

Report of Committee of Conference

S.287

TO THE SENATE AND HOUSE OF REPRESENTATIVES:

The Committee of Conference, to which were referred the disagreeing votes of the two Houses upon Senate Bill, entitled:

S.287. An act relating to involuntary treatment and medication.

Respectfully reports that it has met and considered the same and recommends that the Senate accede to the House Proposal of Amendment with further amendments as follows:

First: In Sec. 8, 18 V.S.A. § 7509, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(b) ~~The person~~ All persons admitted or held for admission shall be given the opportunity, subject to reasonable limitations, to communicate with others, including visits by a peer or other support person designated by the person, presence of the support person at all treatment team meetings the person is entitled to attend, the reasonable use of a telephone, and the reasonable use of electronic mail and the Internet.

Second: In Sec. 10, 18 V.S.A. § 7612a, by striking out subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

(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 in the temporary custody of the Commissioner for further proceedings in accordance with Part 8 of this title. If probable cause is not established, the person shall be ordered discharged or released from the hospital and returned to the place from which he or she was transported or to such place as the person may reasonably direct.

Third: In Sec. 11, 18 V.S.A. § 7615, by inserting after subdivision (a)(2)(B) a new subdivision to be (a)(3) to read as follows:

(3) If a hearing on the application for involuntary treatment has not occurred within 60 days from the date of the Court's receipt of the application, the Commissioner shall request that the Court and both parties' attorneys provide the reasons for the delay. The Commissioner shall submit a report to the Court, the Secretary of Human Services, and the patient's attorney that either explains why the delay was warranted or makes recommendations as to how delays of this type can be avoided in the future.

Fourth: In Sec. 11, 18 V.S.A. § 7615, by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e) to read as follows:

(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, except a peer or other support person designated by the proposed patient, not necessary for the conduct of the hearing.

Fifth: In Sec. 12, 18 V.S.A. § 7624, by striking out subsections (a) and (b) in their entirety and inserting in lieu thereof the following:

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

(4) has an application for involuntary treatment pending for which the Court has granted a motion to expedite pursuant to subdivision 7615(a)(2)(A)(i) of this title;

(5)(A) has an application for involuntary treatment pending;

(B) waives the right to a hearing on the application for involuntary treatment until a later date; and

(C) agrees to proceed with an involuntary medication hearing without a ruling on whether he or she is a person in need of treatment; or

(6) has had an application for involuntary treatment pending pursuant to subdivision 7615(a)(1) of this title for more than 26 days without a hearing having occurred and the treating psychiatrist certifies, based on specific behaviors and facts set forth in the certification, that in his or her professional judgment there is good cause to believe that:

(A) additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence; and

(B) serious deterioration of the person's mental condition is occurring.

(b)(1) A Except as provided in subdivisions (2), (3), and (4) of this subsection, a 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.

(2) If the petition for involuntary medication is filed pursuant to subdivision (a)(4) of this section:

(A) the petition shall be filed in the county in which the application for involuntary treatment is pending; and

(B) the Court shall consolidate the application for involuntary treatment with the petition for involuntary medication and rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

(3) If the petition for involuntary medication is filed pursuant to subdivisions (a)(5) or (a)(6) of this section, the petition shall be filed in the county in which the application for involuntary treatment is pending.

(4) Within 72 hours of the filing of a petition for involuntary medication pursuant to subdivision (a)(6) of this section, the Court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the Court determines that the requirements of subdivision (a)(6) of this section have been established, the Court shall consolidate the application for involuntary treatment with the petition for involuntary medication and hear both applications within ten days of the date that the petition for involuntary medication is filed. The Court shall rule on the application for involuntary treatment before ruling on the petition for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.

Sixth: In Sec. 13, 18 V.S.A. § 7625, by striking out subsection (a) in its entirety and inserting in lieu thereof the following:

(a) A Unless consolidated with an application for involuntary treatment pursuant to subdivision 7624(b)(2) or (b)(4) 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.

Seventh: In Sec. 15, 18 V.S.A. § 7627, by striking out subdivision (f)(2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

(2) The order shall require the person’s treatment provider to conduct ~~monthly~~ weekly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient has become competent pursuant to subsection 7625(c) of this title and shall also require the person’s treatment provider to document this review in detail in the patient’s chart. The person’s treatment provider shall notify the Department when he or she determines that the patient has regained competence. Within two days of receipt, the Department shall provide a copy of the notice to the patient’s attorney.

Eighth: In Sec. 15, 18 V.S.A. § 7627, in subsection (g), by striking out the last sentence and inserting in lieu thereof a new sentence to read as follows: If

at any time the treating psychiatrist finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

Ninth: In Sec. 16, 18 V.S.A. § 7629, by striking out subsections (a) through (c) in their entirety and inserting in lieu thereof new subsections (a) through (c) to read as follows:

(a) It is the intention of the ~~general assembly~~ General Assembly to recognize the right of a legally competent person to determine whether or not to accept medical treatment, ~~including involuntary medication~~, absent an emergency or a determination that the person is incompetent and lacks the ability to make a decision and appreciate the consequences.

(b) ~~This act protects this right through a judicial proceeding prior to the use of nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive conditions consistent with the person's right to adequate treatment shall be provided in all cases. The General Assembly adopts the goal of high-quality, patient-centered health care, which the Institute of Medicine defines as "providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions." A substitute decision-maker is sometimes necessary to~~ make a decision about care when a person is incompetent and lacks the ability

to make a decision and appreciate the consequences. Even when a person lacks competence, health care that a person is opposing should be avoided whenever possible because the distress and insult to human dignity that results from compelling a person to participate in medical treatment against his or her will are real, regardless of how poorly the person may understand the decision.

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

Tenth: In Sec. 23, by striking out Sec. 23 in its entirety and inserting in lieu thereof a new Sec. 23 to read as follows:

Sec. 23. LEGISLATIVE INTENT; EMERGENCY INVOLUNTARY  
PROCEDURES

The Mental Health Oversight Committee shall identify and include in its 2014 annual report a list of policies that may require clarification of legislative intent in order for the Department of Mental Health to proceed with rulemaking pursuant to 2012 Acts and Resolves No.79, Sec. 33a. The Committee shall also make recommendations as to any legislation needed to clarify legislative intent for those policies identified by the Committee.

Eleventh: By inserting after Sec. 27 a new Sec. 28 to read as follows:

Sec. 28. REPORT; APPLICATIONS ON INVOLUNTARY TREATMENT  
AND MEDICATION

On or before February 1, 2015, the Department of Mental Health and the Court Administrator shall jointly submit a report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary containing data on:

(1) the total number of applications for involuntary treatment filed, and the total number granted, between July 1, 2014 and December 31, 2014, and, of those filed, the total number expedited pursuant to 18 V.S.A. § 7615(a)(2)(A)(i) and (a)(2)(A)(ii); and

(2) the total number of applications for involuntary medication filed, and the total number granted, between July 1, 2014 and December 31, 2014 pursuant to 18 V.S.A. § 7624(a), including the total number of applications filed under each subdivision.

and by renumbering the remaining section to be Sec. 29

COMMITTEE ON THE PART OF  
THE SENATE

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SEN. JEANETTE K. WHITE

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SEN. CLAIRE D. AYER

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SEN. RICHARD W. SEARS

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