

1 S.189

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Human services; mental health; treatment of minors; parental consent

6 Statement of purpose: This bill proposes to require a parent or legal guardian,
7 but not a minor, to consent to the examination of the minor under 14 years of
8 age by a physician for the purpose of determining whether the minor is in need
9 of involuntary mental health treatment, and it provides for a judicial review
10 process.

11 An act relating to parental consent to mental health treatment of minors
12 under age 14

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

14 Sec. 1. 18 V.S.A. § 7611 is amended to read:

15 § 7611. INVOLUNTARY TREATMENT

16 (a) No person 14 years of age or older may be made subject to involuntary
17 treatment unless he or she is found to be a person in need of treatment or a
18 patient in need of further treatment.

19 (b)(1) A parent or legal guardian may consent to the examination of a
20 minor under the age of 14 by a licensed physician for the purpose of

1 determining whether the minor should be admitted to a hospital or other
2 facility for a further determination of whether the minor is a person in need of
3 treatment. If consent for the examination is given by the parent or guardian,
4 the consent of the minor shall not be necessary.

5 (2) If the physician determines, upon examination of the minor pursuant
6 to subdivision (1) of this subsection, that admission of the minor to the hospital
7 or other facility meets the standard for a person in need of further treatment as
8 defined in section 7101 of this title, the minor shall be admitted with the
9 consent of the parent or guardian. The consent of the minor shall not be
10 necessary.

11 (3) Within 24 hours after the minor patient's admission to the hospital or
12 other facility, a second physician shall conduct an examination to determine
13 whether the minor patient is a person in need of treatment.

14 (A) If the minor is found to be a person in need of treatment, the
15 physician shall complete a certificate of examination, which shall be executed
16 under penalty of perjury, stating that he or she has examined the minor patient
17 and is of the opinion that the minor patient is a person in need of treatment.
18 The physician shall file a copy of the certificate with the family court.

19 (B) If the minor is found not to be a person in need of treatment, he
20 or she shall be discharged from the hospital or other treatment facility and shall

1 return to the custody of his or her parent or guardian, if appropriate, or to the
2 department for children and families.

3 (4)(A) At any time after a minor has been certified as a person in need
4 of treatment and during such time as the minor continues to receive treatment
5 as an inpatient, the minor patient may request the family court to conduct a
6 preliminary hearing to determine whether there is probable cause to believe
7 that he or she was a person in need of treatment at the time of the evaluation
8 conducted under subdivision (3) of this subsection or continues to be a patient
9 in need of further treatment.

10 (B) Upon receipt of a certification from a physician, the court shall
11 appoint counsel for the minor patient and transmit a copy of the request, the
12 physician's certificate, and a notice of hearing to the minor patient, his or her
13 attorney, his or her parent or guardian, the attorney general, and any other
14 person the court believes has a concern for the minor patient's welfare. A copy
15 of the notice of hearing shall also be transmitted to the certifying physician.

16 (C) The notice of hearing shall set forth the date and time of the
17 hearing, which shall be no more than ten days from the date of the request for
18 hearing, and shall contain a list of the minor patient's rights at the hearing.

19 (D) As soon as practicable after notice of the hearing is given, the
20 court, on its own motion or upon the motion of the minor patient or his or her
21 attorney or the state of Vermont, shall authorize examination of the minor

1 patient by a psychiatrist other than the physician making the original
2 certification. The examination and subsequent report or reports shall be paid
3 for by the state of Vermont. The physician shall report his or her finding to the
4 party requesting the report or to the court if the court requested the
5 examination.

6 (E) The hearing shall be conducted according to the rules of evidence
7 applicable in civil actions, and, to the extent not inconsistent, the Vermont
8 Rules of Civil Procedure and Rules for Family Proceedings shall apply.

9 (F) The minor patient and his or her parent or guardian shall have a
10 right to appear at the hearing to testify. The attorneys for the state and the
11 minor patient shall have the right to subpoena, present, and cross-examine
12 witnesses and present oral arguments. The court may, at its discretion, receive
13 the testimony of any other person. The minor patient may choose whether to
14 attend the hearing, subject to reasonable rules of conduct, and the court may
15 exclude all persons not necessary for the conduct of the hearing.

16 (G) The state shall appear and shall be represented by the attorney
17 general.

18 (H) If the court finds that the minor patient was not a person in need
19 of treatment at the time of the admission or is not a patient in need of further
20 treatment at the time of the hearing, the court shall enter a finding to that effect
21 and shall order the minor patient discharged from the treatment facility. If the

1 minor patient is found to have been a person in need of treatment at the time of
2 admission and a patient in need of further treatment at the time of the hearing,
3 the court may order the minor:

4 (i) hospitalized in a designated hospital;

5 (ii) hospitalized in any other public or private hospital if such
6 hospital agrees to the admission; or

7 (iii) to undergo a program of treatment other than hospitalization.

8 (I) Prior to ordering the hospitalization of a minor, the court shall
9 conduct a thorough consideration of available alternatives. The court may
10 order hospitalization only if the court finds that there is no available program
11 of treatment for the minor patient that is an appropriate alternative to
12 hospitalization. Before making its decision, the court shall order testimony by
13 an appropriate representative of a hospital, community mental health agency,
14 public or private entity or agency, or other suitable person who shall assess the
15 availability and appropriateness for the individual of treatment programs other
16 than hospitalization.

17 (J) Prior to ordering the hospitalization of a minor, the court shall
18 conduct a thorough inquiry into the adequacy of the treatment to be provided to
19 the minor by the hospital. The court may not order hospitalization unless the
20 court finds that the hospital in which the minor is to be hospitalized can

1 provide the minor with treatment that is adequate and appropriate for his or her
2 condition.

3 (K) Preference among available hospitals or other facilities shall be
4 given to the hospital or facility which is located nearest to the residence of the
5 minor's parent or guardian, except when the minor or his or her parent or
6 guardian requests otherwise.

7 (c) The written application and judicial process requirements contained in
8 sections 7612 through 7621, inclusive, of this title shall not apply to the
9 involuntary treatment of minors under the age of 14.

10 Sec. 2. EFFECTIVE DATE

11 This act shall take effect upon passage.