

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. § 7512 is added to read:**

8 **§ 7512. DEFINITION**

9 **As used in this chapter, “admission” means the acceptance of a patient by a**  
10 **hospital for inpatient services, regardless of whether the patient receives**  
11 **services in an emergency or psychiatric department.**

12 **Sec. 2. 18 V.S.A. § 7612 is amended to read:**

13 **§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT**

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

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

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

1 cases, it shall be filed in the unit in which the patient resides. In the case of a  
2 nonresident, it may be filed in any unit.

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.

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

2 § 7612a. PROBABLE CAUSE REVIEW

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

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

17 **Sec. 4.** 18 V.S.A. § 7615 is amended to read:

18 § 7615. HEARING

19 (a)(1) Upon receipt of the application, the ~~court~~ Court shall set a date for  
20 the hearing to be held within 10 days from the date of the receipt of the  
21 application or 20 days from the date of the receipt of the application if a

1 psychiatric examination is ordered under section 7614 of this title unless the  
2 hearing is continued by the ~~court~~ Court pursuant to subsection (b) of this  
3 section.

4 (2)(A) The applicant or a person who is certified as a person in need of  
5 treatment pursuant to section 7508 may file a motion to expedite the hearing.  
6 The motion shall be supported by an affidavit. The Court may grant the  
7 motion if it finds that:

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

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

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

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

19 (b)(1) ~~The court~~ For hearings held pursuant to subdivision (a)(1) of this  
20 section, the Court may grant either party ~~an~~ a onetime extension ~~of time~~ of up  
21 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~~ Rules  
7           of Evidence applicable in civil actions in the ~~criminal division of the superior~~  
8           ~~courts~~ Family Division of the Superior Court of the ~~state~~ State, and to an extent  
9           not inconsistent with this part, the ~~rules of civil procedure of the state~~ Vermont  
10           Rules of Civil Procedure 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 not necessary for the conduct of the hearing.

19           (f) Any hearing on an application for involuntary treatment occurring after  
20           a hearing on involuntary medication pursuant to subdivision 7624(a)(4) of this  
21           title shall proceed in accordance with subdivision (a)(1) of this section.

1 **Sec. 5.** 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 four** 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~~ Mental Health have jointly  
17 determined jointly that involuntary medication would be appropriate pursuant  
18 to 28 V.S.A. § 907(4)(H); **or**

19 **(4)(A) has an application for involuntary treatment pending;**

20 **(B) waives the right to a hearing on the application for involuntary**  
21 **treatment until a later date; and**

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

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

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

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

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

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

- 1           (3) any proposed medication, including the method, dosage range, and  
2 length of administration for each specific medication;
- 3           (4) a statement of the risks and benefits of the proposed medications,  
4 including the likelihood and severity of adverse side effects and its effect on:  
5           (A) the person’s prognosis with and without the proposed  
6 medications; and  
7           (B) the person’s health and safety, including any pregnancy;
- 8           (5) the current relevant facts and circumstances, including any history of  
9 psychiatric treatment and medication, upon which the physician’s opinion is  
10 based;
- 11           (6) what alternate treatments have been proposed by the doctor, the  
12 patient, or others, and the reasons for ruling out those alternatives; and
- 13           (7) whether the person has executed a ~~durable power of attorney for~~  
14 ~~health care~~ an advance directive in accordance with the provisions of  
15 ~~18 V.S.A. chapter 111, subchapter 2~~ chapter 231 of this title, and the identity  
16 of the ~~health care agent or agents~~ designated by the ~~durable power of attorney~~  
17 advance directive.
- 18           (d) A copy of the ~~durable power of attorney~~ advance directive, if available,  
19 shall be attached to the petition.

1 **Sec. 6.** 18 V.S.A. § 7625 is amended to read:

2 § 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

3 BURDEN OF PROOF

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

9 (b) In a hearing conducted pursuant to this section, section 7626, or section  
10 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by  
11 clear and convincing evidence.

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

16 **Sec. 7.** 18 V.S.A. § 7626 is amended to read:

17 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

18 (a) If a person who is the subject of a petition filed under section 7624 of  
19 this title has executed a ~~durable power of attorney~~ an advance directive in  
20 accordance with the provisions of ~~18 V.S.A. chapter 111~~ chapter 231 of this  
21 title, subchapter 2 for health care, the ~~court~~ Court shall suspend the hearing and

1 enter an order pursuant to subsection (b) of this section, if the ~~court~~ Court  
2 determines that:

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

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

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

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

16 (c) ~~In the case of a person subject to an order entered pursuant to~~  
17 ~~subsection (a) of this section, and upon the certification by the person's~~  
18 ~~treating physician to the court that the person has received treatment or no~~  
19 ~~treatment consistent with the durable power of attorney for health care for~~  
20 ~~45 days after the order under subsection (a) of this section has been entered,~~  
21 ~~then the court shall reconvene the hearing on the petition.~~



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

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

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

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

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

16 (A) the person's prognosis; and

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

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

20 \* \* \*

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

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

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

11 Rule 12. 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 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 \* \* \*

11 **Sec. 11. ADVANCE DIRECTIVE AT DISCHARGE**

12 A participating hospital as defined in 18 V.S.A. § 7101 or a representative  
13 of the Department of Mental Health or Vermont Legal Aid's Mental Health  
14 Project is encouraged to describe the purpose of an advance directive to a  
15 patient receiving psychiatric treatment at a participating hospital prior to his or  
16 her discharge and provide the patient an opportunity to execute an advance  
17 directive pursuant to 18 V.S.A. chapter 231.

18 **Sec. 12. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS**

19 The Agency of Human Services shall ensure that Vermont Legal Aid's  
20 Mental Health Law Project has a sufficient number of psychiatrists to conduct

1     psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame  
2     established by 18 V.S.A. § 7615.

3     **Sec. 13.** EFFECTIVE DATE

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

5

6

7         (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

9

Representative \_\_\_\_\_

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FOR THE COMMITTEE