

1 H.400

2 Introduced by Representative Koch of Barre Town

3 Referred to Committee on

4 Date:

5 Subject: Health; mental health; judicial proceedings

6 Statement of purpose: This bill proposes to replace existing chapters of
7 Title 18 related to involuntary medication and treatment related to mental
8 health with a new chapter that requires a judicial proceeding prior to the use of
9 nonemergency involuntary medication and limits the duration of an order for
10 involuntary treatment to no more than one year.

11 An act relating to the repeal of chapters 179, 181, 183, and 185 of Title 18
12 and enactment of a new chapter 180, relating to hospitalization and
13 treatment of persons with mental illness

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

15 Sec. 1. 18 V.S.A. chapter 180 is added to read:

16 CHAPTER 180. HOSPITALIZATION AND TREATMENT OF
17 PERSONS WITH MENTAL ILLNESS

18 Subchapter 1. Admission to Hospital

19 § 7551. LEGISLATIVE INTENT

20 (a) It is the intention of the general assembly to recognize, in the absence of
21 an emergency, the right of a person who has capacity to make a medical

1 decision to determine whether or not to accept medical treatment, including
2 medication.

3 (b) This act protects this right through a judicial proceeding prior to the use
4 of nonemergency involuntary medication and by limiting the duration of an
5 order for involuntary treatment to no more than one year. The least restrictive
6 conditions consistent with the person's right to adequate treatment shall be
7 provided in all cases.

8 (c) It is the policy of the general assembly to work toward a mental health
9 system that does not require coercion or the use of involuntary medication.

10 § 7552. AUTHORITY TO RECEIVE PATIENTS

11 (a) A hospital which has been officially designated by the commissioner
12 may receive for observation, diagnosis, care, and treatment any individual
13 whose admission is sought on proper application, after examination and order
14 of admission by a physician with admitting privileges.

15 (b) A person admitted voluntarily or involuntarily to a designated hospital
16 shall be subject to the control and treatment of the head of the hospital, subject
17 to the provisions of this chapter, until his or her condition warrants release, or
18 until he or she has been lawfully removed or otherwise discharged.

19 (c) Informed consent for a voluntary admission shall include notice and
20 acknowledgement by the applicant for admission that a person found to be a

1 danger to self or others may be prevented by the hospital from a discharge
2 against medical advice consistent with section 7556 of this chapter.

3 § 7553. APPLICATION FOR VOLUNTARY ADMISSION

4 (a) Any person 14 years of age or over may apply for voluntary admission
5 to a designated hospital for examination and treatment and shall be admitted
6 upon examination and order of a physician with admitting privileges in that
7 hospital.

8 (b) Before the person may be admitted as a voluntary patient, he or she
9 shall consent to the admission in writing on a form adopted by the department.
10 The consent shall include a representation that the person understands that
11 treatment will involve inpatient status and that he or she desires to be admitted
12 to the hospital consents to admission voluntarily, without any coercion or
13 duress.

14 (c) A child under 14 years of age may be admitted as a voluntary patient as
15 provided in subsection (a) of this section, or if a parent or guardian makes
16 written application and gives consent as provided in subsection (b) of this
17 section. A child under 14 years of age who is admitted on the application and
18 consent of his or her parent or guardian is a voluntary patient. When a child
19 under 14 years of age is admitted pursuant to this subsection, the head of the
20 hospital shall cause the child to be reexamined promptly by a physician other
21 than the admitting physician to determine if hospitalization is appropriate. If

1 the physician determines that hospitalization is not appropriate, the child shall
2 be discharged to the custody of his or her parents or guardian, unless the
3 physician has reason to believe that the child is being abused or neglected, in
4 which case the child shall be held in the hospital until the head of the hospital
5 or designee can make appropriate contact with the department for children and
6 families.

7 § 7554. APPLICATION FOR EMERGENCY EXAMINATION

8 (a) A person may be admitted to a designated hospital for an emergency
9 examination to determine if he or she is a person in need of treatment upon
10 written application by an interested party accompanied by a certificate by a
11 licensed physician who is not the applicant. The application and certificate
12 shall set forth the facts and circumstances which constitute the need for an
13 emergency examination and which show that the person is a person in need of
14 treatment.

15 (b) The application and certificate shall be authority for transporting the
16 person to a designated hospital for an emergency examination, as provided in
17 section 7559 of this chapter.

18 (c) For the purposes of admission of an individual to a designated hospital
19 for care and treatment under this section, the head of a hospital may delegate
20 his or her authority under this section to a hospital administrator, supervisory

1 personnel, or a licensed physician on duty on the hospital premises, other than
2 the certifying physician under subsection (a) of this section.

3 § 7555. WARRANT FOR IMMEDIATE EXAMINATION

4 (a) In emergency circumstances where a certification by a physician is not
5 available without serious and unreasonable delay, and when personal
6 observation of the conduct of a person constitutes reasonable grounds to
7 believe that the person is a person in need of treatment, a law enforcement
8 officer or mental health professional may make an application, not
9 accompanied by a physician's certificate, to any probate or superior judge for a
10 warrant for an immediate examination.

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

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

19 (d) If necessary, the court may order the law enforcement officer or mental
20 health professional to transport the person to a designated hospital for an
21 immediate examination.

1 (e) Upon presentation at a designated hospital, the person shall be
2 immediately examined by a licensed physician. If the physician certifies that
3 the person is a person in need of treatment, the person shall be held for an
4 emergency examination in accordance with section 7556 of this chapter. If the
5 physician does not certify that the person is a person in need of treatment, the
6 person shall not be admitted and shall be returned to the place from which he
7 or she was taken, or to such place as the person reasonably directs.

8 § 7556. EMERGENCY EXAMINATION

9 (a) A person who is admitted to a designated hospital for an emergency
10 examination in accordance with section 7554 or 7555 of this chapter shall be
11 examined and certified by a psychiatrist as soon as practicable, but not later
12 than one working day after admission.

13 (b) If the person is admitted on an application and physician's certificate,
14 the examining psychiatrist shall not be the same physician who signed the
15 certificate.

16 (c) If the psychiatrist does not certify that the person is a person in need of
17 treatment, the person shall be immediately discharged and returned to the place
18 from which he or she was taken, or to such place as the person reasonably
19 directs.

1 (d) If the psychiatrist does certify that the person is a person in need of
2 treatment, the person's hospitalization may continue for an additional 72 hours,
3 at which time hospitalization shall terminate, unless within that period:

4 (1) the person has been accepted for voluntary admission under section
5 7553 of this chapter; or

6 (2) an application for involuntary admission is filed with the appropriate
7 court under section 7672 of this chapter, in which case the patient shall remain
8 hospitalized pending the court's decision on the application.

9 § 7557. TREATMENT; RIGHT OF ACCESS

10 (a) Upon admission to a hospital pursuant to this chapter, a patient shall be
11 treated with dignity and respect and shall be given such medical and
12 psychiatric treatment as the person may accept or as is ordered pursuant to the
13 provisions of this chapter.

14 (b) Every patient shall be given the opportunity, subject to reasonable
15 limitations, to communicate with others, including the reasonable use of a
16 telephone.

17 (c) Every patient shall be requested to furnish the names of persons he or
18 she may want notified of his or her hospitalization and kept informed of his or
19 her status. The head of the hospital shall see that such persons are notified of
20 the status of the patient, how he or she may be contacted and visited, and how
21 they may obtain information concerning the patient.

1 § 7558. PRELIMINARY HEARING

2 (a) No individual who is admitted to a hospital under subsection 7554(a) of
3 this chapter shall be held involuntarily without a preliminary hearing
4 establishing probable cause that the individual met the criteria of a person in
5 need of treatment, both at the time of admission and at the time of the hearing
6 and application for treatment filed under subdivision 7556(d)(2) of this
7 chapter.

8 (b) The individual has the right to be present and represented by legal
9 counsel at the preliminary hearing.

10 (c) If probable cause to believe that the individual was a person in need of
11 treatment at the time of his or her admission is established at the preliminary
12 hearing, the individual shall be ordered held for further proceedings in
13 accordance with the law. If probable cause is not established, the individual
14 shall be immediately discharged and returned to the place from which he or she
15 was taken, or to such place as the person may reasonably request.

16 § 7559. TRANSPORTATION

17 (a) The commissioner shall ensure that all reasonable and appropriate
18 measures consistent with public safety are made to transport or escort a person
19 subject to this chapter to and from any inpatient setting, including escorts
20 within a designated hospital or the Vermont state hospital, or otherwise being
21 transported under the jurisdiction of the commissioner in any manner which:

1 (1) prevents physical and psychological trauma;
2 (2) respects the privacy of the individual; and
3 (3) represents the least restrictive means necessary for the safety of the
4 patient.

5 (b) The commissioner shall have the authority to designate the
6 professionals who may authorize the method of transport of patients under the
7 commissioner's care and custody.

8 (c) When a professional designated pursuant to subsection (b) of this
9 section decides an individual is in need of secure transport with mechanical
10 restraints, the reasons for such determination shall be documented in writing.

11 (d) It is the policy of the state of Vermont that mechanical restraints are not
12 routinely used on persons subject to this chapter unless circumstances dictate
13 that such methods are necessary.

14 Subchapter 2. Orders of Hospitalization and Nonhospitalization
15 § 7571. INVOLUNTARY TREATMENT

16 No person may be made subject to involuntary treatment unless he or she is
17 found to be a person in need of treatment or a patient in need of further
18 treatment.

1 § 7572. APPLICATION FOR INVOLUNTARY TREATMENT

2 (a) An interested party may, by filing a written application under oath or
3 affirmation, commence proceedings for the involuntary treatment of an
4 individual by judicial process.

5 (b) The application shall be filed in the family division of the superior court
6 in the unit of the proposed patient's residence or, in the case of a nonresident,
7 in any family unit, except that if the application is filed under section 7556 or
8 7558 of this title, it may be filed in the family division of the superior court of
9 the unit in which the hospital is located.

10 (c) The application shall contain:

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

12 (2) A statement of the current and relevant facts upon which the
13 allegation of mental illness and need for treatment is based; and

14 (3) A statement that the relief sought in the application represents the
15 least restrictive treatment appropriate to the patient's condition.

16 (d) The application shall be accompanied by:

17 (1) A certificate of a licensed physician, which shall be executed under
18 oath or affirmation, setting forth the current and relevant facts and
19 circumstances upon which the physician's opinion is based, stating that he or
20 she has examined the proposed patient within five days of the date the petition

1 is filed and is of the opinion that the proposed patient is a person in need of
2 treatment; or

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

5 § 7573. NOTICE—APPOINTMENT OF COUNSEL

6 (a) Upon receipt of the application, the court shall set a date for the hearing
7 to be held within 20 days from the date of the receipt of the application. The
8 court on motion may extend the hearing date for good cause.

9 (b) When the application is filed, the court shall appoint counsel for the
10 proposed patient and transmit a copy of the application, the physician's
11 certificate, if any, and a notice of hearing to the proposed patient, the state's
12 attorney or the attorney general, and any other person the court proposed
13 patient, his or her attorney, guardian, or any person having custody and control
14 of believes has a concern for the proposed patient's welfare. A copy of the
15 notice of hearing shall also be transmitted to the applicant and certifying
16 physician.

17 (c) The notice of hearing transmitted to the patient and his or her attorney
18 shall be accompanied by a list of the proposed patient's rights at the hearing.

19 (d) If the court has reason to believe that notice to the proposed patient will
20 be likely to cause injury to the proposed patient or others, it shall direct the

1 proposed patient's counsel to give the proposed patient oral notice prior to
2 written notice under circumstances most likely to reduce likelihood of injury.

3 § 7574. PSYCHIATRIC EXAMINATION

4 As soon as practicable after notice of the commencement of proceedings is
5 given, the court shall order examination of the proposed patient by a
6 psychiatrist other than the physician making the original certification. The
7 examination and subsequent report or reports shall be paid for by the state of
8 Vermont. The psychiatrist shall report his or her findings to the court and to
9 all parties to whom the court has given notice of hearing on the application.
10 The report shall be confidential and shall be used only as permitted by the
11 court.

12 § 7575. HEARING

13 (a) The state shall appear and be represented by the state's attorney for the
14 county in which the hearing takes place or by the attorney general, at the
15 attorney general's discretion.

16 (b) The hearing shall be conducted according to the rules of evidence
17 applicable in family proceedings, and to the extent not inconsistent with this
18 part, the Rules of Civil Procedure.

19 (c) The applicant and the proposed patient shall have a right to appear at
20 the hearing to testify. The attorney for the state and the proposed patient shall
21 have the right to subpoena, present, and cross-examine witnesses, and present

1 oral arguments. The court may, at its discretion, receive the testimony of any
2 other person.

3 (d) The proposed patient may at his or her election attend the hearing,
4 subject to reasonable rules of conduct, and the court may exclude all persons
5 not necessary for the conduct of the hearing.

6 (e) The state or other applicant shall have the burden of proving its case by
7 clear and convincing evidence.

8 § 7576. FINDINGS; ORDER

9 (a) If the court finds that the proposed patient is not a person in need of
10 treatment at the time of the hearing, the court shall enter a finding to that effect
11 and shall dismiss the application.

12 (b) If the proposed patient is found to be a person in need of treatment at
13 the time of the hearing, the court may order the person:

14 (1) to be hospitalized in a designated hospital;

15 (2) to be hospitalized in any other public or private hospital if the patient
16 and the hospital agree; or

17 (3) to undergo a program of treatment other than hospitalization, if the
18 court finds that there exists an available program of treatment for the person
19 which is an appropriate alternative to hospitalization.

20 (c) Prior to ordering the hospitalization of a person, the court shall inquire
21 into the adequacy of treatment to be provided to the person by the hospital and

1 shall find affirmatively that the hospital in which the person is to be
2 hospitalized can provide the person with treatment which is appropriate to his
3 or her condition and represents the least restrictive environment in which
4 appropriate treatment can be provided.

5 (d) Preference among available hospitals shall be given to the hospital
6 which is located nearest to the person's residence, except when the person
7 requests otherwise or there are other compelling reasons for not following the
8 preference.

9 (e) Any initial order of hospitalization or nonhospitalization shall be for a
10 period not to exceed 90 days.

11 (f) All court orders of hospitalization, nonhospitalization, and continued
12 treatment shall be directed to the commissioner, or with the consent of the head
13 of a designated hospital, to that head of the hospital, and shall admit the patient
14 to his or her care and custody for the period specified.

15 § 7577. ORDER OF NONHOSPITALIZATION

16 (a) If the court finds that a treatment program other than hospitalization is
17 adequate to meet the person's treatment needs, the court shall order the person
18 to receive whatever treatment other than hospitalization is appropriate for a
19 period not to exceed 90 days.

20 (b) If at any time during the specified period it comes to the attention of the
21 court that the patient is not complying with the order or that the treatment

1 ordered has not been adequate to meet the patient's treatment needs, the court,
2 after proper hearing and consideration of alternative treatments, may:

3 (1) Modify its original order and direct the patient to undergo a different
4 program of alternative treatment for the remainder of the specified period;

5 (2) Enter a new order directing that the patient be hospitalized for the
6 remainder of the specified period; or

7 (3) Terminate its prior order.

8 § 7578. ORDER OF HOSPITALIZATION

9 If the court, after hearing, finds that the person is a person in need of
10 treatment and (a) there does not exist an available program of treatment for the
11 person which is an appropriate alternative to hospitalization, and (b) that the
12 hospital in which the person is to be hospitalized can provide the person with
13 treatment which is adequate and appropriate to his or her condition and
14 represents the least restrictive environment in which appropriate treatment can
15 be provided, the court shall order the person hospitalized for a period not to
16 exceed 90 days.

17 § 7579. APPLICATION FOR CONTINUED TREATMENT

18 (a) If, prior to the expiration of any order issued in accordance with section
19 7576 of this title, the commissioner or the head of a hospital in which a person
20 is hospitalized pursuant to such an order, believes that the condition of the
21 patient is such that the patient continues to require treatment, the commissioner

1 shall apply to the court for a determination that the patient is a patient in need
2 of further treatment and for an order of continued treatment.

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

8 (c) Any order of treatment issued in accordance with section 7576 of this
9 title shall remain in force pending the court's decision on the application.

10 (d) The hearing on the application for continued treatment shall be held in
11 accordance with the procedures set forth in sections 7573, 7574, 7755, and
12 7576 of this title.

13 (e) If the court finds that the patient remains a person in need of treatment
14 and requires hospitalization, the court shall order hospitalization for an
15 additional period not to exceed one year.

16 (f) If the court finds that the patient remains a patient in need of treatment
17 but does not require hospitalization, the court shall order nonhospitalization for
18 an additional period not to exceed one year.

19 (g) If at any time during the period of nonhospitalization ordered under
20 subsection (f) of this section, it comes to the attention of the court that the
21 person is not complying with the order or that the alternative treatment has not

1 been adequate to meet the patient's treatment needs, the court, after proper
2 hearing and consideration of alternative treatments, may:

3 (1) Modify its original order and direct the patient to undergo a different
4 program of alternative treatment for the remainder of the specified period;

5 (2) Enter a new order directing that the patient be hospitalized for the
6 remainder of the specified period; or

7 (3) Terminate its prior order.

8 (h) At any time that the court finds that the patient is not a person in need
9 of further treatment, it shall order the patient discharged.

10 (i) This section shall not be construed to prohibit the court from issuing
11 subsequent orders after a new application is filed pursuant to this section.

12 § 7580. EXPERT TESTIMONY

13 (a) An appropriately qualified mental health professional testifying at
14 hearings conducted under this part may give opinion testimony and,
15 notwithstanding 12 V.S.A. § 1612, describe any information which he or she
16 acquired in attending the patient.

17 (b) The facts or data in the particular case upon which an expert bases an
18 opinion or inference may be those perceived by or made known to the expert at
19 or before the hearing. The facts or data need not be admissible in evidence if
20 they are of a type reasonably relied upon by experts in the particular field in
21 forming opinions or inferences upon the subject.

1 § 7581. APPLICATION FOR AN ORDER OF MEDICATION

2 (a) The commissioner or the head of a designated hospital in which a
3 patient has been hospitalized shall file an application for an order of
4 medication for a patient when a physician has proposed psychiatric medication
5 for that patient and the patient lacks the capacity to consent to medication, as
6 defined in section 9701(4)(B) of this title and:

7 (1) has been placed in the applicant's care and custody pursuant to
8 section 7576 or subsection 7579(e) of this title;

9 (2) has previously received treatment under an order of hospitalization
10 and is currently under an order of nonhospitalization;

11 (3) is the subject of an application for involuntary treatment under
12 section 7556(d)(2) of this title or an application for continued treatment under
13 section 7579 of this title; or

14 (4) has been committed to the custody of the commissioner of
15 corrections as a convicted felon and is being held in a correctional facility
16 which is a designated facility pursuant to section 7107(4) of this title and for
17 whom the department of corrections and the department of mental health have
18 jointly determined that involuntary medication would be appropriate pursuant
19 to 28 V.S.A. § 907(4)(H).

20 (b) An application for an order of medication shall be filed in the family
21 division of the superior court in the unit in which the person is receiving

1 treatment, or in the court in which a proceeding concerning the person is
2 already pending under this chapter.

3 (c) The application shall include a certification, executed under oath or
4 affirmation, from the treating physician, that includes the following
5 information:

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

7 (2) the necessity for the use of medication to treat the person's illness;

8 (3) the proposed medication, including the method, dosage range, and
9 length of administration for each specific medication;

10 (4) whether the person has capacity to make a health care decision, as
11 defined in subdivision 9701(4)(B) of this title;

12 (5) whether the person has executed an advance directive in accordance
13 with the provisions of chapter 231 of this title, and if so, the identity of any
14 health care agent designated in the advance directive; a copy of the advance
15 directive shall be attached to the application, if available.

16 § 7582. HEARING ON APPLICATION FOR AN ORDER OF
17 MEDICATION; BURDEN OF PROOF

18 (a) A hearing on an application for an order of medication shall be held
19 within five days of filing if it is brought under subdivision (1), (2), or (4) of
20 subsection 7581(a) of this title, or simultaneously with any hearing under
21 section 7572 of this title. A hearing on an application brought under

1 subdivision 7481(a)(3) of this title shall be held within two days of filing, but
2 not sooner than a probable cause hearing. Notice, appointment of an
3 independent psychiatrist, and conduct of the hearing shall be governed by
4 sections 7573, 7574, and 7575 of this title.

5 (b) In a hearing conducted pursuant to this section, the applicant has the
6 burden of proof by clear and convincing evidence, except that if the patient is
7 not refusing the recommended medication, there shall be a rebuttable
8 presumption that the application should be granted.

9 (c) The court shall not grant an application for an order of medication
10 unless the court finds, based on the evidence, that the person lacks capacity to
11 make a medical decision, as defined in subdivision 9701(4)(B) of this title.

12 (d) If the court finds that the person lacks capacity but has executed a valid
13 advance directive that governs the question of medication in the immediate
14 situation, or grants to an agent the authority to make an appropriate decision in
15 the immediate situation, the court shall enter an order in accordance with the
16 advance directive or shall dismiss the application, as appropriate.

17 (e) If the court grants an application for an order of medication, it shall do
18 so only after making specific findings demonstrating that it has considered all
19 of the following:

20 (1) the nature of the patient's illness, and its duration and any prior
21 history;

1 (2) the patient's prognosis without and without medication, and whether
2 there are any alternative treatments not involving medication or involving a
3 different medication that are likely to be successful;

4 (3) the proposed medication, the manner, dosage, and duration of its
5 administration, and the risks, benefits, and potential adverse reactions to the
6 particular medication;

7 (4) whether the proposed medication has been previously used by the
8 patient, and the results of such use;

9 (5) the patient's health and safety apart from the fact of mental illness,
10 and whether the patient is pregnant;

11 (6) the impact of receiving medication or not receiving medication on
12 the patient's relationship with his or her family or household members whose
13 opinion the court finds relevant and credible based on the nature of the
14 relationship; and

15 (7) the patient's expressed written or oral wishes and beliefs as to
16 medication generally or the proposed medication specifically, even if not
17 contained in a valid advance directive.

18 (f) The court shall not order the patient to undergo electric convulsive
19 therapy, surgery, or experimental medication.

20 (g) If the court grants the application for an order of medication, the court
21 shall authorize the commissioner to administer medication to the patient

1 without the patient's consent for a period not to exceed the lesser of 90 days or
2 the remaining portion of any current order of hospitalization. To the extent
3 that the court finds it consistent with good medical practice, the court shall
4 order medication in accordance with the patient's expressed wishes and beliefs,
5 except that the court shall not deny an application for an order of medication if
6 the result would be to keep the patient in such a state that the patient could not
7 be tried for a pending criminal charge by reason of lack of capacity. If the
8 court finds the patient's expressed wishes and beliefs to be contrary to good
9 medical practice, or if treatment in accordance with the patient's expressed
10 wishes and beliefs has been tried for a reasonable period of time without a
11 significant clinical improvement in the patient's condition, the court may order
12 medication it finds to be appropriate, based upon all of the evidence. The court
13 shall specify the medication to be used, its dosage range, and its method and
14 duration of administration.

15 (h) For a person who had received treatment under an order of
16 hospitalization and is currently subject to an order of nonhospitalization but is
17 refusing to accept the prescribed medication, if the court finds that without an
18 order of medication there is a substantial probability that the person would
19 continue to refuse medication and as a result would pose a danger of harm to
20 self or others, the court may order hospitalization of the person for up to 72
21 hours to administer medication as ordered under this section. The court may

1 authorize future 72-hour hospitalizations of a person subject to an order under
2 this subsection to administer medication for 90 days following the initial
3 hospitalization, unless the court finds that an order of medication for a longer
4 period of time is necessary. However, such an order shall not be longer than
5 the duration of the current order of nonhospitalization.

6 (i) A future administration of medication authorized by the court under
7 subsection (h) of this section shall occur as follows:

8 (1) The treating physician shall execute and file with the commissioner a
9 certification executed under oath or affirmation that states all the following:

10 (A) that the patient has refused medication;

11 (B) that the patient lacks capacity to make a decision regarding
12 medication;

13 (C) the proposed medications, the dosage range, length of
14 administration, and method of administration; and

15 (D) the substantial probability that the patient will pose a danger of
16 harm to self or others if not hospitalized and medicated, and an estimated time
17 by which medication must be administered in order to prevent such harm.

18 (2) The commissioner shall promptly provide, as set forth in the initial
19 court order, to the court, the person, and the person's attorney. The notice
20 shall be given within 24 hours of receipt by the commissioner of the
21 physician's certification and shall state that the person may request an

1 immediate hearing to contest the order. The person may be hospitalized in a
2 designated hospital on the date specified in the notice for up to 72 hours in
3 order to administer medication without the person's consent.

4 (j) An order of medication issued under this section shall be effective
5 concurrently with the current order of treatment issued pursuant to section
6 7576 of this title.

7 (k) The treating physician shall provide written notice to the court when
8 terminating the administration of medication under the order. Medication
9 under the order may be terminated when the physician determines that the
10 medication is no longer necessary or that the patient has regained capacity to
11 make health care decisions.

12 (l) At any time, the patient may petition the court for review of the order.
13 If the basis of the petition is that the patient has regained capacity to make his
14 or her own health care decisions, the hearing shall be held within three days of
15 the filing of the petition.

16 § 7583. PROTOCOL

17 The department of mental health shall develop and adopt by rule a strict
18 protocol to insure the health, safety, dignity, and respect of patients subject to
19 administration of psychiatric medications in any designated hospital. This
20 protocol shall be followed by all designated hospitals administering psychiatric
21 medications.

1 Subchapter 3. Rights of Patients

2 § 7591. NOTICE OF RIGHTS

3 The head of a hospital shall provide reasonable means and arrangements,
4 including the posting of excerpts from relevant statutes, for informing patients
5 of their right to discharge and other rights and for assisting them in making and
6 presenting requests for discharge.

7 § 7592. TREATMENT

8 (a) Outpatient or partial hospitalization shall be preferred to inpatient
9 treatment. Emergency involuntary treatment shall be undertaken only when
10 clearly necessary. Involuntary treatment shall be utilized only if voluntary
11 treatment is not possible.

12 (b) The department shall establish minimum standards for adequate
13 treatment as provided in this section.

14 § 7593. MECHANICAL RESTRAINTS

15 Mechanical restraints, chemical restraints, or seclusion shall not be applied
16 to a patient unless it is determined by the head of the hospital or his designee to
17 be required by the medical needs of the patient or the hospital. Every use of a
18 mechanical restraint and the reasons for the use shall be made a part of the
19 clinical record of the patient over the signature of the head of the hospital or
20 his or her designee.

1 § 7594. COMMUNICATION AND VISITATION

2 (a) Subject to the general rules and regulations of the hospital and except to
3 the extent that the head of the hospital determines that it is necessary for the
4 medical welfare or needs of the patient or the hospital to impose restrictions,
5 every patient is entitled:

6 (1) to communicate by sealed mail or otherwise with persons, including
7 official agencies, inside or outside the hospital;

8 (2) to receive visitors and to make and receive telephone calls; and

9 (3) to exercise all civil rights, including the right to dispose of property,
10 execute instruments, make purchases, enter contractual relationships, and vote
11 on his or her own initiative, unless he or she has been judged to lack legal
12 capacity and has not been restored to legal capacity.

13 (b) Notwithstanding any limitations or restrictions authorized by this
14 section on the right of communication, every patient is entitled to communicate
15 by sealed mail with the board, the commissioner, his or her attorney, clergy of
16 his or her choice, and the judge, if any, who ordered the patient's
17 hospitalization.

18 § 7595. LEGAL COMPETENCE

19 No determination that a person requires treatment and no order of the court
20 authorizing hospitalization or alternative treatment shall lead to a presumption
21 of legal incapacity for matters other than treatment.

1 § 7596. RECORD OF RESTRICTIONS

2 Any limitation imposed by the head of a hospital on the exercise of civil
3 rights by a patient and the reasons for the limitation shall be made a part of the
4 clinical record of the patient.

5 § 7597. SURGICAL OPERATIONS

6 If the superintendent finds that a patient supported by the state requires a
7 surgical operation or that a surgical operation would promote the possibility of
8 the patient's discharge from the hospital, the superintendent, with the consent
9 of the patient, the patient's attorney or legally appointed guardian, if any, may
10 make the necessary arrangements with a qualified surgeon and hospital for the
11 operation. The expense of the operation shall be borne by the state in the same
12 proportion as the patient is supported by the state.

13 § 7598. CHANGE FROM INVOLUNTARY TO VOLUNTARY

14 With the permission of the head of the hospital, a patient may at any time
15 have his or her status changed from involuntary to voluntary upon making
16 application as provided in section 7553 of this title.

17 § 7599. VISITS BY CLERGY OR ATTORNEY

18 A patient's clergy person or an attorney at law retained by or on behalf of
19 any patient or appointed for him or her by any court shall be admitted to visit
20 at all reasonable times

1 § 7612. ADMINISTRATIVE REVIEW

2 The head of a hospital or the governing board in which a person is a patient
3 shall cause the condition of every patient to be reviewed as regularly as
4 practicable, but not less often than every 60 days, and whenever the head of a
5 hospital or governing board certifies that the patient is not a patient in need of
6 further treatment, the patient shall be discharged.

7 Sec. 2. REPEAL

8 18 V.S.A. chapters 175 (the board of mental health), 179 (admission
9 procedures), 181 (judicial proceedings), 183 (care and treatment), and 185
10 (automatic review) are repealed.