S.287 - FORCED MEDICATION BILL

The Legislature is considering a bill this year that would change the law on how fast people can be forced to take medication when they are held against their will by the State because the person's mental health condition allegedly makes them a danger to themselves or others.

The bill is S.287 (http://www.leg.state.vt.us/docs/2014/bills/Intro/S-287.pdf). One part of it would change the law so that very soon after a person is held against their will due to mental health condition the doctors and the State can ask a judge to force the person to take powerful psychoactive medications that the doctors believe will help the person recover the capacity to make reasonable decisions and get better.

Right now the law requires that before the doctors and the State can ask a judge to allow them to forcibly medicate a person, they have to get a Court Order that actually says the person is dangerous due to their mental health condition. Now, under the current law, it takes an average of 40 to 50 days to get the first Court Order. Then the doctors and the State have to file a new petition with the Court to get an Order to forcibly medicate the person. That second petition, for forced medications, usually takes an additional 10 to 14 days to obtain. So now, on average, it takes between 50 to 70 days to get a Court to Order for forced medications.

Under S.287 the goal is to have the Court Order for forced medications much sooner, maybe even within 30 days. Some psychiatrists and many advocates suggest that speeding up the forced drugging process may help the hospitals get the patients out of their units faster, but in the long term it does harm to the patient and their ability to recover and benefit from future treatment. Proponents of S.287 point to the fact that some patients are violent and cause serious harm on the units before they are ordered to take medications and that the Orders take a long time, sometimes more than three months, to obtain. Advocates for patients' rights and the State Administrative Judge have pointed out that current law allows for speeding up the process in certain cases but that this option is not used often by the doctors and the State.

Please learn more about this issue and express your thoughts by contacting your local Representative or Senator.

S.287 - What would this bill actually do?

Vermont law today, found in Chapters 179 and 181 of Title 18, lays out how the State may hold a person against his or her will and also when it may force that person to submit to psychiatric medication. S.287 has been introduced in the belief that the system does not work fast enough. The bill proposes some fundamental changes to the legal processes involved.

Currently, the state has what amounts to a right of protection: if law enforcement or mental health providers believe that a person poses a danger to self or others AND has a mental illness, that individual may be held for an emergency evaluation, supposedly for not more than 72 hours. If that evaluation reinforces that belief, and the individual refuses treatment, the authorities can apply for a commitment order – actually called an application for involuntary treatment (AIT.) The court will order the individual committed if it determines that the state has shown that the individual has a mental illness and is a danger to self or others. This must be shown by "clear and convincing evidence" but does not require the standard of "evidence beyond a reasonable doubt" required in criminal courts.

Once a person has been committed he or she may be forcibly medicated involuntarily if the State can show the court that the individual lacks the capacity to make the medical decision and remains in need of treatment – again by "clear and convincing evidence." The key issue here is the individual's "capacity" since Vermont recognizes that our citizens have a right to accept and refuse medical treatment, generally independently of what others think is right or wrong for us, as long as we can are capable of making the decision.

S.287 would make a number of changes to current law, some major and some minor.

Section 1 relates to when an individual is initially held for evaluation. Currently, that person may request a preliminary hearing where they can present evidence and testimony to help the court to determine whether there is "probable cause" to believe the person is mentally ill and poses a danger. This proposed section would make a preliminary hearing mandatory in every involuntary admission, but it limits the evidence that can be reviewed to the paperwork filed in taking the individual into custody and commitment papers, if they have already been filed. Currently, very few individuals request preliminary hearings and so this will likely add to the work of the court system unless the hearing is nothing but a paper review without an opportunity for the individual to present witness and other evidence. In S.287, even if the court decides in favor of the individual, the State can initiate another emergency evaluation and file new paperwork.

In Section 2 of S.287 the law is changed to allow the State to seek an order for involuntary medication at the same time as it files for a commitment (AIT). Currently, by the time that commitment is ordered, the vast majority of people hospitalized against their will have agreed to take psychiatric medications. This raises an important question: If the Application for Involuntary Treatment (AIT) and a Petition for Involuntary Medication (PIM) can be filed at the same time, won't there be many more forced drugging orders sought since time spent working with providers seems to decrease the number of people who refuse medication? And isn't this contrary to the legislature's current intent in Title 18 V.S.A. § 7629 that "It is the policy of the general assembly to work towards a mental health system that does not require coercion or the use of involuntary medication"?

Section 3 of S.287 allows the State to seek a commitment (AIT) hearing within five days if it can show "good cause," which is characterized as when an individual presents a threat of harm even while hospitalized. Ten days are allowed if the individual seeks an independent psychiatric evaluation, but he or she must show that there is a "good cause" to do so. If this part of the process presents a challenge to either party and they need more time, the court would only be allowed to give a single one-week extension, regardless of whether the parties are sufficiently prepared for this critical hearing - including the need for expert testimony. This section is problematic because the standard for good cause sufficient to justify an expedited hearing could be seen as the same for the initial involuntary patient, meaning that all people held involuntarily in the psychiatric units already have to meet criteria as dangerous due to mental health condition. Under the proposed standard most if not all involuntary patients could be subject to expedited AIT hearings.

Section 4 of S.287 adds the ability to apply for both commitment and forced medication to the section of law that relates specifically to the Petition for Involuntary Medication process.

Section 5 of S. 287 is there to clarify how the scheduling of hearings works in the proposed legal framework in which the State can petition for involuntary medication before the individual has been committed.

Sections 6 and 7 of S.287 don't make any substantial change from current law. They update the term "durable power of attorney" (DPOA) to the current term "advance directive" and eliminate language that was found to be unconstitutional. That language allowed a person's advance directive to be set aside if the person had a psychiatric disability, something not allowed for other disabilities and hence is discriminatory.

In Section 8 of S.287 the Legislature would take the unusual step of amending Family Court Rules by eliminating the automatic "stay" in the rules that currently gives an individual 30 days to decide whether or not to appeal a court's involuntary medication order. The proposal also eliminates the stay if an appeal is actually filed, although the patient may file a Motion to request a stay for good cause. This stay has not been used extensively until recently, but people do need some time to decide whether to exercise their right to appeal a court's decision before the appeal is worthless because the forced medication is already being administered.

Section 9 of S.287 requires the Agency of Human Services to examine its contract with Vermont Legal Aid's Mental Health Law Project and implies that their funding could be reduced if they don't contract with enough psychiatrists to do independent evaluations. It is rather contradictory for the state to imply that the number of psychiatrists the MHLP works with is not enough when actually continuances are rare and requested approximately equally by both sides.

Hospital leadership and doctors have claimed that they only desire an expedited process for involuntary medication for a very few patients who present serious challenges and for whom faster medication would be therapeutically appropriate. We should be asking whether that perceived need outweighs the trauma to people who are forced to take drugs they do not want. If there is a real need for some patients to be medicated quickly, shouldn't we look for solutions that are not as potentially broad as S.287 such as the current ability for the State to file for expedited hearings? Or should the state work to assure that delays do not occur because of a lack of court or attorney resources?