

S.287

An act relating to involuntary treatment and medication

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

Sec. 1. 18 V.S.A. § 7612 is amended to read:

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

(c) If the application is filed under section 7508 or 7620 of this title, it shall be filed in the ~~criminal division of the superior court~~ unit of the Family Division of the Superior Court in which the hospital is located. In all other cases, it shall be filed in the unit in which the patient resides. In the case of a nonresident, it may be filed in any unit.

(d) The application shall contain:

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

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

(e) The application shall be accompanied by:

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

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

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

Sec. 2. 18 V.S.A. § 7612a is added to read:

§ 7612a. PROBABLE CAUSE REVIEW

(a) Within three days after an application for involuntary treatment is filed, the Family Division of the Superior Court shall conduct a review to determine whether there is probable cause to believe that he or she was a person in need of treatment at the time of his or her admission. The review shall be based solely on the application for an emergency examination and accompanying

certificate by a licensed physician and the application for involuntary treatment.

(b) If based on a review conducted pursuant to subsection (a) of this section the Court finds probable cause to believe that the person was a person in need of treatment at the time of his or her admission, the person shall be ordered held for further proceedings in accordance with part 8 of this title. If probable cause is not established, the person shall be ordered discharged from the hospital and returned to the place from which he or she was transported or to his or her home.

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

§ 7615. HEARING

(a)(1) Upon receipt of the application, the ~~court~~ Court shall set a date for the hearing to be held within 10 days from the date of the receipt of the application or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 of this title unless the hearing is continued by the ~~court~~ Court pursuant to subsection (b) of this section.

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 may file a motion to expedite the hearing. The motion shall be supported by an affidavit. The Court may grant the motion if it finds that:

(i) the person has received involuntary medication pursuant to section 7624 of this title during the past two years and experienced significant clinical improvement in his or her mental state as a result of the medication; or

(ii)(I) the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized; and

(II) clinical interventions have failed to address the risk of harm to the person or others.

(B) If the Court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within seven to ten days from the date of the order for expedited hearing.

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

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

(d) The applicant and the proposed patient shall have a right to appear at the hearing to testify. The attorney for the ~~state~~ State and the proposed patient

shall have the right to subpoena, present and cross-examine witnesses, and present oral arguments. The ~~court~~ Court may, at its discretion, receive the testimony of any other person.

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

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

§ 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

(3) has been committed to the custody of the ~~commissioner of corrections~~ Commissioner of Corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for whom the ~~department of corrections~~ Department of

~~Corrections~~ and the ~~department of mental health~~ Department of Mental Health have ~~jointly~~ determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H).

(b)(1) A petition for involuntary medication may be filed at any time after the application for involuntary treatment is filed. ~~A~~ The petition for ~~involuntary medication~~ shall be filed in the ~~family division of the superior court~~ Family Division of the Superior Court in the county in which the person is receiving treatment or, if an order has not been issued on the application for involuntary treatment, in the county in which the application for involuntary treatment is pending.

(2) The Court may consolidate an application for involuntary treatment and a petition for involuntary medication upon motion of a party or upon its own motion if there is good cause to believe that consolidation will serve the best interests of the patient. If the proceedings are consolidated, the Court shall rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

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

- (1) the nature of the person's mental illness;
- (2) the necessity for involuntary medication, including the person's competency to decide to accept or refuse medication;

- (3) any proposed medication, including the method, dosage range, and length of administration for each specific medication;
 - (4) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:
 - (A) the person's prognosis with and without the proposed medications; and
 - (B) the person's health and safety, including any pregnancy;
 - (5) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;
 - (6) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives; and
 - (7) whether the person has executed a ~~durable power of attorney for health care~~ advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111, subchapter 2~~ 231 of this title, and the identity of the ~~health care agent or agents~~ designated by the ~~durable power of attorney~~ advance directive.
- (d) A copy of the ~~durable power of attorney~~ advance directive, if available, shall be attached to the petition.

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

§ 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;
BURDEN OF PROOF

(a) ~~A~~ Unless consolidated with an application for involuntary treatment pursuant to section 7624 of this title, a hearing on a petition for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, ~~7615(b)–(e)~~, and 7616 and subsections ~~7615(b)–(e)~~ of this title.

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

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

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

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

(a) If a person who is the subject of a petition filed under section 7624 of this title has executed a ~~durable power of attorney~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111~~ 231 of this title, ~~subchapter 2 for health care~~, the ~~court~~ Court shall suspend the hearing and

enter an order pursuant to subsection (b) of this section, if the ~~court~~ Court determines that:

- (1) the person is refusing to accept psychiatric medication;
- (2) the person is not competent to make a decision regarding the proposed treatment; and
- (3) the decision regarding the proposed treatment is within the scope of the valid, duly executed ~~durable power of attorney for health care~~ advance directive.

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

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

~~(1) If the court concludes that the person has experienced, and is likely to continue to experience, a significant clinical improvement in his or her mental state as a result of the treatment or nontreatment directed by the durable power of attorney for health care, or that the patient has regained competence, then the court shall enter an order denying and dismissing the petition.~~

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

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

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

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

Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

(1) Automatic Stay. Except as provided in paragraph (2) of this subdivision and in subdivision (c), no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry or until the time for appeal from the judgment as extended by Appellate Rule 4 has expired.

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

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

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

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

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

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

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(d) Stay Pending Appeal.

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

(2) Other Actions.

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

(B)(i) When an appeal has been taken from an order for involuntary treatment, nonhospitalization, or hospitalization ~~or involuntary treatment~~, in an

action pursuant to ~~chapter 181~~ of Title 18 V.S.A. chapter 181, the court in its discretion may, during the pendency of the appeal, grant or deny applications for continued treatment, modify its order, or discharge the patient, as provided in 18 V.S.A. §§ 7617, 7618, 7620, and 7621.

(ii)(I) If an order of involuntary medication is appealed, the appellant may file a motion in the Family Division to stay the order during the pendency of the appeal. A motion to stay filed under this subdivision shall stay the involuntary medication order while the motion to stay is pending.

(II) The Family Division's ruling on a motion to stay filed under subdivision (I) of this subdivision (ii) may be modified or vacated by the Supreme Court upon motion by a party filed within seven days after the ruling is issued. If the appellant is the moving party, the order for involuntary medication shall remain stayed until the Supreme Court rules on the motion to vacate or modify the stay. A motion to vacate or modify a stay under this subdivision shall be determined by a single Justice of the Supreme Court, who may hear the matter or at his or her discretion refer it to the entire Supreme Court for hearing. No further appeal may lie from the ruling of a single Justice in matters to which this subdivision applies. The motion shall be determined as soon as practicable and to the extent possible shall take priority over other matters.

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Sec. 9. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall ensure that Vermont Legal Aid's Mental Health Law Project has a sufficient number of psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.

Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2014.