VCDR'S POSITION ON 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 and they lack capacity to make medical decisions.

The bill is S.287 (http://www.leg.state.vt.us/docs/2014/bills/Senate/S-287C.pdf) and it has passed the Vermont Senate. 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. Under the current law, it takes around 30 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, in most cases, it takes between 45 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 we feel 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.

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 the State may file a separate court proceeding, called an application for involuntary medication, and the patient may be forcibly medicated if the State can show the court that the individual lacks the capacity to make the medical decision and that the consideration of the risks and benefits of the proposed treatment support the requested involuntary medication – 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 are capable of making the decision.

S.287, as it has passed the Senate, would make a number of changes to current law, some major and some minor.

Section 1 clarifies the court in which Applications for Treatment (AITs – "commitment") are to occur and is not controversial.

Section 2 relates to consideration by the court of whether there is probable cause to hold someone who has been involuntarily admitted to the hospital. Currently, that person may request a preliminary hearing to challenge the basis for their detention, and the court will order the person released unless it determines that there is "probable cause" to believe the person is mentally ill and poses a danger, though this rarely occurs. This proposed section would require that within three days of an AIT being filed, the Court must review the paperwork to make sure that it shows there was "probable cause" to hold the individual. If this hasn't been shown, the individual must be released. Though this new review will require some extra work on the part of the court and doesn't offer a lot of extra protection for the individual, since it just involves a paper review, it was not controversial in the Senate. Advocates did not see it as doing harm because the individual keeps the right to a preliminary hearing.

Section 3 makes one of the key changes that proponents are seeking. It allows for a party to seek an expedited hearing on the AIT. Current law allows for a hearing within 20 days, or in 10 if no independent evaluation is sought by the defendant. The expedited hearing would have to take place within 7-10 days, though the bill does allow for one continuance of seven days if the party requesting can show "good cause". Under S.287, this expedited hearing could be requested for individuals that fall into two categories. One includes any individual who has been involuntarily medicated within the last two years and who has "experienced significant clinical improvement in his or her mental state as a result of the medication." The other includes anyone who remains a threat of "serious bodily injury," even while hospitalized, or even after "clinical interventions" have failed to reduce the risk of harm. What constitutes these interventions is not made clear in the bill.

Section 4 of S.287 makes perhaps the most fundamental change in the process. It allows for an involuntary medication order to be filed at any time after an AIT is filed and the two processes may be "consolidated" into one hearing, though the judge must rule on the AIT first. The two processes involve different criteria: commitment involves demonstrating that an individual has a mental illness and presents a danger to self or others; forced court-ordered medication requires that the individual has been committed AND that he or she lacks the capacity to make the medical decision. Patients' rights advocates believe that this proposal will lead to a significant increase in the number of involuntary medication cases that are filed, and are opposing this provision.

Section 5 makes minor changes to keep the law internally consistent with the new possibility of having the process for commitment and forced drugging take place at the same time.

Section 6 makes minor changes to the sections of the law that relate to Advance Directives and it removes a section of the law that was found to violate the Americans with Disabilities Act. That part allowed the State to overrule an Advance Directive after 45 days if providers felt it to be in the best interest of a patient. This section represents a positive change.

Section 7 makes no substantive change but, like many other sections, has language that makes the statutes consistent with formats that are now used, e.g. capitalization and terminology.

Section 8 makes a change in the Vermont Rules for Family Proceedings. In some proceedings there is an automatic "stay" for 30 days. This section eliminates that stay for involuntary medication orders, meaning that as soon as the judge rules, the authorities may force the individual to take medication. However, the individual may ask the court to stay the order while an appeal is made. The court can grant this, BUT the state may then ask the Supreme Court to shorten or eliminate the stay – and S.287 allows this to be done quickly by one member of the Supreme Court.

Section 9 requires the Agency of Human Services to ensure that Vermont Legal Aid's Mental Health Law Project has access to enough psychiatrists to be able to do independent evaluations within the new timeframes envisioned in this bill. The bill doesn't specify how this is to be done.

Section 10 sets the date of July 1, 2014 as when this law would go into effect.

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?