

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 section 7553 of this title;

14 or

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

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

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

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

3 (i) every six months; or

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (g) The Commissioner shall receive prior approval of the Criminal Division
20 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
18 without prejudice if, after the finding of incompetence, the case remains
19 inactive for a continuous period of time equal to or greater than the maximum
20 sentence for the offense. Dismissal under this section shall not be required if

1 the court finds that dismissing the case would be contrary to the interest of
2 justice.

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

4 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

5 ACQUITTED OF CERTAIN CRIMES

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

12 (b)(1) A hearing shall be held by the court where the person was tried
13 within 40 days 48 hours following admission to the forensic facility, unless
14 that period is extended by the court.

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

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

18 (B) a description of any tests that were employed and the results of
19 the tests;

20 (C) the examiner's findings; and

1 (D) the examiner’s opinion as to whether the person’s release would
2 create a substantial risk of bodily injury to another person.

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

8 (B) If the court finds that the State’s Attorney has not established by
9 clear and convincing evidence that the person is suffering from a qualifying
10 condition that, upon the person’s release, would create a substantial risk of
11 bodily injury to another person, the court shall enter an order releasing the
12 person pursuant to subdivision (e)(2) of this section.

13 (c) ~~A placement of a person at the forensic facility shall be for an~~
14 ~~indeterminate period and shall not have a specified end date. The A person~~
15 committed to the forensic facility pursuant to this section shall not be released
16 until the court finds pursuant to subsection (e) of this section that the person is
17 no longer suffering from a qualifying condition that, upon the person’s release,
18 would create a substantial risk of bodily injury to another person or serious
19 damage to the property of another person.

20 (d) The Commissioner of Corrections shall, ~~taking into account the least~~
21 restrictive conditions applicable, provide adequate care and individualized

1 treatment at the forensic facility to persons ordered committed pursuant to this
2 section. In order that the commissioner may adequately determine the nature
3 of the person’s condition and needs, all persons committed pursuant to this
4 section shall be promptly examined by qualified personnel in order to provide
5 a proper evaluation, diagnosis, and treatment plan.

6 (e)(1)(A) The State’s Attorney shall petition the committing court for
7 release evaluation of the person upon not less often than the shorter of either:

8 (I) every six months after the date that the person is committed
9 pursuant to subdivision (b)(3)(A) of this section; or

10 (II) certification to the Commissioner of Corrections by the
11 clinical services director that the person is no longer suffering from a
12 qualifying condition that, upon the person’s release, would create a substantial
13 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

1 person. A petition shall not be filed pursuant to this subdivision (B) until at
2 least 90 days after the issuance of the commitment order.

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

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

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

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

1 (f) The Commissioner shall actively monitor compliance with orders issued
2 pursuant to subdivision (d)(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 where 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 under section 4813 of this title.

9 (2) The evaluations required by this chapter may be conducted pursuant
10 to contracts entered into between the Commissioner of General Services and
11 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 persons
14 who have been transferred pursuant to subsections 4815a(a) and 4819a(a) of
15 this title. The forensic facility shall not refuse any persons it is ordered to
16 admit, and it shall not require any clinical or diagnostic prerequisites for
17 admission. All forensic, clinical, and competency restoration services
18 provided at the forensic facility shall be overseen by a clinical services
19 director.

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

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

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

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

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

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

19 Sec. 5. RULEMAKING; FORENSIC FACILITY

20 Pending the adoption of permanent rules pursuant to 3 V.S.A. chapter 25 to
21 implement the provisions of Secs. 1–4 of this act, the Commissioner of

1 Corrections shall adopt emergency rules pursuant to 3 V.S.A. § 844 on or
2 before January 1, 2027, which shall be deemed to meet the emergency
3 rulemaking standard in 3 V.S.A. § 844(a).

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

5 RULE 1101. APPLICABILITY OF RULES

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

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

10 * * *

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

18 * * *

19 Sec. 7. EFFECTIVE DATE

20 This act shall take effect on July 1, 2026.

21

1 (Committee vote: _____)

2

3

Senator _____

4

FOR THE COMMITTEE