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H.646

Introduced by Representative Donahue of Northfield

Referred to Committee on

Date:

Subject: Health; mental health; Vermont state hospital

Statement of purpose: This bill proposes to ensure appropriate placement of individuals who need intensive psychiatric support and secure care but who do not need inpatient hospital care.

An act relating to replacing services provided by the Vermont state hospital

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

Sec. 1. 18 V.S.A. chapter 171A is added to read:

CHAPTER 171A. SECURE MENTAL HEALTH FACILITIES

§ 7151. PURPOSE

It is the policy of the state of Vermont that:

(1) No individual shall be held against his or her will unless the individual has have been taken into custody for an allegation of criminal conduct, meets the criteria in chapter 181 of this title, or meets the criteria established in this section.

(2) Individuals taken into the custody of the state under the provisions of this chapter and chapter 181 of this title shall have the same opportunity for an

1 immediate due process review of the grounds for restriction of liberty as those
2 taken into custody for allegations of criminal conduct.

3 (3) Individuals taken into custody under the provisions of this chapter
4 and chapter 181 of this title shall be held in the least restrictive setting for
5 physical security consistent with the safety provisions stated herein.

6 (4) Individuals being held for an allegation of criminal misconduct shall
7 have the same right to access to the most appropriate setting for mental health
8 care under this chapter, which is also consistent with the public safety needs
9 and bail requirements established under chapter 125 of Title 12.

10 § 7152. MEDICAL CONFINEMENT

11 (a) A court may order the medical confinement of any individual in a
12 secure mental health treatment facility based on the criteria established in this
13 part or in chapter 157 of Title 13 or upon a finding by the court that the
14 individual must be evaluated for competence.

15 (b) The court shall consider evidence from a qualified health care
16 professional regarding medical and concomitant safety needs. In the case of
17 individuals who are subject to prosecution of a crime, the court's determination
18 also shall consider evidence from the criminal proceedings, and shall
19 determine the department of corrections' capacity to provide adequate
20 treatment for the individual.

1 § 7153. APPROPRIATE PLACEMENT

2 (a) Upon receiving custody of an individual under an order for medical
3 confinement, the commissioner of mental health shall determine the type of
4 secure treatment facility or hospital that will provide the appropriate level and
5 intensity of care for the individual based upon the individual's clinical needs
6 using prevailing medical standards. Notwithstanding the provisions of chapter
7 185 of this title, this determination shall be considered a medical determination
8 not subject to judicial review.

9 (b)(1) If at any time after receiving custody of an individual, the
10 commissioner of mental health determines that the individual is not in need of
11 mental health treatment as defined by this part of this title and the evaluation
12 was ordered under chapter 157 of Title 13, the individual shall be returned to
13 the court. The court shall determine the terms of release under the same
14 process and on the same criteria as provided for a defendant who was not
15 evaluated for medical confinement.

16 (2) If at any time after receiving custody of an individual, the
17 commissioner determines that the individual is not in need of mental health
18 treatment as defined by this part of this title and the court order was not issued
19 under chapter 157 of Title 13, the commissioner shall release the individual.

1 § 7154. DETENTION BY CORRECTIONS

2 (a) Individuals detained by the department of corrections shall receive the
3 mental health care required under this chapter in the most clinically appropriate
4 setting. If a clinically appropriate setting is not available within a corrections
5 facility, the individual shall be treated in a clinically appropriate setting which
6 has been designed to provide the necessary level of security.

7 (b) Individuals confined against their will under this chapter and evaluated
8 under chapter 157 of Title 13 shall not be confined in the same part of a facility
9 with individuals who have not been charged with a crime and evaluated under
10 chapter 157 of Title 13.

11 Sec. 2. DEPARTMENT OF CORRECTIONS

12 No later than January 1, 2011, the department of corrections shall evaluate
13 individuals in correctional facilities to determine that this chapter is complied
14 with. If an individual is not receiving appropriate mental health treatment, the
15 department shall recommend to the court that the individual be placed in a
16 different facility offering appropriate treatment.

17 Sec. 3. 18 V.S.A. § 7510 is amended to read:

18 § 7510. PRELIMINARY HEARING

19 ~~(a) Within five days after a person is admitted to a designated hospital for~~
20 ~~emergency examination~~ 72 hours of an application for emergency examination
21 of a person under section 7504 of this title or an application for a warrant for

1 immediate examination under section 7505 of this title, ~~he may request~~ the
2 district court ~~to~~ shall conduct a preliminary hearing to determine whether there
3 is probable cause to believe that he or she was a person in need of treatment at
4 the time of ~~his~~ admission.

5 (b) ~~The court shall conduct the hearing within three working days of the~~
6 ~~filing of the request.~~ The court shall cause timely notice of the preliminary
7 hearing to be given to the patient or ~~his~~ the patient's attorney, the hospital, and
8 the attorney for the applicant.

9 (c) The individual has the right to be present and represented by legal
10 counsel at the preliminary hearing.

11 (d) If probable cause to believe that the individual was a person in need of
12 treatment at the time of ~~his~~ admission is established at the preliminary hearing,
13 the individual shall be ordered held for further proceedings in accordance with
14 the law. If probable cause is not established, the individual shall be ordered
15 discharged from the hospital and the court shall order ~~him~~ the individual
16 returned to the place from which he or she was transported or to his or her
17 home.

18 (e) ~~Upon a showing of need the court may grant a reasonable continuance~~
19 ~~to either the patient's attorney or the attorney for the state.~~

1 Sec. 4. STATUTORY REVISION

2 The legislative counsel shall review the appropriate chapters in Title 18 and
3 in Title 13 providing for evaluation or treatment of an individual with a mental
4 health condition and, no later than January 1, 2011, shall recommend
5 provisions in need of revision in order to be made consistent with this chapter.

6 Sec. 5. REPEAL

7 Section 8010 of Title 18 (discharge of voluntary patients) is repealed upon
8 passage.