Michael J. O'Neill *Legislative Service Commission*

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Rep. Willamowski

BILL SUMMARY

? Authorizes the warden of a state correctional institution to designate another person to perform certain duties in relation to proceedings to transfer an inmate from a state correctional institution to a psychiatric hospital.

? Permits, rather than requires, the Director of the Department of Rehabilitation and Correction (DRC) to adopt rules setting forth guidelines for the procedures relating to the transfer of an inmate to a psychiatric hospital.

? Authorizes DRC to transfer an inmate to a psychiatric hospital under an emergency transfer order if specified persons determine that the inmate is mentally ill, presents an immediate danger to self or others, and requires hospital-level care.

? After an emergency transfer, requires DRC to hold a hearing for continued hospitalization within five working days after admission of the transferred inmate to the psychiatric hospital and to hold subsequent hearings for continued hospitalization at the same intervals as required for other inmate patients who are transported to a psychiatric hospital.

? Authorizes DRC to transfer an inmate to a psychiatric hospital under an uncontested transfer order if: (1) a psychiatrist determines that the inmate has a mental illness or is a mentally ill person subject to hospitalization, the inmate requires hospital care to address the mental illness, the inmate has the mental capacity to make a reasoned choice regarding the inmate's transfer to a hospital, and (2) the inmate agrees to a transfer to a hospital.

? After an uncontested transfer, permits the inmate to withdraw consent to the transfer in writing at any time and upon withdrawal requires the hospital to discharge the inmate or DRC to hold a hearing for continued hospitalization within five working days.

? Requires DRC to hold subsequent continued hospitalization hearings if the inmate patient continues to be held.

? Authorizes the Director of the Department of Rehabilitation and Correction to adopt rules setting forth guidelines for the procedures relating to emergency transfers and uncontested transfers.

? Revises the time period within which hearings for continued hospitalization must be conducted for inmate patients transported to a psychiatric hospital and for emergency transfers of an inmate to a psychiatric hospital.

? Requires the initial continued hospitalization hearing to be held prior to the expiration of the initial 30-day period of hospitalization and requires any subsequent hearings, if necessary, to be held not later than 90 days after the first 30-day hearing and then not later than each 180 days after the immediately prior hearing.

? Repeals the prohibition against an inmate waiving the hearing for continued commitment.

? Specifies that the hearing for continued commitment is mandatory unless the inmate patient has the capacity to make a reasoned choice to execute a waiver and waives the hearing in writing.

? Permits an inmate patient who is transferred to a psychiatric hospital pursuant to an uncontested transfer and who has scheduled hearings after withdrawal of consent for hospitalization to waive any of the scheduled hearings if the inmate has the capacity to make a reasoned choice and executes a written waiver of the hearing.

? Allows the warden of the psychiatric hospital to file with the probate court in the county in which the inmate will reside (in addition to the county in which the psychiatric hospital is located) an affidavit that alleges that the inmate patient is a mentally ill person subject to

hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

? Authorizes DRC's chief clinical officer or designee of mental health services (instead of DRC's Director of Clinical Services and Psychiatry) to determine when disclosure of otherwise confidential records is in the best interests of the person whose records are to be disclosed.

? Revises the definition of "mentally ill person subject to hospitalization" that applies to the bill's provisions.

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CONTENT AND OPERATION

Transfer to a psychiatric hospital--proceedings prior to transfer

Existing law

Under existing law, if the warden of a state correctional institution believes that an inmate should be transferred to a psychiatric hospital, the Department of Rehabilitation and Correction (DRC) must hold a hearing to determine whether the inmate is a mentally ill person subject to hospitalization. DRC must conduct the hearing at the state correctional institution in which the inmate is confined and provide qualified independent assistance to the inmate for the hearing. An independent decision-maker provided by DRC must preside at the hearing and determine whether the inmate is a mentally ill person subject to hospitalization.

Prior to the hearing, the warden must give written notice to the inmate that DRC is considering transferring the inmate to a psychiatric hospital, that it will hold a hearing on the proposed transfer, that at the hearing the inmate has certain rights, and that DRC will provide qualified independent assistance to the inmate with respect to the hearing. DRC may not hold the hearing until the inmate has received written notice of the proposed transfer and has had sufficient time to consult with the person appointed by DRC to provide assistance to the inmate and to prepare for a presentation at the hearing.

If the independent decision-maker does not find clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, DRC may not transfer the inmate to a psychiatric hospital and must continue to confine the inmate in an appropriate state correctional institution. If the independent decision-maker finds clear and convincing evidence that the inmate is a mentally ill person subject to hospitalization, the decision-maker must order that the inmate be transported to a psychiatric hospital for observation and treatment for a period of not longer than 30 days.

Existing law requires the Director of DRC to adopt rules setting forth guidelines for the procedures described above. (R.C. 5120.17(B).)

Operation of the bill

The bill authorizes the warden of a state correctional institution to designate another person to perform certain duties in relation to transfer proceedings.

Except in emergency transfer and uncontested transfer situations (see "***Emergency transfers and uncontested transfers***," below), if the warden *or the warden's designee* believes that an inmate should be transferred from the institution to a psychiatric hospital, DRC must hold a hearing to determine whether the inmate is a mentally ill person subject to hospitalization. Also, except in emergency transfer and uncontested transfer situations, prior to the hearing the warden *or the warden's designee* must give the written notice to the inmate that DRC is considering transferring the inmate to a psychiatric hospital and of the procedures that will be followed and the rights the inmate has.

The bill also relocates and revises the provision regarding the authority of the Director of DRC to adopt rules setting forth guidelines for the procedures described above. Under the bill, the Director is permitted, not required, to adopt the rules. (R.C. 5120.17(B) and (L).)

Emergency transfers and uncontested transfers

The bill authorizes emergency transfers and uncontested transfers of prisoners to a psychiatric hospital. Under the bill, DRC may transfer an inmate to a psychiatric hospital under an *emergency transfer* order if the chief clinical officer of mental health services or that officer's designee and either a psychiatrist or, in the absence of a psychiatrist, a psychologist determines that the inmate is mentally ill, presents an immediate danger to self or others, and requires hospital-level care. After an emergency transfer, DRC must hold a hearing for continued hospitalization within five working days after admission of the transferred inmate to the psychiatric hospital. DRC must hold a subsequent hearing prior to the expiration of the initial 30-day hospitalization period and, if necessary, not later than 90 days after that initial subsequent hearing and then not later than 180 days after each immediately prior hearing. (See "***Hearings for continued hospitalization***," below.) (R.C. 5120.17(C)(1) and (4) and (F).)

DRC may transfer an inmate to a psychiatric hospital under an *uncontested transfer* order if both of the following apply (R.C. 5120.17(C)(2)):

(1) A psychiatrist determines that the inmate has a mental illness or is a mentally ill person subject to hospitalization, requires hospital care to address the mental illness, and has the mental capacity to make a reasoned choice regarding the inmate's transfer to a hospital.

(2) The inmate agrees to a transfer to a hospital.

After an uncontested transfer, the inmate may withdraw consent to the transfer in writing at any time. Upon the inmate's withdrawal of consent, the hospital must discharge the inmate, or, within five working days, DRC must hold a

hearing for continued hospitalization. DRC must hold subsequent hearings at the same time intervals described above for inmate patients who are transferred to a psychiatric hospital pursuant to an emergency transfer (30, 90, and 180 days). (R.C. 5120.17(C)(5) and (F).)

The written notice and the hearing described above under "***Transfer to a psychiatric hospital--proceedings prior to transfer***" are not required for an emergency transfer or uncontested transfer (R.C. 5120.17(C)(3)).

The bill authorizes the Director of DRC to adopt rules setting forth guidelines for the procedures required above (R.C. 5120.17(C) and (L)).

Hearings for continued hospitalization

Existing law

DRC must hold a hearing for the continued hospitalization of an inmate patient who is transported to a psychiatric hospital prior to the expiration of the initial 30-day period of hospitalization and, if necessary, at 90-day intervals after the first hearing for continued hospitalization. An independent decision-maker must conduct the hearings at the psychiatric hospital in which the inmate patient is confined. The inmate patient has all of the rights set forth for the hearing prior to transfer to the psychiatric hospital. A hearing for continued commitment is mandatory, and neither DRC nor the inmate patient may waive the hearing.

If upon completion of the hearing the independent decision-maker does not find by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker must order the inmate patient's discharge from the psychiatric hospital. If the independent decision-maker finds by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker must order that the inmate patient remain at the psychiatric hospital for another period not to exceed 90 days.

If at any time prior to the expiration of the 90-day period, the warden of the psychiatric hospital or the warden's designee determines that the treatment needs of the inmate patient could be met equally well in an available and appropriate less restrictive state correctional institution or unit, the warden or the warden's designee may discharge the inmate to that facility. (R.C. 5120.17(E).)

Operation of the bill

The bill revises the time period within which hearings for continued hospitalization must be conducted. Under the bill, DRC must hold a hearing for the continued hospitalization of an inmate patient who is transported to a

psychiatric hospital (existing law) or transferred pursuant to an emergency transfer permitted by the bill as described above prior to the expiration of the initial 30-day period of hospitalization. The bill replaces the provision stating that hearings on the continued hospitalization must be conducted, if necessary, at 90-day intervals after the first hearing for continued hospitalization. Instead, the bill requires DRC to hold any subsequent hearings, if necessary, not later than 90 days after the first 30-day hearing and then not later than each 180 days after the immediately prior hearing. As under existing law, an independent decision-maker must conduct the hearings at the psychiatric hospital in which the inmate patient is confined, and the inmate patient is afforded all of the rights set forth for the hearing prior to transfer to the psychiatric hospital.

As under existing law, DRC may not waive a hearing for continued commitment. The bill repeals the prohibition against an inmate waiving the hearing for continued commitment. A hearing for continued commitment is mandatory for an inmate patient transported or transferred to a psychiatric hospital pursuant to the general transfer provisions or an emergency transfer unless the inmate patient has the capacity to make a reasoned choice to execute a waiver and waives the hearing in writing. An inmate patient who is transferred to a psychiatric hospital pursuant to an uncontested transfer and who has scheduled hearings after withdrawal of consent for hospitalization may waive any of the scheduled hearings if the inmate has the capacity to make a reasoned choice and executes a written waiver of the hearing.

As under existing law, if upon completion of the hearing the independent decision-maker does not find by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker must order the inmate patient's discharge from the psychiatric hospital. Under the bill, if the independent decision-maker finds by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker must order that the inmate patient remain at the psychiatric hospital for continued hospitalization until the next required hearing (as opposed to "another period not to exceed 90 days" under existing law).

If at any time prior to the next required hearing for continued hospitalization, the medical director of the hospital or the attending physician (as opposed to the warden of the psychiatric hospital or the warden's designee under existing law) determines that the treatment needs of the inmate patient could be met equally well in an available and appropriate less restrictive state correctional institution or unit, the medical director or attending physician may discharge the inmate to that facility. (R.C. 5120.17(F).)

Hospitalization or institutionalization of inmate patient under the Hospitalization of Mentally Ill Law or the Institutionalization of Mentally Retarded Law

Existing law

If an inmate patient who is a mentally ill person subject to hospitalization is to be released from a psychiatric hospital because of the expiration of the inmate patient's stated prison term, the warden of the psychiatric hospital, at least 14 days before the expiration date, may file an affidavit under the Hospitalization of Mentally Ill Law or the Institutionalization of Mentally Retarded Law with the probate court *in the county where the psychiatric hospital is located*, alleging that the inmate patient is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, whichever is applicable. The proceedings in the probate court must be conducted pursuant to those laws except as modified by this provision.

Upon the request of the inmate patient, the probate court is required to grant the inmate patient an initial hearing under the Hospitalization of Mentally Ill Law or a probable cause hearing under the Institutionalization of Mentally Retarded Law before the expiration of the stated prison term. After holding a full hearing, the probate court must make a disposition authorized by the applicable law before the date of the expiration of the stated prison term unless the court grants a continuance of the hearing at the request of the inmate patient or the inmate patient's counsel. Existing law prohibits an inmate patient from being held in DRC custody past the date of the expiration of the inmate patient's stated prison term. (R.C. 5120.17(H).)

Operation of the bill

The bill also allows the warden of the psychiatric hospital to file an affidavit under the Hospitalization of Mentally Ill Law or the Institutionalization of Mentally Retarded Law with the probate court *in the county where the inmate will reside*, alleging that the inmate patient is a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order, whichever is applicable. Additionally, the bill repeals the court's authority to grant a continuance of the hearing at the request of the inmate patient or the inmate patient's counsel. (R.C. 5120.17(I).)

Disclosure of confidential records

Existing law

Under existing law, a certificate, application, record, or report that is made in compliance with the Transfer of Mentally Ill or Mentally Retarded Prisoners to Psychiatric Hospitals Law and that directly or indirectly identifies an inmate or former inmate whose hospitalization has been sought under this Law is confidential. Generally, no person is permitted to disclose the contents of any certificate, application, record, or report of that nature unless one of the certain statutorily specified exceptions applies. One of those exceptions is that the person identified, or the person's legal guardian, if any, consents to disclosure, and DRC's Director of Clinical Services and Psychiatry determines that disclosure is in the best interests of the person. (R.C. 5120.17(J)(1).)

Operation of the bill

The bill changes the person who determines whether disclosure is in the best interests of the person whose records are to be disclosed from DRC's Director of Clinical Services and Psychiatry to DRC's chief clinical officer or designee of mental health services (R.C. 5120.17(K)(1)).

Definitions

Mental illness (existing law)

"Mental illness" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life (R.C. 5120.17(A)(1)).

Mentally ill person subject to hospitalization (amended by the bill)

"Mentally ill person subject to hospitalization" means a mentally ill person to whom any of the following applies because of the person's mental illness (R.C. 5120.17(A)(2)):

(1) The person represents a substantial risk of physical harm to the person as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm.

(2) The person represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness.

(3) The person represents a substantial and immediate risk of serious physical impairment or injury to the person as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the "community."

The bill replaces "community" with "correctional institution in which the inmate is currently housed."

(4) The person would benefit from treatment in a hospital for the person's mental illness and is in need of treatment in a hospital as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person.

Psychiatric hospital (existing law)

"Psychiatric hospital" means a facility that is operated by DRC, is designated as a psychiatric hospital, is licensed by the Department of Mental Health, and is in substantial compliance with the standards set by the joint commission on accreditation of healthcare organizations (R.C. 5120.17(A)(3)).

Inmate patient (existing law)

"Inmate patient" means an inmate who is admitted to a psychiatric hospital (R.C. 5120.17(A)(4)).

Admitted (existing law)

"Admitted" to a psychiatric hospital means being accepted for and staying at least one night at the psychiatric hospital (R.C. 5120.17(A)(5)).

Treatment plan (existing law)

"Treatment plan" means a written statement of reasonable objectives and goals for an inmate patient that is based on the needs of the inmate patient and that is established by the treatment team, with the active participation of the inmate patient and with documentation of that participation. "Treatment plan" includes all of the following:

(1) The specific criteria to be used in evaluating progress toward achieving the objectives and goals;

(2) The services to be provided to the inmate patient during the inmate patient's hospitalization;

(3) The services to be provided to the inmate patient after discharge from the hospital, including, but not limited to, housing and mental health services provided at the state correctional institution to which the inmate patient returns after discharge or community mental health services. (R.C. 5120.17(A)(6).)

Mentally retarded person subject to institutionalization by court order (existing law)

"Mentally retarded person subject to institutionalization by court order" means a person 18 years of age or older who is at least moderately mentally retarded and in relation to whom, because of the person's retardation, either of the following conditions exist:

(1) The person represents a very substantial risk of physical impairment or injury to the person's self as manifested by evidence that the person is unable to provide for and is not providing for the person's most basic physical needs and that provision for those needs is not available in the community;

(2) The person needs and is susceptible to significant habilitation in an institution.

"A person who is at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate degree and to be functioning at the moderate level of intellectual functioning in accordance with standard measurements as recorded in the most current revision of the manual of terminology and classification in mental retardation published by the American Association on Mental Retardation. (R.C. 5120.17(A)(7), by reference to R.C. 5123.01(L) and (M)--not in the bill.)

Emergency transfer (added by the bill)

"Emergency transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate presents an immediate danger to the inmate's self or others and requires hospital-level care (R.C. 5120.17(A)(8)).

Uncontested transfer (added by the bill)

"Uncontested transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate has the mental capacity to, and has waived, the hearing otherwise required (R.C. 5120.17(A)(9)).

Independent decision-maker (added by the bill)

"Independent decision-maker" means a person who is employed by DRC and is appointed by the chief or chief clinical officer of mental health services as a

hospitalization hearing officer to conduct due process hearings. An independent decision-maker who presides over any hearing or issues any order must be a psychiatrist, psychologist, or attorney, must not be specifically associated with the institution in which the inmate who is the subject of the hearing or order resides at the time of the hearing or order, and previously must not have had any treatment relationship with nor have represented in any legal proceeding the inmate who is the subject of the order. (R.C. 5120.17(A)(10).)

Background

Examination and communication to inmate patient

Under existing law, if an independent decision-maker orders an inmate transported to a psychiatric hospital, the staff of the psychiatric hospital must examine the inmate patient when admitted to the psychiatric hospital as soon as practicable after the inmate patient arrives at the hospital and no later than 24 hours after the time of arrival. The attending physician responsible for the inmate patient's care must give the inmate patient all information necessary to enable the patient to give a fully informed, intelligent, and knowing consent to the treatment the inmate patient will receive in the hospital. The attending physician must tell the inmate patient the expected physical and medical consequences of any proposed treatment and must give the inmate patient the opportunity to consult with another psychiatrist at the hospital and with the inmate advisor. The bill amends this provision to make it also apply to emergency transfers and uncontested transfers. (R.C. 5120.17(D)(1).)

Prohibited procedures

Existing law prohibits an inmate patient who is transported to a psychiatric hospital and who is in the physical custody of DRC from being subjected to any of the following procedures: (1) convulsive therapy, (2) major aversive interventions, (3) any unusually hazardous treatment procedures, or (4) psychosurgery. The bill amends this provision to make it also apply to emergency transfers and uncontested transfers. (R.C. 5120.17(D)(2).)

Rights of inmate patient

The warden of the psychiatric hospital or the warden's designee must ensure that the inmate patient receives or has all of the following (R.C. 5120.17(E) under the bill):

(1) Receives sufficient professional care within 20 days of admission to ensure that an evaluation of the inmate patient's current status, differential

diagnosis, probable prognosis, and description of the current treatment plan have been formulated and are stated on the inmate patient's official chart;

(2) Has a written treatment plan consistent with the evaluation, diagnosis, prognosis, and goals of treatment;

(3) Receives treatment consistent with the treatment plan;

(4) Receives periodic reevaluations of the treatment plan by the professional staff at intervals not to exceed 30 days;

(5) Is provided with adequate medical treatment for physical disease or injury;

(6) Receives humane care and treatment.

Miscellaneous

An inmate patient is entitled to the credits toward the reduction of the inmate patient's stated prison term pursuant to the Criminal Code and the Department of Rehabilitation and Correction Law under the same terms and conditions as if the inmate patient were in any other DRC institution.

The Adult Parole Authority may place an inmate patient on parole or under post-release control directly from a psychiatric hospital.

DRC must set standards for treatment provided to inmate patients, consistent where applicable with the standards set by the joint commission on accreditation of healthcare organizations. (R.C. 5120.17(G), (H), and (J) under the bill.)

HISTORY

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