

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 court shall order continued commitment of the person, taking into account the

13 least restrictive conditions applicable, unless subdivision (B) applies.

14                   (B)(i) If the court finds that the release of a person who cannot be

15 restored to competency would not would not create a substantial risk of bodily

16 injury to another person, the court shall:

17                   (I) order the release of the person under a prescribed regimen

18 of medical, psychiatric, or psychological care or treatment that the forensic

19 facility's clinical services director has certified as appropriate and that has been

20 found by the court to be appropriate; and

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

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

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

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

19                   (f)(1) The Commissioner shall actively monitor compliance with orders  
20                   issued pursuant to subdivision (2)(B)(i) of this subsection and shall  
21                   immediately return a person to the forensic facility if:

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

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

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

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

17          (g) The Commissioner shall receive prior approval of the Criminal Division  
18          of the Superior Court where the person’s underlying criminal charge is pending  
19          for any competency restoration plan involving involuntary medication. The  
20          court shall not approve involuntary medication unless the court finds that:

21               (1) the involuntary medication is medically appropriate;



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 if the person state’s attorney establishes by clear and  
3           convincing evidence that the person is no longer suffering from a qualifying  
4           condition that, upon the person’s release, would create a substantial risk of  
5           bodily injury to another person.

6           (B) If the court finds that the person state’s attorney has not  
7           established by clear and convincing evidence that the person is no longer  
8           suffering from a qualifying condition that, upon the person’s release, would  
9           create a substantial risk of bodily injury to another person, the court shall enter  
10           an order releasing the 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 court finds pursuant to subsection (e) of this section that the person is no  
15           longer suffering from a qualifying condition that, upon the person’s release,  
16           would create a substantial risk of bodily injury to another person or serious  
17           damage to the property of another person.

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

1 committed pursuant to this section shall be promptly examined by qualified  
2 personnel in order to provide a proper evaluation, diagnosis, and treatment  
3 plan.

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

11 (B) A person committed pursuant to subdivision (b)(3)(A) of this  
12 section may petition the committing court for release on the grounds that the  
13 person is no longer suffering from a qualifying condition that, upon the  
14 person’s release, would create a substantial risk of bodily injury to another  
15 person. A petition shall not be filed pursuant to this subdivision until at least  
16 90 days after the issuance of the commitment order.

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

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

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

1 state’s attorney shall have the burden of establishing by a preponderance of the  
2 evidence that the person was noncompliant with the court’s order for  
3 conditional release and that the noncompliance creates a risk of bodily injury  
4 to another person.

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

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

9 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

15 (ii) is required for the custody, control, correctional treatment, and  
16 rehabilitation of persons transferred pursuant to subsections 4815a(a) and  
17 4819a(a) of this title.

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

21 (1) incompetent to stand trial; or

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

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

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

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

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

18           (2) the person's health care providers may, with the person's  
19 permission, view forensic facility records of the person's psychiatric  
20 assessments at the facility, including assessment's of the person's competency  
21 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