

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

14 (3) is not currently receiving treatment through an order of
15 hospitalization pursuant to 18 V.S.A. § 7619 or 13 V.S.A. § 4822; and

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

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

19 (i) every six months; or

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

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

3 (2) At the request of a party the court may order that a second or
4 subsequent evaluation include a forensic risk assessment of the person that
5 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 (A) At the request of a party the court may order that a second or
13 subsequent evaluation include an opinion on whether the person’s competency
14 can be restored. If the court finds that the person may be found likely
15 competent to stand trial, the court shall immediately notify the State’s Attorney
16 and the person’s counsel in the criminal case. If the court finds by clear and
17 convincing evidence that the person cannot be restored to competency, the
18 person shall be subject to commitment pursuant to this subdivision (2).

19 (B)(i) If a person is committed pursuant to this subdivision (2), the
20 State’s Attorney shall petition the committing court for an evaluation of the

1 person upon certification to the Commissioner of Corrections by the clinical
2 services director that the person is likely competent to stand trial.

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

6 (D) If the reviewing court finds that person may be found likely
7 competent to stand trial, the court shall immediately notify the State's Attorney
8 and the person's counsel in the criminal case.

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

15 (c) The person shall remain at the forensic facility until the person is
16 restored to competency or until there is a final disposition of the charges
17 against the person ~~have been dismissed~~.

18 (d) The person shall receive competency restoration services while at the
19 forensic facility according to a plan approved by the forensic facility's clinical
20 services director. Such services shall include any appropriate combination of
21 medication, education, accommodations, habilitation, or other services

1 identified as necessary or proper to achieve and maintain competency to stand
2 trial. The person’s refusal to receive competency restoration services shall not
3 be grounds for release or dismissal from the forensic facility.

4 (e) Competency restoration services shall be provided to the person at the
5 forensic facility, or at another location as part of a discharge plan, until the
6 person is restored to competency or until there is a final disposition of the
7 charges against the person have been dismissed.

8 (f) The Commissioner shall receive prior approval of the Criminal Division
9 of the Superior Court where the person’s underlying criminal charge is pending
10 for any competency restoration plan involving involuntary medication. The
11 court shall not approve involuntary medication unless the court finds that:

12 (1) the involuntary medication is medically appropriate;

13 (2) substantially unlikely to have side effects that may undermine the
14 fairness of the trial, and, taking account of less intrusive alternatives, is
15 necessary significantly to further important governmental trial-related interests
16 the involuntary medication serves the important governmental interests of
17 bringing to trial an individual accused of a serious crime and ensuring a fair,
18 timely prosecution;

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

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

4 (2) Prior to the date of the hearing, the court shall order that a forensic
5 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)(A) At the hearing, the court shall order the person committed to the
13 forensic facility, unless the person establishes by clear and convincing
14 evidence that the person is no longer suffering from a mental disease or defect
15 qualifying condition that, upon the person’s release, would create a substantial
16 risk of bodily injury to another person.

17 (B) If the court finds that the person has established by clear and
18 convincing evidence that the person is no longer suffering from a mental
19 disease or defect qualifying condition that, upon the person’s release, would
20 create a substantial risk of bodily injury to another person, the court shall enter
21 an order releasing the person pursuant to subdivision (e)(2) of this subsection.

1 (c) A placement of a person at the forensic facility shall be for an
2 indeterminate period and shall not have a specified end date. The person shall
3 not be released until the person establishes by clear and convincing evidence
4 the person is no longer suffering from a mental disease or defect qualifying
5 condition that, upon the person’s release, would create a substantial risk of
6 bodily injury to another person or serious damage to the property of another
7 person.

8 (d) The Commissioner of Corrections shall provide adequate care and
9 individualized treatment at the forensic facility to persons ordered committed
10 pursuant to this section. In order that the commissioner may adequately
11 determine the nature of the person’s condition and needs, all persons
12 committed pursuant to this section shall be promptly examined by qualified
13 personnel in order to provide a proper evaluation, diagnosis, and treatment
14 plan.

15 (e)(1)(A) The Commissioner of Corrections State’s Attorney shall petition
16 the committing court for release of the person upon certification to the
17 Commissioner of Corrections by the clinical services director that the person is
18 no longer suffering from a mental disease or defect qualifying condition that,
19 upon the person’s release, would create a substantial risk of bodily injury to
20 another person. The Commissioner of Corrections shall provide all reports

1 required under this section to the State’s Attorney, who shall file them with the
2 petition.

3 (B) A person committed pursuant to subdivision (b)(3)(A) of this
4 section may petition the committing court for release on the grounds that the
5 person is no longer suffering from a ~~mental disease or defect~~ qualifying
6 condition that, upon the person’s release, would create a substantial risk of
7 bodily injury to another person. A petition shall not be filed pursuant to this
8 subdivision until at least 90 days after the issuance of the commitment order.

9 (2) If the reviewing court finds by ~~clear and convincing evidence~~ that
10 person is no longer suffering from a ~~mental disease or defect~~ qualifying
11 condition that, upon the person’s release, would create a substantial risk of
12 bodily injury to another person, the court shall:

13 (A) order the release of the person under a prescribed regimen of
14 medical, psychiatric, or psychological care or treatment that the forensic
15 facility’s clinical services director has certified as appropriate and that has been
16 found by the court to be appropriate; and

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

20 (3) If the court finds that the person is suffering from a ~~mental disease or~~
21 defect qualifying condition that, upon the person’s release, would create a

1 substantial risk of bodily injury to another person, the court shall deny the
2 petition and order the person committed to the forensic facility for continued
3 treatment pursuant to this section. If the court denies a petition filed under this
4 section, no further petition shall be brought for at least one year, unless a
5 shorter duration is authorized by the court.

6 (f) The Commissioner shall actively monitor compliance with orders issued
7 pursuant to subdivision (d)(2) of this section and shall immediately return the
8 person to the forensic facility if the Commissioner determines that the person
9 is noncompliant with the order and that the noncompliance may create a risk of
10 bodily injury to another person. The Commissioner shall notify the court
11 where the where the person was committed upon return of the person to the
12 forensic facility. Upon readmission, the court shall hold a hearing where the
13 state’s attorney shall have the burden of establishing by a preponderance of the
14 evidence that the person was noncompliant with the court’s order for
15 conditional release and that the noncompliance creates a risk of bodily injury
16 to another person.

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

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

21 § 4826. FORENSIC FACILITY; DEFINITIONS

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

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

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

6 (ii) is required for the custody, control, correctional treatment, and
7 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
8 4819a(a) of this title.

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

12 (1) incompetent to stand trial; or

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

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

17 (b) The Commissioner of Corrections shall establish and operate a locked
18 secure forensic facility for the secure evaluation, treatment, and care of persons
19 who have been transferred pursuant to subsections 4815a(a) and 4819a(a) of
20 this title. The forensic facility shall not refuse any persons it is ordered to
21 admit, and it shall not require any clinical or diagnostic prerequisites for

1 admission. All forensic, clinical, and competency restoration services
2 provided at the forensic facility shall be overseen by a clinical services
3 director.

4 (b) Any records related to a person placed at the forensic facility shall be
5 exempt from public inspection and copying under the Public Records Act and
6 shall be kept confidential, except that records shall be made available to the
7 parties in the underlying criminal case upon request.

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

12 (d) The Commissioner of Corrections shall consult with the Commissioner
13 of Mental Health when performing the duties required by this chapter for
14 operating the forensic facility.

15 (e) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
16 implement this section.

17 Sec. 5. RULEMAKING; FORENSIC FACILITY

18 Pending the adoption of permanent rules pursuant to 3 V.S.A. chapter 25 to
19 implement the provisions of Secs. 1–4 of this act, the Commissioner of
20 Corrections shall adopt emergency rules pursuant to 3 V.S.A. § 844 not later

1 than January 1, 2027, which shall be deemed to meet the emergency
2 rulemaking standard in 3 V.S.A. § 844(a).

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

4 RULE 1101. APPLICABILITY OF RULES

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

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

9 * * *

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

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21 Sec. 7. EFFECTIVE DATE

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

2

3 (Committee vote: _____)

4

5

Senator _____

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FOR THE COMMITTEE