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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

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

* * * Purpose * * *

Sec. 1. PURPOSE

It is the purpose of this act to:

(1) enable the Commissioner of Mental Health to seek treatment for individuals at a secure residential recovery facility, regardless of a previous order of hospitalization, and at a psychiatric residential treatment facility for youth, without precluding the future development of a forensic facility;

(2) update the civil commitment procedures for individuals with intellectual disabilities; and

(3) authorize the Department of Disabilities, Aging, and Independent Living to propose alternative options for a secure community-based residence or residences 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, without precluding the future development of a forensic facility.

1 * * * Involuntary Commitment of Individuals with Mental Illness * * *

2 Sec. 2. 13 V.S.A. § 4822 is amended to read:

3 § 4822. FINDINGS AND ORDER; PERSONS WITH A MENTAL ILLNESS

4 (a) If the court finds that the person is a person in need of treatment or a
5 patient in need of further treatment as defined in 18 V.S.A. § 7101, the court
6 shall issue an order of commitment directed to the Commissioner of Mental
7 Health that shall admit the person to the care and custody of the Department of
8 Mental Health for ~~an indeterminate~~ a period of 90 days. In any case involving
9 personal injury or threat of personal injury, the committing court may issue an
10 order requiring a court hearing before a person committed under this section
11 may be discharged from custody.

12 * * *

13 (c)(1) Notwithstanding the provisions of subsection (b) of this section, at
14 least 10 days prior to the proposed discharge of any person committed under
15 this section, the Commissioner of Mental Health shall give notice of the
16 discharge to the committing court and State’s Attorney of the county where
17 the prosecution originated. In all cases requiring a hearing prior to discharge
18 of a person found incompetent to stand trial under section 4817 of this title, the
19 hearing shall be conducted by the committing court issuing the order under
20 that section. In all other cases, when the committing court orders a hearing
21 under subsection (a) of this section or when, in the discretion of the

1 Commissioner of Mental Health, a hearing should be held prior to the
2 discharge, the hearing shall be held in the Family Division of the Superior
3 Court to determine if the committed person is no longer a person in need of
4 treatment or a patient in need of further treatment as set forth in subsection (a)
5 of this section. Notice of the hearing shall be given to the Commissioner, the
6 State's Attorney of the county where the prosecution originated, the
7 committed person, and the person's attorney. Prior to the hearing, the State's
8 Attorney may enter an appearance in the proceedings and may request
9 examination of the patient by an independent psychiatrist, who may testify at
10 the hearing.

11 (2)(A) This subdivision (2) shall apply when a person is committed to
12 the care and custody of the Commissioner of Mental Health under this section
13 after having been found:

14 (i) not guilty by reason of insanity; or

15 (ii) incompetent to stand trial, provided that the person's criminal
16 case has not been dismissed.

17 (B)(i) When a person has been committed under this section, the
18 Commissioner shall provide notice to the State's Attorney of the county where
19 the prosecution originated or to the Office of the Attorney General if that
20 office prosecuted the case:

21 (I) at least 10 days prior to discharging the person from:

- 1 (aa) the care and custody of the Commissioner; or
- 2 (bb) a hospital or a secure residential recovery facility to the
- 3 community on an order of nonhospitalization pursuant to 18 V.S.A. § 7618;
- 4 (II) at least 10 days prior to the expiration of a commitment
- 5 order issued under this section if the Commissioner does not seek continued
- 6 treatment; or
- 7 (III) any time that the person elopes from the custody of the
- 8 Commissioner.
- 9 (ii) When the State’s Attorney or Attorney General receives
- 10 notice under subdivision (i) of this subdivision (B), the Office shall provide
- 11 notice of the action to any victim of the offense for which the person has been
- 12 charged who has not opted out of receiving notice. A victim receiving notice
- 13 pursuant to this subdivision (ii) has the right to submit a victim impact
- 14 statement to the Family Division of the Superior Court in writing or through
- 15 the State’s Attorney or Attorney General’s office.
- 16 (iii) As used in this subdivision (B), “victim” has the same
- 17 meaning as in section 5301 of this title.

18 * * *

1 Sec. 3. 18 V.S.A. § 7101 is amended to read:

2 § 7101. DEFINITIONS

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

5 * * *

6 (31) “Department” means the Department of Mental Health.

7 (32) “Psychiatric residential treatment facility for youth” means a non-
8 hospital inpatient facility that serves individuals between 12 and 21 years of
9 age with complex mental health conditions under the direction of a physician.

10 (33) “Secure residential recovery facility” means a residential facility,
11 licensed as a therapeutic community residence as defined in 33 V.S.A.
12 § 7102(11), for an individual in need of treatment within a secure setting for
13 an extended period of time. “Secure,” when describing a secure residential
14 recovery facility, means that the residents can be physically prevented from
15 leaving the facility by means of locking devices or other mechanical or
16 physical mechanisms.

17 Sec. 4. 18 V.S.A. § 7253 is amended to read:

18 § 7253. CLINICAL RESOURCE MANAGEMENT AND OVERSIGHT

19 The Commissioner of Mental Health, in consultation with health care
20 providers as defined in section 9432 of this title, including designated
21 hospitals, designated agencies, individuals with mental conditions or

1 psychiatric disabilities, and other stakeholders, shall design and implement a
2 clinical resource management system that ensures the highest quality of care
3 and facilitates long-term, sustained recovery for individuals in the custody of
4 the Commissioner.

5 (1) For the purpose of coordinating the movement of individuals across
6 the continuum of care to the most appropriate services, the clinical resource
7 management system shall:

8 * * *

9 (J) Ensure that individuals under the custody of the Commissioner
10 being served in ~~a designated hospital~~ hospital, an intensive residential
11 recovery facilities facility, a psychiatric residential treatment facility for youth,
12 and ~~the~~ a secure residential recovery facility shall have access to a mental
13 health patient representative. The patient representative shall advocate for
14 persons receiving services and shall also foster communication between
15 persons receiving services and health care providers. The Department of
16 Mental Health shall contract with an independent, peer-run organization to
17 staff the full-time equivalent of a representative of persons receiving services.

18 * * *

1 Sec. 5. 18 V.S.A. § 7255 is amended to read:

2 § 7255. SYSTEM OF CARE

3 The Commissioner of Mental Health shall coordinate a geographically
4 diverse system and continuum of mental health care throughout the State that
5 shall include at least the following:

6 (1) comprehensive and coordinated community services, including
7 prevention, to serve children, families, and adults at all stages of mental
8 condition or psychiatric disability;

9 (2) peer services, which may include:

10 (A) a warm line;

11 (B) peer-provided transportation services;

12 (C) peer-supported crisis services; and

13 (D) peer-supported hospital diversion services;

14 (3) alternative treatment options for individuals seeking to avoid or
15 reduce reliance on medications;

16 (4) recovery-oriented housing programs;

17 (5) intensive residential recovery facilities;

18 (6) appropriate and adequate psychiatric inpatient capacity for voluntary
19 patients;

1 (7) appropriate and adequate psychiatric inpatient capacity for
2 involuntary inpatient treatment services, including persons receiving treatment
3 through court order from a civil or criminal court; ~~and~~

4 (8) a secure residential recovery facility; and

5 (9) a psychiatric residential treatment facility for youth.

6 Sec. 6. 18 V.S.A. § 7256 is amended to read:

7 § 7256. REPORTING REQUIREMENTS

8 Notwithstanding 2 V.S.A. § 20(d), the Department of Mental Health shall
9 report annually on or before January 15 to the Senate Committee on Health
10 and Welfare and the House Committee on ~~Human Services~~ Health Care
11 regarding the extent to which individuals with a mental health condition or
12 psychiatric disability receive care in the most integrated and least restrictive
13 setting available. The Department shall consider measures from a variety of
14 sources, including the Joint Commission, the National Quality Forum, the
15 Centers for Medicare and Medicaid Services, the National Institute of Mental
16 Health, and the Substance Abuse and Mental Health Services Administration.
17 The report shall address:

18 (1) use of services across the continuum of mental health services;

19 (2) adequacy of the capacity at each level of care across the continuum
20 of mental health services;

21 (3) individual experience of care and satisfaction;

- 1 (4) individual recovery in terms of clinical, social, and legal results;
- 2 (5) performance of the State's mental health system of care as compared
3 to nationally recognized standards of excellence;
- 4 (6) ways in which patient autonomy and self-determination are
5 maximized within the context of involuntary treatment and medication;
- 6 (7) the number of petitions for involuntary medication filed by the State
7 pursuant to section 7624 of this title and the outcome in each case;
- 8 (8) barriers to discharge from mental health inpatient
9 and secure residential levels of care, including recommendations on how to
10 address those barriers;
- 11 (9) performance measures that demonstrate results and other data on
12 individuals for whom petitions for involuntary medication are filed; and
- 13 ~~(8)~~(10) progress on alternative treatment options across the system of
14 care for individuals seeking to avoid or reduce reliance on medications,
15 including supported withdrawal from medications.

16 Sec. 7. 18 V.S.A. § 7257 is amended to read:

17 § 7257. REPORTABLE ADVERSE EVENTS

- 18 (a) An acute inpatient hospital, an intensive residential recovery facility, a
19 designated agency, a psychiatric residential treatment facility for youth, or a
20 secure residential recovery facility shall report to the Department of Mental
21 Health instances of death or serious bodily injury to individuals with a mental

1 condition or psychiatric disability in the custody or temporary custody of the
2 Commissioner.

3 * * *

4 Sec. 7a. 18 V.S.A. § 7259 is amended to read:

5 § 7259. MENTAL HEALTH CARE OMBUDSMAN

6 * * *

7 (d) The Department of Mental Health shall provide any reportable adverse
8 events reported pursuant to section 7257 of this title and a copy of the
9 certificate of need for all emergency involuntary procedures performed on a
10 person in the custody or temporary custody of the Commissioner to the Office
11 of the Mental Health Care Ombudsman on a monthly basis.

12 Sec. 8. 18 V.S.A. § 7260 is added to read:

13 § 7260. PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY FOR
14 YOUTH

15 (a) A person or governmental entity shall not establish, maintain, or
16 operate a psychiatric residential treatment facility for youth without first
17 obtaining a license from the Department of Health in accordance with this
18 section.

19 (b) Upon receipt of the application for a license, the Department of Health
20 shall issue a license if it determines that the applicant and the proposed

1 psychiatric residential treatment facility for youth meet the following
2 minimum standards:

3 (1) The applicant shall be a nonprofit entity that demonstrates the
4 capacity to operate a psychiatric residential treatment facility for youth in
5 accordance with rules adopted by the Department of Health and in a manner
6 that ensures person-centered care and resident dignity.

7 (2) The applicant shall maintain certification from the Centers for
8 Medicare and Medicaid Services under 42 C.F.R. §§ 441.151–182.

9 (3) The applicant shall maintain accreditation by the Joint Commission
10 or other accrediting organization with comparable standards recognized by the
11 Commissioner of Mental Health.

12 (4) The applicant shall fully comply with standards for health, safety,
13 and sanitation as required by State law, including standards set forth by the
14 State Fire Marshal and the Department of Health, and municipal ordinance.

15 (5) Residents admitted to a psychiatric residential treatment facility for
16 youth shall be under the care of physician licensed pursuant to 26 V.S.A.
17 chapter 23 or 33.

18 (6) The psychiatric residential treatment facility for youth, including the
19 buildings and grounds, shall be subject to inspection by the Department of
20 Disabilities, Aging, and Independent Living, its designees, and other
21 authorized entities at all times.

1 (7) The applicant shall have a clear process for responding to resident
2 complaints, including:

3 (A) the designation of patient representative pursuant to section 7352
4 of this title;

5 (B) a method by which each patient shall be made aware of the
6 compliant procedure;

7 (C) an appeals mechanism within a psychiatric residential treatment
8 facility for youth;

9 (D) a published time frame for processing and resolving complaints
10 and appeals within a psychiatric residential treatment facility for youth; and

11 (E) periodic reporting to the Department of Health of the nature of
12 complaints filed and action taken.

13 (c) A license is not transferable or assignable and shall be issued only for
14 the premises named in the application.

15 (d) Once licensed, a psychiatric residential treatment facility for youth
16 shall be among the placement options for individuals committed to the custody
17 of the Commissioner under an order of nonhospitalization.

18 (e) The Department of Health shall adopt rules pursuant to 3 V.S.A.
19 chapter 25 to carry out the purposes of this section. Rules pertaining to
20 emergency involuntary procedures shall:

1 (1) be identical to those rules adopted by the Department of Mental
2 Health governing the use of emergency involuntary procedures in psychiatric
3 inpatient units;

4 (2) require that a certificate of need for all emergency involuntary
5 procedures performed at the psychiatric residential treatment facility for youth
6 be submitted to the Department and the Mental Health Care Ombudsman in
7 the same manner and time frame as required for hospitals; and

8 (3) require that data regarding the use of emergency involuntary
9 procedures be submitted in accordance with the requirements of the
10 Department.

11 (f) The Department of Health, after notice and opportunity for a hearing to
12 the applicant or licensee, is authorized to deny, suspend, or revoke a license in
13 any case in which it finds that there has been a substantial failure to comply
14 with the requirements established under this section. The notice shall be
15 served by registered mail or by personal service setting forth the reasons for
16 the proposed action and fixing a date not less than 60 days from the date of the
17 mailing or service, at which the applicant or licensee shall be given an
18 opportunity for a hearing. After the hearing, or upon default of the applicant
19 of licensee, the Department of Health shall file its findings of fact and
20 conclusions of law. A copy of the findings and decision shall be sent by
21 registered mail or served personally upon the applicant or licensee. The

1 procedure governing hearings authorized by the section shall be in accordance
2 with the usual and customary rules for hearing.

3 Sec. 9. 18 V.S.A. § 7503 is amended to read:

4 § 7503. APPLICATION FOR VOLUNTARY ADMISSION

5 (a) Any person 14 years of age or over may apply for voluntary admission
6 to a designated hospital or psychiatric residential treatment facility for youth
7 for examination and treatment.

8 (b) Before the person may be admitted as a voluntary patient, the person
9 shall give consent in writing on a form adopted by the Department. The
10 consent shall include a representation that:

11 (1) the person understands that treatment will involve inpatient status or
12 residence at a psychiatric residential treatment facility for youth;

13 (2) the person desires to be admitted to ~~the~~ a hospital or a psychiatric
14 residential treatment facility for youth, respectively;

15 (3) the person consents to admission voluntarily, without any coercion
16 or duress; and

17 (4) the person understands that inpatient treatment or residence at a
18 psychiatric residential treatment facility for youth may be on a locked unit, and
19 a requested discharge may be deferred if the treating physician determines that
20 the person is a person in need of treatment pursuant to section 7101 of this
21 title.

1 (c) If the person is under 14 years of age, ~~he or she~~ the person may be
2 admitted as a voluntary patient if ~~he or she~~ the person consents to admission,
3 as provided in subsection (b) of this section, and if a parent or guardian makes
4 written application.

5 Sec. 9a. 18 V.S.A. § 7509 is amended to read:

6 § 7509. TREATMENT; RIGHT OF ACCESS

7 (a) Upon admission to ~~the a~~ a hospital, secure residential recovery facility, or
8 psychiatric residential treatment facility for youth pursuant to section 7503,
9 7508, 7617, or 7624 of this title, the person shall be treated with dignity and
10 respect and shall be given such medical and psychiatric treatment as is
11 indicated.

12 * * *

13 (c) The person shall be requested to furnish the names of persons ~~he or she~~
14 that the person may want notified of ~~his or her~~ the person's hospitalization or
15 residence and kept informed of ~~his or her~~ the person's status. The head of the
16 hospital shall see that such persons are notified of the status of the ~~patient~~
17 person, how ~~he or she~~ the person may be contacted and visited, and how they
18 may obtain information concerning ~~him or her~~ the person.

1 Sec. 9b. 18 V.S.A. § 7511 is amended to read:

2 § 7511. TRANSPORTATION

3 (a) The Commissioner shall ensure that all reasonable and appropriate
4 measures consistent with public safety are made to transport or escort a person
5 subject to this chapter to and from any ~~inpatient setting~~ hospital, secure
6 residential recovery facility, or psychiatric residential treatment facility for
7 youth under the jurisdiction of the Commissioner in any manner that:

8 (1) prevents physical and psychological trauma;

9 (2) respects the privacy of the individual; and

10 (3) represents the least restrictive means necessary for the safety of the
11 patient.

12 * * *

13 Sec. 10. 18 V.S.A. § 7612 is amended to read:

14 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

17 * * *

18 (d) The application shall contain:

19 (1) The name and address of the applicant.

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

4 (e) The application shall be accompanied by:

5 (1) a certificate of a licensed physician, which shall be executed under
6 penalty of perjury stating that the physician has examined the proposed patient
7 within five days after the date the petition is filed and is of the opinion that the
8 proposed patient is a person in need of treatment, including the current and
9 relevant facts and circumstances upon which the physician's opinion is based;
10 or

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

13 (f) Before an examining physician completes the certificate of
14 examination, ~~he or she~~ the examining physician shall consider available
15 alternative forms of care and treatment that might be adequate to provide for
16 the person's needs without requiring hospitalization. The examining physician
17 shall document on the certificate the specific alternative forms of care and
18 treatment that ~~he or she~~ the examining physician considered and why those
19 alternatives were deemed inappropriate, including information on the
20 availability of any appropriate alternatives.

1 (g) If the Commissioner seeks to have the patient receive treatment in a
2 secure residential recovery facility or a psychiatric residential treatment
3 facility for youth, the application for an order authorizing treatment shall
4 expressly state that such treatment is being sought. The application shall
5 contain, in addition to the statements required by subsections (d) and (e) of
6 this section, a statement setting forth the reasons for the Commissioner's
7 determination that clinically appropriate treatment for the patient's condition
8 can be provided safely only in a secure residential recovery facility or a
9 psychiatric residential treatment facility for youth, respectively.

10 Sec. 11. 18 V.S.A. § 7618 is amended to read:

11 § 7618. ORDER; NONHOSPITALIZATION

12 (a) If the court finds that a treatment program other than hospitalization is
13 adequate to meet the person's treatment needs, the court shall order the person
14 to receive whatever treatment other than hospitalization is appropriate for a
15 period of 90 days. If the treatment plan proposed by the Commissioner is for a
16 secure residential recovery facility or a psychiatric residential treatment
17 facility for youth, the court may at any time, on its own motion or on a motion
18 of an interested party, review the need for treatment at the secure residential
19 recovery facility or the psychiatric residential treatment facility for youth,
20 respectively.

1 (b) If at any time during the specified period it comes to the attention of the
2 court either that the patient is not complying with the order or that the
3 alternative treatment has not been adequate to meet the patient's treatment
4 needs, the court may, after proper hearing:

5 (1) consider other alternatives, modify its original order, and direct the
6 patient to undergo another program of alternative treatment for the remainder
7 of the 90-day period; or

8 (2) enter a new order directing that the patient be hospitalized for the
9 remainder of the 90-day period.

10 Sec. 12. 18 V.S.A. § 7620 is amended to read:

11 § 7620. APPLICATION FOR CONTINUED TREATMENT

12 * * *

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

1 ~~(e) As used in this chapter:~~

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

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

11 Sec. 13. 18 V.S.A. § 7621 is amended to read:

12 § 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;

13 ORDERS

14 * * *

15 (c) If the court finds that the patient is a patient in need of further treatment
16 but does not require hospitalization, it shall order nonhospitalization for up to
17 one year. If the treatment plan proposed by the Commissioner for a patient in
18 need of further treatment includes admission to a secure residential recovery
19 facility or a psychiatric residential treatment facility for youth, the court may
20 at any time, on its own motion or on motion of an interested party, review the

1 need for treatment at the secure residential recovery facility or the psychiatric
2 residential treatment facility for youth, respectively.

3 * * *

4 Sec. 14. 18 V.S.A. § 7624 is amended to read:

5 § 7624. APPLICATION FOR INVOLUNTARY MEDICATION

6 (a) The Commissioner may commence an action for the involuntary
7 medication of a person who is refusing to accept psychiatric medication and
8 meets any one of the following ~~six~~ conditions:

9 (1) has been placed in the Commissioner's care and custody pursuant to
10 section 7619 of this title or subsection 7621(b) of this title;

11 (2) has previously received treatment under an order of hospitalization
12 and is currently under an order of nonhospitalization, ~~including a person on an~~
13 ~~order of nonhospitalization who resides in a secure residential recovery~~
14 ~~facility;~~

15 (3) has been committed to the custody of the Commissioner on an order
16 of nonhospitalization and has been placed at a secure residential recovery
17 facility;

18 (4) has been committed to the custody of the Commissioner of
19 Corrections as a convicted felon and is being held in a correctional facility that
20 is a designated facility pursuant to section 7628 of this title and for whom the
21 Departments of Corrections and of Mental Health have determined jointly that

1 involuntary medication would be appropriate pursuant to 28 V.S.A.

2 § 907(4)(H);

3 ~~(4)~~(5) has an application for involuntary treatment pending for which
4 the court has granted a motion to expedite pursuant to subdivision
5 7615(a)(2)(A)(i) of this title;

6 ~~(5)~~(6)(A) has an application for involuntary treatment pending;

7 (B) waives the right to a hearing on the application for involuntary
8 treatment until a later date; and

9 (C) agrees to proceed with an involuntary medication hearing
10 without a ruling on whether ~~he or she~~ the person is a person in need of
11 treatment; or

12 ~~(6)~~(7) has had an application for involuntary treatment pending pursuant
13 to subdivision 7615(a)(1) of this title for more than 26 days without a hearing
14 having occurred and the treating psychiatrist certifies, based on specific
15 behaviors and facts set forth in the certification, that in ~~his or her~~ the
16 psychiatrist's professional judgment there is good cause to believe that:

17 (A) additional time will not result in the person establishing a
18 therapeutic relationship with providers or regaining competence; and

19 (B) serious deterioration of the person's mental condition is
20 occurring.

1 (b)(1) Except as provided in subdivisions (2), ~~(3)(4)~~, and ~~(4)(5)~~ of this
2 subsection, an application for involuntary medication shall be filed in the
3 Family Division of the Superior Court in the county in which the person is
4 receiving treatment.

5 (2) If the application for involuntary medication is filed pursuant to
6 subdivision ~~(a)(4)~~ (a)(5) of this section:

7 (A) the application shall be filed in the county in which the
8 application for involuntary treatment is pending; and

9 (B) the court shall consolidate the application for involuntary
10 treatment with the application for involuntary medication and rule on the
11 application for involuntary treatment before ruling on the application for
12 involuntary medication.

13 (3) If the application for involuntary medication is filed pursuant to
14 subdivision ~~(a)(5)(6)~~ or ~~(a)(6)(7)~~ of this section, the application shall be filed
15 in the county in which the application for involuntary treatment is pending.

16 (4) Within 72 hours of the filing of an application for involuntary
17 medication pursuant to subdivision ~~(a)(6)(7)~~ of this section, the court shall
18 determine, based solely upon a review of the psychiatrist's certification and
19 any other filings, whether the requirements of that subdivision have been
20 established. If the court determines that the requirements of subdivision
21 ~~(a)(6)(7)~~ of this section have been established, the court shall consolidate the

1 application for involuntary treatment with the application for involuntary
2 medication and hear both applications within 10 days after the date that the
3 application for involuntary medication is filed. The court shall rule on the
4 application for involuntary treatment before ruling on the application for
5 involuntary medication. Subsection 7615(b) of this title shall apply to
6 applications consolidated pursuant to this subdivision.

7 * * *

8 Sec. 15. 18 V.S.A. § 7628 is amended to read:

9 § 7628. PROTOCOL

10 The Department of Mental Health shall develop and adopt by rule a strict
11 protocol to ensure the health, safety, dignity, and respect of patients subject to
12 administration of involuntary psychiatric medications in any designated
13 hospital or secure residential recovery facility. This protocol shall be followed
14 by all designated hospitals and secure residential recovery facilities
15 administering involuntary psychiatric medications.

16 Sec. 15a. 18 V.S.A. § 7701 is amended to read:

17 § 7701. NOTICE OF RIGHTS

18 ~~The head of a~~ A hospital, secure residential recovery facility, and
19 psychiatric residential treatment facility for youth shall provide reasonable
20 means and arrangements, including the posting of excerpts from relevant
21 statutes, for informing patients of their right to discharge and other rights and

1 for assisting them in making and presenting requests for discharge or for
2 application to have the patient's status changed from involuntary to voluntary.

3 Sec. 16. 18 V.S.A. § 7703 is amended to read:

4 § 7703. TREATMENT

5 * * *

6 (b) The Department shall establish minimum standards for adequate
7 treatment as provided in this section, including requirements that, when
8 possible, psychiatric unit staff be used as the primary source to implement
9 emergency involuntary procedures such as seclusion and restraint. The
10 Department shall oversee and collect information and report on data regarding
11 the use of emergency involuntary procedures for patients admitted to a
12 psychiatric unit, a secure residential recovery facility, or a psychiatric
13 residential treatment facility for youth, regardless of whether the patient is
14 under the care and custody of the Commissioner.

15 * * * Policies Applicable to the Secure Residential Recovery Facility * * *

16 Sec. 17. RULEMAKING; SECURE RESIDENTIAL RECOVERY
17 FACILITY

18 On or before August 1, 2024, the Commissioner of Disabilities, Aging, and
19 Independent Living, in consultation with the Commissioner of Mental Health,
20 shall file permanent proposed rule amendments with the Secretary of State
21 pursuant to 3 V.S.A. § 836(a)(2) to the Department of Disabilities, Aging, and

1 Independent Living, Licensing and Operating Regulations for Therapeutic
2 Community Residences (CVR 13-110-12) for the purpose of amending the
3 secure residential recovery facility section of the rule. Prior to the permanent
4 rules taking effect, the Department shall adopt similar emergency rules that
5 shall be deemed to have met the standard for emergency rulemaking in
6 3 V.S.A. § 844. Both the permanent and emergency rules shall:

7 (1) authorize the use of emergency involuntary procedures at a secure
8 residential recovery facility in a manner identical to that required in rules
9 adopted by the Department of Mental Health governing the use of emergency
10 involuntary procedures in psychiatric inpatient units;

11 (2) require that a certificate of need for all emergency involuntary
12 procedures performed at a secure residential recovery facility be submitted to
13 the Department and the Mental Health Care Ombudsman in the same manner
14 and time frame as required for hospitals; and

15 (3) authorize the administration of involuntary medication at a secure
16 residential recovery facility in a manner identical to that required in rules
17 adopted by the Department of Mental Health governing the use of the
18 administration of involuntary medication in psychiatric inpatient units.

1 Sec. 17a. JUDICIAL REVIEW; RESIDENTS OF SECURE RESIDENTIAL
2 RECOVERY FACILITY

3 Between July 1, 2024 and July 1, 2025, an individual who has been
4 committed to the custody of the Commissioner at the secure residential
5 recovery facility continuously since June 30, 2024 or earlier may apply to the
6 Family Division of the Superior Court for a review as to whether the secure
7 residential recovery facility continues to be the most appropriate and least
8 restrictive setting necessary to serve the individual.

9 Sec. 18. 2021 Acts and Resolves No. 50, Sec. 3(c) is amended to read:

10 (c) The amount appropriated in subdivision (a)(1) of this section shall be
11 used to construct a 16-bed Secure Residential Recovery Facility on Parcel
12 ID# 200-5-003-001 as designated on the Town of Essex’s Tax Parcel Maps for
13 transitional support for individuals who are being discharged from inpatient
14 psychiatric care. Through interior fit-up, versus building redesign, the 16-bed
15 facility shall include two eight-bed wings designed with the capability to allow
16 for separation of one wing from the main section of the facility, if necessary.
17 Both wings shall be served by common clinical and activity spaces. ~~Neither~~
18 ~~wing shall include a locked seclusion area, and the facility shall not use~~
19 ~~emergency involuntary procedures.~~ Outdoor space shall be adequate for
20 exercise and other activities but not less than 10,000 square feet.

1 Sec. 19. CERTIFICATE OF NEED

2 Notwithstanding the requirements of 18 V.S.A. chapter 221, subchapter 5,
3 or any prior certificates of need issued pursuant to that subchapter, the secure
4 residential recovery facility shall be authorized to:

5 (1) use emergency involuntary procedures; and

6 (2) accept patients under an initial commitment order.

7 Sec. 20. REPEAL; INVOLUNTARY MEDICATION REPORT

8 1998 Acts and Resolves No. 114, Sec. 5 (report) is repealed on July 1,
9 2024.

10 * * * Persons in Need of Custody, Care, and Habilitation or Continued
11 Custody, Care, and Habilitation * * *

12 Sec. 21. 13 V.S.A. § 4814 is amended to read:

13 § 4814. ORDER FOR EXAMINATION OF COMPETENCY

14 * * *

15 (d) Notwithstanding any other provision of law, an examination ordered
16 pursuant to subsection (a) of this section may be conducted by a doctoral-level
17 psychologist trained in forensic psychology and licensed under 26 V.S.A.
18 chapter 55. ~~This subsection shall be repealed on July 1, 2024.~~

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Sec. 22. 13 V.S.A. § 4816 is amended to read:

§ 4816. SCOPE OF EXAMINATION; REPORT; EVIDENCE

* * *

(b) A competency evaluation for an individual thought to have a developmental disability shall ~~include~~ be a current evaluation by a doctoral-level psychologist trained in forensic psychology and skilled in assessing individuals with developmental disabilities.

* * *

Sec. 23. 13 V.S.A. § 4817 is amended to read:

§ 4817. COMPETENCY TO STAND TRIAL; DETERMINATION

* * *

(c) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in the person's behalf, or the State, at any time before final judgment, raises before the court before which such person is tried or is to be tried, the issue of whether such person is incompetent to stand trial, or if the court has reason to believe that such person may not be competent to stand trial, a hearing shall be held before such court at which evidence shall be received and a finding made regarding the person's competency to stand trial. However, in cases where the court has reason to believe that such person may be incompetent to stand trial due to a mental

1 disease or mental defect, such hearing shall not be held until an examination
2 has been made and a report submitted by an examining psychiatrist or
3 psychologist in accordance with sections 4814–4816 of this title.

4 * * *

5 Sec. 24. 13 V.S.A. § 4820 is amended to read:

6 § 4820. HEARING REGARDING COMMITMENT

7 (a)(1) When a person charged on information, complaint, or indictment
8 with a criminal offense:

9 (1) ~~(1) [Repealed.]~~

10 (2)(A) is found upon hearing pursuant to section 4817 of this title to be
11 incompetent to stand trial due to a mental disease or mental defect;

12 (3)(B) is not indicted upon hearing by grand jury by reason of insanity
13 at the time of the alleged offense, duly certified to the court; or

14 (4)(C) upon trial by court or jury is acquitted by reason of insanity at the
15 time of the alleged offense;

16 (2) ~~the~~ The court before which such person is tried or is to be tried for
17 such offense, shall hold a hearing for the purpose of determining whether such
18 person should be committed to the custody of the Commissioner of Mental
19 Health or Commissioner of Disabilities, Aging, and Independent Living, as
20 appropriate. Such person may be confined in jail or some other suitable place
21 by order of the court pending hearing for a period not exceeding 21 days.

1 (b) When a person is found to be incompetent to stand trial, has not been
2 indicted by reason of insanity for the alleged offense, or has been acquitted by
3 reason of insanity at the time of the alleged offense, the person shall be
4 entitled to have counsel appointed from Vermont Legal Aid to represent the
5 person. The Department of Mental Health and, if applicable, the Department
6 of Disabilities, Aging, and Independent Living shall be entitled to appear and
7 call witnesses at the proceeding.

8 (c) Notwithstanding any other provision of law, a commitment order issued
9 pursuant to this chapter shall not modify or vacate orders concerning
10 conditions of release or bail issued pursuant to chapter 229 of this title, and the
11 commitment order shall remain in place unless expressly modified, provided
12 that inpatient treatment shall be permitted if a person who is held without bail
13 is found to be in need of inpatient treatment under this chapter.

14 Sec. 25. 13 V.S.A. § 4823 is amended to read:

15 § 4823. FINDINGS AND ORDER; PERSONS WITH AN INTELLECTUAL

16 DISABILITY

17 (a) If the court finds by clear and convincing evidence that such person is a
18 person in need of custody, care, and habilitation as defined in 18 V.S.A.
19 § 8839, the court shall issue an order of commitment for up to one year
20 directed to the Commissioner of Disabilities, Aging, and Independent Living
21 for placement in a designated program in the least restrictive environment

1 ~~consistent with the person's need for custody, care, and habilitation of such~~
2 ~~person for an indefinite or limited period in a designated program.~~

3 (b) Such order of commitment shall have the same force and effect as an
4 order issued under 18 V.S.A. ~~§ 8843~~ chapter 206, subchapter 3 and persons
5 committed under such an order shall have the same status, and the same rights,
6 including the right to receive care and habilitation, to be examined and
7 discharged, and to apply for and obtain judicial review of their cases, as
8 persons ordered committed under 18 V.S.A. ~~§ 8843~~ chapter 206, subchapter 3.

9 (c) ~~Section 4822 of this title shall apply to persons proposed for discharge~~
10 ~~under this section; however, judicial proceedings shall be conducted in the~~
11 ~~Criminal Division of the Superior Court in which the person then resides,~~
12 ~~unless the person resides out of State in which case the proceedings shall be~~
13 ~~conducted in the original committing court. [Repealed.]~~

14 Sec. 26. 18 V.S.A. chapter 206, subchapter 3 is amended to read:

15 Subchapter 3. Judicial Proceeding; Persons with an Intellectual Disability

16 Who Present a Danger of Harm to Others

17 § 8839. DEFINITIONS

18 As used in this subchapter:

19 (1) ~~“Danger of harm to others” means the person has inflicted or~~
20 ~~attempted to inflict serious bodily injury to another or has committed an act~~
21 ~~that would constitute a sexual assault or lewd or lascivious conduct with a~~

1 ~~child~~ “Commissioner” means the Commissioner of Disabilities, Aging, and
2 Independent Living.

3 (2) “Designated program” means a program designated by the
4 Commissioner as adequate to provide in an individual manner appropriate
5 custody, care, and habilitation to persons with intellectual disabilities receiving
6 services under this subchapter.

7 (3)(A) “Person in need of continued custody, care, and habilitation”
8 means a person:

9 (i) who was previously found to be a person in need of custody,
10 care, and habilitation;

11 (ii) who poses a danger of harm to others; and

12 (iii) for whom appropriate custody, care, and habilitation can be
13 provided by the Commissioner in a designated program.

14 (B) As used in this subdivision (3), a danger of harm to others shall
15 be shown by establishing that, in the time since the last order of commitment
16 was issued, the person:

17 (i) has inflicted or attempted to inflict serious bodily injury to
18 another or has committed an act that would constitute sexual conduct with a
19 child as defined in 13 V.S.A. § 2821 or lewd and lascivious conduct with a
20 child as provided in 13 V.S.A. § 2602 of this title; or

1 (ii) has exhibited behavior demonstrating that, absent treatment or
2 programming provided by the Commissioner, there is a substantial likelihood
3 that the person would inflict or attempt to inflict physical or sexual harm to
4 another.

5 (4) “Person in need of custody, care, and habilitation” means a person:

6 (A) ~~a person~~ with an intellectual disability, which means
7 significantly subaverage intellectual functioning existing concurrently with
8 deficits in adaptive behavior that were manifest before 18 years of age;

9 (B) who ~~presents a danger of harm to others~~ has inflicted or
10 attempted to inflict serious bodily injury to another or who has committed an
11 act that would constitute sexual conduct with a child as defined in 13 V.S.A.
12 § 2821 or lewd and lascivious conduct with a child as provided in 13 V.S.A.
13 § 2602; and

14 (C) for whom appropriate custody, care, and habilitation can be
15 provided by the Commissioner in a designated program.

16 (5) “Victim” has the same meaning as in 13 V.S.A. § 5301(4).

17 § 8840. ~~JURISDICTION AND VENUE~~

18 ~~Proceedings brought under this subchapter for commitment to the~~
19 ~~Commissioner for custody, care, and habilitation shall be commenced by~~
20 ~~petition in the Family Division of the Superior Court for the unit in which the~~
21 ~~respondent resides. [Repealed.]~~

1 § 8841. ~~PETITION; PROCEDURES~~

2 ~~The filing of the petition and procedures for initiating a hearing shall be as~~
3 ~~provided in sections 8822-8826 of this title. [Repealed.]~~

4 § 8842. ~~HEARING~~

5 ~~Hearings under this subchapter for commitment shall be conducted in~~
6 ~~accordance with section 8827 of this title. [Repealed.]~~

7 § 8843. ~~FINDINGS AND ORDER~~

8 ~~(a) In all cases, the court shall make specific findings of fact and state its~~
9 ~~conclusions of law.~~

10 ~~(b) If the court finds that the respondent is not a person in need of custody,~~
11 ~~care, and habilitation, it shall dismiss the petition.~~

12 ~~(c) If the court finds that the respondent is a person in need of custody,~~
13 ~~care, and habilitation, it shall order the respondent committed to the custody of~~
14 ~~the Commissioner for placement in a designated program in the least~~
15 ~~restrictive environment consistent with the respondent's need for custody,~~
16 ~~care, and habilitation for an indefinite or a limited period. [Repealed.]~~

17 § 8844. ~~LEGAL COMPETENCE~~

18 ~~No determination that a person is in need of custody, care, and habilitation~~
19 ~~or in need of continued custody, care, and habilitation and no order~~
20 ~~authorizing commitment shall lead to a presumption of legal incompetence.~~

1 § 8845. JUDICIAL REVIEW PETITION AND ORDER FOR CONTINUED
2 CUSTODY, CARE, AND HABILITATION

3 (a) ~~A person committed under this subchapter may be discharged from~~
4 ~~eustody by a Superior judge after judicial review as provided herein or by~~
5 ~~administrative order of the Commissioner.~~

6 (b) ~~Procedures for judicial review of persons committed under this~~
7 ~~subchapter shall be as provided in section 8834 of this title, except that~~
8 ~~proceedings shall be brought in the Criminal Division of the Superior Court in~~
9 ~~the unit in which the person resides or, if the person resides out of state, in the~~
10 ~~unit that issued the original commitment order.~~

11 (c) ~~A person committed under this subchapter shall be entitled to a judicial~~
12 ~~review annually. If no such review is requested by the person, it shall be~~
13 ~~initiated by the Commissioner. However, such person may initiate a judicial~~
14 ~~review under this subsection after 90 days after initial commitment but before~~
15 ~~the end of the first year of the commitment.~~

16 (d) ~~If at the completion of the hearing and consideration of the record, the~~
17 ~~court finds at the time of the hearing that the person is still in need of custody,~~
18 ~~care, and habilitation, commitment shall continue for an indefinite or limited~~
19 ~~period. If the court finds at the time of the hearing that the person is no longer~~
20 ~~in need of custody, care, and habilitation, it shall discharge the person from the~~

1 ~~custody of the Commissioner. An order of discharge may be conditional or~~
2 ~~absolute and may have immediate or delayed effect.~~

3 (1) If, prior to the expiration of any previous commitment order issued
4 in accordance with 13 V.S.A. § 4823 or this subchapter, the Commissioner
5 believes that the person is a person in need of continued custody, care, and
6 habilitation, the Commissioner shall seek continued custody, care, and
7 habilitation in the Family Division of the Superior Court. The Commissioner
8 shall, by filing a written petition, commence proceedings for the continued
9 custody, care, and habilitation of a person. The petition shall state the current
10 and relevant facts upon which the person's alleged need for continued custody,
11 care, and habilitation is predicated.

12 (2) Any commitment order for custody, care, and habilitation or
13 continued custody, care, and habilitation issued in accordance with 13 V.S.A.
14 § 4823 or this subchapter shall remain in force pending the court's decision on
15 the petition.

16 (b) Upon receipt of the petition for the continued custody, care, and
17 habilitation, the court shall hold a hearing within 14 days after the date of
18 filing. The hearing may be continued for good cause shown.

19 (c) If the court finds by clear and convincing evidence at the time of the
20 hearing that the person is a person in need of continued custody, care, and
21 habilitation, it shall issue an order of commitment for up to one year in a

1 designated program in the least restrictive environment consistent with the
2 person's need for continued custody, care, and habilitation. If the court finds
3 at the time of the hearing that the person is no longer in need of continued
4 custody, care, and habilitation, it shall discharge the person from the custody
5 of the Commissioner in accordance with section 8847 of this subchapter. In
6 determining whether a person is a person in need of continued custody, care,
7 and habilitation, the court shall consider the degree to which the person has
8 previously engaged in or complied with the treatment and programming
9 provided by the Commissioner.

10 § 8846. RIGHT TO INITIATE REVIEW

11 A person may initiate a judicial review in the Family Division of the
12 Superior Court or an administrative review under this subchapter at any time
13 after 90 days following a current order of commitment or continued
14 commitment and not earlier than six months after the filing of a previous
15 application under this section. If the court or Commissioner finds that the
16 person is not a person in need of custody, care, and habilitation or continued
17 custody, care, and habilitation, the person shall be discharged from the custody
18 of the Commissioner pursuant to section 8847 of this subchapter.

19 § 8847. DISCHARGE FROM COMMITMENT

20 (a) A person committed under 13 V.S.A. § 4823 or this subchapter may be
21 discharged as follows:

1 (1) by a Family Division Superior Court judge after review of an order
2 of custody, care, and habilitation or an order of continued custody, care, and
3 habilitation if the court finds that a person is not a person in need of custody,
4 care, and habilitation or continued custody, care, and habilitation, respectively;
5 or

6 (2) by administrative order of the Commissioner regarding an order of
7 custody, care, and habilitation or an order of continued custody, care, and
8 habilitation if the Commissioner determines that a person is no longer a person
9 in need of custody, care, and habilitation or continued custody, care, and
10 habilitation, respectively.

11 (b) A judicial or administrative order of discharge may be conditional or
12 absolute.

13 (c)(1) When a person is under an order of commitment pursuant to
14 13 V.S.A. § 4823 or continued commitment pursuant to this subchapter, the
15 Commissioner shall provide notice to the State's Attorney of the county where
16 the prosecution originated or to the Office of the Attorney General if that
17 Office prosecuted the case:

18 (A) at least 10 days prior to discharging a person from commitment
19 or continued commitment;

1 (B) at least 10 days prior to the expiration of a commitment or
2 continued commitment order if the Commissioner does not seek an order of
3 continued custody, care, and habilitation; or

4 (C) any time that the person elopes from custody of the
5 Commissioner and cannot be located, and there is reason to believe the person
6 may be lost or poses a risk of harm to others.

7 (2) When the State's Attorney or Attorney General receives notice
8 under subdivision (1) of this subsection, the Office shall provide notice of the
9 action to any victim of the offense for which the person has been charged who
10 has not opted out of receiving notice. A victim receiving notice pursuant to
11 this subdivision has the right to submit a victim impact statement to the Family
12 Division of the Superior Court in writing or through the State's Attorney's or
13 Attorney General's Office.

14 (d) Whenever a person is subject to a judicial or administrative discharge
15 from commitment, the Criminal Division of the Superior Court shall retain
16 jurisdiction over the person's underlying charge and any orders holding the
17 person without bail or concerning bail, and conditions of release shall remain
18 in place. Those orders shall be placed on hold while a person is in the
19 custody, care, and habilitation or continued custody, care, and habilitation of
20 the Commissioner. When a person is discharged from the Commissioner's

1 custody, care, and habilitation to a correctional facility, the custody of the
2 Commissioner shall cease when the person enters the correctional facility.

3 § ~~8846~~ 8848. RIGHT TO COUNSEL

4 Persons subject to commitment ~~or judicial review under~~ continued
5 commitment, or self-initiated review pursuant to section 8846 of this
6 subchapter shall have a right to counsel as provided in section 7111 of this
7 title.

8 * * * Proposal for Enhanced Services * * *

9 Sec. 27. INDIVIDUALS WITH INTELLECTUAL DISABILITIES;

10 SECURE, COMMUNITY-BASED RESIDENCES

11 (a) The Department of Disabilities, Aging, and Independent Living shall
12 propose alternative options, including building and staffing cost estimates, for
13 a secure community-based residence or residences to treat individuals who
14 have been charged with a crime and found incompetent to stand trial or
15 adjudicated not guilty by reason of insanity, who are in the Commissioner's
16 custody, and who require a more secure level of care than is currently
17 available. The Commissioner shall ensure that a secure community-based
18 residence proposed under this section would provide appropriate custody, care,
19 and habilitation in a designated program that provides appropriate staffing and
20 services levels in the least restrictive setting. The alternative options shall be
21 developed in consultation with interested parties, including Disability Rights

1 Vermont, Vermont Legal Aid, Developmental Services State Program
2 Standing Committee, Vermont Care Partners, and Green Mountain Self
3 Advocates with final placement determinations made by the Commissioner.
4 The alternative options may be eligible for funding through the Global
5 Commitment Home- and Community-Based Services Waiver. Prior to
6 seeking funding for constructing, purchasing, or contracting for a secure
7 community-based residence for individuals in the Commissioner’s custody,
8 the Department shall propose to the House Committees on Human Services
9 and on Judiciary and the Senate Committees on Health and Welfare and on
10 Judiciary any necessary statutory modifications to uphold due process
11 requirements.

12 (b) As used in this section:

13 (1) “Designated program” has the same meaning as in 18 V.S.A.
14 § 8839.

15 (2) “Secure” means that residents may be physically prevented from
16 leaving the residence by means of locking devices or other mechanical or
17 physical mechanisms.

1 * * * Fiscal Estimate of Competency Restoration Program * * *

2 Sec. 28. REPORT; COMPETENCY RESTORATION PROGRAM; FISCAL
3 ESTIMATE

4 On or before November 1, 2024, the Agency of Human Services shall
5 submit a report to the House Committees on Appropriations, on Health Care,
6 and on Human Services and to the Senate Committees on Appropriations and
7 on Health and Welfare that provides a fiscal estimate for the implementation
8 of a competency restoration program operated or under contract with the
9 Department of Mental Health. The estimate shall include:

10 (1) whether and how to serve individuals with an intellectual disability
11 in a competency restoration program;

12 (2) varying options dependent upon which underlying charges are
13 eligible for court-ordered competency restoration; and

14 (3) costs associated with establishing a residential program where court-
15 ordered competency restoration programming may be performed on an
16 individual who is neither in the custody of the Commissioner of Mental Health
17 pursuant to 13 V.S.A. § 4822 nor in the custody of the Commissioner of
18 Disabilities, Aging, and Independent Living pursuant to 13 V.S.A. § 4823.

19 * * * Effective Date * * *

20 Sec. 29. EFFECTIVE DATE

21 This act shall take effect on July 1, 2024.