

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) is not deemed a “person in need of treatment” pursuant to 18 V.S.A.
14 § 7101 currently receiving treatment through an order of hospitalization
15 pursuant to 18 V.S.A. § 7619 or 13 V.S.A. § 4822; and

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

17 (b)(1) 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 every six months or upon the determination by the forensic facility’s clinical
20 services director that the person is likely competent to stand trial. The results

1 of all evaluations shall be supplied to the court and the parties to the
2 underlying criminal action.

3 (2) At the request of a party the court may order that a second or
4 subsequent evaluation include an opinion on whether the person's competency
5 can be restored. If the court finds by clear and convincing evidence that the
6 person cannot be restored to competency, the person shall be subject to
7 commitment pursuant to 4819a and all procedures therein shall apply. At the
8 request of a party the court may order that a second or subsequent evaluation
9 include a forensic risk assessment of the person that includes:

10 (A) the person's history and present dangerousness

11 (B) a description of any tests that were employed and the results of
12 the tests;

13 (C) the examiner's findings; and

14 (D) the examiner's opinion as to whether the person's release would
15 create a substantial risk of bodily injury to another person

16 (c) The person shall remain at the forensic facility until the person receives
17 a verdict in the person's underlying criminal case is restored to competency or
18 until there is a final disposition of the charges against the person have been
19 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~~ shall include any appropriate
2 combination of medication, education, accommodations, habilitation, or other
3 services identified as necessary or proper to achieve and maintain competency
4 to stand trial. The person’s refusal to receive competency restoration services
5 shall not be grounds for release or dismissal from the forensic facility.

6 (e) Competency restoration services shall be ~~maintained~~ provided to the
7 person at the forensic facility, or at another location as part of a discharge plan,
8 until the person ~~receives a verdict in the person’s underlying criminal case is~~
9 restored to competency or until ~~there is a final disposition~~ of the charges
10 against the ~~person have been dismissed and the Court finds that the individual~~
11 is unlikely to remain competent outside of the facility.

12 (f) The ~~State’s Attorney shall, at the request of the Commissioner or their~~
13 designee shall move for prior approval of the Criminal Division of the Superior
14 Court where the person’s underlying criminal charge is pending for any
15 competency restoration plan involving involuntary medication. The court shall
16 not approve involuntary medication unless the court finds that the involuntary
17 medication ~~is sought in a case that is a serious felony, is clinically appropriate~~
18 and is likely to aid in the restoration of the person’s competency to stand trial
19 medically appropriate, likely to render the defendant competent, and is
20 necessary to bring the defendant to trial, is substantially unlikely to have side
21 effects that may undermine the fairness of the trial, and, taking account of less

1 ~~intrusive alternatives, is necessary significantly to further important~~
2 ~~governmental trial-related interests.~~

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

4 § 4817. COMPETENCY TO STAND TRIAL; DETERMINATION;

5 DISMISSAL

6 * * *

7 (e) When a person has been found incompetent to stand trial for an alleged
8 misdemeanor offense, the charges against the person shall be dismissed with
9 prejudice if, after the finding of incompetence, the case remains inactive for a
10 continuous period of time equal to or greater than the maximum sentence for
11 the offense. Dismissal under this section shall not be required if the court finds
12 that dismissing the case would be contrary to the interest of justice.

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

14 § 4819a. FORENSIC FACILITY PLACEMENT FOR PERSONS

15 ACQUITTED OF CERTAIN CRIMES

16 (a) A person shall be transferred to the forensic facility established in
17 section 4826 of this title if the person has been acquitted of an offense
18 punishable by a life sentence pursuant to section 4819 of this chapter and the
19 person is not deemed a “person in need of treatment” pursuant to 18 V.S.A.
20 § 7101. A person who is charged with an offense punishable by a life sentence
21 and is found not guilty only by reason of insanity at the time of the offense

1 charged shall be committed to a forensic facility pursuant to this section. This
2 section shall not be construed to prohibit the temporary transfer of a person
3 requiring inpatient treatment through an order of hospitalization pursuant to 18
4 V.S.A. § 7619 or 13 V.S.A. § 4822.

5 (b)(1) A hearing shall be held by the Criminal Division of the Superior
6 Court court where the person was tried within 40 days following admission to
7 the forensic facility, unless that period is extended by the court.

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

18 (A) the person's history and present dangerousness

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

21 (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, unless the person establishes by clear and convincing
5 evidence that the person is no longer suffering from a qualifying condition
6 mental disease or defect that, upon the person's release, would create a
7 substantial risk of bodily injury to another person or serious damage to the
8 property of another person.

9 (B) If the court finds that the person has established the person's
10 burden under this subdivision, the court may enter an order consistent with
11 subdivision (d)(2) of this section by clear and convincing evidence that the
12 person is no longer suffering from a qualifying condition mental disease or
13 defect that, upon the person's release, would create a substantial risk of bodily
14 injury to another person, the court shall enter an order releasing the person
15 pursuant to subdivision (e)(2) of this subsection.

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

1 (d) The Commissioner of Corrections shall provide adequate care and
2 individualized treatment at the forensic facility to persons ordered committed
3 pursuant to this section. In order that the commissioner may adequately
4 determine the nature of the person's condition and needs, all persons
5 committed pursuant to this section shall be promptly examined by qualified
6 personnel in order to provide a proper evaluation, diagnosis, and treatment
7 plan.

8 (e)(1)(A) The Commissioner of Corrections shall provide all reports
9 required under this section to the State's attorney who shall file them with
10 petition the unit of the Criminal Division of the Superior Court in which the
11 acquittal was returned not less frequently than the shorter of every five years
12 or the committing court for review release of the person upon certification by
13 the clinical services director that the person is no longer suffering from a
14 qualifying condition mental disease or defect that, upon the person's release,
15 would create a substantial risk of bodily injury to another person or serious
16 damage to the property of another person.

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 mental disease or
20 defect that, upon the person's release, would create a substantial risk of bodily

1 injury to another person. A petition shall not be filed pursuant to this
2 subdivision until at 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 mental disease or
5 defect that, upon the person’s release, would create a substantial risk of bodily
6 injury to another person or serious damage to the property of another person,
7 the court shall:

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

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

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

6 The Commissioner shall notify the ~~Criminal Division of the Superior Court in~~
7 ~~the county~~ court where the where the person was ~~acquitted~~ ~~committed~~ upon
8 return of the person to the forensic facility. Upon readmission, the court shall
9 hold a hearing where the ~~Commissioner state's attorney~~ shall have the burden
10 of establishing by a preponderance of the evidence that the person was
11 noncompliant with the court's order for conditional release and that the
12 noncompliance creates a risk of bodily injury to another person ~~or serious~~
13 ~~damage to the property of another.~~

14 (g) At any hearing under this section the victim may express views concerning
15 the offense and preferences for the person's placement and care, and the court
16 may consider the victim's testimony.

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

18 § 4826. FORENSIC FACILITY

19 (a) As used in this chapter "qualifying condition" means any condition
20 whether mental, congenital, traumatic, however acquired or developed or any

1 other circumstance effecting the person’s ability to stand trial or sanity at the
2 time of an offense.

3 (b)(1) As used in this chapter “forensic facility” means a locked facility or
4 placement that:

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

8 (B) is required for the custody, control, correctional treatment, and
9 rehabilitation of persons transferred pursuant to subsections 4815a(a) and
10 4819a(a) of this title.

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

14 (c) The Commissioner of Corrections shall establish and operate a locked
15 secure forensic facility for the ~~assessment and safe housing~~ secure evaluation,
16 treatment, and care of persons ~~who are subject to any stage of proceedings~~
17 ~~under this chapter or who have been acquitted pursuant to section 4819 of this~~
18 ~~chapter~~ ~~who~~ have been transferred pursuant to subsections 4815a(a) and
19 4819a(a) of this title.. The forensic facility shall not refuse any persons it is
20 ordered to admit, ~~nor shall it and it shall not~~ require any clinical or diagnostic
21 prerequisites for admission. All forensic, clinical, and competency restoration

1 services provided at the forensic facility shall be overseen by a clinical services
2 director.

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

7 (e) Persons shall be admitted to and maintained at the forensic facility
8 pursuant to sections 4815a and 4819a of this title.

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

11 **Sec. 5. RULEMAKING; FORENSIC FACILITY**

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

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

18 **RULE 1101. APPLICABILITY OF RULES**

19 (a) Rules applicable. Except as otherwise provided in subdivision (b),
20 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.

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21 (Committee vote: _____)

(suggested edits against Draft No. 1.1 – S.193 in green)
2/18/2026 - JCB – 4:03 PM
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Senator _____

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FOR THE COMMITTEE