

1

S.193

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Introduced by Senator Lyons

3

Referred to Committee on

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Date:

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Subject: Criminal procedure; public safety; mental health; forensic facility;

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competency restoration

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Statement of purpose of bill as introduced: This bill proposes to establish a

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forensic facility for certain criminal justice-involved persons; to require the

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court, unless contrary to the interests of justice, to dismiss misdemeanor

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charges against a person who has been found incompetent to stand trial if, after

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the finding of incompetence, the case remains inactive for a continuous period

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of time equal to or greater than the maximum sentence for the offense; and to

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limit the applicability of the Vermont Rules of Evidence in proceedings

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involving competency restoration and granting or revoking conditional release

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from a forensic facility.

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An act relating to establishing a forensic facility for certain criminal justice-

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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.

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

20 (d) The person shall receive competency restoration services while at the
21 forensic facility according to a plan approved by the forensic facility’s clinical

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

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

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 the
12 involuntary medication is clinically appropriate and is likely to aid in the
13 restoration of the person's competency to stand trial.

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

15 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

16 DISMISSAL

17 * * *

18 (e) When a person has been found incompetent to stand trial for an alleged
19 misdemeanor offense, the charges against the person shall be dismissed with
20 prejudice if, after the finding of incompetence, the case remains inactive for a
21 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) If a person who was charged with an offense punishable by a life
7 sentence is found not guilty only by reason of insanity at the time of the
8 offense charged, he shall be committed to a forensic facility until such time as
9 he is eligible for release pursuant to subsection (c) of this section. A person
10 shall be transferred to the forensic facility established in section 4826 of this
11 title if the person has been acquitted of an offense punishable by a life sentence
12 pursuant to section 4819 of this chapter and the person is not deemed a “person
13 in need of treatment” pursuant to 18 V.S.A. § 7101. Nothing in this section
14 shall prohibit the temporary transfer of a person requiring inpatient treatment
15 through an order of hospitalization while receiving hospital level of care.

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

19 (2) At the hearing, the court shall order the person committed to the
20 forensic facility, unless the person establishes by clear and convincing
21 evidence that the person is no longer suffering from a mental disease or defect.

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1 that upon the person's release, would create a substantial risk of bodily injury
2 to another person or serious damage to the property of another person. If the
3 court finds that the person has established the person's burden under this
4 subdivision, the court may enter an order consistent with subdivision (d)(2) of
5 this section.

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

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

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

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

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

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

19 (e) The Commissioner of Corrections shall actively monitor compliance
20 with orders issued under subdivision (d)(2) of this section and shall
21 immediately return the person to the forensic facility if the Commissioner or

1 the Commissioner's designees determine that the person is noncompliant with
2 the order and that the noncompliance may create a risk of bodily injury to
3 another person or serious damage to the property of another. The
4 Commissioner shall notify the Criminal Division of the Superior Court in the
5 county where the person was acquitted upon return of the person to the
6 forensic facility. Upon readmission, the court shall hold a hearing where the
7 Commissioner State's Attorney shall have the burden of establishing by a
8 preponderance of the evidence that the person was noncompliant with the
9 court's order for conditional release and that the noncompliance creates a risk
10 of bodily injury to another person or serious damage to the property of another.

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

12 § 4826. FORENSIC FACILITY

13 (a) the term forensic facility as used in this chapter shall mean a locked
14 physical facility or physical placement allowing for the secure -evaluation,
15 treatment, and care of individuals involved in the legal system who do not
16 require a hospitalization level of care.

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17 (b) The Commissioner of Corrections shall establish and operate a locked
18 secure forensic facility for the assessment and safe housing of persons who are
19 subject to any stage of proceedings under this chapter or who have been
20 acquitted pursuant to section 4819 of this chapter. The forensic facility shall
21 not refuse any persons it is ordered to admit, nor shall it require any clinical or

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

4 (bc) 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 (ed) Persons shall be admitted to and maintained at the forensic facility
9 pursuant to sections 4815a and 4819a of this title.

10 (de) The Commissioner shall adopt rules pursuant to 3 V.S.A. chapter 25 to
11 implement this section.

12 Sec. 5. RULEMAKING; FORENSIC FACILITY

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

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

19 RULE 1101. APPLICABILITY OF RULES

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

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

3 * * *

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

11 * * *

12 Sec. 7. EFFECTIVE DATE

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