

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 287
3 entitled “An act relating to involuntary treatment and medication” respectfully
4 reports that it has considered the same and recommends that the House propose
5 to the Senate that the bill be amended by striking out all after the enacting
6 clause and inserting in lieu thereof the following:

7 **Sec. 1. 18 V.S.A. § 7101(9) is amended to read:**

8 (9) “Interested party” means a guardian, spouse, parent, adult child,
9 close adult relative, a responsible adult friend, or person who has the individual
10 in his or her charge or care. It also means a mental health professional, a law
11 enforcement officer, or a licensed physician, a head of a hospital, a selectman,
12 a town service officer, or a town health officer.

13 **Sec. 2. 18 V.S.A. § 7259 is amended to read:**

14 **§ 7259. MENTAL HEALTH CARE OMBUDSMAN**

15 (a) ~~The department of mental health~~ Department of Mental Health shall
16 ~~establish the office of the mental health care ombudsman~~ Office of the Mental
17 Health Care Ombudsman within the agency designated by the ~~governor~~
18 Governor as the protection and advocacy system for the ~~state~~ State pursuant to
19 42 U.S.C. § 10801 et seq. The agency may execute the duties of the ~~office of~~
20 ~~the mental health care ombudsman~~ Office of the Mental Health Care
21 Ombudsman, including authority to assist individuals with mental health

1 conditions and to advocate for policy issues on their behalf; provided,
2 however, that nothing in this section shall be construed to impose any
3 additional duties on the agency in excess of the requirements under federal
4 law.

5 (b) The agency may provide a report annually to the ~~general assembly~~
6 General Assembly regarding the implementation of this section.

7 (c) In the event the protection and advocacy system ceases to provide
8 federal funding to the agency for the purposes described in this section, the
9 ~~general assembly~~ General Assembly may allocate sufficient funds to maintain
10 the ~~office of the mental health care ombudsman~~ Office of the Mental Health
11 Care Ombudsman.

12 (d) The Department of Mental Health shall provide a copy of the certificate
13 of need for any emergency involuntary procedure performed on a person in the
14 custody or interim custody of the Commissioner to the Office of the Mental
15 Health Care Ombudsman within five days of the certificate's production.

16 Sec. 3. 18 V.S.A. § 7504 is amended to read:

17 § 7504. APPLICATION AND CERTIFICATE FOR EMERGENCY

18 EXAMINATION

19 (a) A person shall be ~~admitted to a designated~~ held for admission to a
20 hospital for an emergency examination to determine if he or she is a person in
21 need of treatment upon written application by an interested party accompanied

1 by a certificate by a licensed physician who is not the applicant. The
2 application and certificate shall set forth the facts and circumstances which
3 constitute the need for an emergency examination and which show that the
4 person is a person in need of treatment.

5 (b) The application and certificate shall be authority for transporting the
6 person to a designated hospital for an emergency examination, as provided in
7 section 7511 of this title.

8 (c) For the purposes of admission of an individual to a designated hospital
9 for care and treatment under this section, a head of a hospital, as provided in
10 subsection (a) of this section, may include a person designated in writing by
11 the head of the hospital to discharge the authority granted in this section.

12 A designated person must be an official hospital administrator, supervisory
13 personnel, or a licensed physician on duty on the hospital premises other than
14 the certifying physician under subsection (a) of this section.

15 Sec. 4. 18 V.S.A. § 7505 is amended to read:

16 § 7505. WARRANT AND CERTIFICATE FOR IMMEDIATE
17 EMERGENCY EXAMINATION

18 (a) In emergency circumstances where a certification by a physician is not
19 available without serious and unreasonable delay, and when personal
20 observation of the conduct of a person constitutes reasonable grounds to
21 believe that the person is a person in need of treatment, and he or she presents

1 an immediate risk of serious injury to himself or herself or others if not
2 restrained, a law enforcement officer or mental health professional may make
3 an application, not accompanied by a physician's certificate, to any district or
4 superior judge for a warrant for an ~~immediate~~ emergency examination.

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

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

13 (d) If necessary, the ~~court~~ Court may order the law enforcement officer or
14 mental health professional to transport the person to a ~~designated~~ hospital for
15 an ~~immediate examination~~ evaluation by a physician to determine if the person
16 should be certified for an emergency examination.

17 (e) ~~Upon admission to a designated hospital, the person shall be~~
18 ~~immediately examined by a~~ If after evaluation the licensed physician
19 determines that the person is a person in need of treatment, he or she shall
20 issue an initial certificate that sets forth the facts and circumstances
21 constituting the need for an emergency examination and showing that the

1 ~~person is a person in need of treatment. If the physician certifies that the~~
2 ~~person is a person in need of treatment~~ Once the physician has issued the
3 initial certificate, the person shall be held for an emergency examination in
4 accordance with section 7508 of this title. If the physician does not certify that
5 the person is a person in need of treatment, he or she shall immediately
6 discharge the person and cause him or her to be returned to the place from
7 which he or she was taken, or to such place as the person reasonably directs.

8 Sec. 5. 18 V.S.A. § 7508 is amended to read:

9 § 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

10 (a) When a person is admitted to a designated hospital an initial
11 certification is issued for an emergency examination of a person in accordance
12 with section 7504 or subsection 7505(e) of this title, he or she shall be
13 examined and certified by a psychiatrist as soon as practicable, but not later
14 than one working day 24 hours after admission initial certification.

15 (b) If the person is admitted held for admission on an application and
16 physician's certificate, the examining psychiatrist shall not be the same
17 physician who signed the certificate.

18 (c) If the psychiatrist does not certify issue a second certification stating
19 that the person is a person in need of treatment, he or she shall immediately
20 discharge or release the person and cause him or her to be returned to the place

1 from which he or she was taken or to such place as the person reasonably
2 directs.

3 (d) If the psychiatrist does ~~certify~~ issue a second certification that the
4 person is a person in need of treatment, the person's hospitalization person
5 may continue to be held for an additional 72 hours, at which time
6 hospitalization shall terminate the person shall be discharged or released,
7 unless within that period:

8 (1) the person has ~~been~~ accepted for voluntary admission under section
9 7503 of this title; or

10 (2) an application for involuntary treatment is filed with the appropriate
11 court under section 7612 of this title, in which case the patient shall remain
12 hospitalized continue to be held pending the court's decision on the application
13 Court's finding of probable cause on the application.

14 (e)(1)(A) A person shall be deemed to be in the interim custody of the
15 Commissioner when:

16 (i) a physician files an initial certification for the person while the
17 person is in a hospital; or

18 (ii) when a person is found to be a person in need of treatment
19 after an emergency examination.

1 (B) Interim custody under this subsection shall continue until the
2 Court issues an order pursuant to subsection 7617(b) of this title or the person
3 is discharged or released.

4 (2) The Commissioner shall make every effort to ensure that a person
5 held for an emergency examination pending a hospital admission is receiving
6 interim care and treatment that:

7 (A) uses the least restrictive manner necessary to protect the safety of
8 both the person and the public;

9 (B) respects the privacy of the person and other patients; and

10 (C) prevents physical and psychological trauma.

11 (3) A person held for an emergency examination may be admitted at an
12 appropriate hospital at any time after the second certification occurs.

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

14 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

20 (c) If the application is filed under section 7508 or 7620 of this title, it shall
21 be filed in the ~~criminal division of the superior court~~ unit of the Family

1 Division of the Superior Court in which the hospital is located. In all other
2 cases, it shall be filed in the unit in which the proposed patient resides. In the
3 case of a nonresident, it may be filed in any unit. The Court may change the
4 venue of the proceeding to the unit in which the proposed patient is located at
5 the time of the trial.

6 (d) The application shall contain:

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

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

11 (e) The application shall be accompanied by:

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

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

20 (f) Before an examining physician completes the certificate of examination,
21 he or she shall consider available alternative forms of care and treatment that

1 might be adequate to provide for the person's needs, without requiring
2 hospitalization. The examining physician shall document on the certificate the
3 specific alternative forms of care and treatment that he or she considered and
4 why those alternatives were deemed inappropriate, including information on
5 the availability of any appropriate alternatives.

6 **Sec. 7.** 18 V.S.A. § 7612a is added to read:

7 § 7612a. PROBABLE CAUSE REVIEW

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

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

1 (c) An application for involuntary treatment shall not be dismissed solely
2 because the probable cause review is not completed within the time period
3 required by this section if there is good cause for the delay.

4 Sec. 8. 18 V.S.A. § 7615 is amended to read:

5 § 7615. HEARING

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

12 (2)(A) The applicant or a person who is certified as a person in need of
13 treatment pursuant to section 7508 may file a motion to expedite the hearing.
14 The motion shall be supported by an affidavit, and the Court shall rule on the
15 motion on the basis of the filings without holding a hearing. After viewing the
16 evidence in the light most favorable to the moving party:

17 (i) The Court may grant the motion if it finds that the person has
18 received involuntary medication pursuant to section 7624 of this title during
19 the past two years and based upon the person's response to previous and
20 ongoing treatment there is good cause to believe that additional time will not

1 result in the person establishing a therapeutic relationship with providers or
2 regain competence.

3 (ii)(I) The Court shall grant the motion if it finds that the person
4 demonstrates a significant risk of causing the person or others serious bodily
5 injury as defined in 13 V.S.A. § 1021 even while hospitalized; and

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

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

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

14 (2) The Court may grant one or more additional seven-day
15 continuances if:

16 (A) the Court finds that the proceeding or parties would be
17 substantially prejudiced without a continuance; or

18 (B) the parties stipulate to the continuance.

19 (c) The hearing shall be conducted according to the ~~rules of evidence~~ Rules
20 of Evidence applicable in civil actions in the ~~criminal division of the superior~~
21 ~~courts~~ Family Division of the Superior Court of the ~~state~~ State, and to an extent

1 not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont
2 Rules of Civil Procedure shall be applicable.

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

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

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

12 § 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

1 (3) has been committed to the custody of the ~~commissioner of~~
2 ~~corrections~~ Commissioner of Corrections as a convicted felon and is being held
3 in a correctional facility which is a designated facility pursuant to section 7628
4 of this title and for whom the ~~department of corrections~~ Departments of
5 Corrections and the ~~department of mental health~~ of Mental Health have jointly
6 determined jointly that involuntary medication would be appropriate pursuant
7 to 28 V.S.A. § 907(4)(H):

8 (4) has an application for involuntary treatment pending for which
9 the Court has granted a motion to expedite pursuant to subdivision
10 7615(a)(2)(A)(ii) of this title; or

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

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

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

16 (b)(1) A petition for involuntary medication may be filed at any time after
17 the application for involuntary treatment is filed. A Except as provided in
18 subdivision (2) of this subsection, a petition for involuntary medication shall
19 be filed in the ~~family division of the superior court~~ Family Division of the
20 Superior Court in the county in which the person is receiving treatment or, if
21 an order has not been issued on the application for involuntary treatment, in the

1 county in which the application for involuntary treatment is pending, if
2 applicable.

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

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

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

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

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

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

20 (2) whether the person is refusing medication proposed by the
21 physician;

1 (3) whether the person lacks the capacity to decide to accept or refuse
2 medication and appreciate the consequences of that decision;

3 (4) the necessity for involuntary medication, including the person's
4 competency to decide to accept or refuse medication;

5 (3)(5) any proposed medication, including the method, dosage range,
6 and length of administration for each specific medication;

7 (4)(6) a statement of the risks and benefits of the proposed medications,
8 including the likelihood and severity of adverse side effects and its effect on:

9 (A) the person's prognosis with and without the proposed
10 medications; and

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

12 (5)(7) the current relevant facts and circumstances, including any history
13 of psychiatric treatment and medication, upon which the physician's opinion is
14 based;

15 (6)(8) what alternate treatments have been proposed by the doctor, the
16 patient, or others, and the reasons for ruling out those alternatives, including
17 information on the availability of any appropriate alternatives; and

18 (7)(9) whether the person has executed a durable power of attorney for
19 health care an advance directive in accordance with the provisions of

20 18 V.S.A. chapter 111, subchapter 2 chapter 231 of this title, and the identity

1 of the ~~health care agent~~ agents designated by the ~~durable power of attorney~~
2 advance directive.

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

5 **Sec. 10.** 18 V.S.A. § 7625 is amended to read:

6 § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

7 BURDEN OF PROOF

8 (a) ~~A~~ Unless consolidated with an application for involuntary treatment
9 pursuant to **subdivision 7624(b)(2)** of this title, a hearing on a petition for
10 involuntary medication shall be held within seven days of filing and shall be
11 conducted in accordance with sections 7613, 7614, ~~7615(b)–(e)~~, and 7616 and
12 subsections ~~7615(b)–(e)~~ of this title.

13 (b) In a hearing conducted pursuant to this section, section 7626, or section
14 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by
15 clear and convincing evidence.

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

1 **Sec. 11.** 18 V.S.A. § 7626 is amended to read:

2 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

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

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

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

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

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

1 (c) ~~In the case of a person subject to an order entered pursuant to~~
2 ~~subsection (a) of this section, and upon the certification by the person's~~
3 ~~treating physician to the court that the person has received treatment or no~~
4 ~~treatment consistent with the durable power of attorney for health care for~~
5 ~~45 days after the order under subsection (a) of this section has been entered,~~
6 ~~then the court shall reconvene the hearing on the petition.~~

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

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

17 (d)(1) The Commissioner of Mental Health shall develop a protocol for use
18 by designated hospitals for the purpose of educating hospital staff on the use
19 and applicability of advance directives pursuant to chapter 231 of this title and
20 other written or oral expressions of treatment preferences pursuant to
21 subsection 7627(b) of this title.

1 (2) The the impact of receiving medication or not receiving medication
2 on the person’s relationship with his or her family or household members
3 whose opinion the ~~court~~ Court finds relevant and credible based on the nature
4 of the relationship;

5 (3) The the likelihood and severity of possible adverse ~~side-effects~~ side
6 effects from the proposed medication;

7 (4) The the risks and benefits of the proposed medication and its
8 effect on:

9 (A) the person’s prognosis; and

10 (B) the person’s health and safety, including any pregnancy; and

11 (5) The the various treatment alternatives available, which may or may
12 not include medication.

13 (d) As a threshold matter, the Court shall consider the person’s
14 competency. If the ~~court~~ Court finds that the person is competent to make a
15 decision regarding the proposed treatment or that involuntary medication is not
16 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall
17 enter a finding to that effect and deny the petition.

18 (e) As a threshold matter, the Court shall consider the person’s
19 competency. If the ~~court~~ Court finds that the person is incompetent to make a
20 decision regarding the proposed treatment and that involuntary medication is
21 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall

1 make specific findings stating the reasons for the involuntary medication by
2 referencing those supporting factors.

3 (f)(1) If the ~~court~~ Court grants the petition, in whole or in part, the ~~court~~
4 Court shall enter an order authorizing the ~~commissioner~~ Commissioner to
5 administer involuntary medication to the person. The order shall specify the
6 types of medication, the dosage range, length of administration, and method of
7 administration for each. The order for involuntary medication shall not include
8 electric convulsive therapy, surgery, long-acting injections, nasogastric
9 intubation, or experimental medications.

10 (2) The order shall require the person's treatment provider to conduct
11 ~~monthly~~ weekly reviews of the medication to assess the continued need for
12 involuntary medication, the effectiveness of the medication, the existence of
13 any side effects, and whether the patient has become competent pursuant to
14 subsection 7625(c) of this title, and shall document this review in detail in the
15 patient's chart and provide the person's attorney with a copy of the
16 documentation within five days of its production.

17 (g) For a person receiving treatment pursuant to an order of hospitalization,
18 the ~~commissioner~~ Commissioner may administer involuntary medication as
19 authorized by this section to the person for up to 90 days, unless the ~~court~~
20 Court finds that an order is necessary for a longer period of time. Such an
21 order shall not be longer than the duration of the current order of

1 hospitalization. If at any time a treatment provider finds that a person subject
2 to an order for involuntary medication has become competent pursuant to
3 subsection 7625(c) of this title, the order shall no longer be in effect.

4 * * *

5 Sec. 13. 18 V.S.A. § 7629 is amended to read:

6 § 7629. LEGISLATIVE INTENT

7 (a) It is the intention of the general assembly to recognize The General
8 Assembly recognizes the right of a legally competent person to determine
9 whether or not to accept medical treatment, including involuntary medication,
10 absent an emergency or a determination that the person is incompetent and
11 lacks the ability to make a decision and appreciate the consequences treatment
12 provided during periods of incapacity.

13 (b) This act protects this right through a judicial proceeding prior to the use
14 of nonemergency involuntary medication and by limiting the duration of an
15 order for involuntary treatment to no more than one year. The least restrictive
16 conditions consistent with the person's right to adequate treatment shall be
17 provided in all cases. The General Assembly adopts the goal of high-quality,
18 patient-centered health care, which the Institute of Medicine defines as
19 “providing care that is respectful of and responsive to individual patient
20 preferences, needs, and values and ensuring that patient values guide all
21 clinical decisions.”

1 (c) It is the policy of the ~~general assembly~~ General Assembly to work
2 ~~towards toward~~ a mental health system that does not require coercion or the
3 use of involuntary medication. The distress and insult to human dignity that
4 results from compelling a person to participate in medical procedures against
5 his or her will are real regardless of how poorly the person may understand the
6 procedures or how confused or mistaken the person may be about the
7 procedures. Any trauma ensuing from the administration of involuntary
8 treatment or medication shall be considered whenever a medical decision is
9 made for a person without the person's consent.

10 (d) This chapter protects the rights and values described in this section
11 through a judicial process to determine competence prior to an order for
12 nonemergency involuntary medication and by limiting the duration of an order
13 for involuntary treatment to no more than one year. The least restrictive order
14 consistent with the person's right to adequate treatment shall be provided in all
15 cases.

16 (e) This act will render the J. L. v. Miller consent judgment no longer
17 applicable.

18 Sec. 14. 18 V.S.A. § 9707(h) is amended to read:

19 (h)(1) An advance directive executed in accordance with section 9703 of
20 this title may contain a provision permitting the agent, in the event that the
21 principal lacks capacity, to authorize or withhold health care over the

1 principal's objection. In order to be valid, the provision shall comply with the
2 following requirements:

3 (A) An agent shall be named in the provision.

4 (B) The agent shall accept in writing the responsibility of authorizing
5 or withholding health care over the principal's objection in the event the
6 principal lacks capacity.

7 (C) A clinician for the principal shall sign the provision and affirm
8 that the principal appeared to understand the benefits, risks, and alternatives to
9 the health care being authorized or rejected by the principal in the provision.

10 (D)(i) An ombudsman, recognized member of the clergy, attorney
11 licensed to practice law in this state State, or ~~probate division of the superior~~
12 ~~court~~ Probate Division of the Superior Court designee shall sign a statement
13 affirming that he or she has explained the nature and effect of the provision to
14 the principal, and that the principal appeared to understand the explanation and
15 be free from duress or undue influence.

16 (ii) If the principal is a patient in a hospital when the provision is
17 executed, the ombudsman, recognized member of the clergy, attorney, or
18 ~~probate division of the superior court~~ Probate Division of the Superior Court
19 designee shall be independent of the hospital and not an interested individual.

20 (E) The provision shall specify the treatments to which it applies, and
21 shall include an explicit statement that the principal desires or does not desire

1 the proposed treatments even over the principal's objection at the time
2 treatment is being offered or withheld. The provision may include a statement
3 expressly granting to the health care agent the authority to consent to the
4 principal's voluntary hospitalization, ~~and to agree that the principal's discharge~~
5 ~~from the hospital may be delayed, pursuant to section 8010 of this title.~~

6 (F) The provision shall include an acknowledgment that the principal
7 is knowingly and voluntarily waiving the right to refuse or receive treatment at
8 a time of incapacity, and that the principal understands that a clinician will
9 determine capacity.

10 (2) A provision executed in compliance with subdivision (1) of this
11 subsection shall be effective when the principal's clinician and a second
12 clinician have determined pursuant to subdivision 9706(a)(1) of this title that
13 the principal lacks capacity.

14 (3) If an advance directive contains a provision executed in compliance
15 with this section:

16 (A) ~~The~~ Except as provided in subdivision (B) of this subdivision (3),
17 the agent may, in the event the principal lacks capacity, make health care
18 decisions over the principal's objection, provided that the decisions are made
19 in compliance with subsection 9711(d) of this title.

20 (B) The Probate Division of the Superior Court, on the motion of the
21 patient or of the Department of Mental Health, shall review the validity of a

1 patient's advance directive if the patient is hospitalized and refusing
2 psychiatric medication and the patient's advance directive contains a provision
3 executed in compliance with this section permitting the agent, in the event that
4 the principal lacks capacity, to consent to hospitalization or psychiatric
5 medication, or both, over the principal's objection. If the patient or the
6 Department requests the Court's review, the agent shall not consent to the
7 hospitalization or the administration of psychiatric medication, or both, over
8 the principal's objection until the Court has determined the provision to be
9 valid.

10 (C) A clinician shall follow instructions of the agent authorizing or
11 withholding health care over the principal's objection.

12 **Sec. 15.** Rule 12 of the Vermont Rules for Family Proceedings is amended to
13 read:

14 Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

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

16 (1) Automatic Stay. Except as provided in paragraph (2) of this
17 subdivision and in subdivision (c), no execution shall issue upon a judgment
18 nor shall proceedings be taken for its enforcement until the expiration of
19 30 days after its entry or until the time for appeal from the judgment as
20 extended by Appellate Rule 4 has expired.

1 (d) Stay Pending Appeal.

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

7 (2) Other Actions.

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

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

19 (ii)(I) If an order of involuntary medication is appealed, the
20 appellant may file a motion in the Family Division to stay the order during the

1 pendency of the appeal. A motion to stay filed under this subdivision shall
2 stay the involuntary medication order while the motion to stay is pending.

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

15 * * *

16 **Sec. 16. REPORT; EMERGENCY INVOLUNTARY PROCEDURES**

17 **On or before January 15, 2015, the Office of Legislative Council shall**
18 **submit a report to the House Committee on Human Services and to the Senate**
19 **Committee on Health and Welfare that:**

1 (1) identifies provisions in 2012 Acts and Resolves No. 79 which
2 require that protections for psychiatric hospital patients meet or exceed those at
3 the former Vermont State Hospital; and

4 (2) identifies policies that may require clarification of legislative intent
5 in order for the Department of Mental Health to proceed with rulemaking
6 pursuant to 2012 Acts and Resolves No.79, Sec. 33a.

7 **Sec. 17. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS**

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

12 **Sec. 18. EFFECTIVE DATE**

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

14

15

16

17

18 (Committee vote: _____)

19

20

21

Representative _____

FOR THE COMMITTEE