

1 H.509

2 Introduced by Representative Koch of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Mental health; involuntary treatment and medication; judicial
6 proceedings

7 Statement of purpose of bill as introduced: This bill proposes to reorganize
8 existing statutes pertaining to judicial proceedings for the involuntary
9 treatment and medication of individuals with psychiatric disabilities.

10 An act relating to judicial proceedings for involuntary psychiatric treatment
11 and medication

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

13 Sec. 1. 18 V.S.A. chapter 180 is added to read:

14 CHAPTER 180. HOSPITALIZATION AND TREATMENT OF

15 PERSONS WITH A PSYCHIATRIC DISABILITY

16 Subchapter 1. Admission to Hospital

17 § 7551. LEGISLATIVE INTENT

18 (a) It is the intent of the General Assembly to recognize, in the absence of
19 an emergency, the right of a person who has capacity to decide whether or not
20 to accept medical treatment, including medication.

1 (b) This chapter protects this right through a judicial proceeding prior to the
2 use of nonemergency involuntary medication and by limiting the duration of an
3 order for involuntary treatment to no more than one year. The least restrictive
4 conditions consistent with the person's right to adequate treatment shall be
5 provided in all cases.

6 (c) It is the policy of the General Assembly to work toward a mental health
7 system that does not require coercion or the use of involuntary medication.

8 § 7552. AUTHORITY TO RECEIVE PATIENTS

9 (a) A hospital that has been officially designated by the Commissioner may
10 receive for observation, diagnosis, care, and treatment any individual whose
11 admission is sought on proper application, after examination and order of
12 admission by a physician with admitting privileges.

13 (b) A person admitted voluntarily or involuntarily to a designated hospital
14 shall be subject to the control and treatment of the head of the hospital, subject
15 to the provisions of this chapter, until his or her condition warrants release, or
16 until he or she has been lawfully removed or otherwise discharged.

17 (c) Informed consent for voluntary admission shall include notice to and
18 acknowledgement by the applicant for admission that the hospital may prevent
19 any person found to be a danger to self or others from being discharged against
20 medical advice consistent with section 7556 of this chapter.

1 § 7553. APPLICATION FOR VOLUNTARY ADMISSION

2 (a) Any person 14 years of age or over may apply for voluntary admission
3 to a designated hospital for examination and treatment and shall be admitted
4 upon examination and order of a physician with admitting privileges in that
5 hospital.

6 (b) Before the person may be admitted as a voluntary patient, he or she
7 shall consent to the admission in writing on a form adopted by the Department.
8 The consent shall include a representation that the person understands that
9 treatment will involve inpatient status, that he or she desires to be admitted to
10 the hospital, and that he or she consents to admission voluntarily, without any
11 coercion or duress.

12 (c) A child under 14 years of age may be admitted as a voluntary patient in
13 accordance with the process described in subsection (a) of this section, or by
14 the written application and consent of a parent or guardian pursuant to
15 subsection (b) of this section. When a child under 14 years of age is admitted
16 pursuant to this subsection, the head of the hospital shall cause the child to be
17 reexamined promptly by a physician other than the admitting physician to
18 determine if hospitalization is appropriate. If the physician determines that
19 hospitalization is not appropriate, the child shall be discharged to the custody
20 of his or her parents or guardian, unless the physician has reason to believe that
21 child abuse or neglect is occurring, in which case the child shall be held in the

1 hospital until the head of the hospital or designee can make appropriate contact
2 with the Department for Children and Families.

3 § 7554. APPLICATION FOR EMERGENCY EXAMINATION

4 (a) A person may be admitted to a designated hospital for an emergency
5 examination to determine if he or she is a person in need of treatment upon
6 written application by an interested party accompanied by a certificate by a
7 licensed physician who is not the applicant. The application and certificate
8 shall set forth the facts and circumstances which constitute the need for an
9 emergency examination and which show that the person is a person in need of
10 treatment.

11 (b) The application and certificate shall be authority for transporting the
12 person to a designated hospital for an emergency examination, as provided in
13 section 7559 of this chapter.

14 (c) For the purposes of admission of an individual to a designated hospital
15 for care and treatment under this section, the head of a hospital may delegate
16 his or her authority under this section to a hospital administrator, supervisory
17 personnel, or a licensed physician on duty on the hospital premises, other than
18 the certifying physician under subsection (a) of this section.

19 § 7555. WARRANT FOR IMMEDIATE EXAMINATION

20 (a) In emergency circumstances where a certification by a physician is not
21 available without serious and unreasonable delay, and when personal

1 observation of the conduct of a person constitutes reasonable grounds to
2 believe that the person is a person in need of treatment, a law enforcement
3 officer or mental health professional may make an application, not
4 accompanied by a physician's certificate, to any probate or superior judge for a
5 warrant for an immediate examination.

6 (b) The law enforcement officer or mental health professional may take the
7 person into temporary custody and shall apply to the court without delay for
8 the warrant.

9 (c) If the judge is satisfied that a physician's certificate is not available
10 without serious and unreasonable delay, and that probable cause exists to
11 believe that the person is in need of an immediate examination, the judge may
12 order the person to submit to an immediate examination at a designated
13 hospital.

14 (d) If necessary, the court may order the law enforcement officer or mental
15 health professional to transport the person to a designated hospital for an
16 immediate examination.

17 (e) Upon presentation at a designated hospital, the person shall be
18 immediately examined by a licensed physician. If the physician certifies that
19 the person is a person in need of treatment, the person shall be held for an
20 emergency examination in accordance with section 7556 of this chapter. If the
21 physician does not certify that the person is a person in need of treatment, the

1 person shall not be admitted and shall be returned to the place from which he
2 or she was taken, or to such place as the person reasonably directs.

3 § 7556. EMERGENCY EXAMINATION

4 (a) A person who is admitted to a designated hospital for an emergency
5 examination in accordance with section 7554 or 7555 of this chapter shall be
6 examined and certified by a psychiatrist as soon as practicable, but not later
7 than one working day after admission.

8 (b) If the person is admitted on an application and physician's certificate,
9 the examining psychiatrist shall not be the same physician who signed the
10 certificate.

11 (c) If the psychiatrist does not certify that the person is a person in need of
12 treatment, the person shall be immediately discharged and returned to the place
13 from which he or she was taken, or to such place as the person reasonably
14 directs.

15 (d) If the psychiatrist does certify that the person is a person in need of
16 treatment, the person's hospitalization may continue for an additional 72 hours,
17 at which time hospitalization shall terminate, unless within that period:

18 (1) the person has been accepted for voluntary admission under section
19 7553 of this chapter; or

1 (2) an application for involuntary admission is filed with the appropriate
2 court under section 7572 of this chapter, in which case the patient shall remain
3 hospitalized pending the court's decision on the application.

4 § 7557. TREATMENT; RIGHT OF ACCESS

5 (a) Upon admission to a hospital pursuant to this chapter, a person shall be
6 treated with dignity and respect and shall be given such medical and
7 psychiatric treatment as the person accepts or as is ordered pursuant to the
8 provisions of this chapter.

9 (b) An admitted person shall be given the opportunity, subject to
10 reasonable limitations, to communicate with others, including the reasonable
11 use of a telephone.

12 (c) An admitted person shall be requested to furnish the names of persons
13 he or she may want notified of his or her hospitalization and kept informed of
14 his or her status. The head of the hospital shall see that such persons are
15 notified of the status of the admitted person, how he or she may be contacted
16 and visited, and how they may obtain information concerning the admitted
17 person.

18 § 7558. PRELIMINARY HEARING

19 (a) A person admitted to a hospital under subsection 7554(a) of this chapter
20 shall not be held involuntarily without a preliminary hearing establishing
21 probable cause that the individual met the criteria of a person in need of

1 treatment, both at the time of admission and at the time of the hearing on the
2 application for treatment filed under subdivision 7556(d)(2) of this chapter.

3 (b) The person has the right to be present and represented by legal counsel
4 at the preliminary hearing.

5 (c) If probable cause to believe that the individual was a person in need of
6 treatment at the time of his or her admission and at the time of the hearing on
7 the application for treatment is established at the preliminary hearing, the
8 person shall be ordered held for further proceedings in accordance with the
9 law. If probable cause is not established, the person shall be immediately
10 discharged from the hospital and returned to the place from which he or she
11 was taken, or to such place as the person may reasonably request.

12 § 7559. TRANSPORTATION

13 (a) The Commissioner shall ensure that all reasonable and appropriate
14 measures consistent with public safety are made to transport or escort a person
15 subject to this chapter to and from any inpatient setting, including escorts
16 within a designated hospital or the Vermont State Hospital or its successor in
17 interest, or otherwise being transported under the jurisdiction of the
18 Commissioner in any manner which:

19 (1) prevents physical and psychological trauma;

20 (2) respects the privacy of the person; and

1 (3) represents the least restrictive means necessary for the safety of the
2 person.

3 (b) The Commissioner shall have the authority to designate the
4 professionals who may authorize the method of transport of persons under the
5 Commissioner's care and custody.

6 (c) When a professional designated pursuant to subsection (b) of this
7 section decides a person is in need of secure transport with mechanical
8 restraints, the reasons for such determination shall be documented in writing.

9 (d) It is the policy of the State of Vermont that mechanical restraints are not
10 routinely used on persons subject to this chapter unless circumstances dictate
11 that such methods are necessary.

12 Subchapter 2. Orders of Hospitalization and Nonhospitalization

13 § 7571. INVOLUNTARY TREATMENT

14 A person shall not be made subject to involuntary treatment unless he or she
15 is found to be a person in need of treatment or a patient in need of further
16 treatment.

17 § 7572. APPLICATION FOR INVOLUNTARY TREATMENT

18 (a) An interested party may, by filing a written application under oath or
19 affirmation, commence proceedings for the involuntary treatment of a person
20 by judicial process.

1 (b) The application shall be filed in the Family Division of the Superior
2 Court in the unit of the proposed patient's residence or, in the case of a
3 nonresident, in any family unit, except that if the application is filed under
4 section 7556 or 7558 of this chapter, it may be filed in the Family Division of
5 the Superior Court of the unit in which the hospital is located.

6 (c) The application shall contain:

7 (1) the name and address of the applicant;

8 (2) a statement of the current and relevant facts upon which the
9 allegation of mental illness and need for treatment is based; and

10 (3) a statement that the relief sought in the application represents the
11 least restrictive treatment appropriate to the proposed patient's condition.

12 (d) The application shall be accompanied by:

13 (1) a certificate of a licensed physician, which shall be executed under
14 oath or affirmation, setting forth the current and relevant facts and
15 circumstances upon which the physician's opinion is based and stating that he
16 or she has examined the proposed patient within five days of the date the
17 petition is filed and is of the opinion that the proposed patient is a person in
18 need of treatment; or

19 (2) a written statement by the applicant that the proposed patient refused
20 to submit to an examination by a licensed physician.

1 § 7573. NOTICE; APPOINTMENT OF COUNSEL

2 (a) Upon receipt of the application, the court shall set a date for the hearing
3 within 20 days from the date on which the application was received. The court
4 on motion may extend the hearing date for good cause.

5 (b) When the application is filed, the court shall appoint counsel for the
6 proposed patient and transmit a copy of the application, the physician's
7 certificate, if any, and a notice of hearing to the proposed patient, his or her
8 attorney, guardian, or any person having custody or control of the proposed
9 patient, the state's attorney or the Attorney General, and any other person the
10 court believes has a concern for the proposed patient's welfare. A copy of the
11 notice of hearing shall also be transmitted to the applicant and certifying
12 physician.

13 (c) The notice of hearing transmitted to the proposed patient and his or her
14 attorney shall contain a list of the proposed patient's rights at the hearing.

15 (d) If the court has reason to believe that notice to the proposed patient will
16 be likely to cause injury to the proposed patient or others, it shall direct the
17 proposed patient's counsel to give the proposed patient oral notice prior to
18 written notice under circumstances most likely to reduce likelihood of injury.

19 § 7574. PSYCHIATRIC EXAMINATION

20 As soon as practicable after notice of the commencement of proceedings is
21 given, the court shall order examination of the proposed patient by a

1 psychiatrist other than the physician making the original certification. The
2 examination and subsequent report or reports shall be paid for by the State of
3 Vermont. The psychiatrist shall report his or her findings to the court and to
4 all parties to whom the court has given notice of hearing on the application.
5 The report or reports are confidential and are exempt from public inspection
6 and copying under the Public Records Act.

7 § 7575. HEARING

8 (a) The State shall appear and be represented by the state's attorney for the
9 county in which the hearing takes place or by the Attorney General, at the
10 Attorney General's discretion.

11 (b) The hearing shall be conducted according to the Rules of Evidence
12 applicable in family proceedings, and to the extent consistent with this part, the
13 Rules of Civil Procedure.

14 (c) The applicant and the proposed patient shall have a right to appear at
15 the hearing to testify. The attorney for the state and the proposed patient shall
16 have the right to subpoena, present, and cross-examine witnesses, and present
17 oral arguments. The court may, at its discretion, receive the testimony of any
18 other person.

19 (d) The proposed patient may at his or her election attend the hearing,
20 subject to reasonable rules of conduct, and the court may exclude all persons
21 not necessary for the conduct of the hearing.

1 (e) The State or other applicant shall have the burden of proving its case by
2 clear and convincing evidence.

3 § 7576. FINDINGS; ORDER

4 (a) If the court finds that the proposed patient is not a person in need of
5 treatment at the time of the hearing, the court shall enter a finding to that effect
6 and shall dismiss the application.

7 (b) If the proposed patient is found to be a person in need of treatment at
8 the time of the hearing, the court may order the person:

9 (1) to be hospitalized in a designated hospital;

10 (2) to be hospitalized in any other public or private hospital if the person
11 and the hospital agree; or

12 (3) to undergo a program of treatment other than hospitalization, if the
13 court finds that there exists an available program of treatment for the person
14 which is an appropriate alternative to hospitalization.

15 (c) Prior to ordering the hospitalization of a person, the court shall inquire
16 into the adequacy of treatment to be provided to the person by the hospital and
17 shall find affirmatively that the hospital in which the person is to be
18 hospitalized can provide the person with treatment which is appropriate to his
19 or her condition and represents the least restrictive environment in which
20 appropriate treatment can be provided.

1 (d) Preference among available hospitals shall be given to the hospital
2 which is located nearest to the person's residence, except when the person
3 requests otherwise or there are other compelling reasons for not following the
4 preference.

5 (e) All court orders of hospitalization, nonhospitalization, and continued
6 treatment shall be directed to the Commissioner, or with his or her consent to
7 the head of a designated hospital, who shall admit the person to his or her care
8 and custody for the period specified.

9 § 7577. ORDER OF NONHOSPITALIZATION

10 (a) If the court finds that a treatment program other than hospitalization is
11 adequate to meet the person's treatment needs, the court shall order the person
12 to receive whatever treatment other than hospitalization is appropriate for a
13 period not to exceed 90 days.

14 (b) If at any time during the specified period it comes to the attention of the
15 court that the person is not complying with the order or that the treatment
16 ordered has not been adequate to meet the person's treatment needs, the court,
17 after proper hearing and consideration of alternative treatments, may:

18 (1) modify its original order and direct the person to undergo a different
19 program of alternative treatment for the remainder of the specified period;

20 (2) enter a new order directing that the person be hospitalized for the
21 remainder of the specified period; or

1 (3) terminate its prior order.

2 § 7578. ORDER OF HOSPITALIZATION

3 If the court, after a hearing pursuant to section 7575 of this chapter, finds
4 that the proposed patient is a person in need of treatment, the court shall order
5 the person hospitalized for a period not to exceed 90 days if it further
6 finds that:

7 (1) there is not an available program of treatment for the person that is
8 an appropriate alternative to hospitalization; and

9 (2) the hospital that the person is to be hospitalized in can provide the
10 person with treatment that is adequate and appropriate to his or her condition
11 and represents the least restrictive environment in which appropriate treatment
12 can be provided.

13 § 7579. APPLICATION FOR CONTINUED TREATMENT

14 (a) If, prior to the expiration of any order issued in accordance with section
15 7576 of this chapter, the Commissioner or the head of a hospital in which a
16 person is hospitalized pursuant to the order believes that the condition of the
17 person is such that the person continues to require treatment, the
18 Commissioner shall apply to the court for a determination that the person is a
19 person in need of further treatment and for an order of continued treatment.

1 (b) An application for an order authorizing continuing treatment shall
2 contain a statement setting forth the reasons for the applicant's determination
3 that the person is a person in need of further treatment, a statement describing
4 the treatment program provided to the person, and the results of that course of
5 treatment.

6 (c) Any order of treatment issued in accordance with section 7576 of this
7 chapter shall remain in force pending the court's decision on the application.

8 (d) If the Commissioner seeks to have the person receive the further
9 treatment in a secure residential recovery facility, the application for an order
10 authorizing continuing treatment shall expressly state that such treatment is
11 being sought. The application shall contain, in addition to the statements
12 required by subsection (b) of this section, a statement setting forth the reasons
13 for the Commissioner's determination that clinically appropriate treatment for
14 the person's condition can be provided safely only in a secure residential
15 recovery facility.

16 (e) As used in this chapter:

17 (1) "Secure," when describing a residential facility, means that the
18 residents can be physically prevented from leaving the facility by means of
19 locking devices or other mechanical or physical mechanisms.

20 (2) "Secure residential recovery facility" means a residential facility,
21 licensed as a therapeutic community residence as defined in 33 V.S.A.

1 § 7102(11), for an individual who no longer requires acute inpatient care but
2 who does remain in need of treatment within a secure setting for an extended
3 period of time. A secure residential recovery facility shall not be used for any
4 purpose other than the purposes permitted by this section.

5 (f) The hearing on the application for continued treatment shall be held in
6 accordance with the procedures set forth in sections 7573, 7574, 7575, and
7 7576 of this chapter.

8 (g)(1) If the court finds that the person remains a person in need of
9 treatment and requires hospitalization, the court shall order hospitalization for
10 an additional period not to exceed one year.

11 (2) If the court finds that the person remains a person in need of
12 treatment but does not require hospitalization, the court shall order
13 nonhospitalization for an additional period not to exceed one year.

14 (h) If, at any time during the period of nonhospitalization ordered under
15 subdivision (g)(2) of this section, it comes to the attention of the court that the
16 person is not complying with the order or that the alternative treatment has not
17 been adequate to meet the person's treatment needs, the court, after proper
18 hearing and consideration of alternative treatments, may:

19 (1) modify its original order and direct the person to undergo a different
20 program of alternative treatment for the remainder of the specified period;

1 (2) enter a new order directing that the person be hospitalized for the
2 remainder of the specified period; or

3 (3) terminate its prior order.

4 (i) At any time that the court finds that the person is not a person in need of
5 further treatment, it shall either terminate the order of nonhospitalization or
6 order a person discharged from a hospital, as applicable.

7 (j) This section shall not be construed to prohibit the court from issuing
8 subsequent orders after a new application is filed pursuant to this section.

9 § 7580. EXPERT TESTIMONY

10 (a) An appropriately qualified mental health professional testifying at
11 hearings conducted under this part may give opinion testimony and,
12 notwithstanding 12 V.S.A. § 1612, describe any information which he or she
13 acquired in attending the person.

14 (b) The facts or data in the particular case upon which an expert bases an
15 opinion or inference may be those perceived by or made known to the expert at
16 or before the hearing. The facts or data need not be admissible in evidence if
17 they are of a type reasonably relied upon by experts in the particular field in
18 forming opinions or inferences upon the subject.

19 § 7581. APPLICATION FOR AN ORDER OF MEDICATION

20 (a) The Commissioner or the head of a designated hospital in which a
21 person has been hospitalized shall file an application for an order of

1 medication for a person when a physician has proposed psychiatric medication
2 and the person lacks the capacity to consent to medication, as defined in
3 subdivision 9701(4)(B) of this title, and:

4 (1) has been placed in the applicant's care and custody pursuant to
5 section 7576 or subdivision 7579(g)(1) of this chapter;

6 (2) has previously received treatment under an order of hospitalization
7 and is currently under an order of nonhospitalization;

8 (3) is the subject of an application for involuntary treatment under
9 subdivision 7556(d)(2) of this chapter or an application for continued treatment
10 under section 7579 of this chapter; or

11 (4) has been committed to the custody of the Commissioner of
12 Corrections as a convicted felon and is being held in a correctional facility
13 which is a designated facility pursuant to subdivision 7101(4) of this title and
14 for whom the Departments of Corrections and of Mental Health have jointly
15 determined that involuntary medication would be appropriate pursuant to
16 28 V.S.A. § 907(4)(H).

17 (b) An application for an order of medication shall be filed in the Family
18 Division of the Superior Court in the unit in which the person is receiving
19 treatment, or in the court in which a proceeding concerning the person is
20 already pending under this chapter.

1 (c) The application shall include a certification, executed under oath or
2 affirmation, from the treating physician, that includes the following
3 information:

4 (1) the nature of the person's mental illness;

5 (2) the necessity for the use of medication to treat the person's illness;

6 (3) the proposed medication, including the method, dosage range, and
7 length of administration for each specific medication;

8 (4) whether the person has capacity to make a health care decision, as
9 defined in subdivision 9701(4)(B) of this title; and

10 (5) whether the person has executed an advance directive in accordance
11 with the provisions of chapter 231 of this title, and if so, the identity of any
12 health care agent designated in the advance directive; a copy of which directive
13 shall be attached to the application, if available.

14 § 7582. HEARING ON APPLICATION FOR AN ORDER OF
15 MEDICATION; BURDEN OF PROOF

16 (a) A hearing on an application for an order of medication shall be held
17 within five days of filing if it is brought under subdivision 7581(a)(1), (2), or
18 (4) of this chapter, or simultaneously with any hearing under section 7572 of
19 this chapter. A hearing on an application brought under subdivision 7581(a)(3)
20 of this chapter shall be held within two days of filing, but not sooner than a
21 probable cause hearing. Notice, appointment of an independent psychiatrist,

1 and conduct of the hearing shall be governed by sections 7573, 7574, and 7575
2 of this chapter.

3 (b) In a hearing conducted pursuant to this section, the applicant has the
4 burden of proof by clear and convincing evidence, except that if the person is
5 not refusing the recommended medication, there shall be a rebuttable
6 presumption that the application should be granted.

7 (c) The court shall not grant an application for an order of medication
8 unless the court finds, based on the evidence, that the person lacks capacity to
9 make a medical decision, as defined in subdivision 9701(4)(B) of this title.

10 (d) If the court finds that the person lacks capacity but has executed a valid
11 advance directive that governs the question of medication in the immediate
12 situation, or grants to an agent the authority to make an appropriate decision in
13 the immediate situation, the court shall enter an order in accordance with the
14 advance directive or shall dismiss the application, as appropriate.

15 (e) If the court grants an application for an order of medication, it shall do
16 so only after making specific findings demonstrating that it has considered all
17 of the following:

18 (1) the nature of the person's illness, its duration, and any prior history;

19 (2) the person's prognosis with and without medication, and whether
20 there are any alternative treatments not involving medication or involving a
21 different medication that are likely to be successful;

1 (3) the proposed medication, the manner, dosage, and duration of its
2 administration, and the risks, benefits, and potential adverse reactions to the
3 particular medication;

4 (4) whether the proposed medication has been previously used by the
5 person, and the results of such use;

6 (5) the person's health and safety apart from the fact of mental illness,
7 including whether the person is pregnant;

8 (6) the impact of receiving medication or not receiving medication on
9 the person's relationship with his or her family or household members whose
10 opinion the court finds relevant and credible based on the nature of the
11 relationship; and

12 (7) the person's expressed written or oral wishes and beliefs as to
13 medication generally or the proposed medication specifically, even if not
14 contained in a valid advance directive.

15 (f) The court shall not order the person to undergo electric convulsive
16 therapy, surgery, or experimental medication.

17 (g) If the court grants the application for an order of medication, the court
18 shall authorize the Commissioner to administer medication to the person
19 without the person's consent for a period not to exceed the lesser of 90 days or
20 the remaining portion of any current order of hospitalization, order of
21 nonhospitalization, or term or imprisonment. To the extent it is consistent with

1 good medical practice, the court shall order medication in accordance with the
2 person's expressed wishes and beliefs, except that the court shall not deny an
3 application for an order of medication if the result would be to keep the person
4 in a state that the person could not be tried for a pending criminal charge by
5 reason of lack of capacity. If the court finds the person's expressed wishes and
6 beliefs to be contrary to good medical practice, or if treatment in accordance
7 with the person's expressed wishes and beliefs has been tried for a reasonable
8 period of time without a significant clinical improvement in the person's
9 condition, the court may order medication it finds to be appropriate, based
10 upon all of the evidence. The court shall specify the medication to be used,
11 dosage range, method, and duration of administration.

12 (h)(1) For a person who had received treatment under an order of
13 hospitalization and is currently subject to an order of nonhospitalization but
14 who is refusing to accept the prescribed medication, if the court finds that
15 without an order of medication there is a substantial probability that the person
16 would continue to refuse medication and as a result pose a danger of harm to
17 self or others, the court may order hospitalization of the person for up to
18 72 hours to administer medication as ordered under this section. The court
19 may authorize future 72-hour hospitalizations of a person subject to an order
20 under this subsection to administer medication for 90 days following the initial
21 hospitalization, unless the court finds that an order of medication for a longer

1 period of time is necessary. However, such an order shall not be longer than
2 the duration of the current order of nonhospitalization.

3 (2) A future administration of medication authorized by the court under
4 this subsection shall occur as follows:

5 (A) The treating physician shall execute and file with the
6 Commissioner a certification executed under oath or affirmation stating the
7 following:

8 (i) the person has refused medication;

9 (ii) the person lacks capacity to make a decision regarding
10 medication;

11 (iii) the proposed medications, dosage range, length of
12 administration, and method of administration; and

13 (iv) the substantial probability that the person will pose a danger
14 of harm to self or others if not hospitalized and medicated, and an estimated
15 time by which medication must be administered in order to prevent such harm.

16 (B) The Commissioner shall promptly provide notice of the order of
17 future administration, as set forth in the initial court order, to the court, the
18 person, and the person's attorney. The notice shall be given within 24 hours of
19 receipt by the Commissioner of the physician's certification and shall state that
20 the person may request an immediate hearing to contest the order. The person
21 may be hospitalized in a designated hospital on the date specified in the notice

1 for up to 72 hours in order to administer medication without the person's
2 consent.

3 (i) An order of medication issued under this section shall be effective
4 concurrently with the current order of treatment issued pursuant to section
5 7576 of this chapter.

6 (j) A treating physician shall provide written notice to the court when
7 terminating the administration of medication under the order. Medication
8 under the order may be terminated when the physician determines that the
9 medication is no longer necessary or that the person has regained capacity to
10 make health care decisions.

11 (k) At any time, the person may petition the court for review of the order of
12 medication. If the basis of the petition is that the person has regained capacity
13 to make his or her own health care decisions, the hearing shall be held within
14 three days of the filing of the petition.

15 § 7583. PROTOCOL

16 The Department of Mental Health shall develop and adopt by rule a strict
17 protocol to ensure the health, safety, dignity, and respect of persons subject to
18 administration of psychiatric medications in any designated hospital. This
19 protocol shall be followed by all designated hospitals administering psychiatric
20 medications.

1 part of the clinical record of the patient over the signature of the head of the
2 hospital or his or her designee.

3 § 7594. COMMUNICATION AND VISITATION

4 (a) Subject to the general rules and regulations of the hospital and except to
5 the extent that the head of the hospital determines that it is necessary for the
6 medical welfare or needs of the patient or the hospital to impose restrictions,
7 every patient is entitled:

8 (1) to communicate by sealed mail or otherwise with persons, including
9 official agencies, inside or outside the hospital;

10 (2) to receive visitors and to make and receive telephone calls; and

11 (3) to exercise all civil rights, including the right to dispose of property,
12 execute instruments, make purchases, enter contractual relationships, and vote
13 on his or her own initiative, unless he or she has been judged to lack legal
14 capacity and has not been restored to legal capacity.

15 (b) Notwithstanding any limitations or restrictions authorized by this
16 section on the right of communication, every patient is entitled to communicate
17 by sealed mail with the Board, the Commissioner, his or her attorney, clergy of
18 his or her choice, and the judge, if any, who ordered the patient's
19 hospitalization.

1 § 7595. LEGAL COMPETENCE

2 No determination that a person requires treatment and no order of the court
3 authorizing hospitalization or alternative treatment shall lead to a presumption
4 of legal incapacity for matters other than treatment.

5 § 7596. RECORD OF RESTRICTIONS

6 Any limitation imposed by the head of a hospital on the exercise of civil
7 rights by a patient and the reasons for the limitation shall be made a part of the
8 clinical record of the patient.

9 § 7597. SURGICAL OPERATIONS

10 If the superintendent finds that a patient supported by the State requires a
11 surgical operation or that a surgical operation would promote the possibility of
12 the patient's discharge from the hospital, the superintendent, with the consent
13 of the patient, the patient's attorney, or legally appointed guardian, if any, may
14 make the necessary arrangements with a qualified surgeon and hospital for the
15 operation. The expense of the operation shall be borne by the State in the same
16 proportion as the patient is supported by the State.

17 § 7598. CHANGE FROM INVOLUNTARY TO VOLUNTARY

18 With the permission of the head of the hospital, a patient may at any time
19 have his or her status changed from involuntary to voluntary upon making
20 application as provided in section 7553 of this chapter.

1 § 7599. VISITS BY CLERGY OR ATTORNEY

2 A patient's clergy person or an attorney at law retained by or on behalf of
3 any patient or appointed for him or her by any court shall be admitted to visit
4 at all reasonable times.

5 Subchapter 4. Review

6 § 7611. APPLICATION FOR DISCHARGE

7 (a) A patient who has been ordered hospitalized may apply for discharge to
8 the Family Division of the Superior Court of the unit within which the hospital
9 is located. A person who has been ordered to receive treatment other than
10 hospitalization may apply for discharge to the Family Division of the Superior
11 Court which originally entered the order. The court in its discretion may
12 transfer the matter for the convenience of witnesses or for other reasons to the
13 Family Division of the Superior Court of the unit within which the treatment is
14 centered or in which the person resides. Applications may be made no sooner
15 than 90 days after the issuance of an order of continued treatment or no sooner
16 than six months after the filing of a previous application under this chapter.

17 (b) The hearing on the application for discharge shall be held in accordance
18 with the procedures set forth in subsections 7575(b) through (e) of this chapter.

19 (c) If the court finds that the applicant is not a person in need of further
20 treatment, it shall order the person discharged.

1 (d) If the court finds that the applicant is a person in need of further
2 treatment, it shall deny the application and order continued treatment in
3 accordance with subsections 7576(b) through (e) of this chapter.

4 § 7612. ADMINISTRATIVE REVIEW

5 The head of a hospital or the governing board of the hospital in which a
6 person is a patient shall cause the condition of every patient to be reviewed as
7 regularly as practicable, but not less often than every 60 days, and whenever
8 the head of a hospital or governing board certifies that the patient is not a
9 person in need of further treatment, the patient shall be discharged.

10 Sec. 2. REPEAL

11 18 V.S.A. chapters 175 (the board of mental health), 179 (admission
12 procedures), 181 (judicial proceedings), 183 (care and treatment), and 185
13 (automatic review) are repealed.

14 Sec. 3. EFFECTIVE DATE

15 This act shall take effect on July 1, 2013.