

1 TO THE HOUSE OF REPRESENTATIVES:

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

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

8 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

19 (d) The application shall contain:

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

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

4 (e) The application shall be accompanied by:

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

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

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

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

18 § 7612a. PROBABLE CAUSE REVIEW

19 (a) Within three days after an application for involuntary treatment is filed,
20 the Family Division of the Superior Court shall conduct a review to determine
21 whether there is probable cause to believe that he or she was a person in need

1 of treatment at the time of his or her admission. The review shall be based
2 solely on the application for an emergency examination and accompanying
3 certificate by a licensed physician and the application for involuntary
4 treatment.

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

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

13 § 7615. HEARING

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. The Court may grant the~~
2 ~~motion if it finds that:~~

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

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

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

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

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

17 (c) The hearing shall be conducted according to the ~~rules of evidence~~ Rules
18 of Evidence applicable in civil actions in the ~~criminal division of the superior~~
19 ~~courts~~ Family Division of the Superior Court of the ~~state~~ State, and to an extent
20 not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont
21 Rules of Civil Procedure shall be applicable.

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

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

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

10 § 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

20 (3) has been committed to the custody of the ~~commissioner of~~
21 ~~corrections~~ Commissioner of Corrections as a convicted felon and is being held

1 in a correctional facility which is a designated facility pursuant to section 7628
2 of this title and for whom the ~~department of corrections~~ Department of
3 Corrections and the ~~department of mental health~~ Department of Mental Health
4 have ~~jointly~~ determined jointly that involuntary medication would be
5 appropriate pursuant to 28 V.S.A. § 907(4)(H); or

6 (4) has an application for involuntary treatment pending.

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

14 (2)(A) The applicant or a person who is certified as a person in need of
15 treatment pursuant to section 7508 of this title may file a single motion to both
16 expedite and consolidate the hearings on involuntary treatment and involuntary
17 medication. The motion shall be supported by an affidavit. The Court may
18 grant the motion if it finds that:

19 (i) the person has received involuntary medication pursuant to this
20 section during the past two years and based upon the person's response to
21 previous and ongoing treatment there is good cause to believe that additional

1 time will not result in the person establishing a therapeutic relationship with
2 providers or regain competence; or

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

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

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

11 (C) If an order for expedited hearing and consolidation is granted, the
12 person may waive his or her right to a hearing on the application for
13 involuntary treatment until a later date and proceed with only the hearing for
14 involuntary medication without receiving a ruling on whether he or she is a
15 person in need of treatment.

16 (3) Even if a person does not meet the criteria in subdivision (2)(A) of
17 this subsection, the Court may consolidate an application for involuntary
18 treatment and a petition for involuntary medication upon motion of a party or
19 upon its own motion if there is good cause to believe that ~~consolidation will~~
20 serve the best interests of the patient additional time will not result in the

1 person establishing a therapeutic relationship with providers or regain
2 competence.

3 (4) If the proceedings are consolidated or expedited and consolidated,
4 the Court shall rule on the application for involuntary treatment before ruling
5 on the petition for involuntary medication.

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

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

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

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

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

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

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

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

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

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

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

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

11 § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

12 BURDEN OF PROOF

13 (a) ~~A~~ Unless consolidated with an application for involuntary treatment
14 pursuant to section 7624 of this title, a hearing on a petition for involuntary
15 medication shall be held within seven days of filing and shall be conducted in
16 accordance with sections 7613, 7614, ~~7615(b)–(e)~~, and 7616 and subsections
17 7615(b)–(e) of this title.

18 (b) In a hearing conducted pursuant to this section, section 7626, or section
19 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by
20 clear and convincing evidence.

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

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

6 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

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

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

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

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

19 (b) An order entered under subsection (a) of this section shall authorize the
20 ~~commissioner~~ Commissioner to administer treatment to the person, including
21 involuntary medication in accordance with the direction set forth in the ~~durable~~

1 ~~power of attorney~~ advance directive or provided by the ~~health care agent or~~
2 agents acting within the scope of authority granted by the ~~durable power of~~
3 ~~attorney~~ advance directive. If hospitalization is necessary to effectuate the
4 proposed treatment, the ~~court~~ Court may order the person to be hospitalized.

5 (c) ~~In the case of a person subject to an order entered pursuant to~~
6 ~~subsection (a) of this section, and upon the certification by the person's~~
7 ~~treating physician to the court that the person has received treatment or no~~
8 ~~treatment consistent with the durable power of attorney for health care for~~
9 ~~45 days after the order under subsection (a) of this section has been entered,~~
10 ~~then the court shall reconvene the hearing on the petition.~~

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

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

1 Sec. 7. 18 V.S.A. § 7627 is amended to read:

2 **§ 7627. COURT FINDINGS; ORDERS**

3 * * *

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

11 * * *

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

17 (e) As a threshold matter, the Court shall consider the person's
18 competency. If the ~~court~~ Court finds that the person is incompetent to make a
19 decision regarding the proposed treatment and that involuntary medication is
20 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall

1 make specific findings stating the reasons for the involuntary medication by
2 referencing those supporting factors.

3 * * *

4 Sec. 8. 18 V.S.A. § 7629 is amended to read:

5 § 7629. LEGISLATIVE INTENT

6 (a) ~~It is the intention of the general assembly to recognize~~ The General
7 Assembly recognizes the right of a legally competent person to determine
8 whether or not to accept medical treatment, including ~~involuntary medication,~~
9 ~~absent an emergency or a determination that the person is incompetent and~~
10 ~~lacks the ability to make a decision and appreciate the consequences~~ treatment
11 provided during periods of incapacity.

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

1 (c) It is the policy of the ~~general assembly~~ General Assembly to work
2 towards toward a mental health system that does not require coercion or the
3 use of involuntary medication. The distress and insult to human dignity that
4 results from compelling a person to participate in medical procedures against
5 his or her will are real regardless of how poorly the person may understand the
6 procedures or how confused or mistaken the person may be about the
7 procedures. Any trauma ensuing from the administration of involuntary
8 treatment or medication shall be considered whenever a medical decision is
9 made for a person without the person's consent.

10 (d) This chapter protects the rights and values described in this section
11 through a judicial process to determine competence prior to an order for
12 nonemergency involuntary medication and by limiting the duration of an order
13 for involuntary treatment to no more than one year. The least restrictive order
14 consistent with the person's right to adequate treatment shall be provided in all
15 cases.

16 (e) This act will render the J. L. v. Miller consent judgment no longer
17 applicable.

18 Sec. 9. 18 V.S.A. § 9707(h)(1)(E) is amended to read:

19 (E) The provision shall specify the treatments to which it applies, and
20 shall include an explicit statement that the principal desires or does not desire
21 the proposed treatments even over the principal's objection at the time

1 treatment is being offered or withheld. The provision may include a statement
2 expressly granting to the health care agent the authority to consent to the
3 principal's voluntary hospitalization, ~~and to agree that the principal's discharge~~
4 ~~from the hospital may be delayed, pursuant to section 8010 of this title.~~

5 **Sec. 10.** Rule 12 of the Vermont Rules for Family Proceedings is amended to
6 read:

7 Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

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

9 (1) Automatic Stay. Except as provided in paragraph (2) of this
10 subdivision and in subdivision (c), no execution shall issue upon a judgment
11 nor shall proceedings be taken for its enforcement until the expiration of
12 30 days after its entry or until the time for appeal from the judgment as
13 extended by Appellate Rule 4 has expired.

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

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

1 (a) of this rule is in effect, the court in its discretion may, during the pendency
2 of the appeal, grant or deny motions for modification or enforcement of that
3 judgment.

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

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

14 (II) The Family Division's ruling on a motion to stay filed
15 under subdivision (I) of this subdivision (ii) may be modified or vacated by the
16 Supreme Court upon motion by a party filed within seven days after the ruling
17 is issued. If the appellant is the moving party, the order for involuntary
18 medication shall remain stayed until the Supreme Court rules on the motion to
19 vacate or modify the stay. A motion to vacate or modify a stay under this
20 subdivision shall be determined by a single Justice of the Supreme Court, who
21 may hear the matter or at his or her discretion refer it to the entire Supreme

1 Court for hearing. No further appeal may lie from the ruling of a single Justice
2 in matters to which this subdivision applies. The motion shall be determined as
3 soon as practicable and to the extent possible shall take priority over other
4 matters.

5 * * *

6 **Sec. 11. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS**

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

11 **Sec. 12. OVERSIGHT AND REPORTING**

12 (a) On or before January 15, 2015, the Department of Mental Health shall
13 report to the Senate Committee on Health and Welfare and to the House
14 Committee on Human Services regarding the Department's efforts to date to
15 plan for implementation, quality improvement, and innovation of Vermont's
16 mental health system. The Department shall also recommend how it shall
17 proceed in its efforts to improve the system, including steps toward reducing
18 coercion. The recommendation shall be based on an assessment of outcome
19 and financial measures focused on at least the following criteria for individuals
20 with a mental health condition:

1 (1) the development of sufficient capacity for inpatient and community
2 psychiatric services and peer supports across the continuum of care;

3 (2) the support of individuals in accessing the services nearest to
4 their home;

5 (3) the reduction in emergency department usage and law enforcement
6 intervention;

7 (4) the reduction in hospital admissions and length of inpatient stays,
8 including any impact on readmissions;

9 (5) the implementation of quality assessment tools for evaluation of
10 services at all levels, including those needed to measure the effectiveness of
11 the care management system;

12 (6) an evaluation of the implementation of this act, including the ways in
13 which patient autonomy and self-determination are maximized within the
14 context of involuntary treatment and medication;

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

17 (8) individuals' satisfaction with provided services.

18 (b) During adjournment, the Department of Mental Health shall submit
19 monthly reports to the Mental Health Oversight Committee through June 2015,
20 which shall include:

21 (1) data contained in the Department's monthly Act 79 Ad Hoc Report;

1 (2) the number of level 1 and nonlevel 1 involuntary admissions during
2 the previous month, including the total number of days of care for patients in
3 each category;

4 (3) the number of emergency and forensic admissions to the Vermont
5 State Hospital and designated hospitals since 2002, including the average
6 number of days of care per year;

7 (4) the number of applications for involuntary treatment and petitions
8 for involuntary medication filed during the previous month;

9 (5) the number of applications for involuntary treatment and petitions
10 for involuntary medication granted, dismissed, or withdrawn during the
11 previous month;

12 (6) the number of motions to expedite a hearing on involuntary
13 treatment pursuant to 18 V.S.A. § 7615 during the previous month, and the
14 number of motions granted;

15 (7) the number of motions to consolidate hearings on involuntary
16 treatment and involuntary medication pursuant to 18 V.S.A. § 7624 during the
17 previous month, and the number of motions granted; and

18 (8) the average length of time from admission to order for involuntary
19 medication during the previous month, including minimum and maximum
20 lengths of time.

1 (c) The Department of Mental Health, in consultation with participating
2 hospitals as defined in 18 V.S.A. § 7101, Vermont Legal Aid’s Mental Health
3 Law Project, and the Office of the Mental Health Ombudsman, shall develop
4 consistent definitions, application procedures, and measurement specifications
5 for affidavits, petitions, and motions filed pursuant to this act for
6 nonemergency involuntary medication. The development of definitions,
7 application procedures, and measurement specifications shall comply with the
8 criteria established in this act.

9 (d) The Commissioner of Mental Health shall adopt rules pursuant to
10 3 V.S.A. chapter 25 that establish standards for the use of and reporting on
11 emergency seclusion and restraint procedures used on individuals in the
12 custody of the Commissioner. The rules shall require that personnel
13 performing these emergency involuntary procedures receive training and
14 certification on the use of the procedures, in compliance with the process and
15 criteria established in 2012 Acts and Resolves No. 79, Sec. 33a.

16 (e)(1) The Commissioner of Mental Health shall develop a protocol for use
17 by designated hospitals for the purpose of educating hospital staff on the use
18 and applicability of advance directives pursuant to 18 V.S.A. chapter 231 and
19 other written or oral expressions of treatment preferences pursuant to
20 18 V.S.A. § 7627(b).

1 (2) Prior to a patient’s discharge, a hospital shall provide information to
2 a patient in the custody of the Commissioner regarding advance directives,
3 including relevant information developed by the Vermont Ethics Network.

4 (f) On or before January 15, 2015, the Commissioner of Mental Health
5 shall develop and present to the General Assembly:

6 (1) statutory language for the emergency admissions process that
7 reflects the inpatient system of care established by 2012 Acts and Resolves
8 No. 79; and

9 (2) a proposal to address those patients in the custody of the
10 Commissioner of Mental Health who are hospitalized and lack competency to
11 provide informed consent, but who are not the subject of a petition for
12 involuntary medication pursuant to 18 V.S.A. § 7624 because they do not
13 object to the administration of medication.

14 Sec. 13. EFFECTIVE DATE

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

16
17

18 (Committee vote: _____)

19

20

Representative _____

21

FOR THE COMMITTEE