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Act No. 137 (S.192). An act relating to civil commitment procedures at a secure residential recovery facility and a psychiatric residential treatment facility for youth and civil commitment procedures for individuals with an intellectual disability

Subjects: Health; human services; mental health; developmental disabilities; commitment

Sec. 1 of this act outlines its purposes, including to enable treatment at a secure residential recovery facility, regardless of a prior hospitalization; enable treatment at a psychiatric residential treatment facility for youth; update civil commitment procedures for individuals with intellectual disabilities; and authorize the proposal of alternative options for a secure community-based residence or residences to treat certain individuals with intellectual disability who have been charged with a crime and found incompetent to stand trial or adjudicated not guilty by reason of insanity and require a more secure level of care than is currently available.

Secs. 2 through 16 make changes to civil commitment processes for individuals with a mental health condition. Sec. 2 amends 13 V.S.A. § 4822 by modifying existing language authorizing initial commitment “for an indeterminate period” to “a period of 90 days.” It further provides a victim with the right to submit a victim impact statement to the Family Division of the Superior Court or through the prosecutor.

Sec. 3 amends 18 V.S.A. § 7101 to add a definition of “Department” and “psychiatric residential treatment facility for youth.” It also moves and modifies the definition of “secure residential recovery facility” from elsewhere in Title 18.

Sec. 4 amends 18 V.S.A. § 7253 to add a psychiatric residential treatment facility for youth to the list of facilities at which patients are entitled to access a mental health patient representative.

Sec. 5 amends 18 V.S.A. § 7255 to add the psychiatric residential treatment facility for youth as a component of the mental health system of care.

Sec. 6 amends the existing reporting requirement in 18 V.S.A. § 7256 to update the receiving committee from the House Committee on Human Services to the House Committee on Health Care; to move an existing reporting requirement regarding involuntary medication from 1998 Acts and Resolves No. 114 to be part of the Department of Mental Health’s systemwide annual report; and to add a new reporting requirement regarding individuals in the Commissioner’s custody who are unable to move to a less restrictive setting due to lack of alternative placements.

Sec. 7 amends 18 V.S.A. § 7257 to add a psychiatric residential treatment facility for youth to the list of facilities that must report adverse events occurring at the facility to the Department of Mental Health.

Sec. 7a amends 18 V.S.A. § 7279 to require the Department of Mental Health to provide notice of any reportable adverse events to the Mental Health Care Ombudsman.

Sec. 8 adds 18 V.S.A. § 7260, which establishes a licensing requirement for the operation of a psychiatric residential treatment facility for youth. Specifically, this section requires that an applicant is a nonprofit entity and has demonstrated the capacity to operate a psychiatric residential treatment for youth in accordance with Department of Health rules; the applicant has maintained certification from the Centers for Medicare and Medicaid Services; the applicant has maintained accreditation by the Joint Commission or other accrediting organization; the applicant has demonstrated that the psychiatric residential treatment facility for youth complies with health, safety, and sanitation standards; residents of the psychiatric residential treatment facility for youth are under the care of a physician; the applicant has a clear process for responding to resident complaints; and the applicant is subject to inspection by the Department of Disabilities, Aging, and Independent Living and other authorized entities.

Sec. 9 amends 18 V.S.A. § 7503 to add the psychiatric residential treatment facility for youth to the list of facilities that a person 14 years of age or older could apply to for voluntary psychiatric care.

Sec. 9a amends 18 V.S.A. § 7509 to add the secure residential recovery facility and psychiatric residential treatment facility for youth to the list of facilities in which residents are statutorily required to be treated with dignity and respect.

Sec. 9b amends 18 V.S.A. § 7511 to apply existing protections for the transportation of individuals in need of mental health care to residents of the secure residential recovery facility and psychiatric residential treatment facility for youth.

Sec. 10 amends 18 V.S.A. § 7612 to specify that an application for initial involuntary treatment at a secure residential recovery facility or psychiatric residential treatment facility for youth must expressly state where treatment is being sought and why the Commissioner of Mental Health has determined that clinically appropriate treatment for the individual's condition can only be provided safely in a secure residential recovery facility or psychiatric residential treatment facility for youth, respectively.

Sec. 11 amends 18 V.S.A. § 7618 to authorize the Family Division of the Superior Court to place an individual in need of involuntary treatment on an order of nonhospitalization at a secure residential recovery facility or psychiatric residential treatment facility for youth. The section further authorizes the Family Division of the Superior Court at any time, on its own motion or on the motion of an interested party, to review the need for treatment at a secure residential recovery facility or psychiatric residential treatment facility for youth, respectively.

Sec. 12 amends 18 V.S.A. § 7620 to specify that an application for continued treatment at a secure residential recovery facility or psychiatric residential treatment facility for youth must expressly state where treatment is being sought and why the Commissioner of Mental Health has determined that clinically appropriate treatment for the individual's condition can only be provided safely in a secure residential recovery facility or psychiatric residential treatment facility for youth, respectively. This section also repeals definitions that this act recodifies in 18 V.S.A. § 7101.

Sec. 13 amends 18 V.S.A. § 7621 to authorize the Family Division of the Superior Court to place an individual in need of further treatment due to a mental condition on an order of nonhospitalization at a psychiatric residential treatment facility for youth. This section also authorizes the Family Division of the Superior Court at any time, on its own motion or on the motion of an interested party, to review the need for treatment at the secure residential recovery facility or psychiatric residential treatment facility for youth.

Sec. 14 amends 18 V.S.A. § 7624 to allow the Commissioner of Mental Health to seek involuntary medication for an individual refusing to accept psychiatric medication who has been placed under an order of nonhospitalization at a secure residential recovery facility.

Sec. 15 amends 18 V.S.A. § 7628 to add a secure residential recovery facility to the Department of Mental Health's protocol ensuring health, safety, and respect for patients subject to involuntary medication.

Sec. 15a amends 18 V.S.A. § 7701 to require that notice of rights is provided to residents of a secure residential recovery facility and a psychiatric residential treatment facility for youth.

Sec. 16 amends 18 V.S.A. § 7703 to add a secure residential recovery facility and a psychiatric residential treatment facility for youth to the list of facilities where emergency involuntary procedure data is collected by the Department of Mental Health.

Sec. 17 directs the Commissioner of Disabilities, Aging, and Independent Living, in consultation with the Commissioner of Mental Health, to file initial proposed permanent rule amendments (and interim emergency rules) to the Licensing and Operating Regulations for Therapeutic Community Residences to allow the use of emergency involuntary procedures at a secure residential recovery facility; to require that a certificate of need for all emergency involuntary procedures performed at a secure residential recovery facility be submitted to Department of Mental Health and the Mental Health Care Ombudsman; and to authorize the use of involuntary medication at the secure residential recovery facility.

Sec. 17a authorizes an individual who has been committed to a secure residential recovery facility continuously since June 30, 2024, or earlier to apply to the Family Division of the Superior Court for review as to whether the secure residential recovery facility continues to be the least restrictive and most appropriate setting.

Sec. 18 amends 2021 Acts and Resolves No. 50, Sec. 3(c) to remove language in a former Capital Bill restricting use of emergency involuntary procedures at a secure residential recovery facility.

Sec. 19 authorizes the current secure residential recovery facility, River Valley, to operate under its existing certificate of need despite the policy changes made in this act.

Sec. 20 repeals 1998 Acts and Resolves No. 114, Sec. 5, an existing reporting requirement on involuntary medication, as the topic has been consolidated into the Department of Mental Health's annual report pursuant to Sec. 6 of this act.

Secs. 21 through 27 pertain to the changes to the civil commitment process for individuals with intellectual disabilities. Sec. 21 amends 13 V.S.A. § 4814 to remove a

sunset, which has the effect of allowing psychologists to complete competency examinations on a permanent basis.

Sec. 22 amends 13 V.S.A. § 4816(b) to specify that a competency evaluation for an individual thought to have a developmental disability shall be conducted by a doctoral-level psychologist trained in forensic psychology.

Sec. 23 amends 13 V.S.A. § 4817 to specify that a psychiatrist or psychologist may conduct a competency exam in accordance with 13 V.S.A. §§ 4814–1816.

Sec. 24 amends 13 V.S.A. § 4820 by reorganizing subsection (a) and by specifying that a commitment hearing may be for commitment to the Commissioner of Mental Health or of Disabilities, Aging, and Independent Living, as appropriate.

Sec. 25 amends 13 V.S.A. § 4823 to specify that if the Criminal Division of the Superior Court finds by clear and convincing evidence that a person is a person in need of custody, care, and habilitation, it shall issue a commitment order for up to one year in a designated program in the least restrictive environment consistent with the person's need for custody. It further specifies that commitment procedures and orders from discharge shall occur in accordance with 18 V.S.A. chapter 206, subchapter 3.

Sec. 26 makes multiple amendments to 18 V.S.A. chapter 206, subchapter 3. In addition to amending definitions in 18 V.S.A. § 8839, this section repeals 18 V.S.A. §§ 8840–8843 to eliminate provisions rendered irrelevant by the previous repeal of cross-referenced sections. This section rewrites 18 V.S.A. § 8845, creating a petition and order for continued custody, care, and habilitation. More specifically, 18 V.S.A. § 8845 states that prior to the expiration of a commitment order pursuant to Title 13, the Commissioner may seek continued commitment in the Family Division of the Superior Court by filing a petition and that once filed the court shall hold a hearing within 14 days after the date of the petition's filing, which may be continued for good cause shown. Orders of continued commitment may be made up to one year in a designated program in the least restrictive environment. 18 V.S.A. § 8846 authorizes a person to initiate judicial review in the Family Division of the Superior Court or an administrative review any time after 90 days following a current commitment or continued commitment order, but not earlier than six months after the filing of a previous review under this section. 18 V.S.A. § 8847 addresses discharge from the Commissioner's custody and also authorizes a crime victim receiving notice of the alleged perpetrator's discharge from the Commissioner's custody to submit a victim impact statement to the Family Division of the Superior Court.

Sec. 27 authorizes the Department of Disabilities, Aging, and Independent Living to propose alternative options for a secure community-based residence to treat individuals who have been charged with a crime and found incompetent to stand trial or adjudicated not guilty by reason of insanity, who are in the Commissioner's custody, and who require a more secure level of care than is currently available.

Lastly, Sec. 28 directs the Agency of Human Services to submit a report to the General Assembly that provides a fiscal estimate for the implementation of a competency restoration program operated or under contract with the Department of Mental Health.

Effective Date: July 1, 2024