

## S.193 – AHS Proposed Edits and Additions

### **Additions: \*\*\* Diversion Expansion & Changes to Competency Evaluations \*\*\***

\*\*Probably need to add session law requiring BGS to work with the SA and DG to execute a universal contract to not just do independent evaluations but also meet their evaluation needs?

#### **13 V.S.A. § 4814 is amended to read:**

(a) Any court before which a criminal prosecution is pending may order ~~the Department of Mental Health~~ the Department of Buildings and General Services to have the defendant examined by a psychiatrist at any time before, during, or after trial, and before final judgment in any of the following cases:

(1) [Repealed.]

(2) when the defendant, the State, or an attorney, guardian, or other person acting on behalf of the defendant raises before such court the issue of whether the defendant is mentally competent to stand trial for the alleged offense; or

(3) [Repealed.]

(4) when the court believes that there is doubt as to the defendant's mental competency to be tried for the alleged offense.

(5) A court may order a competency evaluation in a misdemeanor matter only upon a finding that diversion has been attempted and has been unsuccessful.

(a) Diversion shall be deemed unsuccessful if the court finds, based on documentation from the treatment provider, that at least six months has passed and:

(1) The defendant has failed to meaningfully engage in diversion services despite reasonable accommodations.

(2) The defendant's mental or cognitive condition prevents participation in diversion services.

(3) The defendant has failed to make reasonable progress.

(b) A finding of unsuccessful diversion shall be made on the record, and the defendant shall have an opportunity to be heard.

(6) Before a court orders a competency examination in a felony matter, the court and parties must first consider a referral to the adult court diversion program.

**Commented [KB1]:** Unclear what else might need to be changed in the diversion statutes.

(b) The order may be issued by the court on its own motion or on motion of the State, the defendant, or an attorney, guardian, or other person acting on behalf of the defendant.

(c) An order issued pursuant to this section or Rule 16.1 of the Vermont Rules of Criminal Procedure shall order the release of all relevant records to the examiner, including all juvenile and adult court, mental health, and other health records.

(d) Notwithstanding any other provision of law, an examination ordered pursuant to subsection (a) of this section may be conducted by a doctoral-level psychologist trained in forensic psychology and licensed under 26 V.S.A. chapter 55.

(e) After an initial competency determination, a court may order subsequent evaluations of a defendant to be performed by ~~the Department of Mental Health~~ the Department of Buildings and General Services only upon a showing of changed circumstances. In determining whether to order subsequent evaluations, the court shall consider a treating physician's clinical evidence, if any, indicating that the defendant's competency may have changed. This section shall not limit the parties' abilities to secure their own evaluations voluntarily or under Vermont Rule of Criminal Procedure 16.1.

(f) The court may issue a warrant for the arrest of a defendant who, after receiving notice of an evaluation ordered under this section, fails to appear for the evaluation.

**Sec. XX 18 V.S.A. § 4815 is amended to read:**

...

(g)(1) ...

(5) If it appears that an inpatient examination cannot reasonably be completed within ~~120~~ 30 days, the court issuing the original order, on request of the Commissioner and upon good cause shown may order placement at the hospital extended for additional periods of ~~30~~ 45 days in order to complete the examination, and the defendant on the expiration of the period provided for in such order shall be returned in accordance with this subsection.

**Edits to S.193 as currently written:**

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

(a) This section shall apply in any case where a person has been charged with an offense punishable by a life sentence and shall supersede all contrary provisions of law.

(b) Any Person who is not subject to an order of hospitalization or an Act 248 order and who has been found not competent to stand trial by the court shall be transferred to the forensic facility.

(c) The facility shall cause the person to be evaluated for competency to stand trial no less often than the shorter of either every six months or upon the determination by the clinical services director that the person is likely competent to stand trial. All such evaluations shall be supplied to the court and the parties to the underlying criminal action.

1 (d) A person shall remain at the forensic facility until the person receives a  
2 verdict in the person's underlying criminal case or until the charges against the  
3 person have been dismissed.

4 (e) 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 pursuant to an administrative process meeting the requirements of  
8 [Sell v. United States, 539 U.S. 166 \(2003\)](#), education, accommodations,  
9 habilitation, or other services

10 identified as necessary or proper to achieve and maintain competency to stand  
11 trial. The person's refusal to receive competency restoration services shall not  
12 be grounds for release or dismissal from the forensic facility.

13 (f) Competency restoration services shall be maintained until the person  
14 receives a verdict in the person's underlying criminal case.

(g) If competency cannot be restored:

(1) A hearing shall be held by the criminal court within 40 days unless that period is extended by the court.

(2) The person shall be committed to the forensic facility unless the person establishes by clear and convincing evidence the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another.

(3) The placement of the person at the forensic facility shall be re-assessed by a court every year. The person shall not be released until the court finds by clear and convincing evidence the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another.

(4) Upon request of an individual seeking discharge, the court shall order a forensic risk assessment of the defendant be conducted, and that a report be filed with the court addressing the person's history and present dangerousness; a description of any tests that were employed and their results; the examiner's findings; and the examiner's opinions as to whether the person's release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(5) If the reviewing court finds by clear and convincing evidence that the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall:

- (A) Order the release of the person under a prescribed regimen of care or treatment that has been prepared for them, has been certified to the court as appropriate by the director of forensic facility, and that has been found by the court to be appropriate; and
- (B) Order, as an explicit condition of release, that they comply with the prescribed regimen of care or treatment together with any other conditions appropriate to protect the public; and,
- (C) Order the person conditionally released.

1

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



11 — Court within 40 days following admission to the forensic facility, unless that  
12 — period is extended by the court.

13 — (2) At the hearing, the court shall order the person committed to the  
14 — forensic facility, unless the person establishes by clear and convincing  
15 — evidence that the person is no longer suffering from a mental disease or defect,  
16 — that upon the person's release, would create a substantial risk of bodily injury  
17 — to another person or serious damage to the property of another person. If the  
18 — court finds that the person has established the person's burden under this  
19 — subdivision, the court may enter an order consistent with subdivision (d)(2) of  
20 — 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  
3 — a  
4 — psychiatric or psychological report be filed with the court addressing the  
5 — person's history and present symptoms; a description of the psychiatric,  
6 — psychological, and medical tests that were employed and their results; the  
7 — examiner's findings; and the examiner's opinions as to diagnosis, prognosis;  
8 — and whether the person is suffering from a mental disease or defect that, upon  
9 — the 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 — (c) A placement of a person at the forensic facility shall be for an  
12 — indeterminate period and shall not have a specified end date. The person shall  
13 — not be released until the person establishes by clear and convincing evidence  
14 — 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.

(c) (1) A hearing shall be held by the criminal court within 40 days unless that period  
is extended by the court.

(2) The person shall be committed to the forensic facility unless the person establishes by clear and convincing evidence the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another.

(3) The placement of the person at the forensic facility shall be re-assessed by a court every year. The person shall not be released until the court finds by clear and convincing evidence the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another.

(4) Upon request of the defendant prior to the annual re-assessment, the court shall order a forensic risk assessment of the defendant be conducted, and that a report be filed with the court addressing the person's history and present dangerousness; a description of any tests that were employed and their results; the examiner's findings; and the examiner's opinions as to whether the person's release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(5) If the reviewing court finds by clear and convincing evidence that the person's release would not create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall:

(D) Order the release of the person under a prescribed regimen of care or treatment that has been prepared for them, that has been certified to the court as appropriate by the director of the facility in which they are committed, and that has been found by the court to be appropriate; and

(E) Order, as an explicit condition of release, that they comply with the prescribed regimen of care or treatment together with any other conditions appropriate to protect the public; and,

(F) Order the person conditionally released.

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

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

28 **§ 4826. FORENSIC FACILITY**

29 (a) The Commissioner of Corrections shall establish and operate a locked  
30 secure forensic facility for the forensic assessment and safe housing of  
31 persons who are  
32 subject to any stage of proceedings under this chapter or who have been  
33 acquitted pursuant to section 4819 of this chapter. The forensic facility shall  
34 not refuse any persons it is ordered to admit, nor shall it require any clinical or  
35 diagnostic prerequisites for admission. All forensic, clinical, and competency  
36 restoration services provided at the forensic facility shall be overseen by a  
37 clinical services director.

(b) Any records related to a person placed at the forensic facility shall be

38 exempt from public inspection and copying under the Public Records Act and  
39 shall be kept confidential, except that records shall be made available to the  
40 parties in the underlying criminal case upon request.

41 (c) Persons shall be admitted to and maintained at the forensic facility  
42 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.

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

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

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

10 **RULE 1101. APPLICABILITY OF RULES**

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

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

15 \* \* \*

16 (3) Miscellaneous Proceedings. Proceedings for extradition or  
17 rendition; inquest proceedings; except as otherwise provided by statute or rule  
18 promulgated by the Supreme Court, sentencing or granting or revoking

19 probation; proceedings concerning competency restoration; granting or  
20 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.

**Commented [KB2]:** AHS will need more time to create the forensic unit. The other sections could start earlier.