further petition shall be brought for at least one year, unless
9 a shorter duration is authorized by the court.

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

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

20 (e) 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 (f)(1) The Commissioner shall immediately return a person to the forensic
4 facility if:

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

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

9 (C) the person’s continued release would create a substantial risk of
10 bodily injury to another person.

11 (2) The Commissioner shall notify the court where the where the person
12 was committed upon return of the person to the forensic facility. Upon
13 readmission, the court shall hold a hearing where the state’s attorney shall have
14 the burden of establishing by a preponderance of the evidence that the person
15 is not competent. If the court finds that the person is not competent, the court
16 shall order the person readmitted to the forensic facility for competency
17 restoration treatment pursuant to this section. If the court finds that the person
18 is competent, the court shall order the person restored to the status the person
19 had when the person was returned to the facility.

20 (g) The Commissioner shall receive prior approval of the Criminal Division
21 of the Superior Court where the person’s underlying criminal charge is pending

1 for any competency restoration plan involving involuntary medication. The
2 court shall not approve involuntary medication unless the court finds that:

3 (1) the involuntary medication is medically appropriate;

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

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

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

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

13 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

14 DISMISSAL

15 * * *

16 (e) When a person has been found incompetent to stand trial for an alleged
17 misdemeanor offense, the charges against the person shall be dismissed with
18 prejudice if, after the finding of incompetence, the case remains inactive for a
19 continuous period of time equal to or greater than the maximum sentence for
20 the offense. Dismissal under this section shall not be required if the court finds
21 that dismissing the case would be contrary to the interest of justice.

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

2 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

3 ACQUITTED OF CERTAIN CRIMES

4 (a) A person who is charged with an offense punishable by a life sentence
5 and is found not guilty only by reason of insanity at the time of the offense
6 charged shall be committed to a forensic facility pursuant to this section. This
7 section shall not be construed to prohibit the temporary transfer of a person
8 requiring inpatient treatment through an order of hospitalization pursuant to 18
9 V.S.A. § 7619 or 13 V.S.A. § 4822.

10 (b)(1) A hearing shall be held by the court where the person was tried
11 within 40 days following admission to the forensic facility, unless that period
12 is extended by the court.

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

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

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

18 (C) the examiner's findings; and

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

1 (3)(A) At the hearing, the court shall order the person committed to the
2 forensic facility, unless the person establishes by clear and convincing
3 evidence that the person is no longer suffering from a qualifying condition that,
4 upon the person’s release, would create a substantial risk of bodily injury to
5 another person.

6 (B) If the court finds that the person has established by clear and
7 convincing evidence that the person is no longer suffering from a qualifying
8 condition that, upon the person’s release, would create a substantial risk of
9 bodily injury to another person, the court shall enter an order releasing the
10 person pursuant to subdivision (e)(2) of this subsection.

11 (c) A placement of a person at the forensic facility shall be for an
12 indeterminate period and shall not have a specified end date. The person shall
13 not be released until the person establishes by clear and convincing evidence
14 the person is no longer suffering from a qualifying condition that, upon the
15 person’s release, would create a substantial risk of bodily injury to another
16 person or serious damage to the property of another person.

17 (d) The Commissioner of Corrections shall provide adequate care and
18 individualized treatment at the forensic facility to persons ordered committed
19 pursuant to this section. In order that the commissioner may adequately
20 determine the nature of the person’s condition and needs, all persons
21 committed pursuant to this section shall be promptly examined by qualified

1 personnel in order to provide a proper evaluation, diagnosis, and treatment
2 plan.

3 (e)(1)(A) The State’s Attorney shall petition the committing court for
4 release of the person upon certification to the Commissioner of Corrections by
5 the clinical services director that the person is no longer suffering from a
6 qualifying condition that, upon the person’s release, would create a substantial
7 risk of bodily injury to another person. The Commissioner of Corrections shall
8 provide all reports required under this section to the State’s Attorney, who
9 shall file them with the petition.

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

16 (2) If the reviewing court finds by **clear and convincing evidence** that
17 person is no longer suffering from a qualifying condition that, upon the
18 person’s release, would create a substantial risk of bodily injury to another
19 person, the court shall:

20 (A) order the release of the person under a prescribed regimen of
21 medical, psychiatric, or psychological care or treatment that the forensic

1 facility's clinical services director has certified as appropriate and that has been
2 found by the court to be appropriate; and

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

6 (3) If the court finds that the person is suffering from a qualifying
7 condition that, upon the person's release, would create a substantial risk of
8 bodily injury to another person, the court shall deny the petition and order the
9 person committed to the forensic facility for continued treatment pursuant to
10 this section. If the court denies a petition filed under this section, no further
11 petition shall be brought for at least one year, unless a shorter duration is
12 authorized by the court.

13 (f) The Commissioner shall actively monitor compliance with orders issued
14 pursuant to subdivision (d)(2) of this section and shall immediately return the
15 person to the forensic facility if the Commissioner determines that the person
16 is noncompliant with the order and that the noncompliance may create a risk of
17 bodily injury to another person. The Commissioner shall notify the court
18 where the where the person was committed upon return of the person to the
19 forensic facility. Upon readmission, the court shall hold a hearing where the
20 state's attorney shall have the burden of establishing by a preponderance of the
21 evidence that the person was noncompliant with the court's order for

1 conditional release and that the noncompliance creates a risk of bodily injury
2 to another person.

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

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

7 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

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

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

19 (1) incompetent to stand trial; or

20 (2) not guilty by reason of insanity under 13 VSA 4813.

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

4 (b) The Commissioner of Corrections shall establish and operate a locked
5 secure forensic facility for the secure evaluation, treatment, and care of persons
6 who have been transferred pursuant to subsections 4815a(a) and 4819a(a) of
7 this title. The forensic facility shall not refuse any persons it is ordered to
8 admit, and it shall not require any clinical or diagnostic prerequisites for
9 admission. All forensic, clinical, and competency restoration services
10 provided at the forensic facility shall be overseen by a clinical services
11 director.

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

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

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

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

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

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

10 Sec. 5. RULEMAKING; FORENSIC FACILITY

11 Pending the adoption of permanent rules pursuant to 3 V.S.A. chapter 25 to
12 implement the provisions of Secs. 1–4 of this act, the Commissioner of
13 Corrections shall adopt emergency rules pursuant to 3 V.S.A. § 844 not later
14 than January 1, 2027, which shall be deemed to meet the emergency
15 rulemaking standard in 3 V.S.A. § 844(a).

16 Sec. 6. Rule 1101 of the Vermont Rules of Evidence is amended to read:

17 RULE 1101. APPLICABILITY OF RULES

18 (a) Rules applicable. Except as otherwise provided in subdivision (b),
19 these rules apply to all actions and proceedings in the courts of this state.

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

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(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.

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Sec. 7. EFFECTIVE DATE

This act shall take effect on July 1, 2026.

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE