

No. 192. An act relating to involuntary treatment and medication.

(S.287)

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

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

§ 7101. DEFINITIONS

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

* * *

(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, a licensed physician, or a head of a hospital, ~~a selectman, a town service officer, or a town health officer.~~

* * *

(29) “Peer” means an individual who has a personal experience of living with a mental health condition or psychiatric disability.

(30) “Peer services” means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery.

Sec. 1a. 18 V.S.A. § 7252 is amended to read:

§ 7252. DEFINITIONS

As used in this chapter:

* * *

(10) ~~“Peer” means an individual who has a personal experience of living with a mental health condition or psychiatric disability. [Repealed.]~~

(11) ~~“Peer services” means support services provided by trained peers or peer-managed organizations focused on helping individuals with mental health and other co-occurring conditions to support recovery. [Repealed.]~~

* * *

Sec. 2. 18 V.S.A. § 7256 is amended to read:

§ 7256. REPORTING REQUIREMENTS

Notwithstanding 2 V.S.A. § 20(d), the ~~department of mental health~~ Department of Mental Health shall report annually on or before January 15 to the ~~senate committee on health and welfare and the house committee on human services~~ Senate Committee on Health and Welfare and the House Committee on Human Services regarding the extent to which individuals with mental health conditions receive care in the most integrated and least restrictive setting available. The Department shall consider measures from a variety of sources, including the Joint Commission, the National Quality Forum, the Centers for Medicare and Medicaid Services, the National Institute of Mental Health, and the Substance Abuse and Mental Health Services Administration. The report shall address:

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

- (2) ~~Adequacy~~ adequacy of the capacity at each level of care across the continuum of mental health services;
- (3) ~~Individual~~ individual experience of care and satisfaction;
- (4) ~~Individual~~ individual recovery in terms of clinical, social, and legal outcomes; ~~and~~
- (5) ~~Performance~~ performance of the ~~state's~~ State's mental health system of care as compared to nationally recognized standards of excellence;
- (6) ways in which patient autonomy and self-determination are maximized within the context of involuntary treatment and medication;
- (7) outcome measures and other data on individuals for whom petitions for involuntary medication are filed; and
- (8) progress on alternative treatment options across the system of care for individuals seeking to avoid or reduce reliance on medications, including supported withdrawal from medications.

Sec. 3. 18 V.S.A. § 7257 is amended to read:

§ 7257. REPORTABLE ADVERSE EVENTS

(a) An acute inpatient hospital, an intensive residential recovery facility, a designated agency, or a secure residential facility shall report to the ~~department of mental health~~ Department of Mental Health instances of death or serious bodily injury to individuals with a mental health condition in the custody or temporary custody of the commissioner ~~commissioner~~ Commissioner.

(b) An acute inpatient hospital shall report to the Department of Mental Health any staff injuries caused by a person in the custody or temporary custody of the Commissioner that are reported to both the Department of Labor and to the hospital's workers' compensation carrier.

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

§ 7259. MENTAL HEALTH CARE OMBUDSMAN

(a) The ~~department of mental health~~ Department of Mental Health shall establish the ~~office of the mental health care ombudsman~~ Office of the Mental Health Care Ombudsman within the agency designated by the ~~governor~~ Governor as the protection and advocacy system for the ~~state~~ State pursuant to 42 U.S.C. § 10801 et seq. The agency may execute the duties of the ~~office of the mental health care ombudsman~~ Office of the Mental Health Care Ombudsman, including authority to assist individuals with mental health conditions and to advocate for policy issues on their behalf; provided, however, that nothing in this section shall be construed to impose any additional duties on the agency in excess of the requirements under federal law.

(b) The agency may provide a report annually to the ~~general assembly~~ General Assembly regarding the implementation of this section.

(c) In the event the protection and advocacy system ceases to provide federal funding to the agency for the purposes described in this section, the ~~general assembly~~ General Assembly may allocate sufficient funds to maintain

~~the office of the mental health care ombudsman~~ Office of the Mental Health Care Ombudsman.

(d) The Department of Mental Health shall provide a copy of the certificate of need for all emergency involuntary procedures performed on a person in the custody or temporary custody of the Commissioner to the Office of the Mental Health Care Ombudsman on a monthly basis.

Sec. 5. 18 V.S.A. § 7504 is amended to read:

§ 7504. APPLICATION AND CERTIFICATE FOR EMERGENCY EXAMINATION

(a) ~~A~~ Upon written application by an interested party made under the pains and penalties of perjury and accompanied by a certificate by a licensed physician who is not the applicant, a person shall be admitted to a designated held for admission to a hospital for an emergency examination to determine if he or she is a person in need of treatment ~~upon written application by an interested party accompanied by a certificate by a licensed physician who is not the applicant.~~ The application and certificate shall set forth the facts and circumstances ~~which~~ that constitute the need for an emergency examination and ~~which~~ that show that the person is a person in need of treatment.

(b) The application and certificate shall be authority for transporting the person to a ~~designated~~ hospital for an emergency examination, as provided in section 7511 of this title.

(c) For the purposes of admission of an individual to a designated hospital for care and treatment under this section, a head of a hospital, as provided in subsection (a) of this section, may include a person designated in writing by the head of the hospital to discharge the authority granted in this section.

A designated person must be an official hospital administrator, supervisory personnel, or a licensed physician on duty on the hospital premises other than the certifying physician under subsection (a) of this section.

Sec. 6. 18 V.S.A. § 7505 is amended to read:

§ 7505. WARRANT AND CERTIFICATE FOR IMMEDIATE
EMERGENCY 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~~ Superior judge for a warrant for an ~~immediate~~ emergency examination.

(b) The law enforcement officer or mental health professional may take the person into temporary custody and shall apply to the ~~court~~ 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~~ emergency examination, he or she may order the person to submit to an ~~immediate examination at a designated hospital~~ evaluation by a physician for that purpose.

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

(e) ~~Upon admission to a designated hospital, the person shall be immediately examined by a~~ 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 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. If the physician certifies that the person is a person in need of treatment Once the 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 physician does not certify that the person is a person in need of treatment, he or she 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. 7. 18 V.S.A. § 7508 is amended to read:

§ 7508. EMERGENCY EXAMINATION AND SECOND CERTIFICATION

(a) When ~~a person is admitted to a designated hospital~~ an initial certification is issued for an emergency examination of a person in accordance with section 7504 or subsection 7505(e) of this title, he or she shall be examined and certified by a psychiatrist as soon as practicable, but not later than ~~one working day~~ 24 hours after ~~admission~~ initial certification.

(b) If the person is ~~admitted~~ held for admission on an application and physician's certificate, the examining psychiatrist shall not be the same physician who signed the certificate.

(c) If the psychiatrist does not ~~certify~~ issue a second certification stating that the person is a person in need of treatment, he or she shall immediately discharge or release 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.

(d) If the psychiatrist does ~~certify~~ issue a second certification that the person is a person in need of treatment, the ~~person's hospitalization~~ person may continue to be held for an additional 72 hours, at which time ~~hospitalization shall terminate~~ the person shall be discharged or released, unless within that period:

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

(2) an application for involuntary treatment is filed with the appropriate court under section 7612 of this title, in which case the patient shall ~~remain hospitalized~~ continue to be held pending the ~~court's decision on the application~~ Court's finding of probable cause on the application.

(e)(1)(A) A person shall be deemed to be in the temporary custody of the Commissioner when the first of the following occurs:

(i) a physician files an initial certification for the person while the person is in a hospital; or

(ii) a person is certified by a psychiatrist to be a person in need of treatment during an emergency examination.

(B) Temporary custody under this subsection shall continue until the Court issues an order pursuant to subsection 7617(b) of this title or the person is discharged or released.

(2) The Commissioner shall make every effort to ensure that a person held for an emergency examination pending a hospital admission is receiving temporary care and treatment that:

(A) uses the least restrictive manner necessary to protect the safety of both the person and the public;

(B) respects the privacy of the person and other patients; and

(C) prevents physical and psychological trauma.

(3) All persons admitted or held for admission shall receive a notice of rights as provided for in section 7701 of this title, which shall include contact information for Vermont Legal Aid, the Office of the Mental Health Care Ombudsman, and the mental health patient representative. The Department of Mental Health shall develop and regularly update informational material on available peer-run support services, which shall be provided to all persons admitted or held for admission.

(4) A person held for an emergency examination may be admitted to an appropriate hospital at any time.

Sec. 8. 18 V.S.A. § 7509 is amended to read:

§ 7509. TREATMENT; RIGHT OF ACCESS

(a) Upon admission to the hospital pursuant to section 7503, 7508, 7617, or 7624 of this title, the person shall be treated with dignity and respect and shall be given such medical and psychiatric treatment as is indicated.

(b) ~~The person~~ All persons admitted or held for admission shall be given the opportunity, subject to reasonable limitations, to communicate with others, including visits by a peer or other support person designated by the person, presence of the support person at all treatment team meetings the person is entitled to attend, the reasonable use of a telephone, and the reasonable use of electronic mail and the Internet.

(c) The person shall be requested to furnish the names of persons he or she may want notified of his or her hospitalization and kept informed of his or her

status. The head of the hospital shall see that such persons are notified of the status of the patient, how he or she may be contacted and visited, and how they may obtain information concerning him or her.

Sec. 9. 18 V.S.A. § 7612 is amended to read:

§ 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 the proposed patient's residence or, in the case of a nonresident, in any district court~~ Family Division of the 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~~ unit of the Family Division of the Superior Court in which the hospital is located. In all other cases, it shall be filed in the unit in which the proposed patient resides. In the case of a nonresident, it may be filed in any unit. The Court may change the venue of the proceeding to the unit in which the proposed patient is located at the time of the trial.

(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~~ 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~~ 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. The examining physician shall document on the certificate the specific alternative forms of care and treatment that he or she considered and why those alternatives were deemed inappropriate, including information on the availability of any appropriate alternatives.

Sec. 10. 18 V.S.A. § 7612a is added to read:

§ 7612a. PROBABLE CAUSE REVIEW

(a) Within three days after an application for involuntary treatment is filed, the Family Division of the Superior Court shall conduct a review to determine whether there is probable cause to believe that the person was a person in need of treatment at the time of his or her admission. The review shall be based

solely on the application for an emergency examination and accompanying certificate by a licensed physician and the application for involuntary treatment.

(b) If, based on a review conducted pursuant to subsection (a) of this section, the Court finds probable cause to believe that the person was a person in need of treatment at the time of his or her admission, the person shall be ordered held in the temporary custody of the Commissioner for further proceedings in accordance with Part 8 of this title. If probable cause is not established, the person shall be ordered discharged or released from the hospital and returned to the place from which he or she was transported or to such place as the person may reasonably direct.

(c) An application for involuntary treatment shall not be dismissed solely because the probable cause review is not completed within the time period required by this section if there is good cause for the delay.

Sec. 11. 18 V.S.A. § 7615 is amended to read:

§ 7615. HEARING ON APPLICATION FOR INVOLUNTARY TREATMENT

(a)(1) Upon receipt of the application, the ~~court~~ Court shall set a date for the hearing to be held within 10 days from the date of the receipt of the application or 20 days from the date of the receipt of the application if a psychiatric examination is ordered under section 7614 of this title unless the

hearing is continued by the ~~court~~ Court pursuant to subsection (b) of this section.

(2)(A) The applicant or a person who is certified as a person in need of treatment pursuant to section 7508 of this title may file a motion to expedite the hearing. The motion shall be supported by an affidavit, and the Court shall rule on the motion on the basis of the filings without holding a hearing. The Court:

(i) shall grant the motion if it finds that the person demonstrates a significant risk of causing the person or others serious bodily injury as defined in 13 V.S.A. § 1021 even while hospitalized, and clinical interventions have failed to address the risk of harm to the person or others;

(ii) may grant the motion if it finds that the person has received involuntary medication pursuant to section 7624 of this title during the past two years and, based upon the person's response to previous and ongoing treatment, there is good cause to believe that additional time will not result in the person establishing a therapeutic relationship with providers or regaining competence.

(B) If the Court grants the motion for expedited hearing pursuant to this subdivision, the hearing shall be held within ten days from the date of the order for expedited hearing.

(3) If a hearing on the application for involuntary treatment has not occurred within 60 days from the date of the Court's receipt of the application,

the Commissioner shall request that the Court and both parties' attorneys provide the reasons for the delay. The Commissioner shall submit a report to the Court, the Secretary of Human Services, and the patient's attorney that either explains why the delay was warranted or makes recommendations as to how delays of this type can be avoided in the future.

(b)(1) ~~The court~~ For hearings held pursuant to subdivision (a)(1) of this section, the Court may grant either each party an a onetime extension of time of up to seven days for good cause.

(2) The Court may grant one or more additional seven-day continuances if:

(A) the Court finds that the proceeding or parties would be substantially prejudiced without a continuance; or

(B) the parties stipulate to the continuance.

(c) ~~The hearing shall be conducted according to the rules of evidence~~ Vermont Rules of Evidence applicable in civil actions in the criminal division of the superior courts of the state, and to an extent not inconsistent with this part, ~~the rules of civil procedure of the state~~ Vermont Rules of Civil Procedure shall be applicable.

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

present oral arguments. The ~~court~~ Court may, at its discretion, receive the testimony of any other person.

(e) The proposed patient may at his or her election attend the hearing, subject to reasonable rules of conduct, and the ~~court~~ Court may exclude all persons, except a peer or other support person designated by the proposed patient, not necessary for the conduct of the hearing.

Sec. 12. 18 V.S.A. § 7624 is amended to read:

§ 7624. PETITION FOR INVOLUNTARY MEDICATION

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

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

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

(3) has been committed to the custody of the ~~commissioner of corrections~~ Commissioner of Corrections as a convicted felon and is being held in a correctional facility which is a designated facility pursuant to section 7628 of this title and for whom the ~~department of corrections and the department of mental health~~ Departments of Corrections and of Mental Health have jointly

determined jointly that involuntary medication would be appropriate pursuant to 28 V.S.A. § 907(4)(H);

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

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

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

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

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

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

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

(b)(1) A Except as provided in subdivisions (2), (3), and (4) of this subsection, a petition for involuntary medication shall be filed in the ~~family~~

~~division of the superior court~~ Family Division of the Superior Court in the county in which the person is receiving treatment.

(2) If the petition for involuntary medication is filed pursuant to subdivision (a)(4) of this section:

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

(B) the Court shall consolidate the application for involuntary treatment with the petition for involuntary medication and rule on the application for involuntary treatment before ruling on the petition for involuntary medication.

(3) If the petition for involuntary medication is filed pursuant to subdivisions (a)(5) or (a)(6) of this section, the petition shall be filed in the county in which the application for involuntary treatment is pending.

(4) Within 72 hours of the filing of a petition for involuntary medication pursuant to subdivision (a)(6) of this section, the Court shall determine, based solely upon a review of the psychiatrist's certification and any other filings, whether the requirements of that subdivision have been established. If the Court determines that the requirements of subdivision (a)(6) of this section have been established, the Court shall consolidate the application for involuntary treatment with the petition for involuntary medication and hear both applications within ten days of the date that the petition for involuntary medication is filed. The Court shall rule on the application for involuntary

treatment before ruling on the petition for involuntary medication. Subsection 7615(b) of this title shall apply to applications consolidated pursuant to this subdivision.

(c) The petition shall include a certification from the treating physician, executed under penalty of perjury, that includes the following information:

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

(2) that the person is refusing medication proposed by the physician;

(3) that the person lacks the competence to decide to accept or refuse medication and appreciate the consequences of that decision;

(4) the necessity for involuntary medication, ~~including the person's competency to decide to accept or refuse medication;~~

~~(3)~~(5) any proposed medication, including the method, dosage range, and length of administration for each specific medication;

~~(4)~~(6) a statement of the risks and benefits of the proposed medications, including the likelihood and severity of adverse side effects and its effect on:

(A) the person's prognosis with and without the proposed medications; and

(B) the person's health and safety, including any pregnancy;

~~(5)~~(7) the current relevant facts and circumstances, including any history of psychiatric treatment and medication, upon which the physician's opinion is based;

~~(6)~~(8) what alternate treatments have been proposed by the doctor, the patient, or others, and the reasons for ruling out those alternatives, including information on the availability of any appropriate alternatives; and

~~(7)~~(9) whether the person has executed a ~~durable power of attorney for health care~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111, subchapter 2~~ chapter 231 of this title, and the identity of the ~~health care agent~~ or agents designated by the ~~durable power of attorney~~ advance directive.

(d) A copy of the ~~durable power of attorney~~ advance directive, if available, shall be attached to the petition.

Sec. 13. 18 V.S.A. § 7625 is amended to read:

§ 7625. HEARING ON PETITION FOR INVOLUNTARY MEDICATION;

BURDEN OF PROOF

(a) ~~A~~ Unless consolidated with an application for involuntary treatment pursuant to subdivision 7624(b)(2) or (b)(4) of this title, a hearing on a petition for involuntary medication shall be held within seven days of filing and shall be conducted in accordance with sections 7613, 7614, ~~7615(b)–(e)~~, and 7616 and subsections ~~7615(b)–(e)~~ of this title.

(b) In a hearing conducted pursuant to this section, section 7626, or section 7627 of this title, the ~~commissioner~~ Commissioner has the burden of proof by clear and convincing evidence.

(c) In determining whether or not the person is competent to make a decision regarding the proposed treatment, the ~~court~~ Court shall consider whether the person is able to make a decision and appreciate the consequences of that decision.

Sec. 14. 18 V.S.A. § 7626 is amended to read:

§ 7626. ~~DURABLE POWER OF ATTORNEY~~ ADVANCE DIRECTIVE

(a) If a person who is the subject of a petition filed under section 7624 of this title has executed a ~~durable power of attorney~~ an advance directive in accordance with the provisions of ~~18 V.S.A. chapter 111~~ chapter 231 of this title, subchapter 2 for health care, the ~~court~~ Court shall suspend the hearing and enter an order pursuant to subsection (b) of this section, if the ~~court~~ Court determines that:

- (1) the person is refusing to accept psychiatric medication;
- (2) the person is not competent to make a decision regarding the proposed treatment; and
- (3) the decision regarding the proposed treatment is within the scope of the valid, duly executed ~~durable power of attorney for health care~~ advance directive.

(b) An order entered under subsection (a) of this section shall authorize the ~~commissioner~~ Commissioner to administer treatment to the person, including involuntary medication in accordance with the direction set forth in the ~~durable power of attorney~~ advance directive or provided by the ~~health care agent~~ or

agents acting within the scope of authority granted by the ~~durable power of attorney~~ advance directive. If hospitalization is necessary to effectuate the proposed treatment, the ~~court~~ Court may order the person to be hospitalized.

(c) ~~In the case of a person subject to an order entered pursuant to subsection (a) of this section, and upon the certification by the person's treating physician to the court that the person has received treatment or no treatment consistent with the durable power of attorney for health care for 45 days after the order under subsection (a) of this section has been entered, then the court shall reconvene the hearing on the petition.~~

(1) ~~If the court concludes that the person has experienced, and is likely to continue to experience, a significant clinical improvement in his or her mental state as a result of the treatment or nontreatment directed by the durable power of attorney for health care, or that the patient has regained competence, then the court shall enter an order denying and dismissing the petition.~~

(2) ~~If the court concludes that the person has not experienced a significant clinical improvement in his or her mental state, and remains incompetent then the court shall consider the remaining evidence under the factors described in subdivisions 7627(c)(1)-(5) of this title and render a decision on whether the person should receive medication. [Repealed.]~~

(d)(1) The Commissioner of Mental Health shall develop a protocol for use by designated hospitals for the purpose of educating hospital staff on the use and applicability of advance directives pursuant to chapter 231 of this title and

other written or oral expressions of treatment preferences pursuant to subsection 7627(b) of this title.

(2) Prior to a patient’s discharge or release, a hospital shall provide information to a patient in the custody or temporary custody of the Commissioner regarding advance directives, including relevant information developed by the Vermont Ethics Network and Office of the Mental Health Care Ombudsman.

Sec. 15. 18 V.S.A. § 7627 is amended to read:

§ 7627. COURT FINDINGS; ORDERS

* * *

(b) If a person who is the subject of a petition filed under section 7625 of this title has not executed a ~~durable power of attorney~~ an advance directive, the ~~court~~ Court shall follow the person’s competently expressed written or oral preferences regarding medication, if any, unless the ~~commissioner~~ Commissioner demonstrates that the person’s medication preferences have not led to a significant clinical improvement in the person’s mental state in the past within an appropriate period of time.

(c) If the ~~court~~ Court finds that there are no medication preferences or that the person’s medication preferences have not led to a significant clinical improvement in the person’s mental state in the past within an appropriate period of time, the ~~court~~ Court shall consider at a minimum, in addition to the person’s expressed preferences, the following factors:

(1) ~~The~~ the person's religious convictions and whether they contribute to the person's refusal to accept medication;

(2) ~~The~~ the impact of receiving medication or not receiving medication on the person's relationship with his or her family or household members whose opinion the ~~court~~ Court finds relevant and credible based on the nature of the relationship;

(3) ~~The~~ the likelihood and severity of possible adverse ~~side-effects~~ side effects from the proposed medication;

(4) ~~The~~ the risks and benefits of the proposed medication and its effect on:

(A) the person's prognosis; and

(B) the person's health and safety, including any pregnancy; and

(5) ~~The~~ the various treatment alternatives available, which may or may not include medication.

(d) As a threshold matter, the Court shall consider the person's competency. If the ~~court~~ Court finds that the person is competent to make a decision regarding the proposed treatment or that involuntary medication is not supported by the factors in subsection (c) of this section, the ~~court~~ Court shall enter a finding to that effect and deny the petition.

(e) As a threshold matter, the Court shall consider the person's competency. If the ~~court~~ Court finds that the person is incompetent to make a decision regarding the proposed treatment and that involuntary medication is

supported by the factors in subsection (c) of this section, the ~~court~~ Court shall make specific findings stating the reasons for the involuntary medication by referencing those supporting factors.

(f)(1) If the ~~court~~ Court grants the petition, in whole or in part, the ~~court~~ Court shall enter an order authorizing the ~~commissioner~~ Commissioner to administer involuntary medication to the person. The order shall specify the types of medication, the permitted dosage range, length of administration, and method of administration for each. The order for involuntary medication shall not include electric convulsive therapy, surgery, or experimental medications. A long-acting injection shall not be ordered without clear and convincing evidence, particular to the patient, that this treatment is the most appropriate under the circumstances.

(2) The order shall require the person's treatment provider to conduct ~~monthly~~ weekly reviews of the medication to assess the continued need for involuntary medication, the effectiveness of the medication, the existence of any side effects, and whether the patient has become competent pursuant to subsection 7625(c) of this title and shall also require the person's treatment provider to document this review in detail in the patient's chart. The person's treatment provider shall notify the Department when he or she determines that the patient has regained competence. Within two days of receipt, the Department shall provide a copy of the notice to the patient's attorney.

(g) For a person receiving treatment pursuant to an order of hospitalization, the ~~commissioner~~ Commissioner may administer involuntary medication as authorized by this section to the person for up to 90 days, unless the ~~court~~ Court finds that an order is necessary for a longer period of time. Such an order shall not be longer than the duration of the current order of hospitalization. If at any time the treating psychiatrist finds that a person subject to an order for involuntary medication has become competent pursuant to subsection 7625(c) of this title, the order shall no longer be in effect.

* * *

Sec. 16. 18 V.S.A. § 7629 is amended to read:

§ 7629. LEGISLATIVE INTENT

(a) It is the intention of the ~~general assembly~~ General Assembly to recognize the right of a legally competent person to determine whether or not to accept medical treatment, ~~including involuntary medication,~~ absent an emergency or a determination that the person is incompetent and lacks the ability to make a decision and appreciate the consequences.

(b) ~~This act protects this right through a judicial proceeding prior to the use of nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive conditions consistent with the person's right to adequate treatment shall be provided in all cases.~~ The General Assembly adopts the goal of high-quality, patient-centered health care, which the Institute of Medicine defines as

“providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions.” A substitute decision-maker is sometimes necessary to make a decision about care when a person is incompetent and lacks the ability to make a decision and appreciate the consequences. Even when a person lacks competence, health care that a person is opposing should be avoided whenever possible because the distress and insult to human dignity that results from compelling a person to participate in medical treatment against his or her will are real, regardless of how poorly the person may understand the decision.

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

(d) ~~This act will render the J. L. v. Miller consent judgment no longer applicable.~~ This chapter protects the rights and values described in this section through a judicial process to determine competence prior to an order for nonemergency involuntary medication and by limiting the duration of an order for involuntary treatment to no more than one year. The least restrictive order consistent with the person’s right to adequate treatment shall be provided in all cases.

Sec. 17. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(21) “Ombudsman” means an individual appointed as a long-term care ombudsman under the Program contracted through the Department of Disabilities, Aging, and Independent Living pursuant to the Older Americans Act of 1965, as amended or the agency designated as the Office of the Mental Health Care Ombudsman pursuant to section 7259 of this title.

* * *

(32) “Patient representative” means the mental health patient representative established by section 7253 of this title.

Sec. 18. 18 V.S.A. § 9703 is amended to read:

§ 9703. FORM AND EXECUTION

* * *

(d) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a resident of a nursing home as defined in 33 V.S.A. § 7102 or a residential care facility unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this ~~state~~ State, or a ~~probate division of the superior court~~ Probate Division of the Superior Court designee signs a statement affirming that he or she has explained the nature and effect of the advance directive to the principal. It is the intent of this subsection to ensure that residents of nursing homes and residential care facilities are willingly and voluntarily executing advance directives.

(e) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital, unless an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this ~~state~~ State, a ~~probate division of the superior court~~ Probate Division of the Superior Court designee, or an individual designated under subsection 9709(c) of this title by the hospital signs a statement that he or she has explained the nature and effect of the advance directive to the principal.

* * *

Sec. 19. 18 V.S.A. § 9706(c) is amended to read:

(c) Upon a determination of need by the principal's clinician, or upon the request of the principal, agent, guardian, ombudsman, a patient representative, health care provider, or any interested individual, the principal's clinician, another clinician, or a clinician's designee shall reexamine the principal to determine whether the principal has capacity. The clinician shall document the results of the reexamination in the principal's medical record and shall make reasonable efforts to notify the principal and the agent or guardian, as well as the individual who initiated the new determination of capacity, of the results of the reexamination, if providing such notice is consistent with the requirements of HIPAA.

Sec. 20. 18 V.S.A. § 9707(h) is amended to read:

(h)(1) An advance directive executed in accordance with section 9703 of this title may contain a provision permitting the agent, in the event that the principal lacks capacity, to authorize or withhold health care over the principal's objection. In order to be valid, the provision shall comply with the following requirements:

(A) An agent shall be named in the provision.

(B) The agent shall accept in writing the responsibility of authorizing or withholding health care over the principal's objection in the event the principal lacks capacity.

(C) A clinician for the principal shall sign the provision and affirm that the principal appeared to understand the benefits, risks, and alternatives to the health care being authorized or rejected by the principal in the provision.

(D)(i) An ombudsman, a patient representative ~~recognized member of the clergy~~, attorney licensed to practice law in this ~~state~~ State, or ~~probate division of the superior court~~ Probate Division of the Superior Court designee shall sign a statement affirming that he or she has explained the nature and effect of the provision to the principal, and that the principal appeared to understand the explanation and be free from duress or undue influence.

(ii) If the principal is a patient in a hospital when the provision is executed, the ombudsman, patient representative ~~recognized member of the clergy~~, attorney, or ~~probate division of the superior court~~ Probate Division of

the Superior Court designee shall be independent of the hospital and not an interested individual.

(E) The provision shall specify the treatments to which it applies, and shall include an explicit statement that the principal desires or does not desire the proposed treatments even over the principal's objection at the time treatment is being offered or withheld. The provision may include a statement expressly granting to the health care agent the authority to consent to the principal's voluntary hospitalization, ~~and to agree that the principal's discharge from the hospital may be delayed, pursuant to section 8010 of this title.~~

(F) The provision shall include an acknowledgment that the principal is knowingly and voluntarily waiving the right to refuse or receive treatment at a time of incapacity, and that the principal understands that a clinician will determine capacity.

(2) A provision executed in compliance with subdivision (1) of this subsection shall be effective when the principal's clinician and a second clinician have determined pursuant to subdivision 9706(a)(1) of this title that the principal lacks capacity.

(3) If an advance directive contains a provision executed in compliance with this section:

(A) The agent may, in the event the principal lacks capacity, make health care decisions over the principal's objection, provided that the decisions are made in compliance with subsection 9711(d) of this title.

(B) A clinician shall follow instructions of the agent authorizing or withholding health care over the principal's objection.

Sec. 21. 18 V.S.A. § 9718(a) is amended to read:

(a) A petition may be filed in ~~probate division of the superior court~~ Probate Division of the Superior Court under this section by:

(1) a principal, guardian, agent, ombudsman, a patient representative, or interested individual other than one identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to bring an action under this section;

(2) a social worker or health care provider employed by or directly associated with the health care provider, health care facility, or residential care facility providing care to the principal;

(3) the ~~defender general~~ Defender General if the principal is in the custody of the ~~department of corrections~~ Department of Corrections;

(4) a representative of the ~~state-designated~~ State-designated protection and advocacy system if the principal is in the custody of the ~~department of health~~ Department of Health; or

(5) an individual or entity identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as authorized to bring an action under this section.

Sec. 22. Rule 12 of the Vermont Rules for Family Proceedings is amended to read:

Rule 12. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay Prior to Appeal; Exceptions.

(1) Automatic Stay. Except as provided in paragraph (2) of this subdivision and in subdivision (c), no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry or until the time for appeal from the judgment as extended by Appellate Rule 4 has expired.

(2) Exceptions. Unless otherwise ordered by the court, none of the following orders shall be stayed during the period after its entry and until an appeal is taken:

(A) In an action under Rule 4 of these rules, an order relating to parental rights and responsibilities and support of minor children or to separate support of a spouse (including maintenance) or to personal liberty or to the dissolution of marriage;

(B) An order of involuntary treatment, involuntary medication, nonhospitalization, or hospitalization, in an action pursuant to 18 V.S.A. §§ ~~7611-7623~~ chapter 181;

(C) Any order of disposition in a juvenile case, including an order terminating residual parental rights; or

(D) Any order in an action under Rule 9 of these rules for prevention of abuse, including such an action that has been consolidated or deemed consolidated with a proceeding for divorce or annulment pursuant to Rule 4(n).

The provisions of subdivision (d) of this rule govern the modification or enforcement of the judgment in an action under Rule 4 of these rules, during the pendency of an appeal.

* * *

(d) Stay Pending Appeal.

(1) Automatic Stay. In any action in which automatic stay prior to appeal is in effect pursuant to paragraph (1) or subdivision (a) of this rule, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal, and no supersedeas bond or other security shall be required as a condition of such stay.

(2) Other Actions.

(A) When an appeal has been taken from judgment in an action under Rule 4 of these rules in which no stay pursuant to paragraph (1) of subdivision (a) of this rule is in effect, the court in its discretion may, during the pendency of the appeal, grant or deny motions for modification or enforcement of that judgment.

(B)(i) When an appeal has been taken from an order for involuntary treatment, nonhospitalization, or hospitalization ~~or involuntary treatment~~, in an action pursuant to ~~chapter 181 of Title 18 V.S.A. chapter 181~~, the court in its

discretion may, during the pendency of the appeal, grant or deny applications for continued treatment, modify its order, or discharge the patient, as provided in 18 V.S.A. §§ 7617, 7618, 7620, and 7621.

(ii)(I) If an order of involuntary medication is appealed, the appellant may file a motion in the Family Division to stay the order during the pendency of the appeal. A motion to stay filed under this subdivision shall stay the involuntary medication order while the motion to stay is pending.

(II) The Family Division's ruling on a motion to stay filed under subdivision (I) of this subdivision (ii) may be modified or vacated by the Supreme Court upon motion by a party filed within seven days after the ruling is issued. If the appellant is the moving party, the order for involuntary medication shall remain stayed until the Supreme Court rules on the motion to vacate or modify the stay. A motion to vacate or modify a stay under this subdivision shall be determined by a single Justice of the Supreme Court, who may hear the matter or at his or her discretion refer it to the entire Supreme Court for hearing. No further appeal may lie from the ruling of a single Justice in matters to which this subdivision applies. The motion shall be determined as soon as practicable and to the extent possible shall take priority over other matters.

* * *

Sec. 23. LEGISLATIVE INTENT; EMERGENCY INVOLUNTARY
PROCEDURES

The Mental Health Oversight Committee shall identify and include in its 2014 annual report a list of policies that may require clarification of legislative intent in order for the Department of Mental Health to proceed with rulemaking pursuant to 2012 Acts and Resolves No.79, Sec. 33a. The Committee shall also make recommendations as to any legislation needed to clarify legislative intent for those policies identified by the Committee.

Sec. 24. AVAILABILITY OF PSYCHIATRISTS FOR EXAMINATIONS

The Agency of Human Services shall ensure that Vermont Legal Aid's Mental Health Law Project has a sufficient number of psychiatrists to conduct psychiatric examinations pursuant to 18 V.S.A. § 7614 in the time frame established by 18 V.S.A. § 7615.

Sec. 25. LEGISLATIVE COUNCIL STATUTORY REVISION

AUTHORITY

The Office of Legislative Council, in its statutory revision capacity, is authorized and directed to make such amendments to the Vermont Statutes Annotated as are necessary to effect the purpose of this act, including, where applicable, substituting the words "application for involuntary medication" and "application," as appropriate, for the words "petition for involuntary medication" and "petition."

Sec. 26. 1998 Acts and Resolves No. 114, Sec. 6 is amended to read:

Sec. 6. STUDY AND REPORT

(a) An annual independent study shall be commissioned by the ~~department~~ Department of Mental Health ~~of developmental and mental health services~~ which shall:

(1) evaluate and critique the performance of the institutions and staff of those institutions that are implementing the provisions of this act;

(2) include interviews with persons ~~subjected to orders of involuntary medication~~ subject to proceedings under 18 V.S.A. § 7624, regardless of whether involuntarily medicated, and their families on the outcome and effects of the order;

(3) include the steps taken by the ~~department~~ Department to achieve a mental health system free of coercion; and

(4) include any recommendations to change current practices or statutes.

(b) The person who performs the study shall prepare a report of the results of the study, which shall be filed with the ~~general assembly~~ General Assembly and the ~~department~~ Department annually on or before January 15.

(c) Interviews with patients pursuant to this section may be conducted with the assistance of the mental health patient representative established in 18 V.S.A. § 7253.

Sec. 27. SOTERIA HOUSE

If the Commissioner of Mental Health determines that Soteria House is available to accept residents prior to January 1, 2015 and there are funds available in the Department's budget to do so, the Commissioner shall prioritize the opening of Soteria House.

Sec. 28. REPORT; APPLICATIONS ON INVOLUNTARY TREATMENT
AND MEDICATION

On or before February 1, 2015, the Department of Mental Health and the Court Administrator shall jointly submit a report to the House Committees on Human Services and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary containing data on:

(1) the total number of applications for involuntary treatment filed, and the total number granted, between July 1, 2014 and December 31, 2014, and, of those filed, the total number expedited pursuant to 18 V.S.A.

§ 7615(a)(2)(A)(i) and (a)(2)(A)(ii); and

(2) the total number of applications for involuntary medication filed, and the total number granted, between July 1, 2014 and December 31, 2014 pursuant to 18 V.S.A. § 7624(a), including the total number of applications filed under each subdivision.

Sec. 29. EFFECTIVE DATES

(a) Except for Secs. 5 (application and certificate for emergency examination), 6 (warrant and certificate for emergency examination), and

7 (emergency examination and second certification), this act shall take effect on July 1, 2014.

(b) Secs. 5–7 shall take effect on November 1, 2014.

Date Governor signed bill: June 16, 2014