

1 S.128

2 Introduced by Senator Ayer

3 Referred to Committee on Health and Welfare

4 Date: February 22, 2013

5 Subject: Health; mental health; judicial proceedings

6 Statement of purpose of bill as introduced: This bill proposes to update  
7 provisions of Title 18 pertaining to mental health admission procedures to  
8 reflect current practice.

9 An act relating to updating mental health judicial proceedings

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

11 ~~Sec. 1. 18 V.S.A. chapter 171 is amended to read.~~

12 CHAPTER 171. GENERAL PROVISIONS

13 § 7101. DEFINITIONS

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

16 \* \* \*

17 (4) "Designated hospital" means a public or private hospital, other  
18 facility, or part of a hospital or facility designated by the ~~commissioner~~  
19 Commissioner as adequate to provide appropriate care for ~~the persons with~~  
20 mentally ill patient mental illness.

1 ~~(5) "Elopement" means the leaving of a designated hospital or~~  
2 ~~designated program or training school without lawful authority.~~

3 \* \* \*

4 (9) "Interested party" means a guardian, spouse, parent, adult child,  
5 close adult relative, a responsible adult friend, or person who has the individual  
6 in his or her charge or care. It also means a mental health professional, a law  
7 enforcement officer, or a licensed physician, ~~a head of a hospital, a selectman,~~  
8 ~~a town service officer, or a town health officer.~~

9 \* \* \*

10 (15) "Patient" means a resident of or person in Vermont ~~qualified under~~  
11 ~~this title for hospitalization or treatment as a mentally ill or mentally retarded~~  
12 ~~individual who has been found to be a person in need of hospitalization and~~  
13 ordered into the custody of the Commissioner.

14 \* \* \*

15 (26) "No refusal system" means a system of designated hospitals and,  
16 intensive residential recovery facilities, and residential treatment programs  
17 under contract with the department of mental health ~~Department of Mental~~  
18 Health that provides high intensity services, in which the facilities shall admit  
19 any individual for care if the individual meets the eligibility criteria established  
20 by the ~~commissioner~~ Commissioner in contract.

1 ~~(27) "Participating hospital" means a designated hospital under contract~~  
2 ~~with the department of mental health Department of Mental Health to~~  
3 ~~participate in the no refusal system.~~

4 (28) "Secure residential recovery facility" shall have the same meaning  
5 as in section 7620 of this title.

6 (29) "Successor in interest" means the mental health hospital owned and  
7 operated by the state State that provides acute inpatient care and replaces the  
8 Vermont State Hospital.

9 \* \* \*

10 § 7104. ~~WRONGFUL HOSPITALIZATION~~ PLACEMENT IN CUSTODY  
11 OR DENIAL OF RIGHTS; FRAUD; ELOPEMENT

12 Any person who ~~wilfully~~ willfully causes, or conspires with, or assists  
13 another to cause any of the following shall be fined not more than \$500.00 or  
14 imprisoned not more than one year, or both:

15 (1) the hospitalization of an individual knowing that the individual is not  
16 mentally ill or in need of hospitalization or treatment as a ~~mentally ill or~~  
17 ~~mentally retarded individual~~ person with a mental illness; or

18 (2) the denial to any individual of any rights granted to him or her under  
19 this part of this title; ~~or~~

1 ~~(3) the voluntary admission to a hospital of an individual knowing that~~  
2 he or she is not mentally ill or eligible for treatment thereby attempting to  
3 defraud the ~~state~~ State; or

4 ~~(4) the elopement of any patient or student from a hospital or training~~  
5 ~~school, or who knowingly harbors any sick person~~ patient who has eloped from  
6 a hospital, or who aids in abducting a patient ~~or student~~ who has been  
7 conditionally discharged from the person or persons in whose care and service  
8 that patient ~~or student~~ has been legally placed; ~~shall be fined not more than~~  
9 ~~\$500.00 or imprisoned not more than one year, or both.~~

10 § 7105. ~~ARREST~~ APPREHENSION OF ELOPED PERSONS

11 Any sheriff, deputy sheriff, constable, or officer of ~~state~~ State or local  
12 police, and any officer or employee of any designated hospital, ~~designated~~  
13 ~~program, or training school~~ of a secure residential recovery facility may ~~arrest~~  
14 ~~any~~ take into custody and return to a designated hospital or a secure residential  
15 recovery facility a person in the custody of the Commissioner who has eloped  
16 ~~from a designated hospital or designated program or training school and return~~  
17 ~~such person.~~

18 § 7106. NOTICE OF ~~HOSPITALIZATION~~ CUSTODY AND DISCHARGE

19 Whenever a patient has been admitted to a designated hospital other than  
20 upon his or her own application, the head of the designated hospital shall  
21 immediately notify the patient's legal guardian, ~~spouse, parent or parents, or~~

1 ~~nearest known relative or interested party, if known if any. If the involuntary~~  
2 hospitalization or admission was without court order, notice shall also be given  
3 to the superior court judge for the ~~family division of the superior court~~ Family  
4 Division of the Superior Court in the unit wherein the designated hospital is  
5 located. If the hospitalization or admission was by order of any court, the head  
6 of the designated hospital admitting or discharging ~~an individual~~ the patient  
7 shall forthwith make a report thereof to the ~~commissioner~~ Commissioner and  
8 to the court which entered the order for hospitalization or admission.

9 § 7107. ~~EXTRAMURAL WORK~~

10 ~~Any hospital or training school in the state dealing with mental health may~~  
11 ~~do, or procure to be done, extramural work in the way of prevention,~~  
12 ~~observation, care, and consultation with respect to mental health. [Repealed.]~~

13 § 7108. ~~CANTEENS~~

14 ~~The chief executive officer of the Vermont State Hospital or its successor in~~  
15 ~~interest may conduct a canteen or commissary, which shall be accessible to~~  
16 ~~patients, employees, and visitors of the Vermont State Hospital or its successor~~  
17 ~~in interest at designated hours and shall be operated by employees of the~~  
18 ~~hospital. A revolving fund for this purpose is authorized. The salary of an~~  
19 ~~employee of the hospital shall be charged against the canteen fund. Proceeds~~  
20 ~~from sales may be used for operation of the canteen and the benefit of the~~  
21 ~~patients and employees of the hospital under the direction of the chief~~

1 ~~executive officer and subject to the approval of the commissioner. All~~  
2 ~~balances of such funds remaining at the end of any fiscal year shall remain in~~  
3 ~~such fund for use during the succeeding fiscal year. An annual report of the~~  
4 ~~status of the funds shall be submitted to the commissioner. [Repealed.]~~

5 **§ 7109. SALE OF ARTICLES; REVOLVING FUND**

6 (a) ~~The superintendent of a hospital or training school may sell articles~~  
7 ~~made by the patients or students in the handiwork or occupational therapy~~  
8 ~~departments of the institution and the proceeds thereof shall be credited to a~~  
9 ~~revolving fund. When it is for their best interest, the superintendent may, with~~  
10 ~~the consent of the patients or their legal representatives, employ patients or~~  
11 ~~students or permit them to be employed on a day placement basis.~~

12 (b) ~~The consent of the patient or the legal representative of the patient or~~  
13 ~~student shall, in consideration of the undertaking of the superintendent, contain~~  
14 ~~the further agreement that one half the earnings of the patient or student shall~~  
15 ~~be credited to the personal account of the patient or student so employed at~~  
16 ~~interest for benefit of the patient or student and the balance shall be credited to~~  
17 ~~the fund. The superintendent shall hold and expend the fund for the purchase~~  
18 ~~of equipment and materials for the handicraft or group therapy departments~~  
19 ~~and for the educational and recreational welfare of the patient or student group.~~  
20 ~~He or she shall submit an annual report of the fund to the commissioner.~~

1 ~~Balances remaining in it at the end of a fiscal year shall be carried forward and~~  
2 ~~be available for the succeeding fiscal year.~~

3 (e) ~~For purposes of this section the legal representative of the patient or~~  
4 ~~student shall be the duly appointed guardian, the spouse, the parents or the next~~  
5 ~~of kin legally responsible for the patient or student. In their absence, the~~  
6 ~~commissioner shall be the legal representative. [Repealed.]~~

7 § 7110. CERTIFICATION OF MENTAL ILLNESS

8 A certification of mental illness by a licensed physician required by section  
9 7504 of this title shall be made by a board eligible psychiatrist, a board  
10 certified psychiatrist, ~~or a resident in psychiatry, or a physician licensed~~  
11 ~~pursuant to 26 V.S.A. chapter 23 if no psychiatrist is available,~~ under penalty  
12 of perjury. ~~In areas of the state where board eligible psychiatrists, board~~  
13 ~~certified psychiatrists, or residents in psychiatry are not available to complete~~  
14 ~~admission certifications to the Vermont State Hospital or its successor in~~  
15 ~~interest, the commissioner may designate other licensed physicians as~~  
16 ~~appropriate to complete certification for purposes of section 7504 of this title.~~  
17 The Commissioner shall develop a training program that licensed physicians  
18 who are not psychiatrists shall complete before effecting a certification of  
19 mental illness.

1 ~~§ 7111. RIGHT TO LEGAL COUNSEL~~

2 In any proceeding before, or notice to, a court of this ~~state~~ State involving a  
3 patient ~~or student~~, or a proposed patient ~~or student~~, that person shall be  
4 afforded counsel, and if the patient ~~or student~~ or proposed patient ~~or student~~ is  
5 unable to pay for counsel, compensation shall be paid by the ~~state~~ State to  
6 counsel assigned by the court; however, this section shall not apply to a  
7 proceeding under section 7505 of this title.

8 \* \* \*

9 § 7113. INDEPENDENT EXAMINATION: PAYMENT

10 Whenever a court orders an independent examination by a mental health  
11 professional or a qualified ~~mental retardation~~ developmental disabilities  
12 professional pursuant to this title or 13 V.S.A. § 4822, the cost of the initial  
13 examination shall be paid by the ~~department of disabilities, aging, and~~  
14 ~~independent living~~ Department of Disabilities, Aging, and Independent Living  
15 or of ~~health~~ Mental Health, as applicable. The mental health professional or  
16 qualified ~~mental retardation~~ developmental disabilities professional may be  
17 selected by the court but the ~~commissioner of disabilities, aging, and~~  
18 ~~independent living~~ Commissioner of Disabilities, Aging, and Independent  
19 Living or the ~~commissioner of mental health~~ Commissioner of Mental Health  
20 may adopt a reasonable fee ~~schedule~~ schedules for examination, reports, and  
21 testimony.



1 ~~Sec. 2. 18 V.S.A. § 7205 is amended to read:~~

2 § 7205. SUPERVISION OF INSTITUTIONS

3 (a) ~~The department of mental health~~ Department of Mental Health shall  
4 operate the Vermont State Hospital or its successor in interest and a secure  
5 residential recovery facility. The Department shall be responsible for patients  
6 receiving involuntary treatment at all designated hospitals, including the  
7 Vermont State Hospital or its successor in interest, designated programs, and at  
8 the secure residential recovery facility.

9 (b) ~~The commissioner of the department of mental health~~ Commissioner of  
10 Mental Health, in consultation with the ~~secretary~~ Secretary, shall appoint a  
11 chief executive officer of the Vermont State Hospital or its successor in  
12 interest and a chief executive officer of the secure residential recovery facility  
13 to oversee the operations of the hospital and the secure residential recovery  
14 facility, respectively. The chief executive officer ~~position~~ positions shall be an  
15 exempt ~~position~~ positions.

16 Sec. 3. 18 V.S.A. chapter 179 is amended to read:

17 CHAPTER 179. ADMISSION PROCEDURES

18 \* \* \*

19 § 7504. APPLICATION FOR EMERGENCY EXAMINATION

20 (a) A state or local law enforcement officer, mental health professional, or  
21 a physician licensed pursuant to 26 V.S.A. chapter 23 may take a person into

1 ~~temporary custody during the period between the conduct of an initial~~  
2 ~~examination and the completion of a certificate by a licensed physician~~  
3 ~~authorizing an emergency examination if specific and articulable facts exist~~  
4 ~~that give rise to a reasonable suspicion that the person is a person in need of~~  
5 ~~treatment.~~

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

13 ~~(b)~~(c) The decision of an interested party and a licensed physician to  
14 complete an application and certificate shall be authority for transporting the  
15 person to a designated hospital for an emergency examination, as provided in  
16 section 7511 of this title.

17 ~~(c)~~(d) For the purposes of admission of ~~an individual~~ a person to a  
18 designated hospital for care and treatment under this section, a head of a  
19 hospital, as provided in subsection ~~(a)~~(b) of this section, may include a person  
20 designated in writing by the head of the hospital to discharge the authority  
21 granted in this section. A designated person must be an official hospital

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

4 § 7505. WARRANT FOR IMMEDIATE EXAMINATION

5 ~~(a)(1) In emergency circumstances where a certification by a physician is~~  
6 ~~not available without serious and unreasonable delay, and when personal~~  
7 ~~observation of the conduct of a person constitutes reasonable grounds to~~  
8 ~~believe that the person is a person in need of treatment, and he or she presents~~  
9 ~~an immediate risk of serious injury to himself or herself or others if not~~  
10 ~~restrained, a state or local law enforcement officer or mental health~~  
11 ~~professional may make an application, not accompanied by a physician's~~  
12 ~~certificate, to any district or superior court judge for a warrant for an~~  
13 immediate examination when:

14 (A) a certification by a physician is not available without serious  
15 unreasonable delay;

16 (B) personal observation of the conduct of a person constitutes  
17 reasonable grounds to believe that the person is a person in need of  
18 treatment; and

19 (C) he or she presents an immediate risk of serious injury to himself  
20 or herself or others if not restrained.

1 ~~(2) If personal observation of the person is not possible, receipt by a~~  
2 ~~state or local law enforcement officer or a mental health professional of a~~  
3 ~~reliable report of conduct that constitutes reasonable grounds to believe that the~~  
4 ~~person is a person in need of treatment may serve as the basis for the warrant~~  
5 ~~so long as the circumstances preventing personal observation are set forth in~~  
6 ~~the application.~~

7 (b) ~~The A state or local~~ law enforcement officer or mental health  
8 professional, ~~or both,~~ may take the person into temporary custody and shall  
9 apply to the court without delay for the warrant. The application for a warrant  
10 shall be the sole authority needed for a state or local law enforcement officer to  
11 enter a residence or other premises where the person is reasonably believed to  
12 be located in order to apprehend the person and take him or her into temporary  
13 custody.

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 pursuant to  
17 subsection (a) of this section, he or she the judge may grant the warrant and  
18 order the person to submit to an immediate examination at a designated  
19 hospital.

1 ~~(d) If necessary By granting a warrant, the court may order the authorizes a~~  
2 ~~state or local law enforcement officer or mental health professional to transport~~  
3 ~~the person to a designated hospital for an immediate examination.~~

4 (e) Upon admission to a designated hospital pursuant to a warrant for  
5 immediate examination, the person shall be ~~immediately~~ examined by a  
6 licensed physician as soon as practicable. If the physician certifies that the  
7 person is a person in need of treatment, the person shall be held for an  
8 emergency examination in accordance with section 7508 of this title. If the  
9 physician does not certify that the person is a person in need of treatment, ~~he or~~  
10 ~~she~~ the physician shall immediately discharge the person and cause him or her  
11 to be returned to the place from which he or she was taken, or to such place as  
12 the person reasonably directs.

13 § 7508. EMERGENCY EXAMINATION

14 (a) ~~When~~ For the purposes of part 8 of this title, a person is shall be  
15 deemed admitted to a designated hospital ~~for~~ upon his or her arrival at the  
16 hospital following an emergency examination ~~in accordance with~~. A person  
17 admitted to a designated hospital pursuant to section 7504 or 7505(e) of this  
18 title, ~~he or she~~ shall be examined and certified by a ~~psychiatrist~~ as soon as  
19 practicable, ~~but~~ licensed physician not later than one working day after  
20 admission. A person admitted to a designated hospital pursuant to section

1 ~~7505 of this title shall be examined and certified by a licensed physician as~~  
2 ~~soon as practicable, but not later than two working days after admission.~~

3 (b) ~~If the A~~ person is admitted on an application and physician's certificate,  
4 ~~the psychiatrist~~ shall not be examined by the same physician who signed the  
5 certificate pursuant to section 7504.

6 (c) If the ~~psychiatrist~~ physician conducting the emergency examination  
7 does not certify that the person is a person in need of treatment, he or she shall  
8 immediately discharge the person and cause him or her to be returned to the  
9 place from which he or she was taken or to such place as the person reasonably  
10 directs.

11 (d) If the ~~psychiatrist~~ physician does certify that the person is a person in  
12 need of treatment, the person's hospitalization may continue for an additional  
13 72 hours, at which time hospitalization shall terminate, unless within that  
14 period:

15 (1) the person has been accepted for voluntary admission under section  
16 7503 of this title; or

17 (2) an application for involuntary treatment is filed with the appropriate  
18 court under section 7612 of this title in which case the patient shall remain  
19 hospitalized and shall receive treatment pending the court's decision on the  
20 application.

21 \* \* \*

1 ~~§ 7510. PRELIMINARY HEARING PROBABLE CAUSE REVIEW~~

2 (a) Within five calendar days after a person is admitted to a designated  
3 hospital for emergency examination, he or she may request the ~~criminal~~  
4 ~~division of the superior court~~ Family Division of the Superior Court to conduct  
5 a ~~preliminary hearing~~ probable cause review to determine whether there is  
6 probable cause to believe that he or she was a person in need of treatment at  
7 the time of his or her admission to the hospital and at the time of the review.

8 (b) The court shall conduct the hearing within three working days of the  
9 filing of the request. The court shall cause timely notice of the ~~preliminary~~  
10 ~~hearing~~ probable cause review to be given to the ~~patient~~ person or his or her  
11 attorney, and the hospital ~~and the attorney for the applicant.~~

12 (c) The ~~individual~~ person requesting the review has the right to be present  
13 and represented by legal counsel at the ~~preliminary hearing~~ probable cause  
14 review.

15 (d) The Rules of Evidence shall not be applicable at the probable cause  
16 review. The court may consider any testimony, sworn statement, or affidavits  
17 in determining whether probable cause exists. If probable cause to believe that  
18 the individual was a person in need of treatment at the time of his or her  
19 admission and at the time of the review or solely at the time of the review is  
20 established at the ~~preliminary hearing~~ probable cause review, the individual  
21 shall be ordered held for further proceedings in accordance with the law. If

1 ~~probable cause is not established in both instances or solely with regard to~~  
2 whether the person was in need of treatment at the time of the review, the  
3 individual shall be ordered discharged from the hospital and the court shall  
4 order him or her returned to the place from which he or she was transported or  
5 to his or her home.

6 (e) Upon a showing of need, the court may grant a reasonable continuance  
7 to either the ~~patient's~~ person's attorney or the attorney for the ~~state~~ State.

8 \* \* \*

9 Sec. 4. 18 V.S.A. chapter 181 is amended to read:

10 CHAPTER 181. JUDICIAL PROCEEDINGS

11 \* \* \*

12 § 7612. APPLICATION FOR INVOLUNTARY TREATMENT

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

15 (b) The application shall be filed in the ~~criminal division of the superior~~  
16 ~~court of~~ Family Division of the Superior Court for the district in which the  
17 ~~proposed patient's residence~~ patient resides or, in the case of a nonresident, in  
18 any ~~district~~ superior court.

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



1 ~~(d) The application shall contain:~~

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

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

6 ~~(e) The application shall be accompanied by:~~

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

13 ~~(2) A written statement by the applicant that the proposed patient person~~  
14 ~~refused to submit to an examination by a licensed physician.~~

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

19 § 7613. NOTICE—APPOINTMENT OF COUNSEL

20 ~~(a) When the application is filed, the court shall appoint counsel for the~~  
21 ~~proposed patient, and transmit a copy of the application, the physician's~~

1 ~~certificate, if any, and a notice of hearing to the proposed patient, his or her~~  
2 ~~attorney, guardian, or any person having custody and control of the proposed~~  
3 ~~patient, if any, the state's attorney, State's Attorney or the attorney general~~  
4 ~~Attorney General, and any other person the court believes has a concern for the~~  
5 ~~proposed patient's welfare. A copy of the notice of hearing shall also be~~  
6 ~~transmitted to the applicant and certifying physician.~~

7 \* \* \*

8 § 7620. APPLICATION FOR CONTINUED TREATMENT

9 \* \* \*

10 (e) As used in this chapter:

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

14 (2) "Secure residential recovery facility" means a residential facility;  
15 owned and operated by the State and licensed as a therapeutic community  
16 residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer  
17 requires acute inpatient care but who does remain in need of treatment within a  
18 secure setting for an extended period of time. A secure residential recovery  
19 facility shall not be used for any purpose other than the purposes permitted by  
20 this section.

~~§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;~~

ORDERS

(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.

(b) If the court finds that the ~~patient person~~ patient person is a ~~patient person~~ patient person in need of further treatment ~~and requires hospitalization,~~ it shall order ~~hospitalization~~ continued treatment for up to one year.

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

(d) If at any time during the period of nonhospitalization ordered under subsection (c) of this section, it comes to the attention of the court, that the person is not complying with the order, or that the alternative treatment has not been adequate to meet the ~~patient's~~ person's treatment needs, the court may, after proper hearing:

1 ~~(1) Consider other treatments not involving hospitalization, modify its~~  
2 original order, and direct the patient person to undergo another program of  
3 alternative treatment for an indeterminate period, up to the expiration date of  
4 the original order; or

5 (2) Order that the patient person be hospitalized, up to the expiration  
6 date of the original order.

7 (e) If the court finds that the patient person is not a patient person in need  
8 of further treatment, it shall order the patient person discharged.

9 (f) This section shall not be construed to prohibit the court from issuing  
10 subsequent orders after a new application is filed pursuant to section 7620 of  
11 this title.

12 § 7622. EXPERT TESTIMONY

13 (a) A mental health professional testifying at hearings conducted under this  
14 part may, if appropriately qualified, 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 him or her  
19 at or before the hearing. If of a type reasonably relied upon by experts in the  
20 particular field in forming opinions or inferences upon the subject, the facts or

1 ~~data need not be admissible in evidence. Rule 703 of the Vermont Rules of~~  
2 ~~Evidence shall not apply to a hearing held pursuant to part 8 of this title.~~

3 § 7623. ORDERS; CUSTODY

4 All court orders of hospitalization, nonhospitalization, and continued  
5 treatment shall be directed to the ~~commissioner~~ Commissioner and shall admit  
6 the ~~patient~~ person to his or her care and custody for the period specified.

7 \* \* \*

8 Sec. 5. 18 V.S.A. § 7708 is amended to read:

9 § 7708. ~~SURGICAL OPERATIONS~~

10 ~~If the superintendent finds that a patient supported by the state requires a~~  
11 ~~surgical operation or that a surgical operation would promote the possibility of~~  
12 ~~his or her discharge from the hospital, the superintendent, with the consent of~~  
13 ~~the patient, his or her attorney, or his or her legally appointed guardian, if any,~~  
14 ~~or next of kin, if any be known, may make the necessary arrangements with~~  
15 ~~some surgeon and hospital for the operation. The expense of the operation~~  
16 ~~shall be borne by the state in the same proportion as the patient is supported by~~  
17 ~~the state. [Repealed.]~~

1 ~~Sec. 6. 18 V.S.A. chapter 189 is amended to read:~~

2 CHAPTER 189. RELEASE AND DISCHARGE

3 § 8003. PERSONAL NEEDS OF PATIENT

4 The ~~commissioner~~ Commissioner shall make any necessary arrangements to  
5 ensure:

6 (1) that no patient is discharged or granted a conditional release from a  
7 designated hospital without suitable clothing; and

8 (2) that any indigent patient discharged or granted a conditional release  
9 is furnished suitable transportation for his or her return home and an amount of  
10 money as may be prescribed by the head of ~~the~~ a designated hospital to enable  
11 the patient to meet his or her immediate needs.

12 \* \* \*

13 § 8006. VISITS

14 (a) ~~The head of a hospital may grant a visit permit of not more than 30 days  
15 to any patient under his or her charge. [Deleted.]~~

16 (b) The granting and revocation of visits shall be made in accordance with  
17 rules and procedures adopted by the head of the designated hospital.

18 § 8007. ~~CONDITIONAL DISCHARGES~~

19 ~~(a) The board or the head of a hospital may conditionally discharge from a  
20 hospital any patient who may be safely and properly cared for in a place other  
21 than the hospital.~~

1 ~~(b) A conditional discharge may extend for a term of six months, but shall~~  
2 ~~not exceed 60 days unless the head of the hospital determines that a longer~~  
3 ~~period will materially improve the availability of a program of treatment which~~  
4 ~~is an alternative to hospitalization.~~

5 ~~(c) Unless sooner revoked or renewed, a conditional discharge shall~~  
6 ~~become absolute at the end of its term.~~

7 ~~(d) A conditional discharge may be granted subject to the patient's~~  
8 ~~agreement to participate in outpatient, after care, or follow up treatment~~  
9 ~~programs, and shall be subject to such other conditions and terms as are~~  
10 ~~established by the granting authority.~~

11 ~~(e) Each patient granted a conditional discharge shall be provided, so far as~~  
12 ~~practicable and appropriate, with continuing treatment on an outpatient or~~  
13 ~~partial hospitalization basis.~~

14 ~~(f) Each patient granted a conditional discharge shall be given a written~~  
15 ~~statement of the conditions of his or her release, the violation of which can~~  
16 ~~cause revocation.~~

17 ~~(g) A conditional discharge may be renewed by the granting authority at~~  
18 ~~any time before it becomes absolute if the head of a hospital first determines~~  
19 ~~that such renewal will substantially reduce the risk that the patient will become~~  
20 ~~a person in need of treatment in the near future. [Repealed.]~~

~~§ 8008. REVOCATION OF CONDITIONAL DISCHARGE~~

~~(a) The board or the head of the hospital may revoke a conditional discharge at any time before that discharge becomes absolute if the patient fails to comply with the conditions of the discharge.~~

~~(b) A revocation by the board or the head of the hospital shall authorize the return of the patient to the hospital and shall be sufficient warrant for a law enforcement officer or mental health professional to take the patient into custody and return him or her to the hospital from which he or she was conditionally discharged.~~

~~(c) Immediately upon his or her return to the hospital, the patient shall be examined by a physician who shall orally explain to the patient the purpose of the examination and the reasons why the patient was returned to the hospital.~~

~~(d) If the examining physician certifies in writing to the head of the hospital that, in his or her opinion, the patient is a person in need of treatment, setting forth the recent and relevant facts supporting this opinion, the revocation shall become effective and the patient shall be readmitted to the hospital. If the examining physician does not so certify, the revocation shall be cancelled and the patient shall be returned to the place from which he or she was taken.~~

~~(e) If the patient is readmitted to the hospital, he or she may apply immediately for a judicial review of his or her admission, and he or she shall~~



1 ~~be given a written notice of this right and of his or her right to legal counsel.~~

2 [Repealed.]

3 § 8009 ADMINISTRATIVE DISCHARGE

4 (a) The head of ~~the~~ a designated hospital may at any time discharge a  
5 voluntary or judicially hospitalized patient whom he or she deems clinically  
6 suitable for discharge.

7 (b) The head of ~~the~~ a designated hospital shall discharge a judicially  
8 hospitalized patient when the patient is no longer a ~~patient~~ person in need of  
9 further treatment. When a judicially hospitalized patient is discharged, the  
10 head of ~~the~~ a designated hospital shall notify the ~~applicant, the certifying~~  
11 ~~physician~~ Commissioner, the ~~family division of the superior court~~ Family  
12 Division of the Superior Court, and anyone who was notified at the time the  
13 patient was hospitalized.

14 (c) ~~A person~~ An individual responsible for providing treatment other than  
15 hospitalization to ~~an individual~~ a person ordered to undergo a program of  
16 alternative treatment, under section 7618 or 7621 of this title, may terminate  
17 the alternative treatment to the ~~individual~~ person if the provider of this  
18 alternative treatment considers the ~~individual~~ person clinically suitable for  
19 termination of treatment. Upon termination of alternative treatment, the ~~family~~  
20 ~~division of the superior court~~ Family Division of the Superior Court shall be so  
21 notified by the provider of the alternative treatment.



1 ~~Sec. 8. EFFECTIVE DATE~~

2 ~~This act shall take effect on July 1, 2013.~~

*Sec. 1. 18 V.S.A. chapter 171 is amended to read:*

*CHAPTER 171. GENERAL PROVISIONS*

*§ 7101. DEFINITIONS*

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

*\* \* \**

*(4) “Designated hospital” means a public or private hospital, other facility, or part of a hospital or facility designated by the ~~commissioner~~ Commissioner as adequate to provide appropriate care for ~~the mentally ill patient~~ persons with mental illness.*

*(5) “Elopement” means the leaving of a designated hospital or designated program ~~or training school~~ without lawful authority.*

*\* \* \**

*(9) “Interested party” means a guardian, spouse, parent, adult child, close adult relative, a responsible adult friend, or person who has the individual in his or her charge or care. It also means a mental health professional, a law enforcement officer, or a licensed physician, ~~a head of a hospital, a selectman, a town service officer, or a town health officer.~~*

*\* \* \**

*(15) “Patient” means a resident of or person in Vermont ~~qualified under this title for hospitalization or treatment as a mentally ill or mentally retarded individual~~ who is subject to involuntary or voluntary mental health treatment or evaluation.*

*\* \* \**

*(26) “No refusal system” means a system of designated hospitals and, intensive residential recovery facilities, secure residential recovery facilities, and residential treatment programs under contract with the ~~department of mental health~~ Department of Mental Health that provides high intensity services, in which the facilities shall admit any individual for care if the individual meets the eligibility criteria established by the ~~commissioner~~ Commissioner in contract.*

(27) "Participating hospital" means a designated hospital under contract with the ~~department of mental health~~ Department of Mental Health to participate in the no refusal system.

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

(29) "Secure residential recovery facility" means a residential facility owned and operated by the State and licensed as a therapeutic community residence, as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who remains in need of treatment within a secure setting for an extended period of time or for an individual transferred pursuant to 28 V.S.A. § 705a.

(30) "Successor in interest" means the mental health hospital owned and operated by the ~~state~~ State that provides acute inpatient care and replaces the Vermont State Hospital.

\* \* \*

§ 7104. WRONGFUL ~~HOSPITALIZATION~~ PLACEMENT IN CUSTODY OR DENIAL OF RIGHTS; FRAUD; ~~ELOPEMENT~~

Any person who ~~wilfully~~ willfully causes, or conspires with, or assists another to cause any of the following shall be fined not more than \$500.00 or imprisoned not more than one year, or both:

(1) the hospitalization of an individual knowing that the individual is not mentally ill or in need of hospitalization or treatment as a ~~mentally ill or mentally retarded individual~~ person with a mental illness; or

(2) the denial to any individual of any rights granted to him or her under this part of this title; or

(3) the voluntary admission to a hospital of an individual knowing that he or she is not mentally ill or eligible for treatment thereby attempting to defraud the ~~state~~ State; or

(4) the elopement of any patient ~~or student~~ from a hospital ~~or training school,~~ or who knowingly harbors any ~~sick person~~ patient who has eloped from a hospital, or who aids in abducting a patient ~~or student~~ who has been conditionally discharged from the person or persons in whose care and service that patient ~~or student~~ has been legally placed; ~~shall be fined not more than \$500.00 or imprisoned not more than one year, or both.~~

§ 7105. ARREST APPREHENSION OF ELOPED PERSONS

~~Any sheriff, deputy sheriff, constable, or officer of state State or local police, and any officer or employee of any designated hospital, designated program, or training school a secure residential recovery facility may arrest any take into custody and return to a designated hospital or a secure residential recovery facility a person in the custody of the Commissioner who has eloped from a designated hospital or designated program or training school and return such person.~~

~~§ 7106. NOTICE OF HOSPITALIZATION CUSTODY AND DISCHARGE~~

~~Whenever a patient has been admitted to a designated hospital other than upon his or her own application, the head of the designated hospital shall immediately notify the patient's legal guardian, spouse, parent or parents, or nearest known relative or interested party, if known and agent as defined in section 9701 of this title, if any, or if a minor, the patient's parent or legal guardian. If the involuntary hospitalization or admission was without court order, notice shall also be given to the superior court judge for the family division of the superior court Family Division of the Superior Court in the unit wherein the designated hospital is located. If the hospitalization or admission was by order of any court, the head of the designated hospital admitting or discharging an individual the patient shall forthwith make a report thereof to the commissioner Commissioner and to the court which entered the order for hospitalization or admission.~~

~~§ 7107. EXTRAMURAL WORK~~

~~Any hospital or training school in the state dealing with mental health may do, or procure to be done, extramural work in the way of prevention, observation, care, and consultation with respect to mental health. [Repealed.]~~

~~§ 7108. CANTEENS~~

~~The chief executive officer of the Vermont State Hospital or its successor in interest may conduct a canteen or commissary, which shall be accessible to patients, employees, and visitors of the Vermont State Hospital or its successor in interest at designated hours and shall be operated by employees of the hospital. A revolving fund for this purpose is authorized. The salary of an employee of the hospital shall be charged against the canteen fund. Proceeds from sales may be used for operation of the canteen and the benefit of the patients and employees of the hospital under the direction of the chief executive officer and subject to the approval of the commissioner. All balances of such funds remaining at the end of any fiscal year shall remain in such fund for use during the succeeding fiscal year. An annual report of the status of the funds shall be submitted to the commissioner. [Repealed.]~~

~~§ 7109. SALE OF ARTICLES; REVOLVING FUND~~

~~(a) The superintendent of a hospital or training school may sell articles made by the patients or students in the handiwork or occupational therapy departments of the institution and the proceeds thereof shall be credited to a revolving fund. When it is for their best interest, the superintendent may, with the consent of the patients or their legal representatives, employ patients or students or permit them to be employed on a day placement basis.~~

~~(b) The consent of the patient or the legal representative of the patient or student shall, in consideration of the undertaking of the superintendent, contain the further agreement that one half the earnings of the patient or student shall be credited to the personal account of the patient or student so employed at interest for benefit of the patient or student and the balance shall be credited to the fund. The superintendent shall hold and expend the fund for the purchase of equipment and materials for the handicraft or group therapy departments and for the educational and recreational welfare of the patient or student group. He or she shall submit an annual report of the fund to the commissioner. Balances remaining in it at the end of a fiscal year shall be carried forward and be available for the succeeding fiscal year.~~

~~(c) For purposes of this section the legal representative of the patient or student shall be the duly appointed guardian, the spouse, the parents or the next of kin legally responsible for the patient or student. In their absence, the commissioner shall be the legal representative. [Repealed.]~~

\* \* \*

#### § 7111. RIGHT TO LEGAL COUNSEL

~~In any proceeding before, or notice to, a court of this state State involving a patient ~~or student~~, or a proposed patient ~~or student~~, that person shall be afforded counsel, and if the patient ~~or student~~ or proposed patient ~~or student~~ is unable to pay for counsel, compensation shall be paid by the state State to counsel assigned by the court; however, this section shall not apply to a proceeding under section 7505 of this title.~~

\* \* \*

#### § 7113. INDEPENDENT EXAMINATION: PAYMENT

~~Whenever a court orders an independent examination by a mental health professional ~~or a qualified mental retardation professional~~ pursuant to this title or 13 V.S.A. § 4822, the cost of the initial examination shall be paid by the department of disabilities, aging, and independent living ~~or of health~~ Department of Mental Health. The mental health professional ~~or qualified mental retardation professional~~ may be selected by the court but the commissioner of disabilities, aging, and independent living ~~or the~~~~

~~commissioner of mental health~~ Commissioner of Mental Health may adopt a reasonable fee schedule for examination, reports, and testimony.

Sec. 2. 18 V.S.A. § 7205 is amended to read:

§ 7205. SUPERVISION ~~OF INSTITUTIONS~~

(a) ~~The department of mental health~~ Department of Mental Health shall operate the Vermont State Hospital or its successor in interest and a secure residential recovery facility. ~~The Department~~ shall be responsible for patients receiving involuntary treatment.

(b) ~~The commissioner of the department of mental health~~ Commissioner of Mental Health, in consultation with the ~~secretary~~ Secretary, shall appoint a chief executive officer of the Vermont State Hospital or its successor in interest and a facility director of the secure residential recovery facility to oversee the operations of the hospital and the secure residential recovery facility, respectively. The chief executive officer position shall be an exempt position.

Sec. 3. PURPOSE OF THE MENTAL HEALTH CARE OMBUDSMAN

Due to the State's unique role in coordinating and providing services for Vermonters with one or more diagnosed mental health conditions, the General Assembly created the Office of the Mental Health Care Ombudsman, and now finds it necessary to clarify the Office's role, which is to safeguard access to services and those rights and protections that may be at risk. Due to the fact that the Office of the Mental Health Care Ombudsman addresses methods of care that are not as prevalent as among other health conditions, the Office's existence remains consistent with the principles of parity and achieving integration throughout Vermont's health care system.

Sec. 4. 18 V.S.A. chapter 178 is added to read:

CHAPTER 178. MENTAL HEALTH CARE OMBUDSMAN

§ 7451. DEFINITIONS

As used in this chapter:

(1) "Agency" means the organization designated by the Governor as the protection and advocacy system for the State pursuant to 42 U.S.C. § 10801 et seq.

(2) "Department" means the Department of Mental Health.

(3) "Intensive residential recovery facility" shall have the same meaning as in section 7252 of this title.

(4) “Mental Health Care Ombudsman” or “Ombudsman” means an individual providing protection and advocacy services pursuant to this chapter.

(5) “Office” means the Office of the Mental Health Care Ombudsman.

(6) “Secure residential recovery facility” shall have the same meaning as in section 7620 of this title.

(7) “State agency” means any office, department, board, bureau, division, agency, or instrumentality of the State.

§ 7452. OFFICE OF THE MENTAL HEALTH CARE OMBUDSMAN

(a) The Department of Mental Health shall establish the Office of the Mental Health Care Ombudsman within the Agency by executing a memorandum of designation between the Department and the Agency.

(b) The Office shall represent the interests of Vermonters with one or more diagnosed mental health conditions, including individuals receiving services at designated hospitals, emergency rooms, correctional facilities, intensive residential recovery facilities, secure residential recovery facilities, or within a community setting.

(c) The Office shall be directed by an individual, to be known as the Mental Health Care Ombudsman, who shall be selected from among individuals within the Agency executing the memorandum of designation with the Department of Mental Health.

§ 7453. RESPONSIBILITIES OF THE OFFICE

(a) The Office may:

(1) investigate individual cases of abuse, neglect, and other serious violations of individuals in Vermont with diagnosed mental health conditions;

(2) analyze, monitor, and aim to reduce the use of seclusion, restraint, coercion, and involuntary mental health procedures;

(3)(A) review emergency involuntary procedure reports provided by the Department;

(B) confer with the Department at least twice annually regarding any findings or recommendations for improvement made by the Office in response to the emergency involuntary procedure reports;

(4)(A) review any reports provided by the Department of untimely deaths of individuals with a diagnosed mental health condition in designated hospitals, intensive residential recovery facilities, secure residential recovery facilities, or community settings;



(B) confer with the Department regarding any findings or recommendations for improvement made by the Office in response to the untimely death reports;

(5) participate on state panels reviewing the treatment of individuals with a diagnosed mental health condition;

(6) integrate efforts with the Health Care Ombudsman's Office established under 8 V.S.A. chapter 107, subchapter 1A and the Long-Term Care Ombudsman's Office established under 33 V.S.A. chapter 75 to minimize duplication of efforts; and

(7) annually, on or before January 15th, submit a report to the Department and General Assembly detailing all activities performed pursuant to this chapter and recommending improvements to the mental health system.

(b)(1) A person shall not impose any additional duties on the Office in excess of the requirements set forth in subsection (a) of this section or otherwise imposed on agencies under federal law.

(2) Nothing in this chapter shall supersede the authorities or responsibilities granted to the Agency under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

(3) The General Assembly may at any time allocate funds it deems necessary to supplement federal funding used to maintain the Office.

§ 7454. AUTHORITY OF THE MENTAL HEALTH CARE OMBUDSMAN

In fulfilling the responsibilities of the Office, the Mental Health Care Ombudsman may:

(1) Hire or contract with persons or organizations to fulfill the purposes of this chapter.

(2) Communicate and visit with any individual with a diagnosed mental health condition, provided that the Ombudsman shall discontinue interactions with any individual when requested to do so by that individual. Toward that end, designated hospitals, emergency rooms, correctional facilities, intensive residential recovery facilities, secure residential recovery facilities, and other community treatment facilities shall provide the Ombudsman access to their facilities and to individuals for whom they provide mental health services. If the individual with a diagnosed mental health condition has a guardian, the Office shall take no formal action without consent of the guardian or a court order, unless an emergency situation arises.

(3) Delegate to employees any part of the Mental Health Care Ombudsman's authority.

(4) Take such further actions as are necessary in order to fulfill the purpose of this chapter.

§ 7455. COOPERATION OF STATE AGENCIES

(a) All state agencies shall comply with requests of the Mental Health Care Ombudsman for information and assistance necessary to carry out the responsibilities of the Office.

(b) The Secretary of Human Services may adopt rules necessary to ensure that departments within the Agency of Human Services cooperate with the Office.

§ 7456. CONFIDENTIALITY

In the absence of written consent by an individual with a diagnosed mental health condition about whom a report has been made, or by his or her guardian or legal representative, or a court order, the Mental Health Care Ombudsman shall not disclose the identity of such person, unless otherwise provided for under Protection and Advocacy for Individuals with Mental Illness, 42 U.S.C. §§ 10801–10851.

§ 7457. IMMUNITY

Civil liability shall not attach to the Mental Health Care Ombudsman or his or her employees for good faith performance of the duties imposed by this chapter.

§ 7458. INTERFERENCE AND RETALIATION

(a) A person who intentionally hinders a representative of the Office acting pursuant to this chapter shall be imprisoned not more than one year or fined not more than \$5,000.00, or both.

(b) A person who takes discriminatory, disciplinary, or retaliatory action against an employee, a resident, or a volunteer of a designated hospital, correctional facility, intensive residential recovery facility, secure residential recovery facility, community treatment facility, or state agency for any communication made, or information disclosed, to aid the Office in carrying out its duties and responsibilities shall be imprisoned not more than one year or fined not more than \$5,000.00, or both. An employee, a resident, or a volunteer of such facilities or state agencies may seek damages in superior court against a person who takes an action prohibited by this subsection.

§ 7459. CONFLICT OF INTEREST

The Mental Health Care Ombudsman, an employee of the Ombudsman, or an immediate family member of the Ombudsman or of an employee shall not have any financial interest in or authority over a designated hospital,

correctional facility, intensive residential recovery facility, secure residential recovery facility, or community treatment facility and from providing mental health services, which creates a conflict of interest in carrying out the Ombudsman's responsibilities under this chapter.

Sec. 5. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT FOR IMMEDIATE EXAMINATION

~~(a) In emergency circumstances where a certification by a 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 presents an immediate risk of serious injury to himself or herself 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 district or superior court judge for a warrant for an immediate examination when:~~

(A) a certification by a physician is not available without serious and unreasonable delay;

(B) personal observation of the conduct of a person constitutes reasonable grounds to believe that the person is a person in need of treatment; and

(C) the person presents an immediate risk of serious injury to himself or herself or others if not restrained.

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

~~(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 immediate examination pursuant to subsection (a) of this section, he or she the judge may grant the warrant and order the person to submit to an immediate examination at a designated hospital.~~

~~(d) If necessary By granting a warrant, the court may order the~~ authorizes a law enforcement officer or mental health professional to transport the person to a designated hospital for an immediate examination.

~~(e) Upon admission to a designated hospital pursuant to a warrant for immediate examination, the person shall be immediately examined by a licensed physician immediately. If the physician certifies that the person is a person in need of treatment, the person shall be held for an emergency examination in accordance with section 7508 of this title. If the physician does~~

*not certify that the person is a person in need of treatment, ~~he or she~~ the physician shall immediately discharge the person and cause him or her to be returned to the place from which he or she was taken, or to such place as the person reasonably directs.*

*Sec. 6. 18 V.S.A. chapter 181 is amended to read:*

*CHAPTER 181. JUDICIAL PROCEEDINGS*

*\* \* \**

*§ 7612. APPLICATION FOR INVOLUNTARY TREATMENT*

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

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

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

*(d) The application shall contain:*

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

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

*(e) The application shall be accompanied by:*

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

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

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

*§ 7613. NOTICE—APPOINTMENT OF COUNSEL*

*(a) When the application is filed, the court shall appoint counsel for the proposed patient, and transmit a copy of the application, the physician's certificate, if any, and a notice of hearing to the proposed patient, his or her attorney, guardian, ~~or any person having custody and control of the proposed patient, if any, the state's attorney, State's Attorney or the attorney general Attorney General,~~ and any other person the court believes has a concern for the proposed patient's welfare. A copy of the notice of hearing shall also be transmitted to the applicant and certifying physician.*

\* \* \*

*§ 7617. FINDINGS; ORDER*

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

*(b)(1) If the proposed patient is found to have been a person in need of treatment at the time of admission or application and a patient in need of further treatment at the time of the hearing, the court may order the person:*

*~~(1)(A)~~ hospitalized in a designated hospital;*

*~~(2)(B)~~ hospitalized in any other public or private hospital if he or she and the hospital agree; or*

*~~(3)(C)~~ to undergo a program of treatment other than hospitalization.*

*(2) If the application for treatment was made in accordance with 28 V.S.A. § 705a and the proposed patient is found to be a person in need of treatment at the time of application and at the time of the hearing, the only order for treatment other than hospitalization that a court may enter is an order of nonhospitalization at a secure residential recovery facility.*

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

*(d) Before making its decision, the court shall order testimony by an appropriate representative of a hospital, a community mental health agency, public or private entity or agency, or a suitable person, who shall assess the availability and appropriateness for the individual of treatment programs other than hospitalization.*

\* \* \*

*§ 7620. APPLICATION FOR CONTINUED TREATMENT*

*(a) If, prior to the expiration of any order issued in accordance with section 7623 of this title, the ~~commissioner~~ Commissioner believes that the condition of the patient is such that the patient continues to require treatment, the ~~commissioner~~ Commissioner shall apply to the court for a determination that the patient is a patient in need of further treatment and for an order of continued treatment.*

*(b) An application for an order authorizing continuing treatment shall contain a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that the patient is a patient in need of further treatment, a statement describing the treatment program provided to the patient, and the results of that course of treatment.*

*(c) Any order of treatment issued in accordance with section 7623 of this title shall remain in force pending the court's decision on the application.*

*(d) If the ~~commissioner~~ Commissioner seeks to have the patient receive the further treatment in a secure residential recovery facility, the application for an order authorizing continuing treatment shall expressly state that such treatment is being sought. The application shall contain, in addition to the statements required by subsection (b) of this section, a statement setting forth the reasons for the ~~commissioner's~~ Commissioner's determination that clinically appropriate treatment for the patient's condition can be provided safely only in a secure residential recovery facility.*

*(e) As used in this chapter:*

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

*~~(2) "Secure residential recovery facility" means a residential facility, licensed as a therapeutic community residence as defined in 33 V.S.A. § 7102(11), for an individual who no longer requires acute inpatient care but who does remain in need of treatment within a secure setting for an extended period of time. A, "secure residential recovery facility" shall have the same meaning as in section 7101 of this title. Except as provided in 28 V.S.A. § 705a, a secure residential recovery facility shall not be used for any purpose other than the purposes permitted by this section.~~*

**§ 7621. HEARING ON APPLICATION FOR CONTINUED TREATMENT;  
ORDERS**

*(a) The hearing on the application for continued treatment shall be held in accordance with the procedures set forth in sections 7613, 7614, 7615, and 7616 of this title.*

~~(b) If the court finds that the patient is a patient in need of further treatment and requires hospitalization, it shall order hospitalization continued treatment for up to one year.~~

\* \* \*

Sec. 7. 18 V.S.A. § 7708 is amended to read:

§ 7708. ~~SURGICAL OPERATIONS~~

~~If the superintendent finds that a patient supported by the state requires a surgical operation or that a surgical operation would promote the possibility of his or her discharge from the hospital, the superintendent, with the consent of the patient, his or her attorney, or his or her legally appointed guardian, if any, or next of kin, if any be known, may make the necessary arrangements with some surgeon and hospital for the operation. The expense of the operation shall be borne by the state in the same proportion as the patient is supported by the state. [Repealed.]~~

Sec. 8. 18 V.S.A. chapter 189 is amended to read:

CHAPTER 189. RELEASE AND DISCHARGE

§ 8003. ~~PERSONAL NEEDS OF PATIENT~~

~~The ~~commissioner~~ Commissioner shall make any necessary arrangements to ensure:~~

~~(1) that no patient is discharged ~~or granted a conditional release~~ from a designated hospital without suitable clothing; and~~

~~(2) that any indigent patient discharged ~~or granted a conditional release~~ is furnished suitable transportation for his or her return home and an amount of money as may be prescribed by the head of ~~the~~ a designated hospital to enable the patient to meet his or her immediate needs.~~

\* \* \*

§ 8006. ~~VISITS~~

~~(a) The head of a hospital may grant a visit permit of not more than 30 days to any patient under his or her charge. [Repealed.]~~

~~(b) The granting and revocation of visits shall be made in accordance with rules and procedures adopted by the head of the designated hospital.~~

§ 8007. ~~CONDITIONAL DISCHARGES~~

~~(a) The board or the head of a hospital may conditionally discharge from a hospital any patient who may be safely and properly cared for in a place other than the hospital.~~

~~(b) A conditional discharge may extend for a term of six months, but shall not exceed 60 days unless the head of the hospital determines that a longer period will materially improve the availability of a program of treatment which is an alternative to hospitalization.~~

~~(c) Unless sooner revoked or renewed, a conditional discharge shall become absolute at the end of its term.~~

~~(d) A conditional discharge may be granted subject to the patient's agreement to participate in outpatient, after care, or follow-up treatment programs, and shall be subject to such other conditions and terms as are established by the granting authority.~~

~~(e) Each patient granted a conditional discharge shall be provided, so far as practicable and appropriate, with continuing treatment on an outpatient or partial hospitalization basis.~~

~~(f) Each patient granted a conditional discharge shall be given a written statement of the conditions of his or her release, the violation of which can cause revocation.~~

~~(g) A conditional discharge may be renewed by the granting authority at any time before it becomes absolute if the head of a hospital first determines that such renewal will substantially reduce the risk that the patient will become a person in need of treatment in the near future. [Repealed.]~~

#### § 8008. REVOCATION OF CONDITIONAL DISCHARGE

~~(a) The board or the head of the hospital may revoke a conditional discharge at any time before that discharge becomes absolute if the patient fails to comply with the conditions of the discharge.~~

~~(b) A revocation by the board or the head of the hospital shall authorize the return of the patient to the hospital and shall be sufficient warrant for a law enforcement officer or mental health professional to take the patient into custody and return him or her to the hospital from which he or she was conditionally discharged.~~

~~(c) Immediately upon his or her return to the hospital, the patient shall be examined by a physician who shall orally explain to the patient the purpose of the examination and the reasons why the patient was returned to the hospital.~~

~~(d) If the examining physician certifies in writing to the head of the hospital that, in his or her opinion, the patient is a person in need of treatment, setting forth the recent and relevant facts supporting this opinion, the revocation shall become effective and the patient shall be readmitted to the hospital. If the examining physician does not so certify, the revocation shall be cancelled and the patient shall be returned to the place from which he or she was taken.~~



~~(e) If the patient is readmitted to the hospital, he or she may apply immediately for a judicial review of his or her admission, and he or she shall be given a written notice of this right and of his or her right to legal counsel. [Repealed.]~~

~~§ 8009. ADMINISTRATIVE DISCHARGE~~

~~(a) The head of ~~the~~ a designated hospital may at any time discharge a voluntary or judicially hospitalized patient whom he or she deems clinically suitable for discharge.~~

~~(b) The head of ~~the~~ a designated hospital shall discharge a judicially hospitalized patient when the patient is no longer a patient in need of further treatment. When a judicially hospitalized patient is discharged, the head of ~~the~~ a designated hospital shall notify the ~~applicant, the certifying physician~~ Commissioner, the family division of the superior court Family Division of the Superior Court, and anyone who was notified at the time the patient was hospitalized.~~

~~(c) ~~A person~~ An individual responsible for providing treatment other than hospitalization to ~~an individual~~ a person ordered to undergo a program of alternative treatment, under section 7618 or 7621 of this title, may terminate the alternative treatment to the ~~individual~~ person if the provider of this alternative treatment considers the ~~individual~~ person clinically suitable for termination of treatment. Upon termination of alternative treatment, the ~~family division of the superior court~~ the Commissioner and Family Division of the Superior Court shall be so notified by the provider of the alternative treatment. Upon receipt of the notice, the Court shall vacate the order.~~

\* \* \*

Sec. 9. 18 V.S.A. chapter 197 is amended to read:

~~CHAPTER 197. MENTALLY ILL USERS OF ALCOHOL OR DRUGS~~

\* \* \*

~~§ 8404. CONDITIONAL DISCHARGE~~

~~The board of mental health, in its discretion, may grant a conditional discharge to a patient admitted under this chapter after the expiration of one month from the date of admission and may revoke any conditional discharge so granted. A revocation of a conditional discharge by the board of mental health at any time prior to the expiration of the original term of hospitalization shall be sufficient warrant for the return of the patient to the hospital from which he or she was discharged, there to remain until a subsequent conditional discharge or the expiration of the full term from the date of the original admission. [Repealed.]~~

§ 8405. *OUTSIDE VISITS*

*In the discretion of the head of a designated hospital, a patient admitted under this chapter may be permitted to visit a specifically designated place for a period not to exceed five days and return to the same hospital. The visit may be allowed to see a dying relative, to attend the funeral of a relative, to obtain special medical services, to contact prospective employers, or for any compelling reason consistent with the welfare or rehabilitation of the patient.*

*Sec. 10. 18 V.S.A. § 8847 is added to read:*

§ 8847. INDEPENDENT EXAMINATION: PAYMENT

*Whenever a court orders an independent examination by a qualified intellectual disabilities professional pursuant to this title or 13 V.S.A. § 4822, the cost of the examination shall be paid by the Department of Disabilities, Aging, and Independent Living. The qualified intellectual disabilities professional may be selected by the court but the Commissioner of Disabilities, Aging, and Independent Living may adopt a reasonable fee schedule for examination, reports, and testimony.*

*Sec. 11. 18 V.S.A. § 8848 is added to read:*

§ 8848. APPREHENSION OF ELOPED PERSONS

*Any sheriff, deputy sheriff, or officer of the State or local police and any officer or employee of any designated program may arrest any person who has eloped from a designated program and return such person.*

*Sec. 12. 28 V.S.A. § 705a is added to read:*

§ 705a. TRANSFER TO SECURE RESIDENTIAL RECOVERY FACILITY

*(a) If in the discretion of the Commissioner of Mental Health it becomes necessary and appropriate, the Commissioner of Mental Health may file an application, in consultation with the Commissioner of Corrections, in the Family Division of the Superior Court for the involuntary treatment of an incarcerated person pursuant to 18 V.S.A. § 7612 which specifies admission to a secure residential recovery facility as the proposed plan of treatment for the person if it is determined that the person:*

- (1) has a mental illness as defined in 18 V.S.A. § 7101;*
- (2) poses a danger to himself or herself or others; and*
- (3) requires treatment at a secure residential recovery facility.*

*(b) If the Court finds that the person is in need of treatment pursuant to 18 V.S.A. § 7617(b), the only order of nonhospitalization that a court may order is for a program of treatment at a secure residential recovery facility.*

This limitation pertains only to applications filed by the Commissioner of Mental Health under this subsection.

(c)(1) When a person is transferred to a secure residential recovery facility pursuant to this section, he or she shall be subject to the supervision of the Commissioner of Mental Health except that the time during which the person is in the custody of the Commissioner of Mental Health shall be computed as part of the term for which he or she was sentenced. He or she shall continue to be eligible for good behavior reductions pursuant to section 811 of this title, and he or she shall continue to be eligible for parole pursuant to chapter 7 of this title.

(2) When the Commissioner of Mental Health determines that a person whose sentence has not expired no longer requires treatment at a secure residential recovery facility, the Commissioner of Mental Health shall return the person to the custody of the Commissioner of Corrections in accordance with 18 V.S.A. chapter 189.

(d) If the person's sentence expires while the person is receiving treatment at a secure residential recovery facility and the Commissioner of Mental Health believes that the person continues to meet the criteria in subsection (a) of this section, the Commissioner of Mental Health shall submit an application for continued treatment of the person to the Family Division of the Superior Court pursuant to 18 V.S.A. § 7620.

(e) As used in this section, "secure residential recovery facility" shall have the same meaning as in 18 V.S.A. § 7101.

### Sec. 13. MENTAL HEALTH LEGISLATIVE WORK GROUP

(a) On or before July 15, 2013, the Commissioner of Mental Health shall convene a work group of stakeholders to examine current Vermont statutes pertaining to judicial proceedings in Title 18, Part 8 and to make recommendations that would more closely align the statutes to the Department of Mental Health's current practices while respecting the rights of affected individuals. Members of the Work Group shall include:

- (1) the Commissioner of Mental Health or designee;
- (2) the Commissioner of Corrections or designee;
- (3) a representative of the Vermont Association of Hospitals and Health Systems;
- (4) the Mental Health Care Ombudsman;
- (5) the Administrative Judge or designee;
- (6) a representative of Vermont Legal Aid's Mental Health Law Project;

(7) a representative of the law enforcement community;

(8) a representative of a designated agency's emergency response team; and

(9) two representatives of the peer community.

(b) The Work Group shall consider:

(1) the Department's current preadmission practices through the time of hospital admission;

(2) emergency examination procedures, including temporary custody;

(3) immediate examination procedures, including reliable reports of conduct and warrants for entering residences;

(4) time limits for certification and judicial proceedings;

(5) processes for referral to and discharge from the secure residential recovery facility;

(6) manners of reducing wait times in emergency departments, including the use of technology and streamlined processes;

(7) a protocol that the Departments of Corrections and of Mental Health may use in serving individuals diverted from court-ordered inpatient treatment due to lack of available bed space; and

(8) any other topic the Commissioner of Mental Health deems appropriate.

(c) On or before November 15, 2013, the Commissioner shall submit a report containing the Work Group's recommendations for legislation to the Mental Health Oversight Committee, the Senate Committee on Health and Welfare, and the House Committee on Human Services.

*Sec. 14. REPEAL*

18 V.S.A. § 7259 (mental health care ombudsman) is repealed.

*Sec. 15. REDESIGNATION*

18 V.S.A. chapters 217 (genetic testing), 219 (health information technology), and 220 (Green Mountain Care Board) shall be redesignated to appear within 18 V.S.A. part 9 (unified health care system).

*Sec. 16. EFFECTIVE DATE*

This act shall take effect on July 1, 2013.