

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 287  
3 entitled “An act relating to involuntary treatment and medication” respectfully  
4 reports that it has considered the same and recommends that the House propose  
5 to the Senate that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. § 7101(9) is amended to read:

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

13 Sec. 2. 18 V.S.A. § 7256 is amended to read:

14 § 7256. REPORTING REQUIREMENTS

15 Notwithstanding 2 V.S.A. § 20(d), the ~~department of mental health~~  
16 Department of Mental Health shall report annually on or before January 15 to  
17 ~~the senate committee on health and welfare and the house committee on human~~  
18 ~~services~~ Senate Committee on Health and Welfare and the House Committee  
19 on Human Services regarding the extent to which individuals with mental  
20 health conditions receive care in the most integrated and least restrictive setting  
21 available. The Department shall consider measures from a variety of sources,

1 including the Joint Commission, the National Quality Forum, the Centers for  
2 Medicare and Medicaid Services, the National Institute of Mental Health, and  
3 the Substance Abuse and Mental Health Services Administration. The report  
4 shall address:

5 (1) ~~Utilization~~ use of services across the continuum of mental health  
6 services;

7 (2) ~~Adequacy~~ adequacy of the capacity at each level of care across the  
8 continuum of mental health services;

9 (3) ~~Individual~~ individual experience of care and satisfaction;

10 (4) ~~Individual~~ individual recovery in terms of clinical, social, and legal  
11 outcomes; ~~and~~

12 (5) ~~Performance~~ performance of the ~~state's~~ State's mental health system  
13 of care as compared to nationally recognized standards of excellence;

14 (6) ways in which patient autonomy and self-determination are  
15 maximized within the context of involuntary treatment and medication;

16 (7) outcome measures and other data on individuals for whom petitions  
17 for involuntary medication are filed; and

18 (8) progress on alternative treatment options across the system of care  
19 for individuals seeking to avoid or reduce reliance on medications, including  
20 supported withdrawal from medications.

1 Sec. 3. 18 V.S.A. § 7257 is amended to read:

2 § 7257. REPORTABLE ADVERSE EVENTS

3 (a) An acute inpatient hospital, an intensive residential recovery facility, a  
4 designated agency, or a secure residential facility shall report to the ~~department~~  
5 ~~of mental health~~ Department of Mental Health instances of death or serious  
6 bodily injury to individuals with a mental health condition in the custody or  
7 temporary custody of the ~~commissioner~~ Commissioner.

8 (b) An acute inpatient hospital shall report to the Department of Mental  
9 Health any staff injuries caused by a person in the custody or temporary  
10 custody of the Commissioner that are reported to both the Department of Labor  
11 and to the hospital's workers' compensation carrier.

12 Sec. 4. 18 V.S.A. § 7259 is amended to read:

13 § 7259. MENTAL HEALTH CARE OMBUDSMAN

14 (a) The ~~department of mental health~~ Department of Mental Health shall  
15 establish the ~~office of the mental health care ombudsman~~ Office of the Mental  
16 Health Care Ombudsman within the agency designated by the ~~governor~~  
17 Governor as the protection and advocacy system for the ~~state~~ State pursuant to  
18 42 U.S.C. § 10801 et seq. The agency may execute the duties of the ~~office of~~  
19 ~~the mental health care ombudsman~~ Office of the Mental Health Care  
20 Ombudsman, including authority to assist individuals with mental health  
21 conditions and to advocate for policy issues on their behalf; provided,

1 however, that nothing in this section shall be construed to impose any  
2 additional duties on the agency in excess of the requirements under  
3 federal law.

4 (b) The agency may provide a report annually to the ~~general assembly~~  
5 General Assembly regarding the implementation of this section.

6 (c) In the event the protection and advocacy system ceases to provide  
7 federal funding to the agency for the purposes described in this section, the  
8 ~~general assembly~~ General Assembly may allocate sufficient funds to maintain  
9 the ~~office of the mental health care ombudsman~~ Office of the Mental Health  
10 Care Ombudsman.

11 (d) The Department of Mental Health shall provide a copy of the certificate  
12 of need for all emergency involuntary procedures performed on a person in the  
13 custody or temporary custody of the Commissioner to the Office of the Mental  
14 Health Care Ombudsman on a monthly basis.

15 Sec. 5. 18 V.S.A. § 7504 is amended to read:

16 § 7504. APPLICATION AND CERTIFICATE FOR EMERGENCY  
17 EXAMINATION

18 (a) ~~A~~ Upon written application by an interested party made under the pains  
19 and penalties of perjury and accompanied by a certificate by a licensed  
20 physician who is not the applicant, a person shall be admitted to a designated  
21 held for admission to a hospital for an emergency examination to determine if

1 he or she is a person in need of treatment ~~upon written application by an~~  
2 ~~interested party accompanied by a certificate by a licensed physician who is~~  
3 ~~not the applicant~~. The application and certificate shall set forth the facts and  
4 circumstances ~~which~~ that constitute the need for an emergency examination  
5 and ~~which~~ that show that the person is a person in need of treatment.

6 (b) The application and certificate shall be authority for transporting the  
7 person to a ~~designated~~ hospital for an emergency examination, as provided in  
8 section 7511 of this title.

9 (c) For the purposes of admission of an individual to a designated hospital  
10 for care and treatment under this section, a head of a hospital, as provided in  
11 subsection (a) of this section, may include a person designated in writing by  
12 the head of the hospital to discharge the authority granted in this section.

13 A designated person must be an official hospital administrator, supervisory  
14 personnel, or a licensed physician on duty on the hospital premises other than  
15 the certifying physician under subsection (a) of this section.

16 Sec. 6. 18 V.S.A. § 7505 is amended to read:

17 § 7505. WARRANT AND CERTIFICATE FOR IMMEDIATE

18 EMERGENCY EXAMINATION

19 (a) In emergency circumstances where a certification by a physician is not  
20 available without serious and unreasonable delay, and when personal  
21 observation of the conduct of a person constitutes reasonable grounds to

1 believe that the person is a person in need of treatment, and he or she presents  
2 an immediate risk of serious injury to himself or herself or others if not  
3 restrained, a law enforcement officer or mental health professional may make  
4 an application, not accompanied by a physician's certificate, to any ~~district or~~  
5 ~~superior~~ Superior judge for a warrant for an ~~immediate~~ emergency  
6 examination.

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

10 (c) If the judge is satisfied that a physician's certificate is not available  
11 without serious and unreasonable delay, and that probable cause exists to  
12 believe that the person is in need of an ~~immediate~~ emergency examination, he  
13 or she may order the person to submit to an ~~immediate examination at a~~  
14 ~~designated hospital~~ evaluation by a physician for that purpose.

15 (d) If necessary, the ~~court~~ Court may order the law enforcement officer or  
16 mental health professional to transport the person to a ~~designated~~ hospital for  
17 an ~~immediate examination~~ evaluation by a physician to determine if the person  
18 should be certified for an emergency examination.

19 ~~Upon admission to a designated hospital, the person shall be~~  
20 ~~immediately examined by a~~ A person transported pursuant to subsection (d) of  
21 this section shall be evaluated as soon as possible after arrival at the hospital.

1 If after evaluation the licensed physician determines that the person is a person  
2 in need of treatment, he or she shall issue an initial certificate that sets forth the  
3 facts and circumstances constituting the need for an emergency examination  
4 and showing that the person is a person in need of treatment. ~~If the physician~~  
5 ~~certifies that the person is a person in need of treatment~~ Once the physician  
6 has issued the initial certificate, the person shall be held for an emergency  
7 examination in accordance with section 7508 of this title. If the physician does  
8 not certify that the person is a person in need of treatment, he or she shall  
9 immediately discharge the person and cause him or her to be returned to the  
10 place from which he or she was taken, or to such place as the person  
11 reasonably directs.

12 Sec. 7. 18 V.S.A. § 7508 is amended to read:

13 § 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

14 (a) ~~When a person is admitted to a designated hospital~~ an initial  
15 certification is issued for an emergency examination of a person in accordance  
16 with section 7504 or subsection 7505(e) of this title, he or she shall be  
17 examined and certified by a psychiatrist as soon as practicable, but not later  
18 than ~~one working day~~ 24 hours after ~~admission~~ initial certification.

19 (b) If the person is ~~admitted~~ held for admission on an application and  
20 physician's certificate, the examining psychiatrist shall not be the same  
21 physician who signed the certificate.

1 (c) If the psychiatrist does not ~~certify~~ issue a second certification stating  
2 that the person is a person in need of treatment, he or she shall immediately  
3 discharge or release the person and cause him or her to be returned to the place  
4 from which he or she was taken or to such place as the person reasonably  
5 directs.

6 (d) If the psychiatrist does ~~certify~~ issue a second certification that the  
7 person is a person in need of treatment, the ~~person's hospitalization~~ person  
8 may continue to be held for an additional 72 hours, at which time  
9 ~~hospitalization shall terminate~~ the person shall be discharged or released,  
10 unless within that period:

11 (1) the person has ~~been~~ accepted for voluntary admission under section  
12 7503 of this title; or

13 (2) an application for involuntary treatment is filed with the appropriate  
14 court under section 7612 of this title, in which case the patient shall ~~remain~~  
15 hospitalized continue to be held pending the ~~court's decision on the application~~  
16 Court's finding of probable cause on the application.

17 (e)(1)(A) A person shall be deemed to be in the temporary custody of  
18 the Commissioner when the first of the following occurs:

19 (i) a physician files an initial certification for the person while the  
20 person is in a hospital; or



1           (ii) a person is certified by a psychiatrist to be a person in need of  
2 treatment during an emergency examination.

3           (B) Temporary custody under this subsection shall continue until the  
4 Court issues an order pursuant to subsection 7617(b) of this title or the person  
5 is discharged or released.

6           (2) The Commissioner shall make every effort to ensure that a person  
7 held for an emergency examination pending a hospital admission is receiving  
8 temporary care and treatment that:

9           (A) uses the least restrictive manner necessary to protect the safety of  
10 both the person and the public;

11           (B) respects the privacy of the person and other patients; and

12           (C) prevents physical and psychological trauma.

13           (3) All persons admitted or held for admission shall receive a notice of  
14 rights as provided for in section 7701 of this title, which shall include contact  
15 information for Vermont Legal Aid, the Office of the Mental Health Care  
16 Ombudsman, and the mental health patient representative. The Department of  
17 Mental Health shall develop and regularly update informational material on  
18 available peer-run support services, which shall be provided to all persons  
19 admitted or held for admission.

20           (4) A person held for an emergency examination may be admitted at an  
21 appropriate hospital at any time after the second certification occurs.

1 Sec. 8. 18 V.S.A. § 7509 is amended to read:

2 § 7509. TREATMENT; RIGHT OF ACCESS

3 (a) Upon admission to the hospital pursuant to section 7503, 7508, 7617, or  
4 7624 of this title, the person shall be treated with dignity and respect and shall  
5 be given such medical and psychiatric treatment as is indicated.

6 (b) ~~The person~~ All persons admitted or held for admission shall be given  
7 the opportunity, subject to reasonable limitations, to communicate with others,  
8 including visits by a peer support person designated by the person, presence of  
9 the presence the peer support person at all treatment team meetings the person  
10 is entitled to attend, the reasonable use of a telephone, and the reasonable use  
11 of electronic mail and the Internet.

12 (c) The person shall be requested to furnish the names of persons he or she  
13 may want notified of his or her hospitalization and kept informed of his or her  
14 status. The head of the hospital shall see that such persons are notified of the  
15 status of the patient, how he or she may be contacted and visited, and how they  
16 may obtain information concerning him or her.

17 Sec. 9. 18 V.S.A. § 7612 is amended to read:

18 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

4 (c) If the application is filed under section 7508 or 7620 of this title, it shall  
5 be filed in the ~~criminal division of the superior court~~ unit of the Family  
6 Division of the Superior Court in which the hospital is located. In all other  
7 cases, it shall be filed in the unit in which the proposed patient resides. In the  
8 case of a nonresident, it may be filed in any unit. The Court may change the  
9 venue of the proceeding to the unit in which the proposed patient is located at  
10 the time of the trial.

11 (d) The application shall contain:

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

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

16 (e) The application shall be accompanied by:

17 (1) ~~A~~ a certificate of a licensed physician, which shall be executed under  
18 penalty of perjury stating that he or she has examined the proposed patient  
19 within five days of the date the petition is filed, and is of the opinion that the  
20 proposed patient is a person in need of treatment, including the current and

1 relevant facts and circumstances upon which the physician’s opinion is  
2 based; or

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

5 (f) Before an examining physician completes the certificate of examination,  
6 he or she shall consider available alternative forms of care and treatment that  
7 might be adequate to provide for the person’s needs, without requiring  
8 hospitalization. The examining physician shall document on the certificate the  
9 specific alternative forms of care and treatment that he or she considered and  
10 why those alternatives were deemed inappropriate, including information on  
11 the availability of any appropriate alternatives.

12 Sec. 10. 18 V.S.A. § 7612a is added to read:

13 § 7612a. PROBABLE CAUSE REVIEW

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

1        (b) If, based on a review conducted pursuant to subsection (a) of this  
2        section the Court finds probable cause to believe that the person was a person  
3        in need of treatment at the time of his or her admission, the person shall be  
4        ordered held for further proceedings in accordance with Part 8 of this title. If  
5        probable cause is not established, the person shall be ordered discharged or  
6        released from the hospital and returned to the place from which he or she was  
7        transported or to such place as the person may reasonably direct.

8        (c) An application for involuntary treatment shall not be dismissed solely  
9        because the probable cause review is not completed within the time period  
10       required by this section if there is good cause for the delay.

11       Sec. 11. 18 V.S.A. § 7615 is amended to read:

12       § 7615. HEARING ON APPLICATION FOR INVOLUNTARY  
13       TREATMENT

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

20       (2)(A) The applicant or a person who is certified as a person in need of  
21       treatment pursuant to section 7508 may file a motion to expedite the hearing.

1 The motion shall be supported by an affidavit, and the Court shall rule on the  
2 motion on the basis of the filings without holding a hearing. After viewing the  
3 evidence in the light most favorable to the moving party:

4 (i) The Court shall grant the motion if it finds that the person  
5 demonstrates a significant risk of causing the person or others serious bodily  
6 injury as defined in 13 V.S.A. § 1021 even while hospitalized and clinical  
7 interventions have failed to address the risk of harm to the person or others.

8 (ii) The Court may grant the motion if it finds that the person has  
9 received involuntary medication pursuant to section 7624 of this title during  
10 the past two years and, based upon the person's response to previous and  
11 ongoing treatment, there is good cause to believe that additional time will not  
12 result in the person establishing a therapeutic relationship with providers or  
13 regaining competence.

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

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

1           (2) The Court may grant one or more additional seven-day  
2           continuances if:

3                   (A) the Court finds that the proceeding or parties would be  
4                   substantially prejudiced without a continuance; or

5                   (B) the parties stipulate to the continuance.

6           (c) The hearing shall be conducted according to the ~~rules of evidence~~  
7           Vermont Rules of Evidence ~~applicable in civil actions in the criminal division~~  
8           ~~of the superior courts of the state~~, and to an extent not inconsistent with this  
9           part, the ~~rules of civil procedure of the state~~ Vermont Rules of Civil Procedure  
10           shall be applicable.

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

16           (e) The proposed patient may at his or her election attend the hearing,  
17           subject to reasonable rules of conduct, and the ~~court~~ Court may exclude all  
18           persons, except a peer support person designated by the proposed patient, not  
19           necessary for the conduct of the hearing.

1 Sec. 12. 18 V.S.A. § 7624 is amended to read:

2 § 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

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

19 (4) has an application for involuntary treatment pending for which  
20 the Court has granted a motion to expedite pursuant to subdivision  
21 7615(a)(2)(A)(i) of this title; or



1           (5)(A) has an application for involuntary treatment pending;

2           (B) waives the right to a hearing on the application for involuntary  
3 treatment until a later date; and

4           (C) agrees to proceed with an involuntary medication hearing without  
5 a ruling on whether he or she is a person in need of treatment.

6           (b)(1) ~~A~~ Except as provided in subdivision (2) and (3) of this subsection, a  
7 petition for involuntary medication shall be filed in the ~~family division of the~~  
8 ~~superior court~~ Family Division of the Superior Court in the county in which  
9 the person is receiving treatment.

10           (2) If the petition for involuntary medication is filed pursuant to  
11 subdivision (a)(4) of this section:

12           (A) the petition shall be filed in the county in which the application  
13 for involuntary treatment is pending; and

14           (B) the Court shall consolidate the application for involuntary  
15 treatment with the petition for involuntary medication and rule on the  
16 application for involuntary treatment before ruling on the petition for  
17 involuntary medication.

18           (3) If the petition for involuntary medication is filed pursuant to  
19 subdivision (a)(5) of this section, the petition shall be filed in the county in  
20 which the application for involuntary treatment is pending.

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

3 (1) the nature of the person’s mental illness;

4 (2) that the person is refusing medication proposed by the physician;

5 (3) that the person lacks the competency to decide to accept or refuse  
6 medication and appreciate the consequences of that decision;

7 (4) the necessity for involuntary medication, ~~including the person’s~~  
8 ~~competency to decide to accept or refuse medication;~~

9 (3)(5) any proposed medication, including the method, dosage range,  
10 and length of administration for each specific medication;

11 (4)(6) a statement of the risks and benefits of the proposed medications,  
12 including the likelihood and severity of adverse side effects and its effect on:

13 (A) the person’s prognosis with and without the proposed  
14 medications; and

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

16 (5)(7) the current relevant facts and circumstances, including any history  
17 of psychiatric treatment and medication, upon which the physician’s opinion is  
18 based;

19 (6)(8) what alternate treatments have been proposed by the doctor, the  
20 patient, or others, and the reasons for ruling out those alternatives, including  
21 information on the availability of any appropriate alternatives; and

1           ~~(7)~~(9) whether the person has executed a ~~durable power of attorney for~~  
2 ~~health care~~ an advance directive in accordance with the provisions of  
3 ~~18 V.S.A. chapter 111, subchapter 2~~ chapter 231 of this title, and the identity  
4 of the ~~health care agent~~ or agents designated by the ~~durable power of attorney~~  
5 advance directive.

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

8           Sec. 13. 18 V.S.A. § 7625 is amended to read:

9           § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

10                           BURDEN OF PROOF

11           (a) ~~A~~ Unless consolidated with an application for involuntary treatment  
12 pursuant to subdivision 7624(b)(2) of this title, a hearing on a petition for  
13 involuntary medication shall be held within seven days of filing and shall be  
14 conducted in accordance with sections 7613, 7614, ~~7615(b)–(e), and 7616 and~~  
15 subsections 7615(b)–(e) of this title.

16           (b) In a hearing conducted pursuant to this section, section 7626, or section  
17 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by  
18 clear and convincing evidence.

19           (c) In determining whether or not the person is competent to make a  
20 decision regarding the proposed treatment, the ~~court~~ Court shall consider

1 whether the person is able to make a decision and appreciate the consequences  
2 of that decision.

3 Sec. 14. 18 V.S.A. § 7626 is amended to read:

4 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

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

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

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

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

17 (b) An order entered under subsection (a) of this section shall authorize the  
18 ~~commissioner~~ Commissioner to administer treatment to the person, including  
19 involuntary medication in accordance with the direction set forth in the ~~durable~~  
20 ~~power of attorney~~ advance directive or provided by the ~~health care agent or~~  
21 agents acting within the scope of authority granted by the ~~durable power of~~

1 ~~attorney~~ advance directive. If hospitalization is necessary to effectuate the  
2 proposed treatment, the ~~court~~ Court may order the person to be hospitalized.

3 (c) ~~In the case of a person subject to an order entered pursuant to~~  
4 ~~subsection (a) of this section, and upon the certification by the person's~~  
5 ~~treating physician to the court that the person has received treatment or no~~  
6 ~~treatment consistent with the durable power of attorney for health care for~~  
7 ~~45 days after the order under subsection (a) of this section has been entered,~~  
8 ~~then the court shall reconvene the hearing on the petition.~~

9 (1) ~~If the court concludes that the person has experienced, and is likely~~  
10 ~~to continue to experience, a significant clinical improvement in his or her~~  
11 ~~mental state as a result of the treatment or nontreatment directed by the durable~~  
12 ~~power of attorney for health care, or that the patient has regained competence,~~  
13 ~~then the court shall enter an order denying and dismissing the petition.~~

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

19 (d)(1) The Commissioner of Mental Health shall develop a protocol for use  
20 by designated hospitals for the purpose of educating hospital staff on the use  
21 and applicability of advance directives pursuant to chapter 231 of this title and

1 other written or oral expressions of treatment preferences pursuant to  
2 subsection 7627(b) of this title.

3 (2) Prior to a patient’s discharge or release, a hospital shall provide  
4 information to a patient in the custody or temporary custody of the  
5 Commissioner regarding advance directives, including relevant information  
6 developed by the Vermont Ethics Network and Office of the Mental Health  
7 Care Ombudsman.

8 Sec. 15. 18 V.S.A. § 7627 is amended to read:

9 § 7627. COURT FINDINGS; ORDERS

10 \* \* \*

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

18 (c) If the ~~court~~ Court finds that there are no medication preferences or that  
19 the person’s medication preferences have not led to a significant clinical  
20 improvement in the person’s mental state in the past within an appropriate

1 period of time, the ~~court~~ Court shall consider at a minimum, in addition to the  
2 person's expressed preferences, the following factors:

3 (1) ~~The~~ the person's religious convictions and whether they contribute  
4 to the person's refusal to accept medication;

5 (2) ~~The~~ the impact of receiving medication or not receiving medication  
6 on the person's relationship with his or her family or household members  
7 whose opinion the ~~court~~ Court finds relevant and credible based on the nature  
8 of the relationship;

9 (3) ~~The~~ the likelihood and severity of possible adverse ~~side-effects~~ side  
10 effects from the proposed medication;

11 (4) ~~The~~ the risks and benefits of the proposed medication and its  
12 effect on:

13 (A) the person's prognosis; and

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

15 (5) ~~The~~ the various treatment alternatives available, which may or may  
16 not include medication.

17 (d) As a threshold matter, the Court shall consider the person's  
18 competency. If the ~~court~~ Court finds that the person is competent to make a  
19 decision regarding the proposed treatment or that involuntary medication is not  
20 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall  
21 enter a finding to that effect and deny the petition.

1           (e) As a threshold matter, the Court shall consider the person's  
2           competency. If the ~~court~~ Court finds that the person is incompetent to make a  
3           decision regarding the proposed treatment and that involuntary medication is  
4           supported by the factors in subsection (c) of this section, the ~~court~~ Court shall  
5           make specific findings stating the reasons for the involuntary medication by  
6           referencing those supporting factors.

7           (f)(1) If the ~~court~~ Court grants the petition, in whole or in part, the ~~court~~  
8           Court shall enter an order authorizing the ~~commissioner~~ Commissioner to  
9           administer involuntary medication to the person. The order shall specify the  
10          types of medication, the permitted dosage range, length of administration, and  
11          method of administration for each. The order for involuntary medication shall  
12          not include electric convulsive therapy, surgery, or experimental medications.  
13          Long-acting injections and nasogastric intubation shall not be ordered without  
14          clear and convincing evidence, particular to the patient, that these treatments  
15          are appropriate.

16          (2) The order shall require the person's treatment provider to conduct  
17          ~~monthly~~ weekly reviews of the medication to assess the continued need for  
18          involuntary medication, the effectiveness of the medication, the existence of  
19          any side effects, and whether the patient has become competent pursuant to  
20          subsection 7625(c) of this title, and shall document this review in detail in the



1 patient's chart and provide the person's attorney with a copy of the  
2 documentation within five days of its production.

3 (g) For a person receiving treatment pursuant to an order of hospitalization,  
4 the ~~commissioner~~ Commissioner may administer involuntary medication as  
5 authorized by this section to the person for up to 90 days, unless the ~~court~~  
6 Court finds that an order is necessary for a longer period of time. Such an  
7 order shall not be longer than the duration of the current order of  
8 hospitalization. If at any time a treatment provider finds that a person subject  
9 to an order for involuntary medication has become competent pursuant to  
10 subsection 7625(c) of this title, the order shall no longer be in effect.

11 \* \* \*

12 Sec. 16. 18 V.S.A. § 7629 is amended to read:

13 § 7629. LEGISLATIVE INTENT

14 (a) ~~It is the intention of the general assembly to recognize the right of a~~  
15 ~~legally competent person to determine whether or not to accept medical~~  
16 ~~treatment, including involuntary medication, absent an emergency or a~~  
17 ~~determination that the person is incompetent and lacks the ability to make a~~  
18 ~~decision and appreciate the consequences.~~ The State of Vermont recognizes  
19 the fundamental right of an adult to determine the extent of health care the  
20 individual will receive, including treatment provided during periods of lack of

1 competency that the individual expressed a desire for when he or she was  
2 competent.

3 (b) ~~This act protects this right through a judicial proceeding prior to the use~~  
4 ~~of nonemergency involuntary medication and by limiting the duration of an~~  
5 ~~order for involuntary treatment to no more than one year. The least restrictive~~  
6 ~~conditions consistent with the person’s right to adequate treatment shall be~~  
7 ~~provided in all cases. The General Assembly adopts the goal of high-quality,~~  
8 ~~patient-centered health care, which the Institute of Medicine defines as~~  
9 ~~“providing care that is respectful of and responsive to individual patient~~  
10 ~~preferences, needs, and values and ensuring that patient values guide all~~  
11 ~~clinical decisions.”~~

12 (c) It is the policy of the ~~general assembly~~ General Assembly to work  
13 ~~towards~~ toward a mental health system that does not require coercion or the  
14 use of involuntary medication when a person is opposing it. The distress and  
15 insult to human dignity that results from compelling a person to participate in  
16 medical procedures against his or her will are real regardless of how poorly  
17 the person may understand the procedures or how confused or mistaken the  
18 person may be about the procedures.

19 (d) ~~This act will render the J. L. v. Miller consent judgment no longer~~  
20 ~~applicable. This chapter protects the rights and values described in this section~~  
21 ~~through a judicial process to determine competence prior to an order for~~

1 nonemergency involuntary medication and by limiting the duration of an order  
2 for involuntary treatment to no more than one year. The least restrictive order  
3 consistent with the person’s right to adequate treatment shall be provided in all  
4 cases.

5 Sec. 17. 18 V.S.A. § 9701 is amended to read:

6 § 9701. DEFINITIONS

7 As used in this chapter:

8 \* \* \*

9 (21) “Ombudsman” means an individual appointed as a long-term care  
10 ombudsman under the Program contracted through the Department of  
11 Disabilities, Aging, and Independent Living pursuant to the Older Americans  
12 Act of 1965, as amended or the agency designated as the Office of the Mental  
13 Health Care Ombudsman Pursuant to section 7259 of this title.

14 \* \* \*

15 (32) “Patient representative” means the mental health patient  
16 representative established by section 7253 of this title.

17 Sec. 18. 18 V.S.A. § 9703 is amended to read:

18 § 9703. FORM AND EXECUTION

19 \* \* \*

20 (d) An advance directive shall not be effective if, at the time of execution,  
21 the principal is being admitted to or is a resident of a nursing home as defined

1 in 33 V.S.A. § 7102 or a residential care facility unless an ombudsman, a  
2 patient representative, a recognized member of the clergy, an attorney licensed  
3 to practice in this ~~state~~ State, or a ~~probate division of the superior court~~ Probate  
4 Division of the Superior Court designee signs a statement affirming that he or  
5 she has explained the nature and effect of the advance directive to the  
6 principal. It is the intent of this subsection to ensure that residents of nursing  
7 homes and residential care facilities are willingly and voluntarily executing  
8 advance directives.

9 (e) An advance directive shall not be effective if, at the time of execution,  
10 the principal is being admitted to or is a patient in a hospital, unless an  
11 ombudsman, a patient representative, a recognized member of the clergy, an  
12 attorney licensed to practice in this ~~state~~ State, a ~~probate division of the~~  
13 ~~superior court~~ Probate Division of the Superior Court designee, or an  
14 individual designated under subsection 9709(c) of this title by the hospital  
15 signs a statement that he or she has explained the nature and effect of the  
16 advance directive to the principal.

17 \* \* \*

18 Sec. 19. 18 V.S.A. § 9706(c) is amended to read:

19 (c) Upon a determination of need by the principal's clinician, or upon the  
20 request of the principal, agent, guardian, ombudsman, a patient representative,  
21 health care provider, or any interested individual, the principal's clinician,

1 another clinician, or a clinician’s designee shall reexamine the principal to  
2 determine whether the principal has capacity. The clinician shall document the  
3 results of the reexamination in the principal’s medical record and shall make  
4 reasonable efforts to notify the principal and the agent or guardian, as well as  
5 the individual who initiated the new determination of capacity, of the results of  
6 the reexamination, if providing such notice is consistent with the requirements  
7 of HIPAA.

8 Sec. 20. 18 V.S.A. § 9707(h) is amended to read:

9 (h)(1) An advance directive executed in accordance with section 9703 of  
10 this title may contain a provision permitting the agent, in the event that the  
11 principal lacks capacity, to authorize or withhold health care over the  
12 principal’s objection. In order to be valid, the provision shall comply with the  
13 following requirements:

14 (A) An agent shall be named in the provision.

15 (B) The agent shall accept in writing the responsibility of authorizing  
16 or withholding health care over the principal’s objection in the event the  
17 principal lacks capacity.

18 (C) A clinician for the principal shall sign the provision and affirm  
19 that the principal appeared to understand the benefits, risks, and alternatives to  
20 the health care being authorized or rejected by the principal in the provision.

1           (D)(i) An ombudsman, a patient representative ~~recognized member~~  
2 ~~of the clergy~~, attorney licensed to practice law in this state State, or ~~probate~~  
3 ~~division of the superior court~~ Probate Division of the Superior Court designee  
4 shall sign a statement affirming that he or she has explained the nature and  
5 effect of the provision to the principal, and that the principal appeared to  
6 understand the explanation and be free from duress or undue influence.

7           (ii) If the principal is a patient in a hospital when the provision is  
8 executed, the ombudsman, patient representative ~~recognized member of the~~  
9 ~~clergy~~, attorney, or ~~probate division of the superior court~~ Probate Division of  
10 the Superior Court designee shall be independent of the hospital and not an  
11 interested individual.

12           (E) The provision shall specify the treatments to which it applies, and  
13 shall include an explicit statement that the principal desires or does not desire  
14 the proposed treatments even over the principal's objection at the time  
15 treatment is being offered or withheld. The provision may include a statement  
16 expressly granting to the health care agent the authority to consent to the  
17 principal's voluntary hospitalization, ~~and to agree that the principal's discharge~~  
18 ~~from the hospital may be delayed, pursuant to section 8010 of this title.~~

19           (F) The provision shall include an acknowledgment that the principal  
20 is knowingly and voluntarily waiving the right to refuse or receive treatment at

1 a time of incapacity, and that the principal understands that a clinician will  
2 determine capacity.

3 (2) A provision executed in compliance with subdivision (1) of this  
4 subsection shall be effective when the principal's clinician and a second  
5 clinician have determined pursuant to subdivision 9706(a)(1) of this title that  
6 the principal lacks capacity.

7 (3) If an advance directive contains a provision executed in compliance  
8 with this section:

9 (A) The agent may, in the event the principal lacks capacity, make  
10 health care decisions over the principal's objection, provided that the decisions  
11 are made in compliance with subsection 9711(d) of this title.

12 (B) A clinician shall follow instructions of the agent authorizing or  
13 withholding health care over the principal's objection.

14 Sec. 21. 18 V.S.A. § 9718(a) is amended to read:

15 (a) A petition may be filed in ~~probate division of the superior court~~ Probate  
16 Division of the Superior Court under this section by:

17 (1) a principal, guardian, agent, ombudsman, a patient representative, or  
18 interested individual other than one identified in an advance directive, pursuant  
19 to subdivision 9702(a)(10) of this title, as not authorized to bring an action  
20 under this section;

1           (2) a social worker or health care provider employed by or directly  
2 associated with the health care provider, health care facility, or residential care  
3 facility providing care to the principal;

4           (3) the ~~defender general~~ Defender General if the principal is in the  
5 custody of the ~~department of corrections~~ Department of Corrections;

6           (4) a representative of the ~~state-designated~~ State-designated protection  
7 and advocacy system if the principal is in the custody of the ~~department of~~  
8 ~~health~~ Department of Health; or

9           (5) an individual or entity identified in an advance directive, pursuant to  
10 subdivision 9702(a)(10) of this title, as authorized to bring an action under this  
11 section.

12 Sec. 22. Rule 12 of the Vermont Rules for Family Proceedings is amended to  
13 read:

14 Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

15       (a) Automatic Stay Prior to Appeal; Exceptions.

16           (1) Automatic Stay. Except as provided in paragraph (2) of this  
17 subdivision and in subdivision (c), no execution shall issue upon a judgment  
18 nor shall proceedings be taken for its enforcement until the expiration of  
19 30 days after its entry or until the time for appeal from the judgment as  
20 extended by Appellate Rule 4 has expired.



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

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

8 (B) An order of involuntary treatment, involuntary medication,  
9 nonhospitalization, or hospitalization, in an action pursuant to 18 V.S.A.  
10 §§ ~~7611-7623~~ chapter 181;

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

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

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

19 \* \* \*

1 (d) Stay Pending Appeal.

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

7 (2) Other Actions.

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

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

19 (ii)(I) If an order of involuntary medication is appealed, the  
20 appellant may file a motion in the Family Division to stay the order during the

1 pendency of the appeal. A motion to stay filed under this subdivision shall  
2 stay the involuntary medication order while the motion to stay is pending.

3 (II) The Family Division’s ruling on a motion to stay filed  
4 under subdivision (I) of this subdivision (ii) may be modified or vacated by the  
5 Supreme Court upon motion by a party filed within seven days after the ruling  
6 is issued. If the appellant is the moving party, the order for involuntary  
7 medication shall remain stayed until the Supreme Court rules on the motion to  
8 vacate or modify the stay. A motion to vacate or modify a stay under this  
9 subdivision shall be determined by a single Justice of the Supreme Court, who  
10 may hear the matter or at his or her discretion refer it to the entire Supreme  
11 Court for hearing. No further appeal may lie from the ruling of a single Justice  
12 in matters to which this subdivision applies. The motion shall be determined  
13 as soon as practicable and to the extent possible shall take priority over other  
14 matters.

15 \* \* \*

16 Sec. 23. REPORT; EMERGENCY INVOLUNTARY PROCEDURES

17 On or before January 15, 2015, the Office of Legislative Council shall  
18 submit a report to the House Committee on Human Services and to the Senate  
19 Committee on Health and Welfare that:

1           (1) identifies provisions in 2012 Acts and Resolves No. 79 which  
2           require that protections for psychiatric hospital patients meet or exceed those at  
3           the former Vermont State Hospital; and

4           (2) identifies policies that may require clarification of legislative intent  
5           in order for the Department of Mental Health to proceed with rulemaking  
6           pursuant to 2012 Acts and Resolves No.79, Sec. 33a.

7           Sec. 24. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

8           The Agency of Human Services shall ensure that Vermont Legal Aid’s  
9           Mental Health Law Project has a sufficient number of psychiatrists to conduct  
10           psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame  
11           established by 18 V.S.A. § 7615.

12           Sec. 25. LEGISLATIVE COUNCIL STATUTORY REVISION

13                   AUTHORITY

14           The Office of Legislative Council, in its statutory revision capacity, is  
15           authorized and directed to make such amendments to the Vermont Statutes  
16           Annotated as are necessary to effect the purpose of this act, including, where  
17           applicable, substituting the words “application for involuntary medication” and  
18           “application,” as appropriate, for the words “petition for involuntary  
19           medication” and “petition.”

20           Sec. 26. EFFECTIVE DATE

21           This act shall take effect on July 1, 2014.

1  
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(Committee vote: \_\_\_\_\_)

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE