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2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Mental health; judicial proceedings; commitment and involuntary
6 medication

7 Statement of purpose of bill as introduced: This bill proposes to reduce delays
8 in obtaining commitment and involuntary medication orders by limiting
9 continuations, establishing a time frame for court orders, and combining
10 commitment and involuntary medication hearings.

11 An act relating to commitment and involuntary medication hearings

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 18 V.S.A. chapter 181 is amended to read:

14 CHAPTER 181. JUDICIAL PROCEEDINGS

15 § 7611. INVOLUNTARY TREATMENT

16 (a) ~~No~~ A person may not be made subject to involuntary treatment unless
17 he or she is found to be a person in need of treatment or a patient in need of
18 further treatment.

19 (b) As used in this chapter, "involuntary treatment" means:

20 (1) an order of hospitalization pursuant to section 7619 of this title;

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1 (2) an order of nonhospitalization pursuant to section 7618 of this

2 title; or

3 (3) involuntary medication pursuant to the criteria set forth in section

4 7627 of this title.

5 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

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

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

14 (d) The application shall contain:

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

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

19 (e) The application shall be accompanied by:

20 (1) ~~A~~ a certificate of a licensed physician, which shall be executed under
21 penalty of perjury stating that he or she has examined the proposed patient

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1 within five days of the date the petition is filed, and is of the opinion that the
2 proposed patient is a person in need of treatment, including the current and
3 relevant facts and circumstances upon which the physician's opinion is
4 based; or

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

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

11 (g) If the application includes a request for involuntary medication, it shall
12 include a certification from a licensed physician, executed under penalty of
13 perjury, that includes the licensed physician's professional opinion on the
14 following:

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

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

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

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1 (4) a statement of the risks and benefits of the proposed medications,
2 including the likelihood and severity of adverse side effects and the proposed
3 medication's effect on:

4 (A) the person's prognosis; and

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

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

9 (6) what alternate treatments have been proposed by the physician, the
10 patient, or others, and the reasons for ruling out those alternatives; and

11 (7) whether the person has executed an advance directive in accordance
12 with the provisions of 18 V.S.A. chapter 231, and the identity of the agent or
13 agents designated by the advance directive.

14 (h) A copy of the proposed patient's advance directive, if available, shall be
15 attached to an application that includes a request for involuntary medication.

16 * * *

17 § 7615. HEARING

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

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1 examination is ordered under section 7614 unless the hearing is continued by
2 the ~~court~~ Court.

3 (b) The ~~court~~ Court may grant either party ~~an a one-time~~ an a one-time extension of time
4 of up to seven days for good cause.

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

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

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

18 (f) The Court shall dismiss the application or issue an order within seven
19 days of the hearing. If the order is not issued within seven days, the
20 application for treatment shall be deemed approved until the order is issued.

21 * * *

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1 § 7617. FINDINGS; ORDER

2 (a) If the ~~court~~ Court finds that the proposed patient was not a person in
3 need of treatment at the time of admission or application or is not a patient in
4 need of further treatment at the time of the hearing, the ~~court~~ Court shall enter
5 a finding to that effect and shall dismiss the application.

6 (b) If the proposed patient is found to have been a person in need of
7 treatment at the time of admission or application and a patient in need of
8 further treatment at the time of the hearing, the ~~court~~ Court may order the
9 person:

10 (1) hospitalized in a designated hospital and involuntarily medicated
11 when the latter has been applied for and approved;

12 (2) hospitalized in any other public or private hospital if he or she and
13 the hospital agree; or

14 (3) to undergo a program of treatment other than hospitalization.

15 (c) Prior to ordering any course of treatment, the ~~court~~ Court shall
16 determine whether there exists an available program of treatment for the
17 person which is an appropriate alternative to hospitalization. The ~~court~~ Court
18 shall not order hospitalization without a thorough consideration of available
19 alternatives.

20 (d) Before making its decision, the ~~court~~ Court shall order testimony by an
21 appropriate representative of a hospital, a community mental health agency,

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1 public or private entity or agency, or a suitable person, who shall assess the
2 availability and appropriateness for the individual of treatment programs other
3 than hospitalization.

4 (e)(1) Prior to ordering the hospitalization of a person, the ~~court~~ Court shall
5 inquire into the adequacy and appropriateness of treatment to be provided to
6 the person by the hospital. Hospitalization shall not be ordered unless the
7 hospital in which the person is to be hospitalized can provide him or her with
8 treatment ~~which~~ that is adequate and appropriate to his or her condition.

9 (2) Prior to ordering involuntary medication for a person, the Court shall
10 inquire into the adequacy and appropriateness of the proposed medication to be
11 provided to the person by the treatment provider. Involuntary medication shall
12 not be ordered unless the treatment provider can provide the person with
13 treatment that is adequate and appropriate to his or her condition.

14 (f) Preference between available hospitals shall be given to the hospital
15 which is located nearest to the person's residence except when the person
16 requests otherwise or there are other compelling reasons for not following the
17 preference.

18 * * *

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1 § 7624. PETITION FOR INVOLUNTARY MEDICATION

2 ~~(a) The commissioner may commence an action for the involuntary~~
3 ~~medication of a person who is refusing to accept psychiatric medication and~~
4 ~~meets any one of the following three conditions:~~

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

7 ~~(2) has previously received treatment under an order of hospitalization~~
8 ~~and is currently under an order of nonhospitalization, including a person on an~~
9 ~~order of nonhospitalization who resides in a secure residential recovery~~
10 ~~facility; or~~

11 ~~(3) has been committed to the custody of the commissioner of~~
12 ~~corrections as a convicted felon and is being held in a correctional facility~~
13 ~~which is a designated facility pursuant to section 7628 of this title and for~~
14 ~~whom the department of corrections and the department of mental health have~~
15 ~~jointly determined that involuntary medication would be appropriate pursuant~~
16 ~~to 28 V.S.A. § 907(4)(H).~~

17 ~~(b) A petition for involuntary medication shall be filed in the family~~
18 ~~division of the superior court in the county in which the person is receiving~~
19 ~~treatment.~~

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

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

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1 § 7625. HEARING ON PETITION APPLICATION FOR INVOLUNTARY
2 MEDICATION; BURDEN OF PROOF

3 (a) ~~A hearing on a petition for involuntary medication shall be held within~~
4 ~~seven days of filing and shall be conducted in accordance with sections 7613,~~
5 ~~7614, 7615(b)-(e), and 7616 of this title. [Deleted.]~~

6 (b) In a hearing conducted pursuant to this section, section 7626, or 7627 of
7 this title, the ~~commissioner~~ applicant has the burden of proof by clear and
8 convincing evidence.

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

13 § 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

14 (a) If a person who is the subject of a ~~petition~~ an application for treatment
15 that includes involuntary medication filed under section ~~7624~~ 7612 of this title
16 has executed a ~~durable power of attorney~~ an advance directive in accordance
17 with the provisions of 18 V.S.A. chapter ~~111~~ 231, subchapter 2 for health care,
18 the ~~court~~ Court shall suspend the hearing and enter an order pursuant to
19 subsection (b) of this section, if the ~~court~~ Court determines that:

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

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

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

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

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

19 (1) ~~If the court concludes that the person has experienced, and is likely~~
20 ~~to continue to experience, a significant clinical improvement in his or her~~
21 ~~mental state as a result of the treatment or nontreatment directed by the durable~~

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1 power of attorney for health care, or that the patient has regained competence,
2 then the court shall enter an order denying and dismissing the petition.

3 (2) If the court concludes that the person has not experienced a
4 significant clinical improvement in his or her mental state, and remains
5 incompetent then the court shall consider the remaining evidence under the
6 factors described in subdivisions 7627(c)(1)-(5) of this title and render a
7 decision on whether the person should receive medication. [Deleted.]

8 § 7627. ~~COURT FINDINGS; ORDERS~~ ORDER; INVOLUNTARY
9 MEDICATION

10 (a) ~~The court shall issue an order regarding all possible findings pursuant to~~
11 ~~this section, and for persons subject to a petition pursuant to subdivision~~
12 ~~7624(a)(3) of this title the court shall first find that the person is a person in~~
13 ~~need of treatment as defined by subdivision 7101(17) of this title. [Deleted.]~~

14 (b) If a person who is the subject of a ~~petition~~ an application for treatment
15 that includes involuntary medication filed under section ~~7625~~ 7612 of this title
16 has not executed a ~~durable power of attorney~~ an advance directive, the ~~court~~
17 Court shall follow the person's competently expressed written or oral
18 preferences regarding medication, if any, unless the ~~commissioner~~ applicant
19 demonstrates that the person's medication preferences have not led to a
20 significant clinical improvement in the person's mental state in the past within
21 an appropriate period of time.

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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 person's religious convictions and whether they contribute to
7 the person's refusal to accept medication.

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

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

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

15 (A) the person's prognosis; and

16 (B) the person's health and safety, including any pregnancy.

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

19 (d) If the ~~court~~ Court finds that the person is competent to make a decision
20 regarding the proposed treatment or that involuntary medication is not

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1 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall
2 enter a finding to that effect and deny the petition.

3 (e) If the ~~court~~ Court finds that the person is incompetent to make a
4 decision regarding the proposed treatment and that involuntary medication is
5 supported by the factors in subsection (c) of this section, the ~~court~~ Court shall
6 make specific findings stating the reasons for the involuntary medication by
7 referencing those supporting factors.

8 (f) If the ~~court~~ Court grants the ~~petition~~ application for involuntary
9 medication, in whole or in part, the ~~court~~ Court shall enter an order authorizing
10 the ~~commissioner~~ person's treatment provider to administer involuntary
11 medication to the person. The order shall specify the types of medication, the
12 dosage range, length of administration, and method of administration for each.
13 The order for involuntary medication shall not include electric convulsive
14 therapy, surgery, or experimental medications. The order shall require the
15 person's treatment provider to conduct monthly reviews of the medication to
16 assess the continued need for involuntary medication, the effectiveness of the
17 medication, the existence of any side effects, and shall document this review in
18 detail in the patient's chart.

19 (g) For a person receiving treatment pursuant to an order of hospitalization,
20 the ~~commissioner~~ treatment provider may administer involuntary medication
21 as authorized by this section to the person for up to 90 days, unless the ~~court~~

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1 Court finds that an order is necessary for a longer period of time. Such an
2 order shall not be longer than the duration of the current order of
3 hospitalization.

4 (h) For a person who had received treatment under an order of
5 hospitalization and is currently receiving treatment pursuant to an order of
6 nonhospitalization, if the ~~court~~ Court finds that without an order for
7 involuntary medication there is a substantial probability that the person would
8 continue to refuse medication and as a result would pose a danger of harm to
9 self or others, the ~~court~~ Court may order hospitalization of the person for up to
10 72 hours to administer involuntary medication as ordered under this section.

11 (i) The ~~court~~ Court may authorize future 72-hour hospitalizations of a
12 person subject to an order under subsection (h) of this section to administer
13 involuntary medication for 90 days following the initial hospitalization, unless
14 the ~~court~~ Court finds that an involuntary medication order is necessary for a
15 longer period of time. Such an order shall not be longer than the duration of
16 the current order of nonhospitalization.

17 (j) A future administration of involuntary medication authorized by the
18 ~~court~~ Court under subsection (i) of this section shall occur as follows:

19 (1) The treating physician shall execute and file with the ~~commissioner~~
20 Commissioner a certification executed under penalty of perjury that states all
21 the following:

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1 (A) The person has refused medication.

2 (B) The person is not competent to make a decision regarding
3 medication and to appreciate the consequences.

4 (C) The proposed medications, the dosage range, length of
5 administration, and method of administration.

6 (D) The substantial probability that in the near future the person will
7 pose a danger of harm to self or others if not hospitalized and involuntarily
8 medicated.

9 (2) Depending on the type of medication ordered, the ~~commissioner~~
10 Commissioner shall provide two to 14-days' notice, as set forth in the initial
11 ~~court~~ Court order, to the ~~court~~ Court, the person, and the person's attorney.
12 The notice shall be given within 24 hours of receipt by the ~~commissioner~~
13 Commissioner of the physician's certification and shall state that the person
14 may request an immediate hearing to contest the order. The person may be
15 hospitalized in a designated hospital on the date specified in the notice for up
16 to 72 hours in order to administer involuntary medication.

17 (k) An order for involuntary medication issued under this section shall be
18 effective concurrently with the current order of commitment issued pursuant to
19 section 7623 of this title.

20 (l) The treating physician shall provide written notice to the ~~court~~ Court to
21 terminate the order when involuntary medication is no longer necessary.

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1 (m) At any time, the person may petition the ~~court~~ Court for review of the
2 order.

3 (n) As used in this section "household members" means persons living
4 together or sharing occupancy.

5 * * *

6 Sec. 2. EFFECTIVE DATE

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