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**Date:** April 10, 2014  
**To:** House Committee on Human Services & House Committee on Judiciary  
**From:** A.J. Ruben, Supervising Attorney, DRVT  
**Re:** **S. 287 Potential Amendments**

DRVT, as has been stated, sees negative impacts on individuals with psychiatric disabilities should the changes in S.287 be adopted. However, if some changes to law are to be considered, DRVT suggests the following amendments would be more effective at insuring appropriate treatment and care for people held in State's custody due to their mental health condition.

### **18 VSA § 7508. EMERGENCY EXAMINATION**

(a) When a person is ~~admitted to~~ brought to and detained at a designated hospital for an emergency examination in accordance with section 7504 or 7505(e) of this title, he or she shall be examined and certified by a psychiatrist as soon as practicable, but not later than ~~one working day~~ twenty four hours after admission ~~the person is brought to and detained at hospital.~~

(b) If the person is ~~admitted~~ brought to and detained on an application and physician's certificate, the examining psychiatrist shall not be the same physician who signed the certificate.

(e) The Commissioner may not place a person detained under Section 7504 or 7505 or ordered by a court for inpatient evaluation pursuant to 13 VSA, §4815 in a Correctional Facility but instead must develop the capacity to provide inpatient evaluation beds or non-correctional facility based alternatives pending available beds. This provision to become effective immediately.

*DRVT is the protection and advocacy system for the State of Vermont.*

*DRVT is the Vermont Mental Health Care Ombudsman.*

Email at [info@DisabilityRightsVT.org](mailto:info@DisabilityRightsVT.org),

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*The intent of this amendment is to prohibit the harm that currently exists due to DMH not maintaining a sufficient systemic capacity and allowing people to be held in custody for many days at a time in Emergency Departments around the state without having the second certification by a psychiatrist occur within the next business day or 24 hours. Instead, due to the hospital's position that the existing word "admission" means when a person is brought up to an available bed in a psychiatric unit, not when they are held and receive treatment in the Emergency Department, currently the DMH advises designated agencies and hospitals to simply re-write the initiating Emergency Examination papers every 24 hours, effectively allowing the Department to hold people indefinitely in an Emergency Department without being seen by a psychiatrist qualified to determine if the person actually meets criteria for involuntary detention. In addition the amendment is intended to halt the current practice of DMH allowing people placed in its custody for inpatient evaluation pursuant to a criminal court proceeding to be held in Correctional facilities pending inpatient bed availability.*

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## **18 VSA 7612**

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

**The examining physician shall document on the certification the specific alternative forms of care and treatment that were considered and why those alternatives were not appropriate, specifically including information regarding the lack of capacity or availability of appropriate alternatives.**

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## **§ 7612a. PROBABLE CAUSE REVIEW**

(a) ~~Within three business days~~ **48 hours** after an application for involuntary treatment is filed, **a person is brought to and detained at a hospital or alternative placement pursuant to this Chapter, the Department shall cause EE or GW documentation to be forwarded to the Family Division of the Superior Court in the county where the patient is detained. The Family Division Judge shall conduct a review of the documentation provided to determine whether there is probable cause to believe that he or she was a person in need of treatment at the time of his or her admission and detention. The review shall be based solely on the application for an emergency examination and accompanying certificate by a licensed physician. and the application for involuntary treatment.**

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## § 7624. PETITION FOR INVOLUNTARY MEDICATION

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

(2) The Court may consolidate a petition for involuntary medication and an application for involuntary treatment upon motion of a party or upon its own motion if it finds that ~~consolidation would serve the interests of the parties and the administration of justice~~ consolidation is necessary to prevent serious bodily injury to the patient or others and that the treating facility and the Department of Mental Health have adequate staff and facilities available for the patient to provide all reasonable alternatives to involuntary, non-emergency medication. If the proceedings are consolidated, the Court shall rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

*The intent of this amendment is to limit the people subjected to consolidated medication and commitment hearings to only those patients who are actually a serious threat of harm and to facilities that have exhausted all reasonable alternatives, including increased staff, enhanced physical plants, and increased recreational and therapeutic opportunities.*

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## §7627 COURT FINDINGS AND ORDER [Invol. Med.]

(o) If the court grants the petition, in whole or in part, the court shall enter an order requiring the Department to determine no less than weekly subsequent to the implementation of an order under this subsection that the patient continues to lack capacity to make medical decisions. This information shall be documented in the patient's chart, including the date, time, and individual who made the capacity assessment.

(p) If the court grants the petition, in whole or in part, the court shall enter an order requiring the Commissioner to also provide a documented process or protocol to assist the patient in reducing or eliminating their use of psychiatric medication and provide the patient subject to an Order under this section periodic opportunities to learn about, consider and implement a Department-assisted process to reduce or eliminate reliance on these medications. This aspect of the court's order will be in place for a period of two years after. The Commissioner is to adopt policies to implement this subsection within 120 days of enactment.

*These amendments are intended to ensure that only people who currently do not have capacity to make their own medical decisions are subjected to involuntary medication by requiring weekly assessments and documentation of same for people subject to these orders. In addition the amendments are intended to acknowledge the validity of concern about the impact on long-term use of psychiatric medications and the helplessness many people subjected to involuntary non-emergency medication have expressed in their efforts to reduce or eliminate reliance on these controversial and often harmful medications. If the State is potentially forcing patients to embark on a long-term reliance on these medications, the State should be responsible to provide assistance and opportunities for patients to learn about and implement medication reduction initiatives.*

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### **7629 Legislative Intent**

(e) The Amendments to current statutes addressed by S.287 and intended to expedite appropriate treatment for people detained involuntarily in State’s custody should not increase unnecessarily the number of people subjected to involuntary procedures nor dilute or impair patient due process protections. To that end, the Legislature acknowledges that implementation of S 287 will require significant increased funding for DMH to assure appropriate capacity of mental health professionals, including psychiatrists, and capacity of alternative treatment environments and supports as well as traditional inpatient bed capacity, and require increased funding to all aspects of the legal process that currently struggles to comply with timeframes available to expedite these proceedings.

*This amendment is intended to highlight that the real problem with Vermont mental health system is a lack of resources and leadership to obtain necessary resources to attain and maintain a functional, cutting-edge, financially sustainable mental health system.*