

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, or a licensed physician, a head of a hospital, a selectman,  
12 a town service officer, or a town health officer.

13 **Sec. 2. 18 V.S.A. § 7259 is amended to read:**

14 **§ 7259. MENTAL HEALTH CARE OMBUDSMAN**

15 (a) The department of mental health shall establish the office of the mental  
16 health care ombudsman within the agency designated by the governor as the  
17 protection and advocacy system for the state pursuant to 42 U.S.C. § 10801 et  
18 seq. The agency may execute the duties of the office of the mental health care  
19 ombudsman, including authority to assist individuals with mental health  
20 conditions and to advocate for policy issues on their behalf; provided,  
21 however, that nothing in this section shall be construed to impose any

1 additional duties on the agency in excess of the requirements under federal  
2 law.

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

5 (c) In the event the protection and advocacy system ceases to provide  
6 federal funding to the agency for the purposes described in this section, the  
7 general assembly may allocate sufficient funds to maintain the office of the  
8 mental health care ombudsman.

9 (d) The Department for Mental Health shall provide a copy of a certificate  
10 of need for any emergency involuntary procedure performed to the Office of  
11 the Mental Health Care Ombudsman within five days of the certificate's  
12 production.

13 Sec. 3. 18 V.S.A. § 7504 is amended to read:

14 § 7504. APPLICATION AND CERTIFICATE FOR EMERGENCY  
15 EXAMINATION

16 (a) A person shall be ~~admitted to a designated~~ held for admission to a  
17 hospital for an emergency examination to determine if he or she is a person in  
18 need of treatment upon written application by an interested party accompanied  
19 by a certificate by a licensed physician who is not the applicant. The  
20 application and certificate shall set forth the facts and circumstances which

1 constitute the need for an emergency examination and which show that the  
2 person is a person in need of treatment.

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

6 (c) For the purposes of admission of an individual to a designated hospital  
7 for care and treatment under this section, a head of a hospital, as provided in  
8 subsection (a) of this section, may include a person designated in writing by  
9 the head of the hospital to discharge the authority granted in this section. A  
10 designated person must be an official hospital administrator, supervisory  
11 personnel, or a licensed physician on duty on the hospital premises other than  
12 the certifying physician under subsection (a) of this section.

13 Sec. 4. 18 V.S.A. § 7505 is amended to read:

14 § 7505. WARRANT AND CERTIFICATE FOR IMMEDIATE  
15 EMERGENCY EXAMINATION

16 (a) In emergency circumstances where a certification by a physician is not  
17 available without serious and unreasonable delay, and when personal  
18 observation of the conduct of a person constitutes reasonable grounds to  
19 believe that the person is a person in need of treatment, and he or she presents  
20 an immediate risk of serious injury to himself or herself or others if not  
21 restrained, a law enforcement officer or mental health professional may make

1 an application, not accompanied by a physician's certificate, to any district or  
2 superior judge for a warrant for an ~~immediate~~ emergency examination.

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

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

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

15 (e) ~~Upon admission to a designated hospital, the person shall be~~  
16 ~~immediately examined by a~~ If after evaluation the licensed physician  
17 determines that the person is a person in need of treatment he or she shall  
18 issue an initial certificate that sets forth the facts and circumstances  
19 constituting the need for an emergency examination and showing that the  
20 person is a person in need of treatment. If the physician certifies that the person  
21 is a person in need of treatment Once the physician has issued the initial

1 certificate, the person shall be held for an emergency examination in  
2 accordance with section 7508 of this title. If the physician does not certify that  
3 the person is a person in need of treatment, he or she shall immediately  
4 discharge the person and cause him or her to be returned to the place from  
5 which he or she was taken, or to such place as the person reasonably directs.

6 Sec. 5. 18 V.S.A. § 7508 is amended to read:

7 § 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

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

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

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

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

6                   (1) the person has ~~been accepted for~~ voluntary admission under section  
7           7503 of this title; or

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

12           (e)(1)(A) A person shall be deemed to be in the interim custody of the  
13           Commissioner when:

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

16                   (ii) when a person is found to be a person in need of treatment  
17           after an emergency examination.

18                   (B) Interim custody under this subsection shall continue until the  
19           Court issues an order pursuant to subsection 7617(b) of this title or the person  
20           is released.

1           (2) The Commissioner shall make every effort to ensure that a person  
2           held for an emergency examination pending a hospital admission is receiving  
3           interim care and treatment in a hospital emergency department that:

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

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

7                   (C) prevents physical and psychological trauma.

8           (3) A person held for an emergency examination may be admitted at an  
9           appropriate hospital at any time after the second certification occurs.

10       Sec. 6. 18 V.S.A. § 7612 is amended to read:

11       § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

1 venue of the proceeding to the unit in which the proposed patient is located at  
2 the time of the trial.

3 (d) The application shall contain:

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

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

8 (e) The application shall be accompanied by:

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

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

17 (f) Before an examining physician completes the certificate of examination,  
18 he or she shall consider available alternative forms of care and treatment that  
19 might be adequate to provide for the person's needs, without requiring  
20 hospitalization. The examining physician shall document on the certificate the  
21 specific alternative forms of care and treatment that he or she considered and



1 why those alternatives were deemed inappropriate, including information on  
2 the availability of any appropriate alternatives.

3 **Sec. 7.** 18 V.S.A. § 7612a is added to read:

4 § 7612a. PROBABLE CAUSE REVIEW

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

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

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

1 **Sec. 8.** 18 V.S.A. § 7615 is amended to read:

2 § 7615. HEARING

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

9 (2)(A) The applicant or a person who is certified as a person in need of  
10 treatment pursuant to section 7508 may file a motion to expedite the hearing.  
11 The motion shall be supported by an affidavit, and the Court shall rule on the  
12 motion on the basis of the filings without holding a hearing. After viewing the  
13 evidence in the light most favorable to the moving party:

14 (i) The Court may grant the motion if it finds that the person has  
15 received involuntary medication pursuant to section 7624 of this title during  
16 the past two years and based upon the person's response to previous and  
17 ongoing treatment there is good cause to believe that additional time will not  
18 result in the person establishing a therapeutic relationship with providers or  
19 regain competence.

1           (ii) The Court shall grant the motion if it finds that the person  
2           demonstrates a significant risk of causing the person or others serious bodily  
3           injury as defined in 13 V.S.A. § 1021 even while hospitalized; and

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

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

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

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

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

16                     (B) the parties stipulate to the continuance.

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. 9.** 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~~ Departments of  
3 Corrections and the ~~department of mental health~~ of Mental Health have jointly  
4 determined jointly that involuntary medication would be appropriate pursuant  
5 to 28 V.S.A. § 907(4)(H):

6 (4) has an application for involuntary treatment pending for which the  
7 Court has granted a motion to expedite pursuant to subdivision  
8 7615(a)(2)(A)(ii) of this title; or

9 (5)(A) has an application for involuntary treatment pending:

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

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

14 ~~(b)(1) A petition for involuntary medication may be filed at any time after~~  
15 ~~the application for involuntary treatment is filed. A~~ Except as provided in  
16 subdivision (2) of this subsection, a petition for involuntary medication shall  
17 be filed in the ~~family division of the superior court~~ Family Division of the  
18 Superior Court in the county in which the person is receiving treatment ~~or, if~~  
19 ~~an order has not been issued on the application for involuntary treatment, in the~~  
20 ~~county in which the application for involuntary treatment is pending, if~~  
21 ~~applicable.~~ applicable.

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

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

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

11 (B) the Court shall consolidate the petition for involuntary  
12 medication with the application for involuntary treatment and rule on the  
13 application for involuntary treatment before ruling on the petition for  
14 involuntary medication.

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

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

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

19 (3) that the person lacks the capacity to decide to accept or refuse  
20 medication and appreciate the consequences of that decision;

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

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

5           (4)(6) a statement of the risks and benefits of the proposed medications,  
6 including the likelihood and severity of adverse side effects and its effect on:

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

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

10           (5)(7) the current relevant facts and circumstances, including any history  
11 of psychiatric treatment and medication, upon which the physician's opinion is  
12 based;

13           (6)(8) what alternate treatments have been proposed by the doctor, the  
14 patient, or others, and the reasons for ruling out those alternatives, including  
15 information on the availability of any appropriate alternatives; and

16           (7)(9) whether the person has executed a durable power of attorney for  
17 health care an advance directive in accordance with the provisions of  
18 18 V.S.A. chapter 111, subchapter 2 chapter 231 of this title, and the identity  
19 of the health care agent or agents designated by the durable power of attorney  
20 advance directive.

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

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

4 § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

5 BURDEN OF PROOF

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

11 (b) In a hearing conducted pursuant to this section, section 7626, or section  
12 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by  
13 clear and convincing evidence.

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

18 **Sec. 11.** 18 V.S.A. § 7626 is amended to read:

19 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

20 (a) If a person who is the subject of a petition filed under section 7624 of  
21 this title has executed a ~~durable power of attorney~~ an advance directive in



1 accordance with the provisions of ~~18 V.S.A. chapter 111~~ chapter 231 of this  
2 title, ~~subchapter 2 for health care~~, the ~~court~~ Court shall suspend the hearing and  
3 enter an order pursuant to subsection (b) of this section, if the ~~court~~ Court  
4 determines that:

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

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

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

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

18 (c) ~~In the case of a person subject to an order entered pursuant to~~  
19 ~~subsection (a) of this section, and upon the certification by the person's~~  
20 ~~treating physician to the court that the person has received treatment or no~~  
21 ~~treatment consistent with the durable power of attorney for health care for~~

1 ~~45 days after the order under subsection (a) of this section has been entered,~~  
2 ~~then the court shall reconvene the hearing on the petition.~~

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

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

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

18 (2) Prior to a patient's discharge, a hospital shall provide information to  
19 a patient in the custody of the Commissioner regarding advance directives,  
20 including relevant information developed by the Vermont Ethics Network.  
21

1 **Sec. 12.** 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 (c) If the ~~court~~ Court finds that there are no medication preferences or that  
12 the person's medication preferences have not led to a significant clinical  
13 improvement in the person's mental state in the past within an appropriate  
14 period of time, the ~~court~~ Court shall consider at a minimum, in addition to the  
15 person's expressed preferences, the following factors:

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

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

1           (3) The the likelihood and severity of possible adverse side-effects side  
2 effects from the proposed medication-;

3           (4) The the risks and benefits of the proposed medication and its  
4 effect on:

5                   (A) the person’s prognosis; and

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

7           (5) The the various treatment alternatives available, which may or may  
8 not include medication.

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

14           (e) As a threshold matter, the Court shall consider the person’s  
15 competency. If the eourt Court finds that the person is incompetent to make a  
16 decision regarding the proposed treatment and that involuntary medication is  
17 supported by the factors in subsection (c) of this section, the eourt Court shall  
18 make specific findings stating the reasons for the involuntary medication by  
19 referencing those supporting factors.

20           (f)(1) If the eourt Court grants the petition, in whole or in part, the eourt  
21 Court shall enter an order authorizing the eommissioner Commissioner to

1 administer involuntary medication to the person. The order shall specify the  
2 types of medication, the dosage range, length of administration, and method of  
3 administration for each. The order for involuntary medication shall not include  
4 electric convulsive therapy, surgery, long-acting injections, nasogastric  
5 intubation, or experimental medications.

6 (2) The order shall require the person's treatment provider to conduct  
7 ~~monthly~~ weekly reviews of the medication to assess the continued need for  
8 involuntary medication, the effectiveness of the medication, the existence of  
9 any side effects, and whether the patient has become competent pursuant to  
10 subsection 7625(c) of this title, and shall document this review in detail in the  
11 patient's chart and provide the person's attorney with a copy of the  
12 documentation within five days of its production.

13 (g) For a person receiving treatment pursuant to an order of hospitalization,  
14 ~~the commissioner~~ Commissioner may administer involuntary medication as  
15 authorized by this section to the person for up to 90 days, unless the ~~court~~  
16 Court finds that an order is necessary for a longer period of time. Such an  
17 order shall not be longer than the duration of the current order of  
18 hospitalization. If at any time a treatment provider finds that a person subject  
19 to an order for involuntary medication has become competent pursuant to  
20 7625(c) of this title, the order shall no longer be in effect.

21 \* \* \*

1 Sec. 13. 18 V.S.A. § 7629 is amended to read:

2 § 7629. LEGISLATIVE INTENT

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

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

18 (c) ~~It is the policy of the general assembly~~ General Assembly to work  
19 ~~towards~~ toward a mental health system that does not require coercion or the  
20 use of involuntary medication. The distress and insult to human dignity that  
21 results from compelling a person to participate in medical procedures against

1 his or her will are real regardless of how poorly the person may understand the  
2 procedures or how confused or mistaken the person may be about the  
3 procedures. Any trauma ensuing from the administration of involuntary  
4 treatment or medication shall be considered whenever a medical decision is  
5 made for a person without the person's consent.

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

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

14 Sec. 14. 18 V.S.A. § 9707(h) is amended to read:

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

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

1 (B) The agent shall accept in writing the responsibility of authorizing  
2 or withholding health care over the principal's objection in the event the  
3 principal lacks capacity.

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

7 (D)(i) An ombudsman, recognized member of the clergy, attorney  
8 licensed to practice law in this state, or ~~probate division of the superior court~~  
9 Probate Division of the Superior Court designee shall sign a statement  
10 affirming that he or she has explained the nature and effect of the provision to  
11 the principal, and that the principal appeared to understand the explanation and  
12 be free from duress or undue influence.

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

17 (E) The provision shall specify the treatments to which it applies, and  
18 shall include an explicit statement that the principal desires or does not desire  
19 the proposed treatments even over the principal's objection at the time  
20 treatment is being offered or withheld. The provision may include a statement  
21 expressly granting to the health care agent the authority to consent to the



1 principal's voluntary hospitalization, and to agree that the principal's discharge  
2 from the hospital may be delayed, pursuant to section 8010 of this title.

3 (F) The provision shall include an acknowledgment that the principal  
4 is knowingly and voluntarily waiving the right to refuse or receive treatment at  
5 a time of incapacity, and that the principal understands that a clinician will  
6 determine capacity.

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

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

13 (A) ~~The~~ Except as provision in subdivision (B) of this subdivision (3),  
14 the agent may, in the event the principal lacks capacity, make health care  
15 decisions over the principal's objection, provided that the decisions are made in  
16 compliance with subsection 9711(d) of this title.

17 (B) The Probate Division of the Superior Court, on the motion of the  
18 patient or of the Department of Mental Health, shall review the validity of a  
19 patient's advance directive if the patient is hospitalized and refusing  
20 psychiatric medication and the patient's advance directive contains a provision  
21 executed in compliance with this section permitting the agent, in the event that

1 the principal lacks capacity, to consent to hospitalization or psychiatric  
2 medication, or both, over the principal's objection. If the patient or the  
3 Department requests the Court's review, the agent shall not consent to the  
4 hospitalization or the administration of psychiatric medication, or both, over  
5 the principal's objection until the Court has determined the provision to be  
6 valid.

7 (C) A clinician shall follow instructions of the agent authorizing or  
8 withholding health care over the principal's objection.

9 **Sec. 15.** Rule 12 of the Vermont Rules for Family Proceedings is amended to  
10 read:

11 Rule 13. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

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

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

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

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

5 (B) An order of involuntary treatment, involuntary medication,  
6 nonhospitalization, or hospitalization, in an action pursuant to 18 V.S.A.  
7 ~~§§ 7611-7623~~ chapter 181;

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

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

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

16 \* \* \*

17 (d) Stay Pending Appeal.

18 (1) Automatic Stay. In any action in which automatic stay prior to  
19 appeal is in effect pursuant to paragraph (1) or subdivision (a) of this rule, the  
20 taking of an appeal from a judgment shall operate as a stay of execution upon

1 the judgment during the pendency of the appeal, and no supersedeas bond or  
2 other security shall be required as a condition of such stay.

3 (2) Other Actions.

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

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

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

19 (II) The Family Division's ruling on a motion to stay filed  
20 under subdivision (I) of this subdivision (ii) may be modified or vacated by the  
21 Supreme Court upon motion by a party filed within seven days after the ruling

1 is issued. If the appellant is the moving party, the order for involuntary  
2 medication shall remain stayed until the Supreme Court rules on the motion to  
3 vacate or modify the stay. A motion to vacate or modify a stay under this  
4 subdivision shall be determined by a single Justice of the Supreme Court, who  
5 may hear the matter or at his or her discretion refer it to the entire Supreme  
6 Court for hearing. No further appeal may lie from the ruling of a single Justice  
7 in matters to which this subdivision applies. The motion shall be determined  
8 as soon as practicable and to the extent possible shall take priority over other  
9 matters.

10 \* \* \*

1 **Sec. 16. REPORT; EMERGENCY INVOLUNTARY PROCEDURES**

2 (a) On or before January 15, 2015, the Office of Legislative Council shall  
3 submit a report to the House Committee on Human Services and to the Senate  
4 Committee on Health and Welfare that:

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

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

11 **Sec. 17. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS**

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

16 **Sec. 18. EFFECTIVE DATE**

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

18  
19  
20 (Committee vote: \_\_\_\_\_)

1  
2  
3

\_\_\_\_\_

Representative \_\_\_\_\_

FOR THE COMMITTEE

DRAFT