

1 TO THE HONORABLE SENATE:

2 The Committee on Health and Welfare to which was referred Senate Bill
3 No. 128 entitled “An act relating to updating mental health judicial
4 proceedings” respectfully reports that it has considered the same and
5 recommends that the bill be amended by striking all after the enacting clause
6 and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. chapter 171 is amended to read:

8 CHAPTER 171. GENERAL PROVISIONS

9 § 7101. DEFINITIONS

10 As used in this part of this title, the following words, unless the context
11 otherwise requires, shall have the following meanings:

12 * * *

13 (4) “Designated hospital” means a public or private hospital, other
14 facility, or part of a hospital or facility designated by the ~~commissioner~~
15 Commissioner as adequate to provide appropriate care for ~~the mentally ill~~
16 patient persons with mental illness.

17 (5) “Elopement” means the leaving of a designated hospital or
18 designated program ~~or training school~~ without lawful authority.

19 * * *

20 (9) “Interested party” means a guardian, spouse, parent, adult child,
21 close adult relative, a responsible adult friend, or person who has the individual

1 in his or her charge or care. It also means a mental health professional, a law
2 enforcement officer, or a licensed physician, ~~a head of a hospital, a selectman,~~
3 ~~a town service officer, or a town health officer.~~

4 * * *

5 (15) “Patient” means a resident of or person in Vermont ~~qualified under~~
6 ~~this title for hospitalization or treatment as a mentally ill or mentally retarded~~
7 ~~individual~~ who is subject to involuntary or voluntary mental health treatment
8 or evaluation.

9 * * *

10 (26) “No refusal system” means a system of designated hospitals ~~and,~~
11 intensive residential recovery facilities, secure residential recovery facilities,
12 and residential treatment programs under contract with the ~~department of~~
13 ~~mental health~~ Department of Mental Health that provides high intensity
14 services, in which the facilities shall admit any individual for care if the
15 individual meets the eligibility criteria established by the ~~commissioner~~
16 Commissioner in contract.

17 (27) “Participating hospital” means a designated hospital under contract
18 with the ~~department of mental health~~ Department of Mental Health to
19 participate in the no refusal system.

1 (28) “Secure,” when describing a residential recovery facility, means
2 that the residents can be physically prevented from leaving the facility by
3 means of locking devices or other mechanical or physical mechanisms.

4 (29) “Secure residential recovery facility” means a residential facility
5 owned and operated by the State and licensed as a therapeutic community
6 residence, as defined in 33 V.S.A. § 7102(11), for an individual who no longer
7 requires acute inpatient care but who remains in need of treatment within a
8 secure setting for an extended period of time or for an individual transferred
9 pursuant to 28 V.S.A. § 705a.

10 (30) “Successor in interest” means the mental health hospital owned and
11 operated by the ~~state~~ State that provides acute inpatient care and replaces the
12 Vermont State Hospital.

13 * * *

14 § 7104. ~~WRONGFUL HOSPITALIZATION~~ PLACEMENT IN CUSTODY
15 OR DENIAL OF RIGHTS; FRAUD; ~~ELOPEMENT~~

16 Any person who ~~willfully~~ willfully causes, or conspires with, or assists
17 another to cause any of the following shall be fined not more than \$500.00 or
18 imprisoned not more than one year, or both:

19 (1) the hospitalization of an individual knowing that the individual is not
20 mentally ill or in need of hospitalization or treatment as a ~~mentally ill or~~
21 ~~mentally retarded individual~~ person with a mental illness; or

1 (2) the denial to any individual of any rights granted to him or her under
2 this part of this title; ~~or~~

3 (3) the voluntary admission to a hospital of an individual knowing that
4 he or she is not mentally ill or eligible for treatment thereby attempting to
5 defraud the ~~state~~ State; or

6 (4) the elopement of any patient ~~or student~~ from a hospital ~~or training~~
7 ~~school~~, or who knowingly harbors any ~~sick person~~ patient who has eloped from
8 a hospital, or who aids in abducting a patient ~~or student~~ who has been
9 conditionally discharged from the person or persons in whose care and service
10 that patient ~~or student~~ has been legally placed; ~~shall be fined not more than~~
11 ~~\$500.00 or imprisoned not more than one year, or both.~~

12 § 7105. ~~ARREST~~ APPREHENSION OF ELOPED PERSONS

13 Any sheriff, deputy sheriff, ~~constable~~, or officer of ~~state~~ State or local
14 police, and any officer or employee of any designated hospital, ~~designated~~
15 ~~program~~, or ~~training school~~ a secure residential recovery facility may ~~arrest~~
16 any take into custody and return to a designated hospital or a secure residential
17 recovery facility a person in the custody of the Commissioner who has eloped
18 ~~from a designated hospital or designated program or training school and return~~
19 ~~such person.~~

1 § 7106. NOTICE OF ~~HOSPITALIZATION~~ CUSTODY AND DISCHARGE

2 Whenever a patient has been admitted to a designated hospital other than
3 upon his or her own application, the head of the designated hospital shall
4 immediately notify the patient's legal guardian, ~~spouse, parent or parents, or~~
5 ~~nearest known relative or interested party, if known~~ and agent as defined in
6 section 9701 of this title, if any, or if a minor, the patient's parent or legal
7 guardian. If the involuntary hospitalization or admission was without court
8 order, notice shall also be given to the superior court judge for the ~~family~~
9 ~~division of the superior court~~ Family Division of the Superior Court in the unit
10 wherein the designated hospital is located. If the hospitalization or admission
11 was by order of any court, the head of the designated hospital admitting or
12 discharging ~~an individual~~ the patient shall forthwith make a report thereof to
13 the ~~commissioner~~ Commissioner and to the court which entered the order for
14 hospitalization or admission.

15 § 7107. ~~EXTRAMURAL WORK~~

16 ~~Any hospital or training school in the state dealing with mental health may~~
17 ~~do, or procure to be done, extramural work in the way of prevention,~~
18 ~~observation, care, and consultation with respect to mental health. [Repealed.]~~

19 § 7108. ~~CANTEENS~~

20 ~~The chief executive officer of the Vermont State Hospital or its successor in~~
21 ~~interest may conduct a canteen or commissary, which shall be accessible to~~

1 ~~patients, employees, and visitors of the Vermont State Hospital or its successor~~
2 ~~in interest at designated hours and shall be operated by employees of the~~
3 ~~hospital. A revolving fund for this purpose is authorized. The salary of an~~
4 ~~employee of the hospital shall be charged against the canteen fund. Proceeds~~
5 ~~from sales may be used for operation of the canteen and the benefit of the~~
6 ~~patients and employees of the hospital under the direction of the chief~~
7 ~~executive officer and subject to the approval of the commissioner. All~~
8 ~~balances of such funds remaining at the end of any fiscal year shall remain in~~
9 ~~such fund for use during the succeeding fiscal year. An annual report of the~~
10 ~~status of the funds shall be submitted to the commissioner. [Repealed.]~~

11 ~~§ 7109. SALE OF ARTICLES; REVOLVING FUND~~

12 ~~(a) The superintendent of a hospital or training school may sell articles~~
13 ~~made by the patients or students in the handiwork or occupational therapy~~
14 ~~departments of the institution and the proceeds thereof shall be credited to a~~
15 ~~revolving fund. When it is for their best interest, the superintendent may, with~~
16 ~~the consent of the patients or their legal representatives, employ patients or~~
17 ~~students or permit them to be employed on a day placement basis.~~

18 ~~(b) The consent of the patient or the legal representative of the patient or~~
19 ~~student shall, in consideration of the undertaking of the superintendent, contain~~
20 ~~the further agreement that one half the earnings of the patient or student shall~~
21 ~~be credited to the personal account of the patient or student so employed at~~

1 interest for benefit of the patient or student and the balance shall be credited to
2 the fund. The superintendent shall hold and expend the fund for the purchase
3 of equipment and materials for the handicraft or group therapy departments
4 and for the educational and recreational welfare of the patient or student group.
5 He or she shall submit an annual report of the fund to the commissioner.
6 Balances remaining in it at the end of a fiscal year shall be carried forward and
7 be available for the succeeding fiscal year.

8 (c) For purposes of this section the legal representative of the patient or
9 student shall be the duly appointed guardian, the spouse, the parents or the next
10 of kin legally responsible for the patient or student. In their absence, the
11 commissioner shall be the legal representative. [Repealed.]

12 * * *

13 § 7111. RIGHT TO LEGAL COUNSEL

14 In any proceeding before, or notice to, a court of this state State involving a
15 patient or student, or a proposed patient or student, that person shall be
16 afforded counsel, and if the patient or student or proposed patient or student is
17 unable to pay for counsel, compensation shall be paid by the state State to
18 counsel assigned by the court; however, this section shall not apply to a
19 proceeding under section 7505 of this title.

20 * * *

1 § 7113. INDEPENDENT EXAMINATION: PAYMENT

2 Whenever a court orders an independent examination by a mental health
3 professional ~~or a qualified mental retardation professional~~ pursuant to this title
4 or 13 V.S.A. § 4822, the cost of the initial examination shall be paid by the
5 ~~department of disabilities, aging, and independent living or of health~~
6 Department of Mental Health. The mental health professional ~~or qualified~~
7 ~~mental retardation professional~~ may be selected by the court but the
8 ~~commissioner of disabilities, aging, and independent living or the~~
9 ~~commissioner of mental health~~ Commissioner of Mental Health may adopt a
10 reasonable fee schedule for examination, reports, and testimony.

11 Sec. 2. 18 V.S.A. § 7205 is amended to read:

12 § 7205. SUPERVISION ~~OF INSTITUTIONS~~

13 (a) The ~~department of mental health~~ Department of Mental Health shall
14 operate the Vermont State Hospital or its successor in interest and a secure
15 residential recovery facility. The Department shall be responsible for patients
16 receiving involuntary treatment.

17 (b) The ~~commissioner of the department of mental health~~ Commissioner of
18 Mental Health, in consultation with the ~~secretary~~ Secretary, shall appoint a
19 chief executive officer of the Vermont State Hospital or its successor in
20 interest and a facility director of the secure residential recovery facility to
21 oversee the operations of the hospital and the secure residential recovery

1 facility, respectively. The chief executive officer position shall be an exempt
2 position.

3 Sec. 3. PURPOSE OF THE MENTAL HEALTH CARE OMBUDSMAN

4 Due to the State's unique role in coordinating and providing services for
5 Vermonters with one or more diagnosed mental health conditions, the General
6 Assembly created the Office of the Mental Health Care Ombudsman, and now
7 finds it necessary to clarify the Office's role, which is to safeguard access to
8 services and those rights and protections that may be at risk. Due to the fact
9 that the Office of the Mental Health Care Ombudsman addresses methods of
10 care that are not as prevalent as among other health conditions, the Office's
11 existence remains consistent with the principles of parity and achieving
12 integration throughout Vermont's health care system.

13 Sec. 4. 18 V.S.A. chapter 178 is added to read:

14 CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

15 § 7451. DEFINITIONS

16 As used in this chapter:

17 (1) "Agency" means the organization designated by the Governor as the
18 protection and advocacy system for the State pursuant to 42 U.S.C. § 10801 et
19 seq.

20 (2) "Department" means the Department of Mental Health.

1 (3) “Intensive residential recovery facility” shall have the same meaning
2 as in section 7252 of this title.

3 (4) “Mental Health Care Ombudsman” or “Ombudsman” means an
4 individual providing protection and advocacy services pursuant to this chapter.

5 (5) “Office” means the Office of the Mental Health Care Ombudsman.

6 (6) “Secure residential recovery facility” shall have the same meaning as
7 in section 7620 of this title.

8 (7) “State agency” means any office, department, board, bureau,
9 division, agency, or instrumentality of the State.

10 § 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

11 (a) The Department of Mental Health shall establish the Office of the
12 Mental Health Care Ombudsman within the Agency by executing a
13 memorandum of designation between the Department and the Agency.

14 (b) The Office shall represent the interests of Vermonters with one or more
15 diagnosed mental health conditions, including individuals receiving services at
16 designated hospitals, emergency rooms, correctional facilities, intensive
17 residential recovery facilities, secure residential recovery facilities, or within a
18 community setting.

19 (c) The Office shall be directed by an individual, to be known as the
20 Mental Health Care Ombudsman, who shall be selected from among

1 individuals within the Agency executing the memorandum of designation with
2 the Department of Mental Health.

3 § 7453. RESPONSIBILITIES OF THE OFFICE

4 (a) The Office may:

5 (1) investigate individual cases of abuse, neglect, and other serious
6 violations of individuals in Vermont with diagnosed mental health conditions;

7 (2) analyze, monitor, and aim to reduce the use of seclusion, restraint,
8 coercion, and involuntary mental health procedures;

9 (3)(A) review emergency involuntary procedure reports provided by the
10 Department;

11 (B) confer with the Department at least twice annually regarding any
12 findings or recommendations for improvement made by the Office in response
13 to the emergency involuntary procedure reports;

14 (4)(A) review any reports provided by the Department of untimely
15 deaths of individuals with a diagnosed mental health condition in designated
16 hospitals, intensive residential recovery facilities, secure residential recovery
17 facilities, or community settings;

18 (B) confer with the Department regarding any findings or
19 recommendations for improvement made by the Office in response to the
20 untimely death reports;

1 (5) participate on state panels reviewing the treatment of individuals
2 with a diagnosed mental health condition;

3 (6) integrate efforts with the Health Care Ombudsman’s Office
4 established under 8 V.S.A. chapter 107, subchapter 1A and the Long-Term
5 Care Ombudsman’s Office established under 33 V.S.A. chapter 75 to minimize
6 duplication of efforts; and

7 (7) annually, on or before January 15th, submit a report to the
8 Department and General Assembly detailing all activities performed pursuant
9 to this chapter and recommending improvements to the mental health system.

10 (b)(1) A person shall not impose any additional duties on the Office in
11 excess of the requirements set forth in subsection (a) of this section or
12 otherwise imposed on agencies under federal law.

13 (2) Nothing in this chapter shall supersede the authorities or
14 responsibilities granted to the Agency under Protection and Advocacy for
15 Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

16 (3) The General Assembly may at any time allocate funds it deems
17 necessary to supplement federal funding used to maintain the Office.

18 § 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

19 In fulfilling the responsibilities of the Office, the Mental Health Care
20 Ombudsman may:

1 (1) Hire or contract with persons or organizations to fulfill the purposes
2 of this chapter.

3 (2) Communicate and visit with any individual with a diagnosed mental
4 health condition, provided that the Ombudsman shall discontinue interactions
5 with any individual when requested to do so by that individual. Toward that
6 end, designated hospitals, emergency rooms, correctional facilities, intensive
7 residential recovery facilities, secure residential recovery facilities, and other
8 community treatment facilities shall provide the Ombudsman access to their
9 facilities and to individuals for whom they provide mental health services. If
10 the individual with a diagnosed mental health condition has a guardian, the
11 Office shall take no formal action without consent of the guardian or a court
12 order, unless an emergency situation arises.

13 (3) Delegate to employees any part of the Mental Health Care
14 Ombudsman's authority.

15 (4) Take such further actions as are necessary in order to fulfill the
16 purpose of this chapter.

17 § 7455. COOPERATION OF STATE AGENCIES

18 (a) All state agencies shall comply with requests of the Mental Health Care
19 Ombudsman for information and assistance necessary to carry out the
20 responsibilities of the Office.

1 (b) The Secretary of Human Services may adopt rules necessary to ensure
2 that departments within the Agency of Human Services cooperate with the
3 Office.

4 § 7456. CONFIDENTIALITY

5 In the absence of written consent by an individual with a diagnosed mental
6 health condition about whom a report has been made, or by his or her guardian
7 or legal representative, or a court order, the Mental Health Care Ombudsman
8 shall not disclose the identity of such person, unless otherwise provided for
9 under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C.
10 §§ 10801–10851.

11 § 7457. IMMUNITY

12 Civil liability shall not attach to the Mental Health Care Ombudsman or his
13 or her employees for good faith performance of the duties imposed by
14 this chapter.

15 § 7458. INTERFERENCE AND RETALIATION

16 (a) A person who intentionally hinders a representative of the Office acting
17 pursuant to this chapter shall be imprisoned not more than one year or fined
18 not more than \$5,000.00, or both.

19 (b) A person who takes discriminatory, disciplinary, or retaliatory action
20 against an employee, a resident, or a volunteer of a designated hospital,
21 correctional facility, intensive residential recovery facility, secure residential

1 recovery facility, community treatment facility, or state agency for any
2 communication made, or information disclosed, to aid the Office in carrying
3 out its duties and responsibilities shall be imprisoned not more than one year or
4 fined not more than \$5,000.00, or both. An employee, a resident, or a
5 volunteer of such facilities or state agencies may seek damages in superior
6 court against a person who takes an action prohibited by this subsection.

7 § 7459. CONFLICT OF INTEREST

8 The Mental Health Care Ombudsman, an employee of the Ombudsman, or
9 an immediate family member of the Ombudsman or of an employee shall not
10 have any financial interest in or authority over a designated hospital,
11 correctional facility, intensive residential recovery facility, secure residential
12 recovery facility, or community treatment facility and from providing mental
13 health services, which creates a conflict of interest in carrying out the
14 Ombudsman's responsibilities under this chapter.

15 Sec. 5. 18 V.S.A. § 7505 is amended to read:

16 § 7505. WARRANT FOR IMMEDIATE EXAMINATION

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

1 ~~restrained~~, a law enforcement officer or mental health professional may make
2 an application, ~~not accompanied by a physician's certificate~~, to any district or
3 superior court judge for a warrant for an immediate examination when:

4 (A) a certification by a physician is not available without serious and
5 unreasonable delay;

6 (B) personal observation of the conduct of a person constitutes
7 reasonable grounds to believe that the person is a person in need of
8 treatment; and

9 (C) the person presents an immediate risk of serious injury to himself
10 or herself or others if not restrained.

11 (b) The law enforcement officer or mental health professional, or both, may
12 take the person into temporary custody and shall apply to the court without
13 delay for the warrant.

14 (c) If the judge is satisfied that a physician's certificate is not available
15 without serious and unreasonable delay, and that probable cause exists to
16 believe that the person is in need of an immediate examination pursuant to
17 subsection (a) of this section, ~~he or she~~ the judge may grant the warrant and
18 order the person to submit to an immediate examination at a designated
19 hospital.

1 (d) ~~If necessary~~ By granting a warrant, the court ~~may order the~~ authorizes a
2 law enforcement officer or mental health professional to transport the person to
3 a designated hospital for an immediate examination.

4 (e) Upon admission to a designated hospital pursuant to a warrant for
5 immediate examination, the person shall be ~~immediately~~ examined by a
6 licensed physician immediately. If the physician certifies that the person is a
7 person in need of treatment, the person shall be held for an emergency
8 examination in accordance with section 7508 of this title. If the physician does
9 not certify that the person is a person in need of treatment, ~~he or she~~ the
10 physician shall immediately discharge the person and cause him or her to be
11 returned to the place from which he or she was taken, or to such place as the
12 person reasonably directs.

13 Sec. 6. 18 V.S.A. chapter 181 is amended to read:

14 CHAPTER 181. JUDICIAL PROCEEDINGS

15 * * *

16 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

19 (b) The application shall be filed in the ~~criminal division of the superior~~
20 ~~court of~~ Family Division of the Superior Court for the district in which the

1 proposed ~~patient's residence~~ patient resides or, in the case of a nonresident, in
2 any ~~district~~ superior court.

3 (c) If the application is filed under section 7508 or 7620 of this title, it shall
4 be filed in the ~~criminal division of the superior court~~ Family Division of the
5 Superior Court in which the hospital is located.

6 (d) The application shall contain:

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

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

11 (e) The application shall be accompanied by:

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

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

20 (f) Before an examining physician completes the certificate of examination,
21 he or she shall consider available alternative forms of care and treatment that

1 might be adequate to provide for the person's needs, without requiring
2 hospitalization.

3 § 7613. NOTICE—APPOINTMENT OF COUNSEL

4 (a) When the application is filed, the court shall appoint counsel for the
5 proposed patient, and transmit a copy of the application, the physician's
6 certificate, if any, and a notice of hearing to the proposed patient, his or her
7 attorney, guardian, ~~or any person having custody and control of the proposed~~
8 ~~patient, if any, the state's attorney, State's Attorney or the attorney general~~
9 Attorney General, and any other person the court believes has a concern for the
10 proposed patient's welfare. A copy of the notice of hearing shall also be
11 transmitted to the applicant and certifying physician.

12 * * *

13 § 7617. FINDINGS; ORDER

14 (a) If the court finds that the proposed patient was not a person in need of
15 treatment at the time of admission or application or is not a patient in need of
16 further treatment at the time of the hearing, the court shall enter a finding to
17 that effect and shall dismiss the application.

18 (b)(1) If the proposed patient is found to have been a person in need of
19 treatment at the time of admission or application and a patient in need of
20 further treatment at the time of the hearing, the court may order the person:

21 ~~(4)~~(A) hospitalized in a designated hospital;

1 ~~(2)~~(B) hospitalized in any other public or private hospital if he or she
2 and the hospital agree; or
3 ~~(3)~~(C) to undergo a program of treatment other than hospitalization.
4 (2) If the application for treatment was made in accordance with
5 28 V.S.A. § 705a and the proposed patient is found to be a person in need of
6 treatment at the time of application and at the time of the hearing, the only
7 order for treatment other than hospitalization that a court may enter is an order
8 of nonhospitalization at a secure residential recovery facility.

9 (c) Prior to ordering any course of treatment, the court shall determine
10 whether there exists an available program of treatment for the person which is
11 an appropriate alternative to hospitalization. The court shall not order
12 hospitalization without a thorough consideration of available alternatives.

13 (d) Before making its decision, the court shall order testimony by an
14 appropriate representative of a hospital, a community mental health agency,
15 public or private entity or agency, or a suitable person, who shall assess the
16 availability and appropriateness for the individual of treatment programs other
17 than hospitalization.

18 * * *

19 § 7620. APPLICATION FOR CONTINUED TREATMENT

20 (a) If, prior to the expiration of any order issued in accordance with section
21 7623 of this title, the ~~commissioner~~ Commissioner believes that the condition

1 of the patient is such that the patient continues to require treatment, the
2 ~~commissioner~~ Commissioner shall apply to the court for a determination that
3 the patient is a patient in need of further treatment and for an order of
4 continued treatment.

5 (b) An application for an order authorizing continuing treatment shall
6 contain a statement setting forth the reasons for the ~~commissioner's~~
7 Commissioner's determination that the patient is a patient in need of further
8 treatment, a statement describing the treatment program provided to the
9 patient, and the results of that course of treatment.

10 (c) Any order of treatment issued in accordance with section 7623 of this
11 title shall remain in force pending the court's decision on the application.

12 (d) If the ~~commissioner~~ Commissioner seeks to have the patient receive the
13 further treatment in a secure residential recovery facility, the application for an
14 order authorizing continuing treatment shall expressly state that such treatment
15 is being sought. The application shall contain, in addition to the statements
16 required by subsection (b) of this section, a statement setting forth the reasons
17 for the ~~commissioner's~~ Commissioner's determination that clinically
18 appropriate treatment for the patient's condition can be provided safely only in
19 a secure residential recovery facility.

20 (e) As used in this chapter:

1 (1) ~~“Secure,” when describing a residential facility, means that the~~
2 ~~residents can be physically prevented from leaving the facility by means of~~
3 ~~locking devices or other mechanical or physical mechanisms.~~

4 (2) ~~“Secure residential recovery facility” means a residential facility,~~
5 ~~licensed as a therapeutic community residence as defined in 33 V.S.A.~~
6 ~~§ 7102(11), for an individual who no longer requires acute inpatient care but~~
7 ~~who does remain in need of treatment within a secure setting for an extended~~
8 ~~period of time. A, “secure residential recovery facility” shall have the same~~
9 ~~meaning as in section 7101 of this title. Except as provided in 28 V.S.A.~~
10 ~~§ 705a, a secure residential recovery facility shall not be used for any purpose~~
11 ~~other than the purposes permitted by this section.~~

12 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;

13 ORDERS

14 (a) The hearing on the application for continued treatment shall be held in
15 accordance with the procedures set forth in sections 7613, 7614, 7615, and
16 7616 of this title.

17 (b) If the court finds that the patient is a patient in need of further treatment
18 ~~and requires hospitalization,~~ it shall order ~~hospitalization~~ continued treatment
19 for up to one year.

20 * * *

1 Sec. 7. 18 V.S.A. § 7708 is amended to read:

2 § 7708. ~~SURGICAL OPERATIONS~~

3 ~~If the superintendent finds that a patient supported by the state requires a~~
4 ~~surgical operation or that a surgical operation would promote the possibility of~~
5 ~~his or her discharge from the hospital, the superintendent, with the consent of~~
6 ~~the patient, his or her attorney, or his or her legally appointed guardian, if any,~~
7 ~~or next of kin, if any be known, may make the necessary arrangements with~~
8 ~~some surgeon and hospital for the operation. The expense of the operation~~
9 ~~shall be borne by the state in the same proportion as the patient is supported by~~
10 ~~the state. [Repealed.]~~

11 Sec. 8. 18 V.S.A. chapter 189 is amended to read:

12 CHAPTER 189. RELEASE AND DISCHARGE

13 § 8003. PERSONAL NEEDS OF PATIENT

14 The ~~commissioner~~ Commissioner shall make any necessary arrangements to
15 ensure:

- 16 (1) that no patient is discharged ~~or granted a conditional release~~ from a
17 designated hospital without suitable clothing; and
- 18 (2) that any indigent patient discharged ~~or granted a conditional release~~
19 is furnished suitable transportation for his or her return home and an amount of
20 money as may be prescribed by the head of ~~the~~ a designated hospital to enable
21 the patient to meet his or her immediate needs.

1 * * *

2 § 8006. VISITS

3 (a) ~~The head of a hospital may grant a visit permit of not more than 30 days~~
4 ~~to any patient under his or her charge. [Repealed.]~~

5 (b) The granting and revocation of visits shall be made in accordance with
6 rules and procedures adopted by the head of the designated hospital.

7 § 8007. ~~CONDITIONAL DISCHARGES~~

8 ~~(a) The board or the head of a hospital may conditionally discharge from a~~
9 ~~hospital any patient who may be safely and properly cared for in a place other~~
10 ~~than the hospital.~~

11 ~~(b) A conditional discharge may extend for a term of six months, but shall~~
12 ~~not exceed 60 days unless the head of the hospital determines that a longer~~
13 ~~period will materially improve the availability of a program of treatment which~~
14 ~~is an alternative to hospitalization.~~

15 ~~(c) Unless sooner revoked or renewed, a conditional discharge shall~~
16 ~~become absolute at the end of its term.~~

17 ~~(d) A conditional discharge may be granted subject to the patient's~~
18 ~~agreement to participate in outpatient, after care, or follow up treatment~~
19 ~~programs, and shall be subject to such other conditions and terms as are~~
20 ~~established by the granting authority.~~

1 ~~(e) Each patient granted a conditional discharge shall be provided, so far as~~
2 ~~practicable and appropriate, with continuing treatment on an outpatient or~~
3 ~~partial hospitalization basis.~~

4 ~~(f) Each patient granted a conditional discharge shall be given a written~~
5 ~~statement of the conditions of his or her release, the violation of which can~~
6 ~~cause revocation.~~

7 ~~(g) A conditional discharge may be renewed by the granting authority at~~
8 ~~any time before it becomes absolute if the head of a hospital first determines~~
9 ~~that such renewal will substantially reduce the risk that the patient will become~~
10 ~~a person in need of treatment in the near future. [Repealed.]~~

11 § 8008. ~~REVOCATION OF CONDITIONAL DISCHARGE~~

12 ~~(a) The board or the head of the hospital may revoke a conditional~~
13 ~~discharge at any time before that discharge becomes absolute if the patient fails~~
14 ~~to comply with the conditions of the discharge.~~

15 ~~(b) A revocation by the board or the head of the hospital shall authorize the~~
16 ~~return of the patient to the hospital and shall be sufficient warrant for a law~~
17 ~~enforcement officer or mental health professional to take the patient into~~
18 ~~custody and return him or her to the hospital from which he or she was~~
19 ~~conditionally discharged.~~

1 ~~(c) Immediately upon his or her return to the hospital, the patient shall be~~
2 ~~examined by a physician who shall orally explain to the patient the purpose of~~
3 ~~the examination and the reasons why the patient was returned to the hospital.~~

4 ~~(d) If the examining physician certifies in writing to the head of the~~
5 ~~hospital that, in his or her opinion, the patient is a person in need of treatment,~~
6 ~~setting forth the recent and relevant facts supporting this opinion, the~~
7 ~~revocation shall become effective and the patient shall be readmitted to the~~
8 ~~hospital. If the examining physician does not so certify, the revocation shall be~~
9 ~~cancelled and the patient shall be returned to the place from which he or she~~
10 ~~was taken.~~

11 ~~(e) If the patient is readmitted to the hospital, he or she may apply~~
12 ~~immediately for a judicial review of his or her admission, and he or she shall~~
13 ~~be given a written notice of this right and of his or her right to legal counsel.~~

14 [Repealed.]

15 § 8009. ADMINISTRATIVE DISCHARGE

16 (a) The head of ~~the~~ a designated hospital may at any time discharge a
17 voluntary or judicially hospitalized patient whom he or she deems clinically
18 suitable for discharge.

19 (b) The head of ~~the~~ a designated hospital shall discharge a judicially
20 hospitalized patient when the patient is no longer a patient in need of further
21 treatment. When a judicially hospitalized patient is discharged, the head of ~~the~~

1 ~~a designated~~ hospital shall notify the ~~applicant, the certifying physician~~
2 ~~Commissioner, the family division of the superior court~~ Family Division of the
3 Superior Court, and anyone who was notified at the time the patient was
4 hospitalized.

5 (c) ~~A person~~ An individual responsible for providing treatment other than
6 hospitalization to ~~an individual~~ a person ordered to undergo a program of
7 alternative treatment, under section 7618 or 7621 of this title, may terminate
8 the alternative treatment to the ~~individual~~ person if the provider of this
9 alternative treatment considers the ~~individual~~ person clinically suitable for
10 termination of treatment. Upon termination of alternative treatment, the ~~family~~
11 ~~division of the superior court~~ the Commissioner and Family Division of the
12 Superior Court shall be so notified by the provider of the alternative treatment.
13 Upon receipt of the notice, the Court shall vacate the order.

14 * * *

15 Sec. 9. 18 V.S.A. chapter 197 is amended to read:

16 CHAPTER 197. MENTALLY ILL USERS OF ALCOHOL OR DRUGS

17 * * *

18 § 8404. ~~CONDITIONAL DISCHARGE~~

19 ~~The board of mental health, in its discretion, may grant a conditional~~
20 ~~discharge to a patient admitted under this chapter after the expiration of one~~
21 ~~month from the date of admission and may revoke any conditional discharge~~

1 ~~so granted. A revocation of a conditional discharge by the board of mental~~
2 ~~health at any time prior to the expiration of the original term of hospitalization~~
3 ~~shall be sufficient warrant for the return of the patient to the hospital from~~
4 ~~which he or she was discharged, there to remain until a subsequent conditional~~
5 ~~discharge or the expiration of the full term from the date of the original~~
6 ~~admission. [Repealed.]~~

7 § 8405. OUTSIDE VISITS

8 In the discretion of the head of a designated hospital, a patient admitted
9 under this chapter may be permitted to visit a specifically designated place for
10 a period not to exceed five days and return to the same hospital. The visit may
11 be allowed to see a dying relative, to attend the funeral of a relative, to obtain
12 special medical services, to contact prospective employers, or for any
13 compelling reason consistent with the welfare or rehabilitation of the patient.

14 Sec. 10. 18 V.S.A. § 8847 is added to read:

15 § 8847. INDEPENDENT EXAMINATION: PAYMENT

16 Whenever a court orders an independent examination by a qualified
17 intellectual disabilities professional pursuant to this title or 13 V.S.A. § 4822,
18 the cost of the examination shall be paid by the Department of Disabilities,
19 Aging, and Independent Living. The qualified intellectual disabilities
20 professional may be selected by the court but the Commissioner of Disabilities,

1 Aging, and Independent Living may adopt a reasonable fee schedule for
2 examination, reports, and testimony.

3 Sec. 11. 18 V.S.A. § 8848 is added to read:

4 § 8848. APPREHENSION OF ELOPED PERSONS

5 Any sheriff, deputy sheriff, or officer of the State or local police and any
6 officer or employee of any designated program may arrest any person who has
7 eloped from a designated program and return such person.

8 Sec. 12. 28 V.S.A. § 705a is added to read:

9 § 705a. TRANSFER TO SECURE RESIDENTIAL RECOVERY FACILITY

10 (a) If in the discretion of the Commissioner of Mental Health it becomes
11 necessary and appropriate, the Commissioner of Mental Health may file an
12 application, in consultation with the Commissioner of Corrections, in the
13 Family Division of the Superior Court for the involuntary treatment of an
14 incarcerated person pursuant to 18 V.S.A. § 7612 which specifies admission to
15 a secure residential recovery facility as the proposed plan of treatment for the
16 person if it is determined that the person:

17 (1) has a mental illness as defined in 18 V.S.A. § 7101;

18 (2) poses a danger to himself or herself or others; and

19 (3) requires treatment at a secure residential recovery facility.

20 (b) If the Court finds that the person is in need of treatment pursuant to
21 18 V.S.A. § 7617(b), the only order of nonhospitalization that a court may

1 order is for a program of treatment at a secure residential recovery facility.

2 This limitation pertains only to applications filed by the Commissioner of

3 Mental Health under this subsection.

4 (c)(1) When a person is transferred to a secure residential recovery facility
5 pursuant to this section, he or she shall be subject to the supervision of the
6 Commissioner of Mental Health except that the time during which the person
7 is in the custody of the Commissioner of Mental Health shall be computed as
8 part of the term for which he or she was sentenced. He or she shall continue
9 to be eligible for good behavior reductions pursuant to section 811 of this title,
10 and he or she shall continue to be eligible for parole pursuant to chapter 7 of
11 this title.

12 (2) When the Commissioner of Mental Health determines that a person
13 whose sentence has not expired no longer requires treatment at a secure
14 residential recovery facility, the Commissioner of Mental Health shall return
15 the person to the custody of the Commissioner of Corrections in accordance
16 with 18 V.S.A. chapter 189.

17 (d) As used in this section, “secure residential recovery facility” shall have
18 the same meaning as in 18 V.S.A. § 7101.

19 Sec. 13. MENTAL HEALTH LEGISLATIVE WORK GROUP

20 (a) On or before July 15, 2013, the Commissioner of Mental Health shall
21 convene a work group of stakeholders to examine current Vermont statutes

1 pertaining to judicial proceedings in Title 18, Part 8 and to make
2 recommendations that would more closely align the statutes to the Department
3 of Mental Health's current practices while respecting the rights of affected
4 individuals. Members of the Work Group shall include:

5 (1) the Commissioner of Mental Health or designee;

6 (2) the Commissioner of Corrections or designee;

7 (3) a representative of the Vermont Association of Hospitals and Health

8 Systems;

9 (4) the Mental Health Care Ombudsman;

10 (5) the Administrative Judge or designee;

11 (6) a representative of Vermont Legal Aid's Mental Health Law Project;

12 (7) a representative of the law enforcement community;

13 (8) a representative of a designated agency's emergency response

14 team; and

15 (9) two representatives of the peer community.

16 (b) The Work Group shall consider:

17 (1) the Department's current preadmission practices through the time of
18 hospital admission;

19 (2) emergency examination procedures, including temporary custody;

20 (3) immediate examination procedures, including reliable reports of
21 conduct and warrants for entering residences;

- 1 (4) time limits for certification and judicial proceedings;
2 (5) processes for referral to and discharge from the secure residential
3 recovery facility;
4 (6) manners of reducing wait times in emergency departments, including
5 the use of technology and streamlined processes;
6 (7) a protocol that the Departments of Corrections and of Mental Health
7 may use in serving individuals diverted from court-ordered inpatient treatment
8 due to lack of available bed space; and
9 (8) any other topic the Commissioner of Mental Health deems
10 appropriate.

11 (c) On or before November 15, 2013, the Commissioner shall submit a
12 report containing the Work Group's recommendations for legislation to the
13 Mental Health Oversight Committee, the Senate Committee on Health and
14 Welfare, and the House Committee on Human Services.

15 Sec. 14. REPEAL

16 18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

17 Sec. 15. REDESIGNATION

18 18 V.S.A. chapters 217 (genetic testing), 219 (health information
19 technology), and 220 (Green Mountain Care Board) shall be redesignated to
20 appear within 18 V.S.A. part 9 (unified health care system).

21 Sec. 16. EFFECTIVE DATE

1 This act shall take effect on July 1, 2013.

2

3

4

5 (Committee vote: _____)

6

7

Senator [surname]

8

FOR THE COMMITTEE