

1 S.287

2 Introduced by Senators Ayer, Sears, and White

3 Referred to Committee on

4 Date:

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

7 Statement of purpose of bill as introduced: This bill proposes a number of  
8 changes to the procedures for involuntary treatment and medication.

9 Specifically, it proposes to substitute a mandatory preliminary hearing for a  
10 voluntary preliminary hearing, create an expedited application for involuntary  
11 treatment, enable joint filing of certain applications for involuntary treatment  
12 and petitions for involuntary medication, and eliminate automatic stays and  
13 automatic stays pending appeal for orders of involuntary medication.

14 An act relating to involuntary treatment and medication

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

16 Sec. 1. 18 V.S.A. § 7510 is amended to read:

17 § 7510. PRELIMINARY HEARING

18 (a) Within five days after a person is admitted to a designated hospital for  
19 emergency examination, ~~he or she may request the criminal division of the~~  
20 ~~superior court to~~ the Family Division of the Superior Court shall conduct a

1 preliminary hearing to determine whether there is probable cause to believe  
2 that he or she was a person in need of treatment at the time of his or her  
3 admission. The hearing shall be based solely on the application for an  
4 emergency examination and accompanying certificate by a licensed physician,  
5 and the application for involuntary treatment if it is available at the time of the  
6 hearing. Hearsay, to the extent it is deemed relevant and reliable by the Court,  
7 shall be admissible.

8 (b) ~~The court shall conduct the hearing within three working days of the~~  
9 ~~filing of the request.~~ The ~~court~~ Court shall cause timely notice of the  
10 preliminary hearing to be given to the patient or his or her attorney, the  
11 hospital, the State, and the attorney for the applicant.

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

14 (d) If probable cause to believe that the individual was a person in need of  
15 treatment at the time of his or her admission is established by substantial  
16 evidence at the preliminary hearing, the individual shall be ordered held for  
17 further proceedings in accordance with the law. If probable cause is not  
18 established, the individual shall be ordered discharged from the hospital and  
19 the ~~court~~ Court shall order him or her returned to the place from which he or  
20 she was transported or to his or her home. Nothing in this section shall  
21 prohibit an interested party from initiating a subsequent emergency

1 examination or warrant for an immediate examination pursuant to sections  
2 7504 and 7505 of this title.

3 (e) Upon a showing of need, the ~~court~~ Court may grant a reasonable  
4 continuance to either the proposed patient's attorney or the attorney for the  
5 ~~state~~ State.

6 Sec. 2. 18 V.S.A. § 7612 is amended to read:

7 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

8 (a) An interested party may, by filing a written application, commence  
9 proceedings for the involuntary treatment of an individual by judicial process.

10 (b) The application shall be filed in the ~~criminal division of the superior~~  
11 ~~court~~ Family Division of the Superior Court of the proposed patient's residence  
12 or, in the case of a nonresident, in any ~~district court~~ District Court.

13 (c) If the application is filed under section 7508 or 7620 of this title, it shall  
14 be filed in the ~~criminal division of the superior court~~ Family Division of the  
15 Superior Court in which the hospital is located.

16 (d) The application shall contain:

17 (1) The name and address of the applicant; and

18 (2) A statement of the current and relevant facts upon which the  
19 allegation of mental illness and need for treatment is based. The application  
20 shall be signed by the applicant under penalty of perjury.

21 (e) The application shall be accompanied by:

1           (1) ~~A~~ a certificate of a licensed physician, which shall be executed under  
2 penalty of perjury stating that he or she has examined the proposed patient  
3 within five days of the date the petition is filed, and is of the opinion that the  
4 proposed patient is a person in need of treatment, including the current and  
5 relevant facts and circumstances upon which the physician's opinion is  
6 based; or

7           (2) ~~A~~ a written statement by the applicant that the proposed patient  
8 refused to submit to an examination by a licensed physician.

9           (f) Before an examining physician completes the certificate of examination,  
10 he or she shall consider available alternative forms of care and treatment that  
11 might be adequate to provide for the person's needs, without requiring  
12 hospitalization.

13           (g) If the proposed patient is certified as a person in need of treatment  
14 pursuant to section 7508 of this title, a petition for involuntary medication may  
15 be filed jointly in the Family Division of the Superior Court with an  
16 application for involuntary treatment in accordance with sections 7624–7627  
17 of this title.

18           Sec. 3. 18 V.S.A. § 7615 is amended to read:

19           § 7615. HEARING

20           (a)(1) Upon receipt of the application, the ~~court~~ Court shall set a date for  
21 the hearing to be held within 10 days from the date of the receipt of the

1 application or 20 days from the date of the receipt of the application if a  
2 psychiatric examination is ordered under section 7614 of this title unless the  
3 hearing is continued by the ~~court~~ Court pursuant to subsection (b) of this  
4 section.

5 (2) If the proposed patient is certified as a person in need of treatment  
6 pursuant to section 7508 of this title, the Court may grant either the applicant  
7 or the proposed patient an expedited hearing to be held within five days from  
8 the date of the receipt of the application or 10 days from the date of the receipt  
9 of the application if a psychiatric examination is ordered for good cause under  
10 section 7614 of this title. For the purposes of this subdivision, good cause  
11 shall include a showing that the proposed patient presents a significant risk of  
12 harm to him or herself or others even while hospitalized.

13 (b) ~~The court~~ For hearings held pursuant to subdivision (a)(1) of this  
14 section, the Court may grant either party ~~an a onetime extension of time~~ of up  
15 to seven days for good cause.

16 (c) The hearing shall be conducted according to the ~~rules of evidence~~ Rules  
17 of Evidence applicable in civil actions in the ~~criminal division of the superior~~  
18 ~~courts~~ Family Division of the Superior Court of the ~~state~~ State, and to an extent  
19 not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont  
20 Rules of Civil Procedure shall be applicable.

1 (d) The applicant and the proposed patient shall have a right to appear at  
2 the hearing to testify. The attorney for the ~~state~~ State and the proposed patient  
3 shall have the right to subpoena, present and cross-examine witnesses, and  
4 present oral arguments. The ~~court~~ Court may, at its discretion, receive the  
5 testimony of any other person.

6 (e) The proposed patient may at his or her election attend the hearing,  
7 subject to reasonable rules of conduct, and the ~~court~~ Court may exclude all  
8 persons not necessary for the conduct of the hearing.

9 Sec. 4. 18 V.S.A. § 7624 is amended to read:

10 § 7624. PETITION FOR INVOLUNTARY MEDICATION

11 (a) The ~~commissioner~~ Commissioner may commence an action for the  
12 involuntary medication of a person who is refusing to accept psychiatric  
13 medication and meets any one of the following ~~three~~ four conditions:

14 (1) has been placed in the ~~commissioner's~~ Commissioner's care and  
15 custody pursuant to section 7619 of this title or subsection 7621(b) of this title;

16 (2) has ~~previously~~ received previously treatment under an order of  
17 hospitalization and is currently under an order of nonhospitalization, including  
18 a person on an order of nonhospitalization who resides in a secure residential  
19 recovery facility; ~~or~~

20 (3) has been committed to the custody of the ~~commissioner of~~  
21 ~~corrections~~ Commissioner of Corrections as a convicted felon and is being held

1 in a correctional facility which is a designated facility pursuant to section 7628  
2 of this title and for whom the ~~department of corrections~~ Department of  
3 Corrections and the ~~department of mental health~~ Department of Mental Health  
4 have ~~jointly~~ jointly determined jointly that involuntary medication would be  
5 appropriate pursuant to 28 V.S.A. § 907(4)(H); or

6 (4) has been certified as a person in need of treatment pursuant to  
7 section 7508 of this title and the petition for involuntary medication is filed  
8 jointly with an application for involuntary treatment pursuant to section 7612  
9 of this title.

10 (b) A petition for involuntary medication shall be filed in the ~~family~~  
11 ~~division of the superior court~~ Family Division of the Superior Court in the  
12 county in which the person is receiving treatment, but if filed pursuant to  
13 subdivision (a)(4) of this section, in the county in which the application for  
14 involuntary treatment is filed.

15 (c) The petition shall include a certification from the treating physician,  
16 executed under penalty of perjury, that includes the following information:

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

18 (2) the necessity for involuntary medication, including the person's  
19 competency to decide to accept or refuse medication;

20 (3) any proposed medication, including the method, dosage range, and  
21 length of administration for each specific medication;

1 (4) a statement of the risks and benefits of the proposed medications,  
2 including the likelihood and severity of adverse side effects and its effect on:

3 (A) the person's prognosis with and without the proposed  
4 medications; and

5 (B) the person's health and safety, including any pregnancy;

6 (5) the current relevant facts and circumstances, including any history of  
7 psychiatric treatment and medication, upon which the physician's opinion is  
8 based;

9 (6) what alternate treatments have been proposed by the doctor, the  
10 patient, or others, and the reasons for ruling out those alternatives; and

11 (7) whether the person has executed a  ~~durable power of attorney for~~  
12 ~~health care~~ an advance directive in accordance with the provisions of  
13 18 V.S.A. chapter ~~111, subchapter 2~~ 231, and the identity of the ~~health care~~  
14 agent or agents designated by the  ~~durable power of attorney~~ advance directive.

15 (d) A copy of the  ~~durable power of attorney~~ advance directive, if available,  
16 shall be attached to the petition.

17 Sec. 5. 18 V.S.A. § 7625 is amended to read:

18 § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

19 BURDEN OF PROOF

20 (a)(1) A hearing on a petition for involuntary medication filed pursuant to  
21 subdivisions 7624(a)(1)–(3) of this title shall be held within seven days of

1 filing and shall be conducted in accordance with sections 7613, 7614,  
2 ~~7615(b)–(e)~~ 7616, and ~~7616~~ subsections 7615(b)–(e) of this title.

3 (2) A hearing on a petition for involuntary medication filed pursuant to  
4 subdivision 7624(a)(4) of this title shall be held in accordance with sections  
5 7613–7616 of this title.

6 (b) In a hearing conducted pursuant to this section, section 7626, or section  
7 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by  
8 clear and convincing evidence.

9 (c) In determining whether or not the person is competent to make a  
10 decision regarding the proposed treatment, the ~~court~~ Court shall consider  
11 whether the person is able to make a decision and appreciate the consequences  
12 of that decision.

13 Sec. 6. 18 V.S.A. § 7626 is amended to read:

14 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

15 (a) If a person who is the subject of a petition filed under section 7624 of  
16 this title has executed a ~~durable power of attorney~~ an advance directive in  
17 accordance with the provisions of 18 V.S.A. chapter ~~111 231~~, ~~subchapter 2 for~~  
18 ~~health care~~, the ~~court~~ Court shall suspend the hearing and enter an order  
19 pursuant to subsection (b) of this section, if the ~~court~~ Court determines that:

20 (1) the person is refusing to accept psychiatric medication;

1           (2) the person is not competent to make a decision regarding the  
2 proposed treatment; and

3           (3) the decision regarding the proposed treatment is within the scope of  
4 the valid, duly executed ~~durable power of attorney for health care~~ advance  
5 directive.

6           (b) An order entered under subsection (a) of this section shall authorize the  
7 ~~commissioner~~ Commissioner to administer treatment to the person, including  
8 involuntary medication in accordance with the direction set forth in the ~~durable~~  
9 ~~power of attorney~~ advance directive or provided by the ~~health care agent or~~  
10 agents acting within the scope of authority granted by the ~~durable power of~~  
11 ~~attorney~~ advance directive. If hospitalization is necessary to effectuate the  
12 proposed treatment, the ~~court~~ Court may order the person to be hospitalized.

13           (c) ~~In the case of a person subject to an order entered pursuant to~~  
14 ~~subsection (a) of this section, and upon the certification by the person's~~  
15 ~~treating physician to the court that the person has received treatment or no~~  
16 ~~treatment consistent with the durable power of attorney for health care for~~  
17 ~~45 days after the order under subsection (a) of this section has been entered,~~  
18 ~~then the court shall reconvene the hearing on the petition.~~

19           (1) ~~If the court concludes that the person has experienced, and is likely~~  
20 ~~to continue to experience, a significant clinical improvement in his or her~~  
21 ~~mental state as a result of the treatment or nontreatment directed by the durable~~

1 ~~power of attorney for health care, or that the patient has regained competence,~~  
2 ~~then the court shall enter an order denying and dismissing the petition.~~

3 ~~(2) If the court concludes that the person has not experienced a~~  
4 ~~significant clinical improvement in his or her mental state, and remains~~  
5 ~~incompetent then the court shall consider the remaining evidence under the~~  
6 ~~factors described in subdivisions 7627(c)(1) (5) of this title and render a~~  
7 ~~decision on whether the person should receive medication. [Repealed.]~~

8 Sec. 7. 18 V.S.A. § 7627(b) is amended to read:

9 (b) If a person who is the subject of a petition filed under section 7625 of  
10 this title has not executed a ~~durable power of attorney~~ an advance directive, the  
11 ~~court~~ Court shall follow the person's competently expressed written or oral  
12 preferences regarding medication, if any, unless the ~~commissioner~~  
13 Commissioner demonstrates that the person's medication preferences have not  
14 led to a significant clinical improvement in the person's mental state in the past  
15 within an appropriate period of time.

16 Sec. 8. Rule 12 of the Vermont Rules for Family Proceedings is amended to  
17 read:

18 Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

19 (a) Automatic Stay Prior to Appeal; Exceptions.

20 (1) Automatic Stay. Except as provided in paragraph (2) of this  
21 subdivision and in subdivision (c), no execution shall issue upon a judgment

1 nor shall proceedings be taken for its enforcement until the expiration of  
2 30 days after its entry or until the time for appeal from the judgment as  
3 extended by Appellate Rule 4 has expired.

4 (2) Exceptions. Unless otherwise ordered by the court, none of the  
5 following orders shall be stayed during the period after its entry and until an  
6 appeal is taken:

7 (A) In an action under Rule 4 of these rules, an order relating to  
8 parental rights and responsibilities and support of minor children or to separate  
9 support of a spouse (including maintenance) or to personal liberty or to the  
10 dissolution of marriage;

11 (B) An order of involuntary treatment, involuntary medication,  
12 nonhospitalization, or hospitalization, in an action pursuant to 18 V.S.A.  
13 ~~§§ 7611-7623~~ chapter 181;

14 (C) Any order of disposition in a juvenile case, including an order  
15 terminating residual parental rights; or

16 (D) Any order in an action under Rule 9 of these rules for prevention  
17 of abuse, including such an action that has been consolidated or deemed  
18 consolidated with a proceeding for divorce or annulment pursuant to Rule 4(n).

19 The provisions of subdivision (d) of this rule govern the modification or  
20 enforcement of the judgment in an action under Rule 4 of these rules, during  
21 the pendency of an appeal.

1 \* \* \*

2 (d) Stay Pending Appeal.

3 (1) Automatic Stay. In any action in which automatic stay prior to  
4 appeal is in effect pursuant to paragraph (1) or subdivision (a) of this rule, the  
5 taking of an appeal from a judgment shall operate as a stay of execution upon  
6 the judgment during the pendency of the appeal, and no supersedeas bond or  
7 other security shall be required as a condition of such stay.

8 (2) Other Actions.

9 (A) When an appeal has been taken from judgment in an action under  
10 Rule 4 of these rules in which no stay pursuant to paragraph (1) of subdivision  
11 (a) of this rule is in effect, the court in its discretion may, during the pendency  
12 of the appeal, grant or deny motions for modification or enforcement of that  
13 judgment.

14 (B) When an appeal has been taken from an order for involuntary  
15 treatment, nonhospitalization, ~~or hospitalization,~~ or involuntary ~~treatment~~  
16 medication, in an action pursuant to ~~chapter 181 of Title 18 V.S.A. chapter~~  
17 181, the court in its discretion may, during the pendency of the appeal, grant or  
18 deny applications for continued treatment or involuntary medication, modify  
19 its order, or discharge the patient, as provided in 18 V.S.A. §§ 7617, 7618,  
20 7620, 7621, 7624, 7625, and 7627.

21 \* \* \*

1       Sec. 9. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

2           The Agency of Human Services shall examine its contract with Vermont  
3       Legal Aid's Mental Health Law Project to determine whether continued State  
4       funding to the Mental Health Law Project may be made contingent upon the  
5       Mental Health Law Project contracting with a sufficient number of  
6       psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614  
7       in the time frame established by 18 V.S.A. § 7615.

8       Sec. 10. EFFECTIVE DATE

9           This act shall take effect on July 1, 2014.