

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 128 entitled “An act relating to updating mental health judicial
4 proceedings” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking all after the enacting clause
6 and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. chapter 171 is amended to read:

8 CHAPTER 171. GENERAL PROVISIONS

9 § 7101. DEFINITIONS

10 As used in this part of this title, the following words, unless the context
11 otherwise requires, shall have the following meanings:

12 * * *

13 (4) “Designated hospital” means a public or private hospital, other
14 facility, or part of a hospital or facility designated by the ~~commissioner~~
15 Commissioner as adequate to provide appropriate care for ~~the persons with~~
16 ~~mentally ill patient~~ mental illness.

17 (5) “Elopement” means the leaving of a designated hospital or
18 designated program ~~or training school~~ without lawful authority.

19 * * *

20 (9) “Interested party” means a guardian, spouse, parent, adult child,
21 close adult relative, a responsible adult friend, or person who has the individual

1 in his or her charge or care. It also means a mental health professional, a law
2 enforcement officer, or a licensed physician, ~~a head of a hospital, a selectman,~~
3 ~~a town service officer, or a town health officer.~~

4 * * *

5 (15) “Patient” means a resident of or person in Vermont ~~qualified under~~
6 ~~this title for hospitalization or treatment as a mentally ill or mentally retarded~~
7 individual who has been found to be a person in need of hospitalization.

8 * * *

9 (26) “No refusal system” means a system of designated hospitals and,
10 intensive residential recovery facilities, secure residential recovery facilities,
11 and residential treatment programs under contract with the ~~department of~~
12 ~~mental health~~ Department of Mental Health that provides high intensity
13 services, in which the facilities shall admit any individual for care if the
14 individual meets the eligibility criteria established by the ~~commissioner~~
15 Commissioner in contract.

16 (27) “Participating hospital” means a designated hospital under contract
17 with the ~~department of mental health~~ Department of Mental Health to
18 participate in the no refusal system.

19 (28) “Secure,” when describing a residential recovery facility, means
20 that the residents can be physically prevented from leaving the facility by
21 means of locking devices or other mechanical or physical mechanisms.

1 (3) the voluntary admission to a hospital of an individual knowing that
2 he or she is not mentally ill or eligible for treatment thereby attempting to
3 defraud the ~~state~~ State; or

4 (4) the elopement of any patient ~~or student~~ from a hospital ~~or training~~
5 ~~school~~, or who knowingly harbors any ~~sick person~~ patient who has eloped from
6 a hospital, or who aids in abducting a patient ~~or student~~ who has been
7 conditionally discharged from the person or persons in whose care and service
8 that patient ~~or student~~ has been legally placed; ~~shall be fined not more than~~
9 ~~\$500.00 or imprisoned not more than one year, or both.~~

10 § 7105. ~~ARREST~~ APPREHENSION OF ELOPED PERSONS

11 Any sheriff, deputy sheriff, constable, or officer of ~~state~~ State or local
12 police, and any officer or employee of any designated hospital, designated
13 program, or ~~training school~~ a secure residential recovery facility may ~~arrest~~
14 ~~any~~ take into custody and return to a designated hospital, designated program,
15 or a secure residential recovery facility a person in the custody of the
16 Commissioner who has eloped ~~from a designated hospital or designated~~
17 ~~program or training school and return such person.~~

18 § 7106. NOTICE OF ~~HOSPITALIZATION~~ CUSTODY AND DISCHARGE

19 Whenever a patient has been admitted to a designated hospital other than
20 upon his or her own application, the head of the designated hospital shall
21 immediately notify the patient's legal guardian, ~~spouse, parent or parents, or~~

1 ~~nearest known relative or interested party, if known~~ and health care agent, if
2 any, or if a minor, the patient's parent or legal guardian. If the involuntary
3 hospitalization or admission was without court order, notice shall also be given
4 to the superior court judge for the ~~family division of the superior court~~ Family
5 Division of the Superior Court in the unit wherein the designated hospital is
6 located. If the hospitalization or admission was by order of any court, the head
7 of the designated hospital admitting or discharging ~~an individual~~ the patient
8 shall forthwith make a report thereof to the ~~commissioner~~ Commissioner and
9 to the court which entered the order for hospitalization or admission.

10 § 7107. ~~EXTRAMURAL WORK~~

11 ~~Any hospital or training school in the state dealing with mental health may~~
12 ~~do, or procure to be done, extramural work in the way of prevention,~~
13 ~~observation, care, and consultation with respect to mental health. [Repealed.]~~

14 § 7108. ~~CANTEENS~~

15 ~~The chief executive officer of the Vermont State Hospital or its successor in~~
16 ~~interest may conduct a canteen or commissary, which shall be accessible to~~
17 ~~patients, employees, and visitors of the Vermont State Hospital or its successor~~
18 ~~in interest at designated hours and shall be operated by employees of the~~
19 ~~hospital. A revolving fund for this purpose is authorized. The salary of an~~
20 ~~employee of the hospital shall be charged against the canteen fund. Proceeds~~
21 ~~from sales may be used for operation of the canteen and the benefit of the~~

1 ~~patients and employees of the hospital under the direction of the chief~~
2 ~~executive officer and subject to the approval of the commissioner. All~~
3 ~~balances of such funds remaining at the end of any fiscal year shall remain in~~
4 ~~such fund for use during the succeeding fiscal year. An annual report of the~~
5 ~~status of the funds shall be submitted to the commissioner. [Repealed.]~~

6 § 7109. ~~SALE OF ARTICLES; REVOLVING FUND~~

7 (a) ~~The superintendent of a hospital or training school may sell articles~~
8 ~~made by the patients or students in the handiwork or occupational therapy~~
9 ~~departments of the institution and the proceeds thereof shall be credited to a~~
10 ~~revolving fund. When it is for their best interest, the superintendent may, with~~
11 ~~the consent of the patients or their legal representatives, employ patients or~~
12 ~~students or permit them to be employed on a day placement basis.~~

13 (b) ~~The consent of the patient or the legal representative of the patient or~~
14 ~~student shall, in consideration of the undertaking of the superintendent, contain~~
15 ~~the further agreement that one half the earnings of the patient or student shall~~
16 ~~be credited to the personal account of the patient or student so employed at~~
17 ~~interest for benefit of the patient or student and the balance shall be credited to~~
18 ~~the fund. The superintendent shall hold and expend the fund for the purchase~~
19 ~~of equipment and materials for the handiwork or group therapy departments~~
20 ~~and for the educational and recreational welfare of the patient or student group.~~
21 ~~He or she shall submit an annual report of the fund to the commissioner.~~

1 ~~Balances remaining in it at the end of a fiscal year shall be carried forward and~~
2 ~~be available for the succeeding fiscal year.~~

3 ~~(c) For purposes of this section the legal representative of the patient or~~
4 ~~student shall be the duly appointed guardian, the spouse, the parents or the next~~
5 ~~of kin legally responsible for the patient or student. In their absence, the~~
6 ~~commissioner shall be the legal representative. [Repealed.]~~

7 § 7110. CERTIFICATION OF MENTAL ILLNESS

8 ~~(a) A certification of mental illness by a licensed physician required by~~
9 ~~section 7504 of this title shall be made by a board eligible psychiatrist, a board~~
10 ~~certified psychiatrist, or a resident in psychiatry, or a licensed physician who~~
11 ~~has completed training pursuant to subsection (b) of this section if no~~
12 ~~psychiatrist is available, under penalty of perjury. ~~In areas of the state where~~~~
13 ~~board eligible psychiatrists, board certified psychiatrists, or residents in~~
14 ~~psychiatry are not available to complete admission certifications to the~~
15 ~~Vermont State Hospital or its successor in interest, the commissioner may~~
16 ~~designate other licensed physicians as appropriate to complete certification for~~
17 ~~purposes of section 7504 of this title.~~

18 ~~(b) The Commissioner shall develop a comprehensive training program~~
19 ~~that licensed physicians who are not psychiatrists and who provide care in~~
20 ~~emergency departments shall complete before effecting a certification of~~
21 ~~mental illness.~~

1 Sec. 2. 18 V.S.A. § 7205 is amended to read:

2 § 7205. SUPERVISION OF INSTITUTIONS

3 (a) ~~The department of mental health~~ Department of Mental Health shall
4 operate the Vermont State Hospital or its successor in interest and a secure
5 residential recovery facility. The Department shall be responsible for patients
6 receiving involuntary treatment at all designated hospitals, including the
7 Vermont State Hospital or its successor in interest, designated programs, and at
8 the secure residential recovery facility.

9 (b) ~~The commissioner of the department of mental health~~ Commissioner of
10 Mental Health, in consultation with the ~~secretary~~ Secretary, shall appoint a
11 chief executive officer of the Vermont State Hospital or its successor in
12 interest and a facility director of the secure residential recovery facility to
13 oversee the operations of the hospital and the secure residential recovery
14 facility, respectively. The chief executive officer position shall be an exempt
15 position.

16 Sec. 3. PURPOSE

17 Due to the State's unique role in coordinating and providing services for
18 Vermonters with one or more diagnosed mental health conditions, the General
19 Assembly created the Office of the Mental Health Care Ombudsman, and now
20 finds it necessary to clarify the Office's role, which is to safeguard access to
21 services and those rights and protections that may be at risk. Due to the fact

1 that the Office of the Mental Health Care Ombudsman addresses methods of
2 care that are not as prevalent as among other health conditions, the Office's
3 existence remains consistent with the principles of parity and achieving
4 integration throughout Vermont's health care system.

5 Sec. 4. 18 V.S.A. chapter 178 is added to read:

6 CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

7 § 7451. DEFINITIONS

8 As used in this chapter:

9 (1) "Agency" means the organization designated by the Governor as the
10 protection and advocacy system for the State pursuant to 42 U.S.C. § 10801 et
11 seq.

12 (2) "Department" means the Department of Mental Health.

13 (3) "Intensive residential recovery facility" shall have the same meaning
14 as in section 7252 of this title.

15 (4) "Mental Health Care Ombudsman" or "Ombudsman" means an
16 individual providing protection and advocacy services pursuant to this chapter.

17 (5) "Office" means the Office of the Mental Health Care Ombudsman.

18 (6) "Secure residential recovery facility" shall have the same meaning as
19 in section 7620 of this title.

20 (7) "State agency" means any office, department, board, bureau,
21 division, agency, or instrumentality of the State.

1 § 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

2 (a) The Department of Mental Health shall establish the Office of the
3 Mental Health Care Ombudsman within the Agency by executing a
4 memorandum of designation between the Department and the Agency.

5 (b) The Office shall represent the interests of Vermonters with one or more
6 diagnosed mental health conditions, including individuals receiving services at
7 designated hospitals, emergency rooms, correctional facilities, intensive
8 residential recovery facilities, secure residential recovery facilities, or within a
9 community setting.

10 (c) The Office shall be directed by an individual, to be known as the
11 Mental Health Care Ombudsman, who shall be selected from among
12 individuals within the Agency executing the memorandum of designation with
13 the Department of Mental Health.

14 § 7453. RESPONSIBILITIES OF THE OFFICE

15 (a) The Office may:

16 (1) investigate individual cases of abuse, neglect, and other serious
17 violations of individuals in Vermont with diagnosed mental health conditions;

18 (2) analyze, monitor, and aim to reduce the use of seclusion, restraint,
19 coercion, and involuntary mental health procedures;

20 (3)(A) review emergency involuntary procedure reports provided by the
21 Department;

1 (B) confer with the Department at least twice annually regarding any
2 findings or recommendations for improvement made by the Office in response
3 to the emergency involuntary procedure reports;

4 (4)(A) review any reports provided by the Department of untimely
5 deaths of individuals with a diagnosed mental health condition in designated
6 hospitals, intensive residential recovery facilities, secure residential recovery
7 facilities, or community settings;

8 (B) confer with the Department regarding any findings or
9 recommendations for improvement made by the Office in response to the
10 untimely death reports;

11 (5) participate on state panels reviewing the treatment of individuals
12 with a diagnosed mental health condition;

13 (6) integrate efforts with the Health Care Ombudsman’s Office
14 established under 8 V.S.A. chapter 107, subchapter 1A and the Long-Term
15 Care Ombudsman’s Office established under 33 V.S.A. chapter 75 to minimize
16 duplication of efforts; and

17 (7) annually, on or before January 15th, submit a report to the
18 Department and General Assembly detailing all activities performed pursuant
19 to this chapter and recommending improvements to the mental health system.

1 (b)(1) A person shall not impose any additional duties on the Office in
2 excess of the requirements set forth in subsection (a) of this section or
3 otherwise imposed on agencies under federal law.

4 (2) Nothing in this chapter shall supersede the authorities or
5 responsibilities granted to the Agency under Protection and Advocacy for
6 Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

7 (3) The General Assembly may at any time allocate funds it deems
8 necessary to supplement federal funding used to maintain the Office.

9 § 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

10 In fulfilling the responsibilities of the Office, the Mental Health Care
11 Ombudsman may:

12 (1) Hire or contract with persons or organizations to fulfill the purposes
13 of this chapter.

14 (2) Communicate and visit with any individual with a diagnosed mental
15 health condition, provided that the Ombudsman shall discontinue interactions
16 with any individual when requested to do so by that individual. Toward that
17 end, designated hospitals, emergency rooms, correctional facilities, intensive
18 residential recovery facilities, secure residential recovery facilities, and other
19 community treatment facilities shall provide the Ombudsman access to their
20 facilities and to individuals for whom they provide mental health services. If

1 the individual with a diagnosed mental health condition has a guardian, the
2 Office shall take no action without consent of the guardian or a court order.

3 (3) Delegate to employees any part of the Mental Health Care
4 Ombudsman’s authority.

5 (4) Take such further actions as are necessary in order to fulfill the
6 purpose of this chapter.

7 § 7455. COOPERATION OF STATE AGENCIES

8 (a) All state agencies shall comply with requests of the Mental Health Care
9 Ombudsman for information and assistance necessary to carry out the
10 responsibilities of the Office.

11 (b) The Secretary of Human Services may adopt rules necessary to ensure
12 that departments within the Agency of Human Services cooperate with the
13 Office.

14 § 7456. CONFIDENTIALITY

15 In the absence of written consent by an individual with a diagnosed mental
16 health condition about whom a report has been made, or by his or her guardian
17 or legal representative, or a court order, the Mental Health Care Ombudsman
18 shall not disclose the identity of such person, unless otherwise provided for
19 under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C.
20 §§ 10801–10851.

1 § 7457. IMMUNITY

2 Civil liability shall not attach to the Mental Health Care Ombudsman or his
3 or her employees for good faith performance of the duties imposed by
4 this chapter.

5 § 7458. INTERFERENCE AND RETALIATION

6 (a) A person who intentionally hinders a representative of the Office acting
7 pursuant to this chapter shall be imprisoned not more than one year or fined
8 not more than \$5,000.00, or both.

9 (b) A person who takes discriminatory, disciplinary, or retaliatory action
10 against an employee, a resident, or a volunteer of a designated hospital,
11 correctional facility, intensive residential recovery facility, secure residential
12 recovery facility, community treatment facility, or state agency for any
13 communication made, or information disclosed, to aid the Office in carrying
14 out its duties and responsibilities shall be imprisoned not more than one year or
15 fined not more than \$5,000.00, or both. An employee, a resident, or a
16 volunteer of such facilities or state agencies may seek damages in superior
17 court against a person who takes an action prohibited by this subsection.

18 § 7459. CONFLICT OF INTEREST

19 The Mental Health Care Ombudsman, an employee of the Ombudsman, or
20 an immediate family member of the Ombudsman or of an employee shall not
21 have any financial interest in or authority over a designated hospital,

1 correctional facility, intensive residential recovery facility, secure residential
2 recovery facility, or community treatment facility and from providing mental
3 health services, which creates a conflict of interest in carrying out the
4 Ombudsman’s responsibilities under this chapter.

5 Sec. 5. 18 V.S.A. chapter 179 is amended to read:

6 CHAPTER 179. ADMISSION PROCEDURES

7 * * *

8 § 7504. APPLICATION FOR EMERGENCY EXAMINATION

9 * * *

10 (b) The decision of an interested party and a licensed physician to complete
11 an application and certificate shall be authority for transporting the person to a
12 designated hospital for an emergency examination, as provided in section 7511
13 of this title.

14 (c) For the purposes of admission of ~~an individual~~ a person to a designated
15 hospital for care and treatment under this section, a head of a hospital, as
16 provided in subsection (a) of this section, may include a person designated in
17 writing by the head of the hospital to discharge the authority granted in this
18 section. A designated person must be an official hospital administrator,
19 supervisory personnel, or a licensed physician on duty on the hospital premises
20 other than the certifying physician under subsection (a) of this section.

1 § 7505. WARRANT FOR IMMEDIATE EXAMINATION

2 (a) In emergency circumstances ~~where a certification by a physician is not~~
3 ~~available without serious and unreasonable delay, and when personal~~
4 ~~observation of the conduct of a person constitutes reasonable grounds to~~
5 ~~believe that the person is a person in need of treatment, and he or she presents~~
6 ~~an immediate risk of serious injury to himself or herself or others if not~~
7 ~~restrained~~, a law enforcement officer or mental health professional may make
8 an application, ~~not accompanied by a physician's certificate~~, to any district or
9 superior court judge for a warrant for an immediate examination when:

10 (A) a certification by a physician is not available without serious
11 unreasonable delay;

12 (B) personal observation of the conduct of a person constitutes
13 reasonable grounds to believe that the person is a person in need of
14 treatment; and

15 (C) the person presents an immediate risk of serious injury to himself
16 or herself or others if not restrained.

17 (b) ~~The~~ A state or local law enforcement officer or mental health
18 professional, or both, may take the person into temporary custody and shall
19 apply to the court without delay for the warrant.

20 (c) If the judge is satisfied that a physician's certificate is not available
21 without serious and unreasonable delay, and that probable cause exists to

1 believe that the person is in need of an immediate examination pursuant to
2 subsection (a) of this section, he or she the judge may grant the warrant and
3 order the person to submit to an immediate examination at a designated
4 hospital.

5 (d) ~~If necessary~~ By granting a warrant, the court may order the authorizes a
6 state or local law enforcement officer or mental health professional to transport
7 the person to a designated hospital for an immediate examination.

8 (e) Upon admission to a designated hospital pursuant to a warrant for
9 immediate examination, the person shall be ~~immediately~~ examined by a
10 licensed physician immediately. If the physician certifies that the person is a
11 person in need of treatment, the person shall be held for an emergency
12 examination in accordance with section 7508 of this title. If the physician does
13 not certify that the person is a person in need of treatment, ~~he or she the~~
14 physician shall immediately discharge the person and cause him or her to be
15 returned to the place from which he or she was taken, or to such place as the
16 person reasonably directs.

17 * * *

18 § 7510. ~~PRELIMINARY HEARING~~ PROBABLE CAUSE REVIEW

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

1 a ~~preliminary hearing~~ probable cause review to determine whether there is
2 probable cause to believe that he or she was a person in need of treatment at
3 the time of his or her admission.

4 (b) The court shall conduct the hearing within three working days of the
5 filing of the request. The court shall cause timely notice of the ~~preliminary~~
6 ~~hearing~~ probable cause review to be given to the ~~patient~~ person or his or her
7 attorney, and the hospital ~~and the attorney for the applicant~~.

8 (c) The ~~individual~~ person requesting the review has the right to be present
9 and represented by legal counsel at the ~~preliminary hearing~~ probable cause
10 review.

11 (d) If probable cause to believe that the individual was a person in need of
12 treatment at the time of his or her admission is established at the ~~preliminary~~
13 ~~hearing~~ probable cause review, the individual shall be ordered held for further
14 proceedings in accordance with the law. If probable cause is not established,
15 the individual shall be ordered discharged from the hospital and the court shall
16 order him or her returned to the place from which he or she was transported or
17 to his or her home.

18 (e) Upon a showing of need, the court may grant a reasonable continuance
19 to either the ~~patient's~~ person's attorney or the attorney for the ~~state~~ State.

20 * * *

21 Sec. 6. 18 V.S.A. chapter 181 is amended to read:

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CHAPTER 181. JUDICIAL PROCEEDINGS

* * *

§ 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 of~~ Family Division of the Superior Court for the district in which the proposed patient's residence ~~patient resides~~ or, in the case of a nonresident, in any ~~district~~ superior 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~~ Family Division of the Superior Court in which the hospital is located.

(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 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

1 ~~proposed patient~~ person is a person in need of treatment, including the current
2 and relevant facts and circumstances upon which the physician's opinion is
3 based; or

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

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

10 § 7613. NOTICE—APPOINTMENT OF COUNSEL

11 (a) When the application is filed, the court shall appoint counsel for the
12 proposed patient, and transmit a copy of the application, the physician's
13 certificate, if any, and a notice of hearing to the proposed patient, his or her
14 attorney, guardian, ~~or any person having custody and control of the proposed~~
15 ~~patient, if any, the state's attorney, State's Attorney or the attorney general~~
16 Attorney General, and any other person the court believes has a concern for the
17 proposed patient's welfare. A copy of the notice of hearing shall also be
18 transmitted to the applicant and certifying physician.

19 * * *

20 § 7620. APPLICATION FOR CONTINUED TREATMENT

21 * * *

1 (e) As used in this chapter:

2 (1) ~~“Secure,” when describing a residential facility, means that the~~
3 ~~residents can be physically prevented from leaving the facility by means of~~
4 ~~locking devices or other mechanical or physical mechanisms.~~

5 (2) ~~“Secure residential recovery facility” means a residential facility,~~
6 ~~licensed as a therapeutic community residence as defined in 33 V.S.A.~~
7 ~~§ 7102(11), for an individual who no longer requires acute inpatient care but~~
8 ~~who does remain in need of treatment within a secure setting for an extended~~
9 ~~period of time , “secure residential recovery facility” shall have the same~~
10 ~~meaning as in section 7101 of this title. A~~ Except as allowed in 28 V.S.A.
11 § 705a, a secure residential recovery facility shall not be used for any purpose
12 other than the purposes permitted by this section.

13 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
14 ORDERS

15 (a) The hearing on the application for continued treatment shall be held in
16 accordance with the procedures set forth in sections 7613, 7614, 7615, and
17 7616 of this title.

18 (b) If the court finds that the patient person is a patient person in need of
19 further treatment ~~and requires hospitalization,~~ it shall order ~~hospitalization~~
20 continued treatment for up to one year.

1 (c) If the court finds that the ~~patient~~ person is a ~~patient~~ person in need of
2 further treatment but does not require hospitalization, it shall order
3 nonhospitalization for up to one year. If the treatment plan proposed by the
4 ~~commissioner~~ Commissioner for a ~~patient~~ person in need of further treatment
5 includes admission to a secure residential recovery facility, the court may at
6 any time, on its own motion or on motion of an interested party, review the
7 need for treatment at the secure residential recovery facility.

8 (d) If at any time during the period of nonhospitalization ordered under
9 subsection (c) of this section, it comes to the attention of the court, that the
10 person is not complying with the order, or that the alternative treatment has not
11 been adequate to meet the ~~patient's~~ person's treatment needs, the court may,
12 after proper hearing:

13 (1) Consider other treatments not involving hospitalization, modify its
14 original order, and direct the ~~patient~~ person to undergo another program of
15 alternative treatment for an indeterminate period, up to the expiration date of
16 the original order; or

17 (2) Order that the ~~patient~~ person be hospitalized, up to the expiration
18 date of the original order.

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

1 (f) This section shall not be construed to prohibit the court from issuing
2 subsequent orders after a new application is filed pursuant to section 7620 of
3 this title.

4 § 7622. EXPERT TESTIMONY

5 (a) A mental health professional testifying at hearings conducted under this
6 part may, if appropriately qualified, give opinion testimony and,
7 notwithstanding 12 V.S.A. § 1612, describe any information which he or she
8 acquired in attending the ~~patient~~ person.

9 (b) The facts or data in the particular case, upon which an expert bases an
10 opinion or inference, may be those perceived by or made known to him or her
11 at or before the hearing. If of a type reasonably relied upon by experts in the
12 particular field in forming opinions or inferences upon the subject, the facts or
13 data need not be admissible in evidence.

14 § 7623. ORDERS; CUSTODY

15 All court orders of hospitalization, nonhospitalization, and continued
16 treatment shall be directed to the ~~commissioner~~ Commissioner and shall admit
17 the ~~patient~~ person to his or her care and custody for the period specified.

18 * * *

19 Sec. 7. 18 V.S.A. § 7708 is amended to read:

20 § 7708. ~~SURGICAL OPERATIONS~~

1 (a) ~~The head of a hospital may grant a visit permit of not more than 30 days~~
2 ~~to any patient under his or her charge. [Repealed.]~~

3 (b) The granting and revocation of visits shall be made in accordance with
4 rules and procedures adopted by the head of the designated hospital.

5 § 8007. ~~CONDITIONAL DISCHARGES~~

6 (a) ~~The board or the head of a hospital may conditionally discharge from a~~
7 ~~hospital any patient who may be safely and properly cared for in a place other~~
8 ~~than the hospital.~~

9 (b) ~~A conditional discharge may extend for a term of six months, but shall~~
10 ~~not exceed 60 days unless the head of the hospital determines that a longer~~
11 ~~period will materially improve the availability of a program of treatment which~~
12 ~~is an alternative to hospitalization.~~

13 (c) ~~Unless sooner revoked or renewed, a conditional discharge shall~~
14 ~~become absolute at the end of its term.~~

15 (d) ~~A conditional discharge may be granted subject to the patient's~~
16 ~~agreement to participate in outpatient, after care, or follow up treatment~~
17 ~~programs, and shall be subject to such other conditions and terms as are~~
18 ~~established by the granting authority.~~

19 (e) ~~Each patient granted a conditional discharge shall be provided, so far as~~
20 ~~practicable and appropriate, with continuing treatment on an outpatient or~~
21 ~~partial hospitalization basis.~~

1 ~~(f) Each patient granted a conditional discharge shall be given a written~~
2 ~~statement of the conditions of his or her release, the violation of which can~~
3 ~~cause revocation.~~

4 ~~(g) A conditional discharge may be renewed by the granting authority at~~
5 ~~any time before it becomes absolute if the head of a hospital first determines~~
6 ~~that such renewal will substantially reduce the risk that the patient will become~~
7 ~~a person in need of treatment in the near future. [Repealed.]~~

8 § 8008. ~~REVOCATION OF CONDITIONAL DISCHARGE~~

9 ~~(a) The board or the head of the hospital may revoke a conditional~~
10 ~~discharge at any time before that discharge becomes absolute if the patient fails~~
11 ~~to comply with the conditions of the discharge.~~

12 ~~(b) A revocation by the board or the head of the hospital shall authorize the~~
13 ~~return of the patient to the hospital and shall be sufficient warrant for a law~~
14 ~~enforcement officer or mental health professional to take the patient into~~
15 ~~custody and return him or her to the hospital from which he or she was~~
16 ~~conditionally discharged.~~

17 ~~(c) Immediately upon his or her return to the hospital, the patient shall be~~
18 ~~examined by a physician who shall orally explain to the patient the purpose of~~
19 ~~the examination and the reasons why the patient was returned to the hospital.~~

20 ~~(d) If the examining physician certifies in writing to the head of the~~
21 ~~hospital that, in his or her opinion, the patient is a person in need of treatment,~~

1 ~~setting forth the recent and relevant facts supporting this opinion, the~~
2 ~~revocation shall become effective and the patient shall be readmitted to the~~
3 ~~hospital. If the examining physician does not so certify, the revocation shall be~~
4 ~~cancelled and the patient shall be returned to the place from which he or she~~
5 ~~was taken.~~

6 (e) ~~If the patient is readmitted to the hospital, he or she may apply~~
7 ~~immediately for a judicial review of his or her admission, and he or she shall~~
8 ~~be given a written notice of this right and of his or her right to legal counsel.~~

9 [Repealed.]

10 § 8009. ADMINISTRATIVE DISCHARGE

11 (a) The head of ~~the~~ a designated hospital may at any time discharge a
12 voluntary or judicially hospitalized patient whom he or she deems clinically
13 suitable for discharge.

14 (b) The head of ~~the~~ a designated hospital shall discharge a judicially
15 hospitalized patient when the patient is no longer a ~~patient~~ person in need of
16 further treatment. When a judicially hospitalized patient is discharged, the
17 head of ~~the~~ a designated hospital shall notify the ~~applicant, the certifying~~
18 ~~physician~~ Commissioner, the ~~family division of the superior court~~ Family
19 Division of the Superior Court, and anyone who was notified at the time the
20 patient was hospitalized.

1 (c) ~~A person~~ An individual responsible for providing treatment other than
2 hospitalization to ~~an individual~~ a person ordered to undergo a program of
3 alternative treatment, under section 7618 or 7621 of this title, may terminate
4 the alternative treatment to the ~~individual~~ person if the provider of this
5 alternative treatment considers the ~~individual~~ person clinically suitable for
6 termination of treatment. Upon termination of alternative treatment, the ~~family~~
7 ~~division of the superior court~~ Family Division of the Superior Court shall be so
8 notified by the provider of the alternative treatment.

9 * * *

10 Sec. 9. 18 V.S.A. chapter 197 is amended to read:

11 CHAPTER 197. MENTALLY ILL USERS OF ALCOHOL OR DRUGS

12 * * *

13 § 8404. ~~CONDITIONAL DISCHARGE~~

14 ~~The board of mental health, in its discretion, may grant a conditional~~
15 ~~discharge to a patient admitted under this chapter after the expiration of one~~
16 ~~month from the date of admission and may revoke any conditional discharge~~
17 ~~so granted. A revocation of a conditional discharge by the board of mental~~
18 ~~health at any time prior to the expiration of the original term of hospitalization~~
19 ~~shall be sufficient warrant for the return of the patient to the hospital from~~
20 ~~which he or she was discharged, there to remain until a subsequent conditional~~

1 ~~discharge or the expiration of the full term from the date of the original~~
2 ~~admission.~~ [Repealed.]

3 § 8405. OUTSIDE VISITS

4 In the discretion of the head of a designated hospital, a patient admitted
5 under this chapter may be permitted to visit a specifically designated place for
6 a period not to exceed five days and return to the same hospital. The visit may
7 be allowed to see a dying relative, to attend the funeral of a relative, to obtain
8 special medical services, to contact prospective employers, or for any
9 compelling reason consistent with the welfare or rehabilitation of the patient.

10 Sec. 10. 18 V.S.A. § 8847 is added to read:

11 § 8847. INDEPENDENT EXAMINATION: PAYMENT

12 Whenever a court orders an independent examination by a qualified
13 intellectual disabilities professional pursuant to this title or 13 V.S.A. § 4822,
14 the cost of the examination shall be paid by the Department of Disabilities,
15 Aging, and Independent Living. The qualified intellectual disabilities
16 professional may be selected by the court but the Commissioner of Disabilities,
17 Aging, and Independent Living may adopt a reasonable fee schedule for
18 examination, reports, and testimony.

19 Sec. 11. 28 V.S.A. § 705a is added to read:

20 § 705a. DISCHARGE TO SECURE RESIDENTIAL RECOVERY

21 FACILITY

1 (a) The Commissioner of Corrections shall petition the Family Division of
2 the Superior Court for the involuntary treatment of a person pursuant to
3 18 V.S.A. chapter 181 if he or she determines, in consultation with the
4 Commissioner of Mental Health, that a person:

5 (1) has a serious functional impairment or mental illness or a disorder as
6 defined in section 906 of this title;

7 (2) has served his or her minimum sentence; and

8 (3) is in need of treatment at a secure residential recovery facility upon
9 discharge from the custody of the Department.

10 (b) If the court finds that the person is in need of treatment pursuant to 18
11 V.S.A. chapter 181, the court may order the person to undergo a program of
12 treatment at a secure residential recovery facility where that person shall be in
13 the custody of the Commissioner of Mental Health.

14 (c) As used in this section, “secure residential recovery facility” shall mean
15 the same as in 18 V.S.A. § 7101.

16 Sec. 12. REPEAL

17 18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

18 Sec. 13. MENTAL HEALTH LEGISLATIVE WORKGROUP

19 (a) On or before July 15, 2013, the Commissioner of Mental Health shall
20 convene a workgroup of stakeholders to examine current Vermont statutes
21 pertaining to judicial proceedings in Title 18, Part 8 and to make

1 recommendations that would more closely align the statutes to the Department
2 of Mental Health's current practices while respecting the rights of affected
3 individuals. Members of the Workgroup shall include:

4 (1) the Commissioner of Mental Health or designee;

5 (2) the Vermont Association of Hospitals and Health Systems;

6 (3) a representative of the law enforcement community;

7 (4) a representative of a designated agency's emergency response team;

8 (5) a representative of the peer community; and

9 (6) any other interested stakeholders.

10 (b) The Workgroup shall address:

11 (1) emergency examination procedures, including temporary custody;

12 (2) immediate examination procedures, including reliable reports of
13 conduct and warrants for entering residences;

14 (3) continuations in judicial proceedings; and

15 (4) any other topic the Commissioner of Mental Health deems
16 appropriate.

17 (c) On or before November 15, 2013, the Commissioner shall submit a
18 report containing the recommendations of the Workgroup to the Chair of the
19 Senate Committee on Health and Welfare and to the Chair of the House
20 Committee on Human Services.

21 Sec. 14. EFFECTIVE DATE

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

2

3

4

5 (Committee vote: _____)

6

7

Senator [surname]

8

FOR THE COMMITTEE