

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 currently receiving inpatient
8 treatment through an order of hospitalization ~~deemed a “person in need of~~
9 ~~treatment” pursuant to 18 V.S.A. § 7101~~, and the person has been found not
10 competent to stand trial.

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11 (b) Upon admission, the forensic facility shall cause the person to be
12 evaluated for competency to stand trial not less often than the shorter of either
13 every six months or upon the determination by the forensic facility’s clinical
14 services director that the person is likely competent to stand trial. The results
15 of all evaluations shall be supplied to the court and the parties to the
16 underlying criminal action. At the request of a party the court may order that a
17 second or subsequent evaluation include a forensic risk assessment of the
18 defendant addressing the person's history and present dangerousness; a
19 description of any tests that were employed and their results; the examiner's
20 findings; and the examiner's opinions as to whether the person’s release would
21 create a substantial risk of bodily injury to another person.

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1 (c) A person shall remain at the forensic facility until either the person is
2 restored to competency. receives a verdict in the person's underlying criminal
3 case, or until the charges against the person have been dismissed.

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

11 (e) Competency restoration services shall may be maintained until the
12 person receives a verdict in the person's underlying criminal case either at the
13 forensic facility or elsewhere as part of a discharge plan.

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

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

21 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

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

4 (2) At the hearing, the court shall order the person committed to the
5 forensic facility, unless the person establishes by clear and convincing
6 evidence that the person is no longer suffering from a mental disease or defect,
7 that upon the person's release, would create a substantial risk of bodily injury
8 to another person or serious damage to the property of another person. If the
9 court finds that the person has established the person's burden under this
10 subdivision, the court may enter an order consistent with subdivision (d)(2) of
11 this section.

12 (3) Prior to the date of the hearing, the court shall order that a forensic
13 risk assessment of the defendant be conducted, and that a report be filed with
14 the court addressing the person's history and present dangerousness; a
15 description of any tests that were employed and their results; the examiner's
16 findings; and the examiner's opinions as to whether the person's release would
17 create a substantial risk of bodily injury to another person .~~psychiatric or~~
18 ~~psychological examination of the person be conducted and that a psychiatric or~~
19 ~~psychological report be filed with the court addressing the person's history and~~
20 ~~present symptoms; a description of the psychiatric, psychological, and medical~~
21 ~~tests that were employed and their results; the examiner's findings; and the~~

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1 ~~examiner's opinions as to diagnosis, prognosis; and whether the person is~~
2 ~~suffering from a mental disease or defect that, upon the person's release, would~~
3 ~~create a substantial risk of bodily injury to another person or serious damage to~~
4 ~~the property of another person.~~

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

11 (d)(1) The Commissioner of Corrections shall petition the unit of the
12 Criminal Division of the Superior Court in which the acquittal was returned
13 not less frequently than the shorter of every five years or upon certification by
14 the clinical services director that the person is no longer suffering from a
15 mental disease or defect that, upon the person's release, would create a
16 substantial risk of bodily injury to another person or serious damage to the
17 property of another person.

18 (2) If the reviewing court finds by clear and convincing evidence that
19 person is no longer suffering from a mental disease or defect that, upon the
20 person's release, would create a substantial risk of bodily injury to another
21 person or serious damage to the property of another 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 (e) The Commissioner of Corrections shall actively monitor compliance
9 with orders issued under subdivision (d)(2) of this section and shall
10 immediately return the person to the forensic facility if the Commissioner or
11 the Commissioner's designees determine that the person is noncompliant with
12 the order and that the noncompliance may create a risk of bodily injury to
13 another person or serious damage to the property of another. The
14 Commissioner shall notify the Criminal Division of the Superior Court in the
15 county where the person was acquitted upon return of the person to the
16 forensic facility. Upon readmission, the court shall hold a hearing where the
17 Commissioner State's Attorney shall have the burden of establishing by a
18 preponderance of the evidence that the person was noncompliant with the
19 court's order for conditional release and that the noncompliance creates a risk
20 of bodily injury to another person or serious damage to the property of another.

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

2 § 4826. FORENSIC FACILITY

3 (a) the term forensic facility as used in this chapter shall mean a locked
4 facility or placement required for the custody, control, correctional treatment,
5 and rehabilitation of committed persons, wherein the Department of
6 Corrections may provide for the secure -evaluation, treatment, and care of
7 individuals involved in the legal system who do not require a hospitalization
8 level of care.

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

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

1 revoking conditional release from a forensic facility; finding probable cause
2 for arrests without warrant and issuance of citations, warrants for arrest,
3 criminal summonses, and search warrants.

4 * * *

5 Sec. 7. EFFECTIVE DATE

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