

# Senate Calendar

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FRIDAY, FEBRUARY 14, 2014

**SENATE CONVENES AT: 11:30 A.M.**

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**ACTION CALENDAR**

**NEW BUSINESS**

**Third Reading**

**S. 317.**

An act relating to repealing the unconstitutional Vermont statutes related to the performance of abortions.

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 213.**

An act relating to an employee's use of benefits.

**Reported favorably with recommendation of amendment by Senator Baruth for the Committee on Economic Development, Housing and General Affairs.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. PURPOSE

The purpose of this act is to promote a healthy work environment by ensuring that employers do not penalize employees who use employer-provided sick leave or any other employer-provided benefit.

Sec. 2. 21 V.S.A. § 496b is added to read:

§ 496b. EMPLOYEE USE OF BENEFITS

(a) An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against or penalize an employee because the employee has used, or attempted to use, accrued employer-provided sick leave or other employer-provided benefits.

(b) This section shall not:

(1) diminish any rights under this chapter or pursuant to a collective bargaining agreement;

(2) require an employer to provide sick leave or other benefits to employees; or

(3) prohibit the establishment and enforcement of other reasonable workplace policies that relate to an employee's use of benefits, such as policies addressing attendance incentives, tardiness or unexcused absences, procedures for using sick leave or other benefits, or seniority calculations.

(c) The provisions against retaliation in subdivision 495(a)(8) of this title and the penalty and enforcement provisions of section 495b of this title shall apply to this section.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 4-1-0)

**NOTICE CALENDAR**

**Second Reading**

**Favorable with Recommendation of Amendment**

**S. 168.**

An act relating to making miscellaneous amendments to laws governing municipalities.

**Reported favorably with recommendation of amendment by Senator French for the Committee on Government Operations.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Municipal Animal Control \* \* \*

Sec. 1. 13 V.S.A. § 351 is amended to read:

§ 351. DEFINITIONS

As used in this chapter:

\* \* \*

(4) "Humane officer" or "officer" means any law enforcement officer as defined in 23 V.S.A. § 4(11);<sub>2</sub> auxiliary ~~state police~~ State Police officers;<sub>2</sub> deputy game wardens;<sub>2</sub> humane society officer, employee,<sub>2</sub> or agent, ~~elected animal control officer;~~<sub>2</sub> animal control officer appointed by the legislative body of a municipality;<sub>2</sub> local board of health officer or agent;<sub>2</sub> or any officer authorized to serve criminal process.

\* \* \*

Sec. 2. 20 V.S.A. § 3549 is amended to read:

§ 3549. DOMESTIC PETS OR WOLF-HYBRIDS, REGULATION BY TOWNS

The legislative body of a city or town by ordinance may regulate the licensing, keeping, leashing, muzzling, restraint, impoundment, and destruction of domestic pets or wolf-hybrids and their running at large except that a legislative body of a city or town shall not prohibit or regulate the barking or running at large of a working farm dog when it is on the property being farmed by the person who registered the working farm dog, pursuant to subsection 3581(a) of this title, in the following circumstances:

(1) If the working farm dog is barking in order to herd or protect livestock or poultry or to protect crops.

(2) If the working farm dog is running at large in order to herd or protect livestock or poultry or to protect crops.

Sec. 3. 20 V.S.A. § 3550 is amended to read:

§ 3550. PENALTIES; ENFORCEMENT; MUNICIPAL LEGISLATIVE BODY; SECRETARY

\* \* \*

(k) A municipality may adopt ordinances inconsistent with this section imposing penalties for violation of any provisions of subchapter 1 or 2, refusal to obtain a kennel permit, or refusal to comply with an order issued by a municipal officer under subchapter 5 of this chapter, in which case those ordinances shall apply.

Sec. 4. 20 V.S.A. § 3621 is amended to read:

§ 3621. ISSUANCE OF WARRANT TO IMPOUND; COMPLAINT

(a)(1) The legislative body of a municipality may at any time issue a warrant to one or more police officers ~~or~~, constables, or pound keepers, ~~or~~ ~~elected or appointed animal control officers~~, directing them to proceed forthwith to impound all dogs or wolf-hybrids within the town or city not licensed according to the provisions of this subchapter, except as exempted by section 3587 of this title, and to enter a complaint against the owners or keepers thereof.

(2) A dog or wolf-hybrid impounded by a municipality under this section may be transferred to an animal shelter or rescue organization for the purpose of finding an adoptive home for the dog or wolf-hybrid. If the dog or wolf-hybrid cannot be placed in an adoptive home or transferred to a humane society or rescue organization within ten days, or a greater number of days

established by the municipality, the dog or wolf-hybrid may be destroyed in a humane way. The municipality shall not be liable for expenses associated with keeping the dog or wolf-hybrid at the animal shelter or rescue organization beyond the established number of days.

\* \* \*

\* \* \* Current and Delinquent Tax Collectors \* \* \*

Sec. 5. 17 V.S.A. § 2646 is amended to read:

§ 2646. TOWN OFFICERS; QUALIFICATION; ELECTION

At the annual meeting, a town shall choose from among its legally qualified voters the following town officers, who shall serve until the next annual meeting and until successors are chosen, unless otherwise provided by law:

\* \* \*

(8) ~~A collector of current taxes, if the town so orders; [Repealed.]~~

(9) A collector of delinquent taxes, if the town so orders, for a term of one year unless a town votes that a collector of delinquent taxes shall be elected for a term of three years. When a town votes for a three-year term for the collector of delinquent taxes, that three-year term shall remain in effect until the town rescinds it by the majority vote of the legal voters present and voting at an annual meeting, duly warned for that purpose;

\* \* \*

Sec. 6. 17 V.S.A. § 2651d is added to read:

§ 2651d. COLLECTOR OF DELINQUENT TAXES; APPOINTMENT;  
REMOVAL

(a) A municipality may vote by Australian ballot at an annual or special meeting to authorize the legislative body to appoint a collector of delinquent taxes, who may be the municipal treasurer. A collector of delinquent taxes so appointed may be removed by the legislative body for just cause after notice and hearing.

(b) When a municipality votes to authorize the legislative body to appoint a collector of delinquent taxes, the legislative body's authority to make such appointment shall remain in effect until the municipality rescinds that authority by the majority vote of the legal voters present and voting at an annual or special meeting, duly warned for that purpose.

(c) Any collector of delinquent taxes appointed under this section shall be paid a salary or other compensation for collecting delinquent taxes in lieu of fees and commissions. Fees and commissions collected by the collector of

delinquent taxes shall be turned over to the municipal treasurer at least once a month.

\* \* \* Incompatible Offices; Cemetery Commissioners and  
Treasurers \* \* \*

Sec. 7. 17 V.S.A. § 2647 is amended to read:

§ 2647. INCOMPATIBLE OFFICES

(a)(1) An auditor shall not be town clerk, town treasurer, selectboard member, first constable, collector of current or delinquent taxes, trustee of public funds, town manager, road commissioner, water commissioner, sewage system commissioner, sewage disposal commissioner, cemetery commissioner, or town district school director; nor shall a spouse of or any person assisting any of these officers in the discharge of official duties be eligible to hold office as auditor.

(2) A selectboard member or school director shall not be first constable, collector of taxes, town treasurer, auditor, or town agent. A selectboard member shall not be lister or assessor.

(3) A cemetery commissioner shall not be town treasurer.

~~(3)~~(4) A town manager shall not hold any elective office in the town or town school district.

~~(4)~~(5) Election officers at local elections shall be disqualified as provided in section 2456 of this title.

(b) Notwithstanding subsection (a) of this section, if a school district prepares and reports its budget independently from the budget of the town and the school district is audited by an independent public accountant, a person shall be eligible to hold office as auditor even if that person's spouse holds office as a school director.

\* \* \* Town Clerks; Public Record Redaction Authority \* \* \*

Sec. 8. 24 V.S.A. § 1164 is amended to read:

§ 1164. CERTIFIED COPIES; FORM

(a) A town clerk shall furnish certified copies of any instrument on record in his or her office, or any instrument or paper filed in his or her office pursuant to law, on the tender of ~~his~~ the clerk's fees therefor, and his or her attestation shall be a sufficient authentication of the copies, except that the town clerk shall not copy the word "illegitimate" from any birth certificate he or she furnishes. The town clerk may redact Social Security numbers from copies of any instrument or record in his or her office.

(b) Copies of vital records for events occurring outside the ~~state~~ State, filed with a town clerk pursuant to ~~section 5015 of Title 18~~ V.S.A. § 5015, shall not be copied and certified.

\* \* \* Planning and Advisory Commissions \* \* \*

Sec. 9. 24 V.S.A. § 4433 is amended to read:

§ 4433. ADVISORY COMMISSIONS AND COMMITTEES

Municipalities may at any time create one or more advisory commissions, which for the purposes of this chapter include committees, or a combination of advisory commissions to assist the legislative body or the planning commission in preparing, adopting, and implementing the municipal plan. Advisory commissions authorized under this section and under chapter 118 of this title may advise appropriate municipal panels, applicants, and interested parties in accordance with the procedures established under section 4464 of this title.

(1) Creation of an advisory commission. Advisory commissions not authorized in chapter 118 of this title shall be created as follows:

(A) An advisory commission may be created at any time when a municipality votes to create one, or through adoption of bylaws, or ~~if the charter of a municipality permits it,~~ when the legislative body of the municipality votes to create one.

(B) An advisory commission shall have ~~not less~~ no fewer than three members. All members should be residents of the municipality, except that historic preservation; or design advisory; ~~or conservation~~ commissions may be composed of professional and lay members, a majority of whom shall reside within the municipality creating the commission.

\* \* \*

(2) Procedures for advisory commissions. Advisory commissions not authorized in chapter 118 of this title shall establish the following procedures:

(A) At its organizational meeting, an advisory commission shall adopt by majority vote of those present and voting such rules as it deems necessary and appropriate for the performance of its functions. It shall annually elect a ~~chairperson, a treasurer,~~ chair and a clerk.

(B) Times and places of meetings of an advisory commission shall be publicly posted in the municipality, and its meetings shall be open to the public in accordance with the terms of the open meeting law, ~~subchapter 2 of chapter 5 of Title 1~~ set forth in 1 V.S.A. chapter 5, subchapter 2.

\* \* \*

(3) Duties and powers of historic preservation commissions. In addition to the requirements set forth in subdivision (2) of this section, all historic preservation commissions shall comply with all the following:

\* \* \*

(C) Have responsibilities set forth in ~~the commission's rules of procedure~~ a written document approved by a majority vote of the local legislative body at a regular or special meeting that may include:

(i) Preparation of reports and recommendations on standards for the planning commission in creating a local historic district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on matters related to historic preservation.

(iii) Advising the appropriate municipal panel and administrative officer in development review and enforcement pursuant to subdivision ~~4414(2)(C)~~ 4414(1)(F) and section 4464 of this title.

(iv) If provided in the bylaw, advising and assisting the legislative body, appropriate municipal panel, and administrative officer in creating and administering a design review district or downtown or village center district pursuant to subdivision 4414(1)(A) or ~~(B)~~(E) of this title.

(v) If provided in a bylaw developed in cooperation with the division for historic preservation, those procedural and advisory powers required of a Certified Local Government under the National Historic Preservation Act.

(4) Powers and duties of design review commissions. In addition to the requirements set forth in subdivision (2) of this section, all design review commissions shall:

(A) To the extent possible, have among their members professionals in the fields of architecture, landscape architecture, urban planning, historic preservation, and related disciplines.

(B) Have responsibilities identified by the legislative body that may include:

(i) Preparation of reports and standards for the planning commission in creating a design review district bylaw under this chapter.

(ii) Advising and assisting the legislative body, planning commission, and other entities on design-related matters in the creation of plans and bylaws and planning for public improvements.



(iii) Advising appropriate municipal panels and the administrative officer in development review and enforcement pursuant to subdivisions 4414(1)(E) and (F) and section 4464 of this title.

(5) Powers and duties of housing commissions. In addition to the requirements set forth in subdivision (2) of this section, housing commissions may have responsibilities identified by the local legislative body that include:

(A) ~~Make~~ Making an inventory of the current stock of housing units in the municipality and identify any gaps in the housing stock according to household incomes or special needs of the community. The inventory may include documentation of the affordable housing cost index for an average citizen of the municipality, the average cost of rental units and vacancy rates, and the annual average sales price of homes.

(B) ~~Review~~ Reviewing the zoning ordinances, subdivision bylaws, building codes, and the development review process of the municipality, make recommendations to facilitate the development of affordable housing in the municipality, and promote bylaws that increase densities for the purpose of providing affordable housing.

(C) ~~Assist~~ Assisting the local appropriate municipal panels pursuant to section 4464 of this title and the district environmental commission by providing advisory testimony on the housing needs of the municipality, where pertinent to applications made to those bodies, for permits for development.

(D) ~~Cooperate~~ Cooperating with the local legislative body, planning commission, zoning board of adjustment, road committee, or other municipal or private organizations on matters affecting housing resources of the municipality. This may include working with the municipality on a wastewater and water allocation policy that reserves a percentage of the capacity for future affordable housing.

(E) ~~Collaborate~~ Collaborating with not-for-profit housing organizations, government agencies, developers, and builders in pursuing options to meet the housing needs of the local residents.

Sec. 10. 24 V.S.A. § 4460 is amended to read:

§ 4460. APPROPRIATE MUNICIPAL PANELS

\* \* \*

(c) In the case of an urban municipality or of a rural town where the planning commission does not serve as the board of adjustment or the development review board, members of the board of adjustment or the development review board shall be appointed by the legislative body, the number and terms of office of which shall be determined by the legislative

body subject to the provisions of subsection (a) of this section. The municipal legislative body may appoint alternates to a planning commission, a board of adjustment, or a development review board for a term to be determined by the legislative body. Alternates may be assigned by the legislative body to serve on the planning commission, the board of adjustment, or the development review board in situations when one or more members of the board are disqualified or are otherwise unable to serve. Vacancies shall be filled by the legislative body for the unexpired terms and upon the expiration of such terms. Each member of a board of adjustment or a development review board may be removed for cause by the legislative body upon written charges and after public hearing. If a development review board is created, provisions of this subsection regarding removal of members of the board of adjustment shall not apply.

\* \* \*

\* \* \* Required Frontage for Land Development \* \* \*

Sec. 11. 24 V.S.A. § 4412 is amended to read:

§ 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

Notwithstanding any existing bylaw, the following land development provisions shall apply in every municipality:

\* \* \*

(3) Required frontage on, or access to, public roads, ~~class 4 town highways~~, or public waters. Land development may be permitted on lots that do not have frontage either on a public road, ~~class 4 town highway~~, or public waters, provided that access through a permanent easement or right-of-way has been approved in accordance with standards and process specified in the bylaws. This approval shall be pursuant to subdivision bylaws adopted in accordance with section 4418 of this title, or where subdivision bylaws have not been adopted or do not apply, through a process and pursuant to standards defined in bylaws adopted for the purpose of assuring safe and adequate access. Any permanent easement or right-of-way providing access to such a road or waters shall be at least 20 feet in width.

\* \* \*

\* \* \* Municipal Law Enforcement Authority \* \* \*

Sec. 12. 20 V.S.A. § 2358(c)(4) is added to read:

(4) “Exercise of law enforcement authority” does not include the enforcement of civil municipal ordinances, except civil municipal ordinances

relating to the operation or use of motor vehicles which are adopted pursuant to 24 V.S.A. chapters 59 and 117.

\* \* \* General Municipal Regulatory Authority \* \* \*

Sec. 13. 24 V.S.A. § 2291 is amended to read:

§ 2291. ENUMERATION OF POWERS

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\* \* \*

(10) To regulate the keeping of dogs, and to provide for their licensing, leashing, muzzling, restraint, impoundment, and destruction.

\* \* \*

(16) To name and rename streets and to number and renumber lots pursuant to section 4463 of this title, and to require the owner of a house or other building to which a number has been assigned to affix the number, including the assigned 911 address, to the structure, sign, or number post so that it is clearly visible from the road.

\* \* \*

(26) When a disaster or emergency has been declared by the Governor, a municipal building inspector, health officer, fire marshal, or zoning administrator may declare a property that has been damaged in the disaster or emergency and is dangerous to life, health, or safety due to the disaster-related damage, condemned to be destroyed.

\* \* \* Effective Date \* \* \*

Sec. 14. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 4-0-1)

**S. 287.**

An act relating to involuntary treatment and medication.

**Reported favorably with recommendation of amendment by Senator White for the Committee on Judiciary.**

The Committee recommends that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

(d) The application shall contain:

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

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

(e) The application shall be accompanied by:

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

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

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

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

§ 7612a. PROBABLE CAUSE REVIEW

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

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

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

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

§ 7615. HEARING

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

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

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

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

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

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

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

(c) The hearing shall be conducted according to the ~~rules of evidence~~ Rules of Evidence applicable in civil actions in the ~~criminal division of the superior~~

~~courts~~ Family Division of the Superior Court of the state State, and to an extent not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont Rules of Civil Procedure shall be applicable.

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

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

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

#### § 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

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

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

(2) The Court may consolidate a petition for involuntary medication and an application for involuntary treatment upon motion of a party or upon its

own motion if it finds that consolidation would serve the interests of the parties and the administration of justice. If the proceedings are consolidated, the Court shall rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

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

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

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

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

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

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

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

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

(6) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives; and

(7) whether the person has executed ~~a durable power of attorney for health care~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111, subchapter 2~~ 231 of this title, and the identity of the ~~health care agent or agents~~ designated by the durable power of attorney advance directive.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(1) If the court concludes that the person has experienced, and is likely to continue to experience, a significant clinical improvement in his or her mental state as a result of the treatment or nontreatment directed by the durable~~



~~power of attorney for health care, or that the patient has regained competence, then the court shall enter an order denying and dismissing the petition.~~

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

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

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

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

#### Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

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

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

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

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

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

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

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

\* \* \*

(d) Stay Pending Appeal.

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

(2) Other Actions.

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

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

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

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

in matters to which this subdivision applies. The motion shall be determined as soon as practicable and to the extent possible shall take priority over other matters.

\* \* \*

#### Sec. 9. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall examine its contract with Vermont Legal Aid's Mental Health Law Project to determine whether continued State funding to the Mental Health Law Project may be made contingent upon the Mental Health Law Project contracting with a sufficient number of psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.

#### Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 5-0-0)

### **ORDERED TO LIE**

#### **S. 165.**

An act relating to collective bargaining for deputy state's attorneys.

**PENDING ACTION:** Third reading of the bill.

### **CONCURRENT RESOLUTIONS FOR ACTION**

**H.C.R. 222-229** (For text of Resolutions, see Addendum to House Calendar for February 13, 2014)

### **CONFIRMATIONS**

The following appointments will be considered by the Senate, as a group, under suspension of the Rules, as moved by the President *pro tempore*, for confirmation together and without debate, by consent thereby given by the Senate. However, upon request of any senator, any appointment may be singled out and acted upon separately by the Senate, with consideration given to the report of the Committee to which the appointment was referred, and with full debate; and further, all appointments for the positions of Secretaries of Agencies, Commissioners of Departments, Judges, Magistrates, and members of the Public Service Board shall be fully and separately acted upon.

Rachel Smith of St. Albans – Member of the Vermont Economic Progress Council – By Sen. Collins for the Committee on Economic Development, Housing and General Affairs. (2/6/14)

Edward F. Flanagan of Montpelier – Member of the Vermont State Lottery Commission – By Sen. Cummings for the Committee on Economic Development, Housing and General Affairs. (2/11/14)

Timothy Briglin of Thetford Center – Member of the Vermont Economic Progress Council – By Sen. Cummings for the Committee on Economic Development, Housing and General Affairs. (2/11/14)

Thomas Nesbitt of Waterbury Center – Member of the Plumbers Examining Board – By Sen. Cummings for the Committee on Economic Development, Housing and General Affairs. (2/11/14)

Ron Shems of Moretown – Chair of the Natural Resources Board – By Sen. Hartwell for the Committee on Natural Resources and Energy. (2/12/14)

### **PUBLIC HEARINGS**

**Tuesday, February 18, 2014** – Room 11 – 11:00 A.M. – 12:00 P.M. – Re: Governor’s Proposed FY 2015 State Budget – House Committee on Appropriations.

**Wednesday, February 19, 2014** – Room 11 – 7:00 – 8:30 P.M. – Re: Judicial Retention of Judges – Joint Committee on Judicial Retention.

**Friday, February 21, 2014** – Room 11 – 1:00 P.M. – 2:00 P.M. – Re: Governor’s Proposed FY 2015 State Budget – House Committee on Appropriations.

### **NOTICE OF JOINT ASSEMBLY**

**Thursday, February 20, 2014 - 10:30 A.M.** - Election of two (2) trustees for the Vermont State Colleges Corporation.

Candidates for the positions of trustee must notify the Secretary of State **in writing** not later than Thursday, February 13, 2014, by 5:00 P.M. pursuant to the provisions of 2 V.S.A. §12(b). Otherwise their names will not appear on the ballots for these positions.

The following rules shall apply to the conduct of these elections:

First: All nominations for these offices will be presented in alphabetical order prior to voting.

Second: There will be only one nominating speech of not more than three (3) minutes and not more than two seconding speeches of not more than one (1) minute each for each nominee.

## FOR INFORMATION ONLY

### CROSSOVER DEADLINES

The Joint Rules Committee established the following Crossover deadlines:

(1) All **Senate** bills must be reported out of the last committee of reference (including the Committees on Appropriations and Finance, except as provided below in (2) and the exceptions listed below) on or before **Friday, March 14, 2014**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

(2) All **Senate** bills referred pursuant to Senate Rule 31 to the Committees on Appropriations and Finance must be reported out by the last of those committees on or before **Friday, March 21, 2014**, and filed with the Secretary of the Senate so that they may be placed on the Calendar for Notice the next legislative day.

These deadlines may be waived for any bill or committee only with the consent of the Committee on Rules.

**Note:** The deadlines were determined by the Joint Rules Committee. The Senate will not act on House bills that do not meet these crossover deadlines, without the consent of the Senate Rules Committee.

**Exceptions to the foregoing deadlines include the major money bills (Appropriations “Big Bill”, Transportation Spending Bill, Capital Construction Bill, and Miscellaneous Tax Bill).**