

1 S.193

2 Introduced by Senator Lyons

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedure; public safety; mental health; forensic facility;
6 competency restoration

7 Statement of purpose of bill as introduced: This bill proposes to establish a
8 forensic facility for certain criminal justice-involved persons; to require the
9 court, unless contrary to the interests of justice, to dismiss misdemeanor
10 charges against a person who has been found incompetent to stand trial if, after
11 the finding of incompetence, the case remains inactive for a continuous period
12 of time equal to or greater than the maximum sentence for the offense; and to
13 limit the applicability of the Vermont Rules of Evidence in proceedings
14 involving competency restoration and granting or revoking conditional release
15 from a forensic facility.

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

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

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

3 § 4815a. COMPETENCY RESTORATION SERVICES WITHIN
4 FORENSIC FACILITY

5 (a) A person shall be transferred to the forensic facility established in
6 section 4826 of this title if the person has been charged with an offense
7 punishable by a life sentence, the person is not deemed a “person in need of
8 treatment” pursuant to 18 V.S.A. § 7101, and the person has been found not
9 competent to stand trial.

10 (b) Upon admission, the forensic facility shall cause the person to be
11 evaluated for competency to stand trial not less often than the shorter of either
12 every six months or upon the determination by the forensic facility’s clinical
13 services director that the person is likely competent to stand trial. The results
14 of all evaluations shall be supplied to the court and the parties to the
15 underlying criminal action.

16 (c) A person shall remain at the forensic facility until the person receives a
17 verdict in the person’s underlying criminal case or until the charges against the
18 person have been dismissed.

19 (d) The person shall receive competency restoration services while at the
20 forensic facility according to a plan approved by the forensic facility’s clinical
21 services director. Such services may include any appropriate combination of

1 medication, education, accommodations, habilitation, or other services
2 identified as necessary or proper to achieve and maintain competency to stand
3 trial. The person's refusal to receive competency restoration services shall not
4 be grounds for release or dismissal from the forensic facility.

5 (e) Competency restoration services shall be maintained until the person
6 receives a verdict in the person's underlying criminal case.

7 (f) The Commissioner shall receive prior approval of the Criminal Division
8 of the Superior Court where the person's underlying criminal charge is pending
9 for any competency restoration plan involving involuntary medication. The
10 court shall not approve involuntary medication unless the court finds that the
11 involuntary medication is clinically appropriate and is likely to aid in the
12 restoration of the person's competency to stand trial.

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

14 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

15 DISMISSAL

16 * * *

17 (e) When a person has been found incompetent to stand trial for an alleged
18 misdemeanor offense, the charges against the person shall be dismissed with
19 prejudice if, after the finding of incompetence, the case remains inactive for a
20 continuous period of time equal to or greater than the maximum sentence for

1 the offense. Dismissal under this section shall not be required if the court finds
2 that dismissing the case would be contrary to the interest of 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 shall be transferred to the forensic facility established in
7 section 4826 of this title if the person has been acquitted of an offense
8 punishable by a life sentence pursuant to section 4819 of this chapter and the
9 person is not deemed a “person in need of treatment” pursuant to 18 V.S.A.
10 § 7101.

11 (b)(1) A hearing shall be held by the Criminal Division of the Superior
12 Court within 40 days following admission to the forensic facility, unless that
13 period is extended by the court.

14 (2) At the hearing, the court shall order the person committed to the
15 forensic facility, unless the person establishes by clear and convincing
16 evidence that the person is no longer suffering from a mental disease or defect,
17 that upon the person’s release, would create a substantial risk of bodily injury
18 to another person or serious damage to the property of another person. If the
19 court finds that the person has established the person’s burden under this
20 subdivision, the court may enter an order consistent with subdivision (d)(2) of
21 this section.

1 (3) Prior to the date of the hearing, the court shall order that a
2 psychiatric or psychological examination of the person be conducted and that a
3 psychiatric or psychological report be filed with the court addressing the
4 person's history and present symptoms; a description of the psychiatric,
5 psychological, and medical tests that were employed and their results; the
6 examiner's findings; and the examiner's opinions as to diagnosis, prognosis;
7 and whether the person is suffering from a mental disease or defect that, upon
8 the person's release, would create a substantial risk of bodily injury to another
9 person or serious damage to the property of another person.

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

16 (d)(1) The Commissioner of Corrections shall petition the unit of the
17 Criminal Division of the Superior Court in which the acquittal was returned
18 not less frequently than the shorter of every five years or upon certification by
19 the clinical services director that the person is no longer suffering from a
20 mental disease or defect that, upon the person's release, would create a

1 substantial risk of bodily injury to another person or serious damage to the
2 property of another person.

3 (2) If the reviewing court finds by clear and convincing evidence that
4 person is no longer suffering from a mental disease or defect that, upon the
5 person's release, would create a substantial risk of bodily injury to another
6 person or serious damage to the property of another 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 (e) The Commissioner of Corrections shall actively monitor compliance
15 with orders issued under subdivision (d)(2) of this section and shall
16 immediately return the person to the forensic facility if the Commissioner or
17 the Commissioner's designees determine that the person is noncompliant with
18 the order and that the noncompliance may create a risk of bodily injury to
19 another person or serious damage to the property of another. The
20 Commissioner shall notify the Criminal Division of the Superior Court in the
21 county where the person was acquitted upon return of the person to the

1 forensic facility. Upon readmission, the court shall hold a hearing where the
2 Commissioner shall have the burden of establishing by a preponderance of the
3 evidence that the person was noncompliant with the court's order for
4 conditional release and that the noncompliance creates a risk of bodily injury
5 to another person or serious damage to the property of another.

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

7 **§ 4826. FORENSIC FACILITY**

8 (a) The Commissioner of Corrections shall establish and operate a locked
9 secure forensic facility for the assessment and safe housing of persons who are
10 subject to any stage of proceedings under this chapter or who have been
11 acquitted pursuant to section 4819 of this chapter. The forensic facility shall
12 not refuse any persons it is ordered to admit, nor shall it require any clinical or
13 diagnostic prerequisites for admission. All forensic, clinical, and competency
14 restoration services provided at the forensic facility shall be overseen by a
15 clinical services director.

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

20 (c) Persons shall be admitted to and maintained at the forensic facility
21 pursuant to sections 4815a and 4819a of this title.

1 (d) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
2 implement this section.

Sec. 5. RULEMAKING; FORENSIC FACILITY

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

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

RULE 1101. APPLICABILITY OF RULES

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

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

15 * * *

(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

1 for arrests without warrant and issuance of citations, warrants for arrest,
2 criminal summonses, and search warrants.

3 * * *

4 Sec. 7. EFFECTIVE DATE

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