

Journal of the Senate

THURSDAY, MARCH 21, 2013

Pursuant to the Senate Rules, in the absence of the President, the Senate was called to order by the President *pro tempore*.

Devotional Exercises

Devotional exercises were conducted by the Senator from Windsor District, Senator Campbell.

Message from the House No. 30

A message was received from the House of Representatives by Ms. H. Gwynn Zakov, its Second Assistant Clerk, as follows:

Mr. President:

I am directed to inform the Senate that:

The House has passed a House bill of the following title:

H. 315. An act relating to group health coverage for same-sex spouses.

In the passage of which the concurrence of the Senate is requested.

The House has considered joint resolution originating in the Senate of the following title:

J.R.S. 20. Joint resolution relating to weekend adjournment.

And has adopted the same in concurrence.

Joint Resolution Placed on Calendar

J.R.S. 19.

Joint Senate resolution of the following title was offered, read the first time and is as follows:

By Senator Nitka,

J.R.S. 19. Joint resolution providing for a Joint Assembly to vote on the retention of seven Superior Judges and one Magistrate.

Whereas, by virtue of the provisions of 4 V.S.A. § 608 and of J.R.S. 17, the vote on the retention seven Superior Court Judges, and one Magistrate who have submitted declarations seeking retention was deferred until March 28, 2013,

Whereas, subsection 608(g) of Title 4 permits the General Assembly to defer action on the retention of judges to a subsequent Joint Assembly, *now therefore be it*

Resolved by the Senate and House of Representatives:

That the two Houses meet in Joint Assembly on Thursday, April 4, 2013, at ten o'clock and thirty minutes in the forenoon to vote on the retention of a seven Superior Court Judges, and one Magistrate. In case the vote to retain said Judges and Magistrate shall not be made on that day, the two Houses shall meet in Joint Assembly at ten o'clock and thirty minutes in the forenoon, on each succeeding day, Saturdays and Sundays excepted, and proceed until the above is completed.

Thereupon, in the discretion of the President *pro tempore*, under Rule 51, the joint resolution was placed on the Calendar for action the next legislative day.

Bill Referred

House bill of the following title was read the first time and referred:

H. 315.

An act relating to group health coverage for same-sex spouses.

To the Committee on Finance.

Consideration Postponed

Senate bill entitled:

S. 30.

An act relating to siting of electric generation plants.

Was taken up.

Thereupon, pending the reading of the report of the Committee on Natural Resources and Energy, Senator Snelling moved that consideration of the bill be postponed until Tuesday, March 26, 2013.

Consideration Postponed

S. 58.

Senator Rodgers, for the Committee on Natural Resources and Energy, to which was referred Senate bill entitled:

An act relating to Act 250 and oil pipelines.

Reported recommending that the bill be amended as follows:

First: In Sec. 2, 10 V.S.A. § 6081, in subsection (b), by striking out the last sentence and inserting in lieu thereof the following:

Subsection (a) of this section also shall apply to an oil or petroleum transmission pipeline and associated facilities excepted under this subsection if there is any change to the pipeline or associated facilities, unless the change is solely for the purpose of repair in the usual course of business.

Second: By striking out Secs. 3 and 4 in their entirety and inserting in lieu thereof new Secs. 3 and 4 to read as follows:

Sec. 3. 10 V.S.A. § 6086 is amended to read:

§ 6086. ISSUANCE OF PERMIT; CONDITIONS AND CRITERIA

* * *

(g) When applying the criteria of this section to an oil or petroleum transmission pipeline, the district commission shall not consider the safety of the pipeline and shall issue no permit condition that regulates pipeline safety or has an effect on pipeline safety that is not permitted under the Pipeline Safety Act, 49 U.S.C. §§ 60101–60137.

Sec. 4. APPLICATION

Notwithstanding 1 V.S.A. §§ 213 and 214, this act shall apply to any change to an oil or petroleum pipeline and associated facilities that is made after the act's effective date regardless of whether a jurisdictional opinion under 10 V.S.A. chapter 151 (Act 250) was issued prior to that date concerning the applicability of that chapter to the change.

And that when so amended the bill ought to pass.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, Senator Sears moved that the bill be committed to the Committee on Judiciary. Thereupon, pending the question, Shall the bill be committed to the Committee on Judiciary?, Senator Sears requested and was granted leave to withdraw his motion.

Thereupon, pending the question, Shall the bill be amended as recommended by the Committee on Natural Resources and Energy?, on motion of Senator Sears, action on the bill was postponed until the next legislative day.

Bill Amended; Third Reading Ordered**S. 128.**

Senator Fox, for the Committee on Health and Welfare, to which was referred Senate bill entitled:

An act relating to updating mental health judicial proceedings.

Reported recommending 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. chapter 171 is amended to read:

CHAPTER 171. GENERAL PROVISIONS**§ 7101. DEFINITIONS**

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

* * *

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

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

* * *

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

* * *

(15) “Patient” means a resident of or person in Vermont ~~qualified under this title for hospitalization or treatment as a mentally ill or mentally retarded individual~~ who is subject to involuntary or voluntary mental health treatment or evaluation.

* * *

(26) “No refusal system” means a system of designated hospitals and, intensive residential recovery facilities, secure residential recovery facilities, and residential treatment programs under contract with the ~~department of~~

~~mental health~~ Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the ~~commissioner~~ Commissioner in contract.

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

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

(29) "Secure residential recovery facility" means a residential facility owned and operated by the State and licensed as a therapeutic community residence, as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who remains in need of treatment within a secure setting for an extended period of time or for an individual transferred pursuant to 28 V.S.A. § 705a.

(30) "Successor in interest" means the mental health hospital owned and operated by the ~~state~~ State that provides acute inpatient care and replaces the Vermont State Hospital.

* * *

§ 7104. WRONGFUL HOSPITALIZATION PLACEMENT IN CUSTODY OR DENIAL OF RIGHTS; FRAUD; ELOPEMENT

Any person who ~~wilfully~~ willfully causes, or conspires with, or assists another to cause any of the following shall be fined not more than \$500.00 or imprisoned not more than one year, or both:

(1) the hospitalization of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as a ~~mentally ill or mentally retarded individual~~ person with a mental illness; or

(2) the denial to any individual of any rights granted to him or her under this part of this title; ~~or~~

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

(4) the elopement of any patient ~~or student~~ from a hospital ~~or training school~~, or who knowingly harbors any ~~sick person~~ patient who has eloped from a hospital, or who aids in abducting a patient ~~or student~~ who has been

conditionally discharged from the person or persons in whose care and service that patient ~~or student~~ has been legally placed; ~~shall be fined not more than \$500.00 or imprisoned not more than one year, or both.~~

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

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

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

Whenever a patient has been admitted to a designated hospital other than upon his or her own application, the head of the designated hospital shall immediately notify the patient's legal guardian, ~~spouse, parent or parents, or nearest known relative or interested party, if known~~ and agent as defined in section 9701 of this title, if any, or if a minor, the patient's parent or legal guardian. If the involuntary hospitalization or admission was without court order, notice shall also be given to the superior court judge for the ~~family division of the superior court~~ Family Division of the Superior Court in the unit wherein the designated hospital is located. If the hospitalization or admission was by order of any court, the head of the designated hospital admitting or discharging ~~an individual~~ the patient shall forthwith make a report thereof to the ~~commissioner~~ Commissioner and to the court which entered the order for hospitalization or admission.

§ 7107. ~~EXTRAMURAL WORK~~

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

§ 7108. ~~CANTEENS~~

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

~~executive officer and subject to the approval of the commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the commissioner. [Repealed.]~~

§ 7109. SALE OF ARTICLES; REVOLVING FUND

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

~~(b) The consent of the patient or the legal representative of the patient or student shall, in consideration of the undertaking of the superintendent, contain the further agreement that one half the earnings of the patient or student shall be credited to the personal account of the patient or student so employed at interest for benefit of the patient or student and the balance shall be credited to the fund. The superintendent shall hold and expend the fund for the purchase of equipment and materials for the handiwork or group therapy departments and for the educational and recreational welfare of the patient or student group. He or she shall submit an annual report of the fund to the commissioner. Balances remaining in it at the end of a fiscal year shall be carried forward and be available for the succeeding fiscal year.~~

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

* * *

§ 7111. RIGHT TO LEGAL COUNSEL

In any proceeding before, or notice to, a court of this state State involving a patient ~~or student~~, or a proposed patient ~~or student~~, that person shall be afforded counsel, and if the patient ~~or student~~ or proposed patient ~~or student~~ is unable to pay for counsel, compensation shall be paid by the state State to counsel assigned by the court; however, this section shall not apply to a proceeding under section 7505 of this title.

* * *

§ 7113. INDEPENDENT EXAMINATION: PAYMENT

Whenever a court orders an independent examination by a mental health professional ~~or a qualified mental retardation professional~~ pursuant to this title or 13 V.S.A. § 4822, the cost of the initial examination shall be paid by the ~~department of disabilities, aging, and independent living or of health~~ Department of Mental Health. The mental health professional ~~or qualified mental retardation professional~~ may be selected by the court but the ~~commissioner of disabilities, aging, and independent living or the~~ commissioner of mental health Commissioner of Mental Health may adopt a reasonable fee schedule for examination, reports, and testimony.

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

§ 7205. ~~SUPERVISION OF INSTITUTIONS~~

(a) The ~~department of mental health~~ Department of Mental Health shall operate the Vermont State Hospital or its successor in interest and a secure residential recovery facility. The Department shall be responsible for patients receiving involuntary treatment.

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

Sec. 3. PURPOSE OF THE MENTAL HEALTH CARE OMBUDSMAN

Due to the State's unique role in coordinating and providing services for Vermonters with one or more diagnosed mental health conditions, the General Assembly created the Office of the Mental Health Care Ombudsman, and now finds it necessary to clarify the Office's role, which is to safeguard access to services and those rights and protections that may be at risk. Due to the fact that the Office of the Mental Health Care Ombudsman addresses methods of care that are not as prevalent as among other health conditions, the Office's existence remains consistent with the principles of parity and achieving integration throughout Vermont's health care system.

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

CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

§ 7451. DEFINITIONS

As used in this chapter:

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

(2) “Department” means the Department of Mental Health.

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

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

(5) “Office” means the Office of the Mental Health Care Ombudsman.

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

(7) “State agency” means any office, department, board, bureau, division, agency, or instrumentality of the State.

§ 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

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

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

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

§ 7453. RESPONSIBILITIES OF THE OFFICE

(a) The Office may:

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

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

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

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

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

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

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

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

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

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

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

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

§ 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

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

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

(2) Communicate and visit with any individual with a diagnosed mental health condition, provided that the Ombudsman shall discontinue interactions

with any individual when requested to do so by that individual. Toward that end, designated hospitals, emergency rooms, correctional facilities, intensive residential recovery facilities, secure residential recovery facilities, and other community treatment facilities shall provide the Ombudsman access to their facilities and to individuals for whom they provide mental health services. If the individual with a diagnosed mental health condition has a guardian, the Office shall take no formal action without consent of the guardian or a court order, unless an emergency situation arises.

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

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

§ 7455. COOPERATION OF STATE AGENCIES

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

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

§ 7456. CONFIDENTIALITY

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

§ 7457. IMMUNITY

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

§ 7458. INTERFERENCE AND RETALIATION

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

(b) A person who takes discriminatory, disciplinary, or retaliatory action against an employee, a resident, or a volunteer of a designated hospital,

correctional facility, intensive residential recovery facility, secure residential recovery facility, community treatment facility, or state agency for any communication made, or information disclosed, to aid the Office in carrying out its duties and responsibilities shall be imprisoned not more than one year or fined not more than \$5,000.00, or both. An employee, a resident, or a volunteer of such facilities or state agencies may seek damages in superior court against a person who takes an action prohibited by this subsection.

§ 7459. CONFLICT OF INTEREST

The Mental Health Care Ombudsman, an employee of the Ombudsman, or an immediate family member of the Ombudsman or of an employee shall not have any financial interest in or authority over a designated hospital, correctional facility, intensive residential recovery facility, secure residential recovery facility, or community treatment facility and from providing mental health services, which creates a conflict of interest in carrying out the Ombudsman's responsibilities under this chapter.

Sec. 5. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT FOR IMMEDIATE EXAMINATION

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

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

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

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

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

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

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

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

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

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

CHAPTER 181. JUDICIAL PROCEEDINGS

* * *

§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

(c) If the application is filed under section 7508 or 7620 of this title, it shall be filed in the ~~criminal division of the superior court~~ Family Division of the Superior Court in which the hospital is located.

(d) The application shall contain:

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

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

(e) The application shall be accompanied by:

(1) A certificate of a licensed physician, which shall be executed under penalty of perjury stating that he or she has examined the proposed patient within five days of the date the petition is filed, and is of the opinion that the 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 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.

§ 7613. NOTICE—APPOINTMENT OF COUNSEL

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

* * *

§ 7617. FINDINGS; ORDER

(a) If the court finds that the proposed patient was not a person in need of treatment at the time of admission or application or is not a patient in need of further treatment at the time of the hearing, the court shall enter a finding to that effect and shall dismiss the application.

(b)(1) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:

~~(1)(A)~~ hospitalized in a designated hospital;

~~(2)(B)~~ hospitalized in any other public or private hospital if he or she and the hospital agree; or

~~(3)(C)~~ to undergo a program of treatment other than hospitalization.

(2) If the application for treatment was made in accordance with 28 V.S.A. § 705a and the proposed patient is found to be a person in need of

treatment at the time of application and at the time of the hearing, the only order for treatment other than hospitalization that a court may enter is an order of nonhospitalization at a secure residential recovery facility.

(c) Prior to ordering any course of treatment, the court shall determine whether there exists an available program of treatment for the person which is an appropriate alternative to hospitalization. The court shall not order hospitalization without a thorough consideration of available alternatives.

(d) Before making its decision, the court shall order testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency, or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.

* * *

§ 7620. APPLICATION FOR CONTINUED TREATMENT

(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the ~~commissioner~~ Commissioner believes that the condition of the patient is such that the patient continues to require treatment, the ~~commissioner~~ Commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.

(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient, and the results of that course of treatment.

(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.

(d) If the ~~commissioner~~ Commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility.

(e) As used in this chapter:

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

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

§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;
ORDERS

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

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

* * *

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

§ 7708. ~~SURGICAL OPERATIONS~~

~~If the superintendent finds that a patient supported by the state requires a surgical operation or that a surgical operation would promote the possibility of his or her discharge from the hospital, the superintendent, with the consent of the patient, his or her attorney, or his or her legally appointed guardian, if any, or next of kin, if any be known, may make the necessary arrangements with some surgeon and hospital for the operation. The expense of the operation shall be borne by the state in the same proportion as the patient is supported by the state. [Repealed.]~~

Sec. 8. 18 V.S.A. chapter 189 is amended to read:

CHAPTER 189. RELEASE AND DISCHARGE

§ 8003. PERSONAL NEEDS OF PATIENT

The ~~commissioner~~ Commissioner shall make any necessary arrangements to ensure:

(1) that no patient is discharged ~~or granted a conditional release~~ from a designated hospital without suitable clothing; and

(2) that any indigent patient discharged ~~or granted a conditional release~~ is furnished suitable transportation for his or her return home and an amount of money as may be prescribed by the head of ~~the~~ a designated hospital to enable the patient to meet his or her immediate needs.

* * *

§ 8006. VISITS

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

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

§ 8007. CONDITIONAL DISCHARGES

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

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

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

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

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

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

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

§ 8008. ~~REVOCATION OF CONDITIONAL DISCHARGE~~

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

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

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

~~(d) If the examining physician certifies in writing to the head of the hospital that, in his or her opinion, the patient is a person in need of treatment, setting forth the recent and relevant facts supporting this opinion, the revocation shall become effective and the patient shall be readmitted to the hospital. If the examining physician does not so certify, the revocation shall be cancelled and the patient shall be returned to the place from which he or she was taken.~~

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

§ 8009. ADMINISTRATIVE DISCHARGE

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

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

(c) ~~A person~~ An individual responsible for providing treatment other than hospitalization to ~~an individual~~ a person ordered to undergo a program of alternative treatment, under section 7618 or 7621 of this title, may terminate

the alternative treatment to the ~~individual person~~ if the provider of this alternative treatment considers the ~~individual person~~ clinically suitable for termination of treatment. Upon termination of alternative treatment, the ~~family division of the superior court~~ the Commissioner and Family Division of the Superior Court shall be so notified by the provider of the alternative treatment. Upon receipt of the notice, the Court shall vacate the order.

* * *

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

CHAPTER 197. MENTALLY ILL USERS OF ALCOHOL OR DRUGS

* * *

§ 8404. ~~CONDITIONAL DISCHARGE~~

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

§ 8405. OUTSIDE VISITS

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

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

§ 8847. INDEPENDENT EXAMINATION: PAYMENT

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

Sec. 11. 18 V.S.A. § 8848 is added to read:

§ 8848. APPREHENSION OF ELOPED PERSONS

Any sheriff, deputy sheriff, or officer of the State or local police and any officer or employee of any designated program may arrest any person who has eloped from a designated program and return such person.

Sec. 12. 28 V.S.A. § 705a is added to read:

§ 705a. TRANSFER TO SECURE RESIDENTIAL RECOVERY FACILITY

(a) If in the discretion of the Commissioner of Mental Health it becomes necessary and appropriate, the Commissioner of Mental Health may file an application, in consultation with the Commissioner of Corrections, in the Family Division of the Superior Court for the involuntary treatment of an incarcerated person pursuant to 18 V.S.A. § 7612 which specifies admission to a secure residential recovery facility as the proposed plan of treatment for the person if it is determined that the person:

- (1) has a mental illness as defined in 18 V.S.A. § 7101;
- (2) poses a danger to himself or herself or others; and
- (3) requires treatment at a secure residential recovery facility.

(b) If the Court finds that the person is in need of treatment pursuant to 18 V.S.A. § 7617(b), the only order of nonhospitalization that a court may order is for a program of treatment at a secure residential recovery facility. This limitation pertains only to applications filed by the Commissioner of Mental Health under this subsection.

(c)(1) When a person is transferred to a secure residential recovery facility pursuant to this section, he or she shall be subject to the supervision of the Commissioner of Mental Health except that the time during which the person is in the custody of the Commissioner of Mental Health shall be computed as part of the term for which he or she was sentenced. He or she shall continue to be eligible for good behavior reductions pursuant to section 811 of this title, and he or she shall continue to be eligible for parole pursuant to chapter 7 of this title.

(2) When the Commissioner of Mental Health determines that a person whose sentence has not expired no longer requires treatment at a secure residential recovery facility, the Commissioner of Mental Health shall return the person to the custody of the Commissioner of Corrections in accordance with 18 V.S.A. chapter 189.

(d) As used in this section, “secure residential recovery facility” shall have the same meaning as in 18 V.S.A. § 7101.

Sec. 13. MENTAL HEALTH LEGISLATIVE WORK GROUP

(a) On or before July 15, 2013, the Commissioner of Mental Health shall convene a work group of stakeholders to examine current Vermont statutes pertaining to judicial proceedings in Title 18, Part 8 and to make recommendations that would more closely align the statutes to the Department of Mental Health’s current practices while respecting the rights of affected individuals. Members of the Work Group shall include:

- (1) the Commissioner of Mental Health or designee;
- (2) the Commissioner of Corrections or designee;
- (3) a representative of the Vermont Association of Hospitals and Health Systems;
- (4) the Mental Health Care Ombudsman;
- (5) the Administrative Judge or designee;
- (6) a representative of Vermont Legal Aid’s Mental Health Law Project;
- (7) a representative of the law enforcement community;
- (8) a representative of a designated agency’s emergency response team; and
- (9) two representatives of the peer community.

(b) The Work Group shall consider:

- (1) the Department’s current preadmission practices through the time of hospital admission;
- (2) emergency examination procedures, including temporary custody;
- (3) immediate examination procedures, including reliable reports of conduct and warrants for entering residences;
- (4) time limits for certification and judicial proceedings;
- (5) processes for referral to and discharge from the secure residential recovery facility;
- (6) manners of reducing wait times in emergency departments, including the use of technology and streamlined processes;

(7) a protocol that the Departments of Corrections and of Mental Health may use in serving individuals diverted from court-ordered inpatient treatment due to lack of available bed space; and

(8) any other topic the Commissioner of Mental Health deems appropriate.

(c) On or before November 15, 2013, the Commissioner shall submit a report containing the Work Group's recommendations for legislation to the Mental Health Oversight Committee, the Senate Committee on Health and Welfare, and the House Committee on Human Services.

Sec. 14. REPEAL

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

Sec. 15. REDESIGNATION

18 V.S.A. chapters 217 (genetic testing), 219 (health information technology), and 220 (Green Mountain Care Board) shall be redesignated to appear within 18 V.S.A. part 9 (unified health care system).

Sec. 16. EFFECTIVE DATE

This act shall take effect on July 1, 2013.

And that when so amended the bill ought to pass.

Senator Baruth Assumes the Chair

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and pending the question, Shall the bill be amended as recommended by the Committee on Health and Welfare?, Senator Sears moved that the recommendation of amendment of the Committee on Health and Welfare be amended as follows:

In Sec. 12, 28 V.S.A. § 705a, after subsection (c) by inserting a new subsection (d) to read as follows:

(d) If the person's sentence expires while the person is receiving treatment at a secure residential recovery facility and the Commissioner of Mental Health believes that the person continues to meet the criteria in subsection (a) of this section, the Commissioner of Mental Health shall submit an application for continued treatment of the person to the Family Division of the Superior Court pursuant to 18 V.S.A. § 7620.

And by relettering the remaining subsection to be alphabetically correct.

Which was agreed to.

Thereupon, the pending question, Shall the bill be amended as recommended by the Committee on Health and Welfare, as amended?, was decided in the affirmative.

Thereupon, third reading of the bill was ordered.

Bill Amended; Bill Passed

S. 7.

Senate bill entitled:

An act relating to social networking privacy protection.

Was taken up.

Thereupon, pending third reading of the bill, Senator Zuckerman moved to amend the bill striking out subsection (a) in its entirety and inserting in lieu thereof a new subsection (a) to read as follows:

(a) A Committee is established to study how to create statutory language to prohibit employers from requiring employees or applicants for employment to disclose a means of accessing the employee's or applicant's social network account.

Which was agreed to.

Thereupon, pending third reading of the bill, Senators Galbraith, Nitka, Hartwell, and Benning moved to amend the bill by adding a new section to be numbered Sec. 2 to read as follows:

Sec. 2. 21 V.S.A. § 495j is added to read:

§ 495j. PRIVACY PROTECTION

An employer shall not require or request that an employee disclose a means for accessing the employee's personal computer, e-mail account, or telephone, or require or request access to an employee's personal documents, files, personal letters, or diaries created prior to employment.

And by renumbering the remaining section of the bill to be numerically correct.

Which was agreed to.

Senator Galbraith moved to amend the bill in Sec. 2 by designating, 21 V.S.A. § 495j as subsection (a) and by adding a new subsection (b) to read as follows:

(b) An employer shall not require or request that an employee disclose a means for accessing the employee's personal computer, e-mail account, or

telephone, or require or request access to an employee's personal documents, files, personal letters, or diaries created prior to employment.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw his motion.

Which was agreed to.

Thereupon, pending third reading of the bill, Senator Galbraith moved to amend the bill in Sec. 2 by designating, 21 V.S.A. § 495j as subsection (a) and by adding a new subsection (b) to read as follows:

(b) An employer shall not require or request that an employee disclose a means for accessing the employee's personal computer, e-mail account, or telephone created prior to employment.

Thereupon, pending the question, Shall the bill be amended as recommended by Senator Galbraith?, Senator Galbraith requested and was granted leave to withdraw his amendment.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bill Passed

S. 20.

Senate bill of the following title was read the third time and passed:

An act relating to increasing the statute of limitations for certain sex offenses against children

Bill Amended; Bill Passed

S. 47.

Senate bill entitled:

An act relating to protection orders and second degree domestic assault.

Was taken up.

Thereupon, pending third reading of the bill, Senator Flory moved to amend the bill in Sec. 4, 15 V.S.A. § 1103(c)(2), by striking out subparagraph (H) in its entirety and inserting in lieu thereof the following:

(H) an order that the defendant return any personal documentation in his or her possession, including immigration documentation, birth certificates, and identification cards:

(i) pertaining to the plaintiff; or

(ii) pertaining to the plaintiff's children if relief is sought for the children or for good cause shown.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Bills Passed

Senate bills of the following titles were severally read the third time and passed:

S. 73. An act relating to the moratorium on home health agency certificates of need

S. 88. An act relating to telemedicine services delivered outside a health care facility.

S. 104. An act relating to expedited partner therapy.

Bill Amended; Bill Passed

S. 156.

Senate bill entitled:

An act relating to home visiting standards.

Was taken up.

Thereupon, pending third reading of the bill, Senator Ayer moved to amend the bill in Sec. 2, by striking out subsection (b) in its entirety and inserting in lieu thereof the following:

(b) The Department for Children and Families and the Department of Health in consultation with the Secretary of Human Services, the Home Visiting Alliance, and other stakeholders shall adopt rules on or before July 1, 2014, establishing consistent standards for the delivery of home visiting services throughout Vermont.

Which was agreed to.

Thereupon, the bill was read the third time and passed.

Third Readings Ordered

S. 159.

Senate committee bill entitled:

An act relating to various amendments to Vermont's land use control law and related statutes.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

S. 161.

Senate committee bill entitled:

An act relating to mitigation of traffic fines and approval of a DLS Diversion Program contract.

Having appeared on the Calendar for notice for one day, was taken up.

Thereupon, the bill was read the second time by title only pursuant to Rule 43, and third reading of the bill was ordered.

Adjournment

On motion of Senator Mazza, the Senate adjourned until ten o'clock and thirty minutes in the morning.