

Senate Calendar

TUESDAY, FEBRUARY 25, 2014

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ACTION CALENDAR

CONSIDERATION POSTPONED TO FEBRUARY 26, 2014

Second Reading

Favorable with Recommendation of Amendment

S. 168.

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

PENDING QUESTION: Shall the recommendation of the Committee of Government Operations be amended as moved by Senator Benning?

(Senator Benning has moved to amend the recommendation of amendment of the Committee on Government Operations in Sec. 6. 17 V.S.A. § 2651d, by striking out subsection (c) in its entirety.)

Amendment to S. 168 to be Offered by Senator French

Senator French moves that the recommendation of the Committee on Government Operations, as amended, be further amended by striking out Sec. 8 in its entirety and by renumbering the remaining sections to be numerically correct.

Amendment to S. 168 to be Offered by Senator Galbraith

Senator Galbraith moves that the recommendation of amendment of the Committee on Government Operations as amended, be further amended in Sec. 13, 24 V.S.A. § 2291, by striking out subdivision (26) in its entirety and inserting in lieu thereof a new subdivision (26) to read as follows:

(26)(A) 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.

(B) The owner of the condemned property may appeal an order of a building inspector, health officer, fire marshal, or zoning administrator to a board of arbitrators or to the Criminal Division of the Superior Court, at his or her election. The appeal shall be taken within ten days after the receipt of the inspector's notice and order by the aggrieved party. In case of an election to appeal to a board of arbitrators, it shall be deemed perfected by a written notice of appeal left with the building inspector, health officer, fire marshal, or zoning

administrator personally, or at his or her office, or at the office of the town clerk. In case of an election to appeal to the Criminal Division of the Superior Court, the appeal shall be deemed perfected by the filing with the Court of a complaint. The taking of the appeal shall operate as a stay.

(C) The board of arbitrators or the Court shall have the power to annul, amend, modify, or affirm the order of the building inspector. The board of arbitrators shall be composed of two disinterested persons, residents of the municipality, one of whom shall be appointed by the appellant and one by the building inspector. If such arbitrators cannot agree, a third member shall be chosen by them. On failure to agree as to such third member, he or she shall be appointed by a District or Superior judge. A decision of a majority of the board of arbitrators thus composed, when reduced to writing, sworn to and filed in the inspector's office, shall be final and conclusive upon the parties. Upon the filing of such decision, work may be immediately resumed in accordance therewith. The expense of such arbitration shall be paid by the appellant.

UNFINISHED BUSINESS OF THURSDAY, FEBRUARY 20, 2014

Third Reading

S. 304.

An act relating to public school principals and nonrenewal of contracts.

Amendment to S. 304 to be Offered by Senator Collins before Third Reading

Senator Collins moves to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 16 V.S.A. § 243 is amended to read:

§ 243. APPOINTMENT; SUPERVISION; RENEWAL; DISMISSAL

(a) Appointment; supervision.

(1) The school board of each school district operating a school, after recommendation by the superintendent, may designate a person as principal for each public school within the district, except that a principal may be selected to serve more than one school. In the case of a career technical education center, only the school board ~~which that~~ operates the center may designate a person as director. ~~For purposes of~~ As used in this section, the word "principal" shall include a principal and the director of career technical education, and the term "public school" shall include a career technical education center.

(2) The superintendent shall supervise each principal within the supervisory union in the performance of duties and the implementation of

school-based initiatives. The superintendent shall evaluate a principal during the year in which the principal's contract shall expire and may evaluate the principal at other times during the contract term. Together with the evaluation provided to the principal in the year in which the contract shall expire, the superintendent shall indicate in writing whether he or she intends to recommend to the school board that the contract be renewed or not renewed. If the superintendent intends to recommend nonrenewal, then the written notification shall also indicate on which of the three categories set forth in subdivision (c)(2) of this section the recommendation is based.

(b) Length of contract. ~~The~~ A principal shall be employed by written contract for a term of not less than one year nor more than three years. Based upon the superintendent's most recent written evaluation of the principal, a superintendent shall recommend to the school board whether or not to renew the initial and any subsequent contract with a principal.

(c) Renewal and nonrenewal.

(1) A principal who has been continuously employed for more than two years in the same position has the right either to have his or her contract renewed, or to receive written notice of nonrenewal at least 90 days before the existing contract expires;

(A) on or before February 1, if the principal has been continuously employed for more than two years in the same position; and

(B) on or before April 1, if the principal has been continuously employed for two years or less in the same position.

(2) Nonrenewal may be based upon elimination of the position, unresolved performance deficiencies, or other reasons affecting the educational mission of the district. The written notice shall recite the grounds for nonrenewal. If nonrenewal is based on performance deficiencies, the written notice shall be accompanied by an evaluation performed by the superintendent. At its discretion, any reason other than the elimination of the position then, at its discretion, the school board may allow a period of remediation of performance deficiencies prior to issuance of the written notice its final decision on nonrenewal.

(3) After receiving such a notice of nonrenewal, the principal may request in writing, and shall be granted, a meeting with the school board. Such request shall be delivered within 15 10 calendar days of delivery of notice of nonrenewal, and the meeting shall be held within 15 calendar days of delivery of the request for a meeting. At the meeting, the school board shall explain its position, and the principal shall be allowed to respond. The principal and any member of the board may present written information or oral information

through statements of others, and the principal and the board may be represented by counsel. The meeting shall be in executive session unless both parties agree in writing that it be open to the public. After the meeting, the school board shall decide whether or not to offer the principal an opportunity to renew his or her contract. The school board shall issue its decision in writing within five days. The decision of the school board shall be final.

* * *

(e) Inclusion in contract. Every principal's contract shall be deemed to contain the provisions of this section. Any contract provision to the contrary is without effect. Each written contract shall include a reference to chapter 5, subchapter 3 of this title; provided, however, that failure to do so shall not give rise to a private right of action.

(f) Notification by principal. On or before May 1 of the year in which a principal's contract expires, the principal shall notify the school board in writing if he or she intends not to enter into a new contract with the district.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

Amendment to S. 304 to be Offered by Senators Mullin and Flory before Third Reading

Senators Mullin and Flory move to amend the bill as follows:

In Sec. 1, in 16 V.S.A. § 243(c), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read:

(2) Nonrenewal may be based upon elimination of the position, performance deficiencies, or other reasons. The written notice shall recite the grounds for nonrenewal. If nonrenewal is based on performance deficiencies, the written notice shall be accompanied by an evaluation performed by the superintendent. At its discretion, the school board may allow a period of remediation of performance deficiencies prior to issuance of the written notice.

Amendment to S. 304 to be Offered by Senator Nitka before Third Reading

Senator Nitka moves to amend the bill as follows:

First: In Sec. 1, in 16 V.S.A. § 243(c), by striking out subdivision (1) its entirety and inserting in lieu thereof a new subdivision (1) to read:

(1) ~~A principal who has been continuously employed for more than two years in the same position~~ has the right either to have his or her contract

renewed, or to receive written notice of nonrenewal ~~at least 90 days before the existing contract expires;~~

(A) on or before February 1, if the principal has been continuously employed for more than two years in the same position;

(B) on or before April 1, if the principal has been continuously employed for two years or less in the same position; and

(C) at least 30 days before the existing contract expires, if the final day of the existing contract is other than June 30.

Second: In Sec. 1, in 16 V.S.A. § 243(c)(3), in the second sentence, by striking out the word “five” and inserting in lieu thereof the numeral 10

NEW BUSINESS

Second Reading

Favorable with Recommendation of Amendment

S. 275.

An act relating to the Court’s jurisdiction over youthful offenders.

Reported favorably with recommendation of amendment by Senator Sears 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. 33 V.S.A. § 5204a is amended to read:

§ 5204a. JURISDICTION OVER ADULT DEFENDANT FOR CRIME COMMITTED WHEN DEFENDANT WAS UNDER ~~AGE~~ 18 YEARS OF AGE

* * *

(b)(1) The Family Division shall, except as provided in subdivision (2) of this subsection, transfer a petition filed pursuant to subsection (a) of this section to the Criminal Division if the Family Division finds that:

* * *

(2)(A) The Family Division may order that the defendant be treated as a youthful offender consistent with the applicable provisions of subchapter 5 of chapter 52 of this title if the defendant is under ~~23~~ 22 years of age and the Family Division:

(i) makes the findings required by subdivisions (1)(A), (B), and (C) of this subsection;

(ii) finds that the youth is amenable to treatment or rehabilitation as a youthful offender; and

(iii) finds that there are sufficient services in the Family Division system and the Department for Children and Families or the Department of Corrections to meet the youth's treatment and rehabilitation needs.

(B) If the Family Division orders that the defendant be treated as a youthful offender, the Court shall approve a disposition case plan and impose conditions of probation on the defendant.

(C) If the Family Division finds after hearing that the defendant has violated the terms of his or her probation, the Family Division may:

(i) maintain the defendant's status as a youthful offender, with modified conditions of probation if the Court deems it appropriate; or

(ii) revoke the defendant's youthful offender status and transfer the petition to the Criminal Division pursuant to subdivision (1) of this subsection.

* * *

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.

(Committee vote: 4-0-1)

NOTICE CALENDAR

Second Reading

Favorable

S. 263.

An act relating to the authority of assistant judges in child support contempt proceedings.

Reported favorably by Senator Benning for the Committee on Judiciary.

(Committee vote: 4-0-1)

Favorable with Recommendation of Amendment

S. 177.

An act relating to nonjudicial discipline.

Reported favorably with recommendation of amendment by Senator McAllister 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:

Sec. 1. 20 V.S.A. chapter 39 (courts-martial) §§ 941–945 are designated as subchapter 1, which is added to read:

Subchapter 1. General Provisions

Sec. 2. 20 V.S.A. chapter 39 (courts-martial), subchapter 2 is added to read:

Subchapter 2. Nonjudicial Discipline

§ 961. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

(a)(1) A commanding officer may impose nonjudicial discipline upon a service member for minor military offenses without the intervention of a court-martial in accordance with the provisions of this subchapter.

(2) The commanding officer who intends to impose nonjudicial discipline upon a service member shall notify him or her of the following:

(A) the nature of the alleged offense;

(B) the commanding officer's intent to dispose of the matter by nonjudicial discipline; and

(C) any other nonjudicial discipline procedural rights established by regulation.

(3) As used in this section, "commanding officer" shall include an officer-in-charge.

(b) A commanding officer may impose upon enlisted members of the officer's command:

(1) an admonition;

(2) a reprimand;

(3) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of up to seven days of pay and, for all others, up to four days of pay;

(4) a fine of not more than seven days' pay;

(5) a reduction to the next inferior pay grade, if the grade from which the member is demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(6) extra duties for not more than 14 days, which need not be consecutive; and

(7) restriction to certain specified limits, with or without suspension from duty, for not more than 14 days, which need not be consecutive.

(c) A commanding officer of the grade of major or above may impose upon enlisted members of the officer's command:

(1) any discipline authorized in subdivisions (b)(1), (2), and (3) of this section;

(2) for members who are serving on full-time military orders in excess of 179 days, the forfeiture of not more than one-half of one month's pay per month for up to two months, and, for all others, up to 14 days of pay;

(3) a fine of not more than one month's pay;

(4) a reduction to the lowest or any intermediate pay grade, if the grade from which the member is demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(5) for members who are serving on full-time military orders in excess of 179 days, the imposition of extra duties for up to 45 days which need not be consecutive, and, for all others, the imposition of extra duties for up to 14 days which need not be consecutive; and

(6) restriction to certain specified limits, with or without suspension from duty, for not more than 60 days, which need not be consecutive.

(d)(1) The Adjutant and Inspector General or an officer of a general or flag rank in command may impose:

(A) upon an officer or warrant officer of the officer's command, any discipline authorized in subdivisions (c)(1), (2), (3), and (6) of this section;

(B) upon an enlisted member of the officer's command, any discipline authorized in subsection (c) of this section.

(2) The Adjutant and Inspector General or an officer of a general or flag rank in command may delegate his or her powers under this subsection to a principle assistant who is a member of the Vermont National Guard.

(e) Whenever any disciplines imposed under this section are to be served consecutively, the total length of the combined discipline shall not exceed the authorized duration of the longest discipline in the combination, and there shall be an apportionment of disciplines so that no single discipline in the combination exceeds its authorized length.

(f)(1) The officer who imposes the discipline or his or her successor in command may at any time suspend, set aside, mitigate, or remit any part or amount of the discipline and restore all rights, privileges, and property affected. The officer also may mitigate a reduction in grade to a forfeiture of pay or mitigate extra duties to a restriction to certain specified limits.

(2) The mitigated discipline shall not be for a greater period than the original discipline mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the discipline.

(g) Whenever a discipline of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing before, on, or after the date that discipline is imposed.

§ 962. SERVICE MEMBERS SUBJECT TO NONJUDICIAL DISCIPLINE

(a) A service member subject to nonjudicial discipline under this subchapter shall, during the course of his or her disciplinary proceedings, have the right to:

(1) consult with a judge advocate or with private counsel at the service member's own expense;

(2) submit matters in extenuation, mitigation, or defense; and

(3) call and examine witnesses, to the extent witness are reasonably available.

(b)(1) Except as provided in subdivision (2) of this subsection, a service member subject to nonjudicial discipline shall have the right to demand a court-martial in lieu of nonjudicial discipline.

(2) A service member subject to nonjudicial discipline shall not have the right to demand a court-martial in lieu of nonjudicial discipline if the service member is notified by the commanding officer that the commanding officer does not intend to impose a restriction to certain specified limits, a fine, or extra duties if, after a hearing, the service member is found guilty of any offense with which he or she is charged.

(c)(1) A service member subject to nonjudicial discipline under this subchapter may elect to have his or her case heard before a nonjudicial discipline panel, described in section 963 of this subchapter.

(2) The service member shall have 24 hours from the commanding officer's notice of his or her intent to dispose of the matter by nonjudicial discipline to make an election for disposition by a nonjudicial panel, and shall

have the right to consult with a judge advocate or with private counsel at the service member's own expense prior to making such a decision.

§ 963. NONJUDICIAL DISCIPLINE PANELS

(a) When a service member elects to have his or her case heard before a nonjudicial discipline panel as provided in section 962 of this subchapter, the panel shall be formed as follows:

(1) The panel shall consist of three members, appointed by the next higher authority of the commanding officer who seeks to impose the nonjudicial discipline.

(2) The members of the panel shall be officers who are senior to the service member requesting the panel. If it is an enlisted service member requesting the panel, there shall be at least one enlisted service member on the panel, but that enlisted service member must be senior to the enlisted service member requesting the panel.

(3) The senior member of the panel shall be the chair. The most junior member shall be the recorder and shall record summaries of the proceedings.

(4) If the nonjudicial discipline is being offered by a general officer, the panel shall consist of three members appointed by the Adjutant and Inspector General with the most senior member being the chair and the most junior member being the recorder, who shall record the summaries of the proceedings.

(b) The panel decision shall be by majority vote. The panel shall have the same authority and responsibility in conducting the proceeding and disposing of the matter, including imposing nonjudicial discipline, as has a commanding officer of the grade of major or above pursuant to this subchapter.

(c)(1) The panel shall forward its recommendation for disposition and imposition of discipline, if any, to the authority who appointed the panel under subsection (a) of this section.

(2)(A) The appointing authority may approve the recommended discipline or any part or amount as the appointing authority sees fit and may suspend, mitigate, or remit the recommended discipline as he or she deems appropriate.

(B) The appointing authority shall not approve any discipline in excess of that recommended by the panel.

§ 964. APPEALS FROM NONJUDICIAL DISCIPLINE DECISIONS

(a)(1) A service member disciplined under this subchapter who considers the discipline unjust or disproportionate to the offense may appeal to the next superior authority within 15 days after the discipline is either announced or notice of the discipline is sent to the accused, as the commander under section 961 or the appointing authority under section 963 of this subchapter may determine.

(2) An appeal from the decision of an appointing authority under section 963 of this subchapter shall be taken directly to the next higher authority, unless the action is initiated by a general officer, in which case the Adjutant and Inspector General shall have the final decision.

(b) The appeal shall be promptly forwarded and decided, but the service member disciplined may, in the meantime, be required to undergo the discipline adjudged.

(c)(1) The superior authority may exercise the same powers with respect to the discipline imposed as may be exercised under section 961 or 963 of this subchapter by the officer who imposed the discipline, except that the superior authority shall not impose any discipline in excess of what was originally imposed.

(2) Before acting on an appeal, the authority may refer the case to a judge advocate for consideration and advice.

§ 965. EFFECT OF NONJUDICIAL DISCIPLINE

(a) The imposition and enforcement of nonjudicial discipline under this subchapter for any act or omission shall not be a bar to trial by court-martial or a civilian court of competent jurisdiction for a serious crime or offense growing out of the same act or omission and not properly punishable under this subchapter.

(b) The fact that nonjudicial discipline has been enforced may be shown by the accused upon trial and, when so shown, it shall be considered in determining the measure of discipline to be adjudged in the event of a finding of guilty.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

(Committee vote: 5-0-0)

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

The Committee recommends that the bill be amended as recommended by the Committee on Government Operations, with the following amendments thereto:

First: In Sec. 2, in 20 V.S.A. § 961(a)(1), after “in accordance with the provisions” by inserting of

Second: In Sec. 2, in 20 V.S.A. § 962(b), by striking out subdivision (2) in its entirety and inserting in lieu thereof the following:

(2) A service member subject to nonjudicial discipline shall not have the right to demand a court-martial in lieu of nonjudicial discipline if the commanding officer will not impose a restriction to certain specified limits, a fine, or extra duties if, after a hearing, the service member is found guilty of any offense with which he or she is charged and the commanding officer advises the service member of that fact when the commanding officer notifies the service member of his or her intent to impose nonjudicial discipline.

(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 ~~u~~ 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 ~~u~~ 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(e)(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)

Reported favorably with recommendation of amendment by Senator Ayer for the Committee on Health and Welfare.

The Committee recommends that the bill be amended as recommended by the Committee on Judiciary with the following amendment thereto:

In Sec. 4, 18 V.S.A. § 7624(b), by striking out subdivision (2) in its entirety and inserting in lieu thereof a new subdivision (2) to read as follows:

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

and that when so amended the bill ought to pass.

(Committee vote: 3-2-0)

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.

Patti Pallito of Richmond – Member of the State Police Advisory Commission – By Sen. French for the Committee on Government Operations. (2/19/14)

Shirley A. Jefferson of South Royalton – Member of the State Police Advisory Commission – By Sen. McAllister for the Committee on Government Operations. (2/19/14)

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).