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S.192

Senator Lyons moves that the bill be amended as follows:

First: By striking out Sec. 4, 13 V.S.A. § 4822, in its entirety and inserting in lieu thereof a new Sec. 4 to read as follows:

Sec. 4. 13 V.S.A. § 4822 is amended to read:

§ 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

(a)(1) If the court finds that the person is a person in need of treatment or a patient in need of further treatment as defined in 18 V.S.A. § 7101, the court shall issue an order of commitment directed to the Commissioner of Mental Health that shall admit the person to the care and custody of the Department of Mental Health for ~~an indeterminate~~ a period of 90 days. In any case involving personal injury or threat of personal injury, the committing court may issue an order requiring a court hearing before a person committed under this section may be discharged from custody.

(2) If the Commissioner seeks to have a person receive treatment in a forensic facility pursuant to an order of nonhospitalization under subdivision (1) of this subsection, the Commissioner shall submit a petition to the court expressly stating that such treatment is being sought, including:

(A) a statement setting forth the reasons for the Commissioner’s determination that clinically appropriate treatment for the person’s condition can be provided safely only in a forensic facility; and

1 (B) the recommendation of the Human Services Community Safety
2 Panel pursuant to section 4821 of this title.

3 (3) If the Commissioner determines that treatment at a forensic facility
4 is appropriate, and the court finds that treatment at a forensic facility is the
5 least restrictive setting adequate to meet the person’s needs, the court shall
6 order the person to receive treatment at a forensic facility for a period of 90
7 days. The court may, at any time following the issuance of an order, on its
8 own motion or on motion of an interested party, review whether treatment at
9 the forensic facility continues to be the least restrictive treatment option.

10 (b) An order of commitment issued pursuant to this section shall have the
11 same force and effect as an order issued under 18 V.S.A. §§ 7611–7622, and a
12 person committed under this order shall have the same status and the same
13 rights, including the right to receive care and treatment, to be examined and
14 discharged, and to apply for and obtain judicial review of ~~his or her~~ the
15 person’s case, as a person ordered committed under 18 V.S.A. §§ 7611–7622.

16 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
17 least 10 days prior to the proposed discharge of any person committed under
18 this section, the Commissioner of Mental Health shall give notice of the
19 discharge to the committing court and State’s Attorney of the county where the
20 prosecution originated. In all cases requiring a hearing prior to discharge of a
21 person found incompetent to stand trial under section 4817 of this title, the

1 hearing shall be conducted by the committing court issuing the order under that
2 section. In all other cases, when the committing court orders a hearing under
3 subsection (a) of this section or when, in the discretion of the Commissioner of
4 Mental Health, a hearing should be held prior to the discharge, the hearing
5 shall be held in the Family Division of the Superior Court to determine if the
6 committed person is no longer a person in need of treatment or a patient in
7 need of further treatment as set forth in subsection (a) of this section. Notice
8 of the hearing shall be given to the Commissioner, the State's Attorney of the
9 county where the prosecution originated, the committed person, and the
10 person's attorney. Prior to the hearing, the State's Attorney may enter an
11 appearance in the proceedings and may request examination of the patient by
12 an independent psychiatrist, who may testify at the hearing.

13 (2)(A) This subdivision (2) shall apply when a person is committed to
14 the care and custody of the Commissioner of Mental Health under this section
15 after having been found:

16 (i) not guilty by reason of insanity; or

17 (ii) incompetent to stand trial, provided that the person's criminal
18 case has not been dismissed.

19 (B)(i) When a person has been committed under this section, the
20 Commissioner shall provide notice to the State's Attorney of the county where

1 the prosecution originated or to the Office of the Attorney General if that office
2 prosecuted the case:

3 (I) at least 10 days prior to discharging the person from:

4 (aa) the care and custody of the Commissioner; or

5 (bb) a hospital, a forensic facility, or a secure residential
6 recovery facility to the community on an order of nonhospitalization pursuant
7 to 18 V.S.A. § 7618;

8 (II) at least 10 days prior to the expiration of a commitment
9 order issued under this section if the Commissioner does not seek continued
10 treatment; or

11 (III) any time that the person elopes from the custody of the
12 Commissioner.

13 (ii) When the State’s Attorney or Attorney General receives notice
14 under subdivision (i) of this subdivision (B), the Office shall provide notice of
15 the action to any victim of the offense for which the person has been charged
16 who has not opted out of receiving notice. A victim receiving notice pursuant
17 to this subdivision (ii) has the right to submit a victim impact statement to the
18 Family Division of the Superior Court in writing or through the State’s
19 Attorney or Attorney General’s Office.

20 (iii) As used in this subdivision (B), “victim” has the same
21 meaning as in section 5301 of this title.

1 (d) The court may continue the hearing provided in subsection (c) of this
2 section for a period of 15 additional days upon a showing of good cause.

3 (e) If the court determines that commitment shall no longer be necessary, it
4 shall issue an order discharging the patient from the custody of the Department
5 of Mental Health.

6 (f) The court shall issue its findings and order not later than 15 days from
7 the date of hearing.

8 Second: In Sec. 10, 18 V.S.A. chapter 206, subchapter 3, in section 8847,
9 by striking out subsection (a) in its entirety and inserting in lieu thereof a new
10 subsection (a) to read as follows:

11 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
12 discharged as follows:

13 (1) by a Criminal Division Superior Court judge after an automatic 90-
14 day review of placement at a forensic facility pursuant to subsection 8845(e) of
15 this subchapter;

16 (2) by a Family Division Superior Court judge after judicial review of
17 an order of custody, care, and habilitation; an order of continued custody, care,
18 and habilitation; or placement at a forensic facility pursuant to subsection (b)
19 of this section; or

20 (3) by administrative order of the Commissioner regarding an order of
21 custody, care, and habilitation; an order of continued custody, care, and

- 1 habilitation; or placement at a forensic facility pursuant to subsection (c) of
- 2 this section.