

1 S.47

2 Introduced by Senators Lyons, Sears and Chittenden

3 Referred to Committee on Health and Welfare

4 Date: January 27, 2023

5 Subject: Health; mental health; transportation; custody; restraint

6 Statement of purpose of bill as introduced: This bill proposes to repeal
7 authority related to a mental health professional transporting and taking into
8 temporary custody an individual for whom a warrant for emergency
9 examination is pending. It also proposes to prioritize the use of soft restraints
10 over the use of mechanical restraints when the use of restraints is necessary.

11 An act relating to the transport of individuals requiring psychiatric care

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

13 ~~Sec. 1. 18 V.S.A. § 7505 is amended to read:~~

14 § 7505. WARRANT AND CERTIFICATE FOR EMERGENCY

15 EXAMINATION

16 (a) In emergency circumstances where certification by a licensed physician
17 is not available without serious and unreasonable delay, and when personal
18 observation of the conduct of a person constitutes reasonable grounds to
19 ~~believe that the person is a person in need of treatment, and he or she the~~

1 ~~person presents an immediate risk of serious injury to himself or herself, self or~~
2 others if not restrained, a law enforcement officer or mental health
3 professional may make an application, not accompanied by a physician's
4 certificate, to any Superior judge for a warrant for an emergency examination.

5 (b) ~~The law enforcement officer or mental health professional~~ may take the
6 person into temporary custody and transport the person to a hospital, police
7 barracks, or another safe location in accordance with section 7511 of this title.
8 The law enforcement officer or mental health professional shall apply to the
9 court without delay for the warrant while the person is in temporary custody.

10 (c) If the judge is satisfied that a physician's certificate is not available
11 without serious and unreasonable delay, and that probable cause exists to
12 believe that the person is in need of an emergency examination, ~~he or she~~ the
13 judge may order the person to submit to an evaluation by a licensed physician
14 for that purpose.

15 (d) If necessary, the court may order the law enforcement officer ~~or mental~~
16 ~~health professional~~ to transport the person, in accordance with section 7511 of
17 this title, to a hospital for an evaluation by a licensed physician to determine if
18 the person should be certified for an emergency examination.

19 (e) A person transported pursuant to subsection (d) of this section shall be
20 evaluated as soon as possible after arrival at the hospital. If after evaluation,
21 ~~the licensed physician determines that the person is a person in need of~~

1 ~~treatment, he or she the licensed physician shall issue an initial certificate that~~
2 sets forth the facts and circumstances constituting the need for an emergency
3 examination and showing that the person is a person in need of treatment.
4 Once the licensed physician has issued the initial certificate, the person shall
5 be held for an emergency examination in accordance with section 7508 of this
6 title. If the licensed physician does not certify that the person is a person in
7 need of treatment, ~~he or she~~ the licensed physician shall immediately discharge
8 the person and cause ~~him or her~~ the person to be returned to the place from
9 which ~~he or she~~ the person was taken, or to such place as the person
10 reasonably directs.

11 Sec. 2. 18 V.S.A. § 7511 is amended to read:

12 § 7511. TRANSPORTATION

13 (a) The Commissioner shall ensure that all reasonable and appropriate
14 measures consistent with public safety are made to transport or escort a person
15 subject to this chapter to and from any emergency department or inpatient
16 setting, ~~including escorts within a designated hospital or the Vermont State~~
17 ~~Hospital or its successor in interest or otherwise being transported under the~~
18 jurisdiction of the Commissioner in any manner ~~which~~ that:

19 (1) prevents physical and psychological trauma;

20 ~~(2) respects the privacy of the individual, and~~

1 ~~(2) represents the least restrictive means necessary for the safety of the~~
2 patient.

3 (b) The Commissioner shall have the authority to designate the
4 professionals or law enforcement officers who may authorize the method of
5 transport of patients under the Commissioner's care and custody.

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

10 (d) It is the policy of the State of Vermont that mechanical restraints are
11 not routinely used on persons subject to this chapter unless circumstances
12 dictate that such methods are necessary. If a law enforcement officer or mental
13 health professional deems it necessary to use restraints, soft restraints shall be
14 considered as a first option. A law enforcement officer and mental health
15 professional shall have soft restraints available for use, and mechanical
16 restraints shall not be used as a substitute for soft restraints if the soft restraints
17 are otherwise deemed adequate for safety.

18 Sec. 3. EFFECTIVE DATE

19 ~~This act shall take effect on July 1, 2023.~~

~~Sec. 1. 18 V.S.A. § 7505 is amended to read:~~

~~§ 7505. WARRANT AND CERTIFICATE FOR EMERGENCY
EXAMINATION~~

~~(a) In emergency circumstances where certification by a licensed physician is not available without serious and unreasonable delay, and when personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment, and ~~he or she~~ the person presents an immediate risk of serious injury to ~~himself or herself~~ self or others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination.~~

~~(b) The law enforcement officer ~~or mental health professional~~ may take the person into temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may transport the person to a hospital, police barracks, or another safe location in accordance with section 7511 of this title. The law enforcement officer or mental health professional shall apply to the court without delay for the warrant while the person is in temporary custody.~~

~~(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, ~~he or she~~ the judge may order the person to submit to an evaluation by a licensed physician for that purpose.~~

~~(d) If necessary, the court may order the law enforcement officer ~~or mental health professional~~ to transport the person, in accordance with section 7511 of this title, to a hospital for an evaluation by a licensed physician to determine if the person should be certified for an emergency examination.~~

~~(e) A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall issue an initial certificate that sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. Once the licensed physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the licensed physician does not certify that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall immediately discharge the person and cause ~~him or her~~ the person to be returned to the place from which ~~he or she~~ the person was taken, or to such place as the person~~

~~reasonably directs.~~

~~Sec. 2. 18 V.S.A. § 7511 is amended to read:~~

~~§ 7511. TRANSPORTATION~~

~~(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any emergency department or inpatient setting, including escorts within a designated hospital or the Vermont State Hospital or its successor in interest or otherwise being transported under the jurisdiction of the Commissioner in any manner which that:~~

~~(1) prevents physical and psychological trauma;~~

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

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

~~(b) The Commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the Commissioner's care and custody.~~

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

~~(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to this chapter unless circumstances dictate that such methods are necessary. A law enforcement vehicle shall have soft restraints available for use as a first option, and mechanical restraints shall not be used as a substitute for soft restraints if the soft restraints are otherwise deemed adequate for safety.~~

~~Sec. 3. EFFECTIVE DATE~~

~~This act shall take effect on July 1, 2023.~~

~~Sec. 1. 18 V.S.A. § 7505 is amended to read:~~

~~§ 7505. WARRANT AND CERTIFICATE FOR EMERGENCY
EXAMINATION~~

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

others if not restrained, a law enforcement officer or mental health professional may make an application, not accompanied by a physician's certificate, to any Superior judge for a warrant for an emergency examination. The application shall be based on facts personally observed by the mental health professional or the law enforcement officer or shall be supported by a statement of facts under penalty of perjury by a person who personally observed the facts that form the basis of the application.

(b)(1) ~~The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the court without delay for the warrant if the law enforcement officer has probable cause to believe that the person poses a risk of harm to self or others. The law enforcement officer or a mental health professional shall apply to the court for the warrant without delay while the person is in temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may then transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others.~~

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(c) If the judge is satisfied that a physician's certificate is not available without serious and unreasonable delay, and that probable cause exists to believe that the person is in need of an emergency examination, ~~he or she~~ the judge may order the person to submit to an evaluation by a licensed physician for that purpose.

(d)(1) ~~If necessary, the court may order the law enforcement officer or mental health professional to transport the person to a hospital for an evaluation by a licensed physician to determine if the person should be certified for an emergency examination.~~

(2) Transports conducted pursuant to this subsection shall provide individuals with the same protections as provided to individuals in the custody of the Commissioner who are transported pursuant to section 7511 of this title.

(e) Authority to transport a person pursuant to this section shall expire if the person is not taken into custody and transported within 72 hours after a warrant is issued by a Superior judge.

(f) A person transported pursuant to subsection (d) of this section shall be evaluated as soon as possible after arrival at the hospital. If after evaluation the licensed physician determines that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall issue an initial certificate that

sets forth the facts and circumstances constituting the need for an emergency examination and showing that the person is a person in need of treatment. Once the licensed physician has issued the initial certificate, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the licensed physician does not certify that the person is a person in need of treatment, ~~he or she~~ the licensed physician shall immediately discharge the person and cause ~~him or her~~ the person to be returned to the place from which ~~he or she~~ the person was taken, or to such place as the person reasonably directs.

Sec. 2. 18 V.S.A. § 7511 is amended to read:

§ 7511. TRANSPORTATION

(a) The Commissioner shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a person subject to this chapter to and from any inpatient setting, ~~including escorts within a designated hospital or the Vermont State Hospital or its successor in interest or otherwise being transported~~ under the jurisdiction of the Commissioner in any manner ~~which~~ that:

(1) prevents physical and psychological trauma;

(2) respects the privacy of the individual; and

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

(b) The Commissioner shall have the authority to designate the professionals or law enforcement officers who may authorize the method of transport of patients under the Commissioner's care and custody.

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

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on persons subject to this chapter unless circumstances dictate that such methods are necessary. A law enforcement vehicle shall have soft restraints available for use as a first option, and mechanical restraints shall not be used as a substitute for soft restraints if the soft restraints are otherwise deemed adequate for safety.

Sec. 3. REPORT; MENTAL HEALTH; WARRANT PROCESS

On or before January 15, 2024, the Department of Mental Health, in consultation with Vermont Care Partners; Vermont Legal Aid; MadFreedom,

Inc.; Vermont Psychiatric Survivors; and persons with lived experience of a mental health condition, shall submit a report to the House Committees on Health Care and on Judiciary, and the Senate Committees on Health and Welfare and on Judiciary containing any proposed changes to the warrant process in 18 V.S.A. § 7505, including mechanisms to reduce safety risks and reduce delays in accessing care.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.