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Bill Analysis
Legislative Service Commission

H.B. 299

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(As Introduced)

Reps. Patton, J. McGregor, R. Hagan, Ujvagi, Boyd

BILL SUMMARY

- Requires each board of alcohol, drug addiction, and mental health services (ADAMH board) to establish and maintain an assisted outpatient treatment program for persons with mental illness and establishes requirements for the programs.
- Requires the Director of Mental Health or the Director's designee to oversee and coordinate all assisted outpatient treatment programs in the state.
- Establishes procedures under which a court may order a person to receive assisted outpatient treatment for mental illness.
- Establishes the criteria a person must meet for a court to order that person to participate in assisted outpatient treatment.
- Specifies who may petition the court for an order requiring a person to participate in an assisted outpatient treatment program and specifies the contents of the petition.
- Provides procedures for the court if the person refuses a mental health examination.
- Requires a mental health professional employed in the alcohol, drug addiction, and mental health services district in the county in which the petition is filed to create a written assisted outpatient treatment plan and detail the services that will be provided pursuant to the plan.
- Allows the court to approve, partially approve, or amend the plan, extend assisted outpatient treatment, or dismiss the case, after considering certain factors.

- Specifies that the person who is the subject of the hearing has the right to counsel and to be present at any hearing, present evidence, examine or cross-examine witnesses, and appeal any decision regarding the treatment.
- States that a person who fails to participate in court-ordered assisted outpatient treatment is subject to judicial hospitalization under current law.

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CONTENT AND OPERATION

Background

The state is divided into alcohol, drug addiction, and mental health service districts (ADAMH districts). Generally, each county or combination of counties having a population of at least 50,000 is to serve as a district, but the Director of Mental Health and the Director of Alcohol and Drug Addiction Services may approve a district comprised of a single county or combination of counties with a smaller population. (R.C. 340.01.)

Most districts have a single board to serve as the planning agency for the district's mental health services and its alcohol and drug addiction services. This type of board is called a board of alcohol, drug addiction, and mental health

services (ADAMH board). However certain districts have two separate boards; one to serve as the planning agency for mental health services (community mental health board) and another to serve as the planning agency for alcohol and drug addiction services (alcohol and drug addiction services board). (R.C. 340.02 and 340.021.) Any provision of the Revised Code applicable to ADAMH boards applies equally to community mental health boards and to alcohol and drug addiction services boards as appropriate.

One duty of an ADAMH board or community mental health board is to establish an annual community mental health plan. The plan lists the district's community mental health needs and the institutional and community mental health services that are or will be in operation in the district to meet those needs. Each board's plan is subject to the Director of Mental Health's approval. (R.C. 340.03(A)(1)(c).)

The bill

(R.C. 340.20(A))

The bill establishes a procedure under which a court may order assisted outpatient treatment for a person with a mental illness and requires each ADAMH board to establish an assisted outpatient treatment program. "Assisted outpatient treatment" is defined by the bill as services provided pursuant to a court order to a person who is suffering from a mental illness¹ to treat the person's mental illness, assist the person in living and functioning in the community, or attempt to prevent a relapse or further deterioration of the mental illness that may be reasonably predicted to result in suicide or the need for hospitalization. The services include:

- Medication;
- Periodic blood tests or urinalysis to determine compliance with prescribed medications or the presence of alcohol or illegal drugs;
- Individual or group therapy;
- Educational and vocational training or activities;
- Supervision of living arrangements;

¹ "Mental illness" is defined for purposes of the bill as "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. 5122.01(A), not in the bill).

- Any other services related to the goals of the treatment.

ADAMH boards

(R.C. 340.20(B) and (C))

Each assisted outpatient treatment program established by an ADAMH board under the bill must, through mental health professionals² employed in the ADAMH district, (1) provide timely assisted outpatient treatment, (2) monitor compliance with the treatment, (3) evaluate and address the conditions or needs of assisted outpatients, and (4) ensure compliance with court orders for assisted outpatient treatment. The executive director of each ADAMH board must appoint a mental health professional employed in that ADAMH district to oversee and coordinate the operations of the assisted outpatient treatment program in the district.

The Director of Mental Health (or the Director's designee) is required to oversee and coordinate all of the assisted outpatient treatment programs.

Initiating proceedings

(R.C. 340.21(A))

If a person meets criteria listed in the bill, a petition can be filed and a court can order the person to receive assisted outpatient treatment (see **'Criteria for court order,'** below). The person named in the petition is referred to in the bill as the respondent.

Only the following persons can initiate proceedings to obtain a court order requiring the respondent to participate in an assisted outpatient treatment program

² "Mental health professional" is defined by the bill as any of the following persons: (1) a physician authorized to practice medicine and surgery or osteopathic medicine and surgery, (2) subject to the supervision, control, and direction of a physician, a licensed physician's assistant, (3) a certified clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, (4) a licensed psychologist, (5) a licensed professional clinical counselor, or a licensed professional counselor under the supervision of a psychologist, psychiatrist, professional clinical counselor, or independent social worker, (6) a licensed independent social worker, or a licensed social worker under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or registered nurse who holds a master's degree in psychiatric nursing, or (7) a licensed independent marriage and family therapist, or a licensed marriage and family therapist under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist (R.C. 340.20(A)(4)).

by filing a petition in the probate court of the county in which the respondent resides or is believed to be residing:

- A person who is at least 18 years old and resides with the respondent or is a parent, spouse, sibling, or child of the respondent;
- A mental health professional who has provided or is providing mental health services to the respondent;
- A parole or probation officer who is supervising the respondent.

Petition

(R.C. 340.21(B)(1) and (D) and 340.22(A))

A petition filed to initiate the proceedings to obtain an order requiring the respondent to participate in an assisted outpatient treatment program must contain all of the following information:

- Facts stating that the respondent meets all of the criteria for being ordered to participate in an assisted outpatient treatment program;
- A statement that the respondent resides or is believed to be residing in the county where the petition is filed;
- An affidavit by a mental health professional, who is not the petitioner and who has done either of the following within ten days prior to filing the petition: (a) personally examined the respondent regarding the respondent's mental health and recommends assisted outpatient treatment, or (b) attempted to examine the respondent regarding the respondent's mental health, has been unsuccessful in examining the respondent, and has reason to suspect that the respondent meets the criteria.

Notice and a copy of the petition must be given personally or mailed to the respondent, the executive director of the ADAMH board of the county in which the petition is filed, the Director of Mental Health, the closest known relative of the respondent who does not live with the respondent, and each person 18 years of age or older who lives with the respondent.

On receipt of the petition, the court must schedule a hearing no later than three business days after receipt of the petition and mail notice of the hearing to the petitioner and all persons to whom notice of the petition must be given.

Refusal of examination

(R.C. 340.21(C))

If the respondent refuses attempted examination by a mental health professional, the court may request that a court-appointed mental health professional examine the respondent. If the respondent refuses the court-requested examination and there is reasonable cause to believe that the respondent meets the criteria for assisted outpatient treatment, the court may order the respondent to be taken into custody by a police officer or sheriff to undergo examination by a court-appointed mental health professional. The examination must be conducted within 24 hours of receiving custody of the respondent and may be by a mental health professional that is not the petitioner. The respondent cannot be in custody for longer than 24 hours.

Criteria for court order

(R.C. 340.21(B)(2))

A court may order a respondent to participate in assisted outpatient treatment only if the respondent meets all of the following criteria:

- Is at least 18 years old;
- Is suffering from mental illness;
- Is unlikely to survive safely in the community without supervision based on determination by a mental health professional;
- Has a history of lack of compliance with treatment for mental illness and either of the following has occurred: (1) at least twice in the 36 months prior to filing the petition, the respondent's mental illness has been a significant factor in hospitalization, services, or other related treatment, or (2) in the 48 months prior to filing the petition, the respondent's mental illness has been a significant cause of one or more acts of serious violent behavior toward the respondent's self or others or the cause of threats of, or attempts at, serious physical harm to the respondent's self or others;³

³ Neither of these time periods includes any current period of hospitalization, services, or other related treatment or period of hospitalization, services, or other related treatment ending in the six months prior to filing the petition.

- Is unlikely to voluntarily participate in treatment for the respondent's mental illness that would enable the respondent to live safely in the community;
- Is in need of assisted outpatient treatment based on the respondent's treatment history and current behavior in order to prevent relapse of the mental illness or additional damage to the respondent's mental health and such relapse or damage would result in serious harm to the respondent or others; and
- The respondent is likely to benefit from assisted outpatient treatment.

Written assisted outpatient treatment plan

(R.C. 340.22(B))

On receiving notice of the hearing on the assisted outpatient treatment petition, the executive director of the ADAMH board of the county where the petition was filed must cause a written assisted outpatient treatment plan for the respondent to be delivered to the court no later than the business day prior to the hearing on the petition. A mental health professional employed in the ADAMH district of that county must create the plan and detail the services that will be provided to the respondent in accordance with rules adopted by the Director of Mental Health. The services provided pursuant to the plan must be the least restrictive services necessary for treating the respondent. The mental health professional creating the plan must give the respondent, and any other person named by the respondent, an opportunity to participate in the development of the plan.

Court order

(R.C. 340.22(C))

The court may order the respondent to participate in the assisted outpatient treatment contained in the plan (see "**Written assisted outpatient treatment plan**" above) for an initial period not to exceed six months if (1) the court finds by clear and convincing evidence that the respondent meets all of the criteria for assisted outpatient treatment described above, (2) the plan provides the least restrictive services necessary for treating the respondent, and (3) the court hears testimony from relevant persons, including the mental health professional creating the plan, regarding the respondent and the plan.

If it does not find by clear and convincing evidence that the respondent meets all of the criteria for assisted outpatient treatment, the court may dismiss the

petition. If, however, the court does not find by clear and convincing evidence that the plan provides the least restrictive services necessary for treating the respondent, the court may continue the proceeding for ten business days to obtain a revised plan. On receipt of the revised plan, the court must either dismiss the petition or order the respondent to participate in the assisted outpatient treatment contained in the revised plan for an initial period not to exceed six months.

A copy of the court order must be sent to the petitioner, respondent, the executive director of the ADAMH board in the county in which the petition is filed, the ODMH Director, the closest known relative of the respondent who does not live with the respondent, each person 18 years of age or older who lives with the respondent, and the mental health professional providing assisted outpatient treatment to the respondent.

Extension of order

(R.C. 340.22(D))

Not earlier than 30 days prior to the expiration of the assisted outpatient treatment order, the ADAMH board executive director or the original petitioner may petition the court to order continuation of the assisted outpatient treatment for up to one year after the expiration of the original order. The court may order continued assisted outpatient treatment if the respondent meets the original criteria.

Rights of the respondent

(R.C. 340.22(E))

During all hearings held regarding assisted outpatient treatment, the respondent has the right to counsel and to be present at any hearing, present evidence, examine or cross-examine witnesses, and appeal any decision. Generally, the Rules of Civil Procedure apply to all hearings and the court may continue a hearing for good cause shown and upon motion of the court or respondent.

Amending the original plan

(R.C. 340.23)

The mental health professional providing assisted outpatient treatment must petition the court in which the original petition was filed to make any substantive change in the plan. The bill defines "substantive change" as any addition, deletion, or amendment to a written assisted outpatient treatment plan that would affect the mental health of the person receiving treatment.

Notice of the petition must be mailed to the respondent and the persons to whom the original petition had to be sent.

The court may approve any changes without a hearing if the person receiving treatment consents to the changes, unless one or more of the notified parties objects to the change. If the person receiving treatment does not consent, or any of the notified parties objects to the changes, the court must schedule a hearing on the proposed change within five business days of receiving the petition.

The mental health professional may make any nonsubstantive changes to the plan without petitioning the court.

Failure to comply with assisted outpatient treatment

(R.C. 340.24)

The bill states that a person who fails to participate in assisted outpatient treatment according to a court ordered plan is subject to judicial hospitalization under current law (see **COMMENT**).

Falsification or perjury

(R.C. 340.25 and 2921.11 (not in the bill) and 2921.13 (not in the bill))

The bill states that anyone who knowingly falsifies a statement on a petition, written statement, or other documentation required by the bill is guilty of falsification, which is a first degree misdemeanor under current law⁴ (R.C. 2921.13, not in the bill).

The bill also states that anyone who knowingly makes a false statement during any proceeding held pursuant to the bill is guilty of perjury, which is a third degree felony under current law (R.C. 2921.11, not in the bill).

Statistical data

(R.C. 340.20(B), (C), and (D))

On a quarterly basis, the assisted outpatient treatment coordinator for each ADAMH board must collect and report nonidentifying statistical data regarding the program in the coordinator's ADAMH district to the Director of Mental Health

⁴ Current law provides that a person who violates the falsification section (R.C. 2921.13) can be held liable in a civil action for injury, death, or loss to person or property incurred as a result of falsification and for reasonable attorney's fees, court costs, and other expenses.

or the Director's designee. The Director or designee must compile the statistical data and report the findings to the Governor, the General Assembly, and the executive directors of all ADAMH boards.

Aside from the nonidentifying statistical data, records regarding assisted outpatient treatment are confidential and are not public records under the public records law (R.C. 149.43, not in the bill).

Rule-making authority

(R.C. 5119.01(N))

The bill requires the Director of Mental Health to adopt assisted outpatient treatment rules regarding (1) training and education of mental health professionals, judges, or other relevant persons involved with assisted outpatient training, (2) the contents of assisted outpatient training plans, and (3) collection and dissemination of the required statistical data.

COMMENT

Ohio law establishes two procedures for the care on an involuntary basis of certain persons with mental illness: emergency and judicial hospitalization.

Under the procedures for emergency hospitalization, a person with mental illness may be taken into custody and to a mental hospital or community mental health agency for examination to determine whether the person is a mentally ill person subject to hospitalization by court order and represents a substantial risk of physical harm to him or herself or others if allowed to remain at liberty pending examination. After examination, the person must be released if determined not to be such a mentally ill person and no court has issued a temporary detention order. If determined to be such a mentally ill person, the person may be held for a period of not more than three court days. At the end of the three-court-day period, the person must be admitted as a voluntary patient, a judicial hospitalization proceeding must be initiated, or the person must be released (unless the person has been sentenced to the Department of Rehabilitation and Correction).

Judicial hospitalization proceedings are commenced by the filing of an affidavit for hospitalization. Pursuant to the proceedings, an investigation of whether the person is a mentally ill person subject to hospitalization by court order⁵ is conducted and an examination of the person may be ordered. After that,

⁵ "Mentally ill person subject to hospitalization by court order" means a mentally ill person who, because of the person's illness, (1) represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious

a probable cause hearing and a full hearing is to be held, except in certain circumstances, to determine whether the person is such a mentally ill person. After a full hearing, the court may commit the person to care and treatment for the mental illness for 90 days. Continued commitment for a further time period is possible after a subsequent full hearing. The probable cause hearing and first full hearing must be conducted within certain time periods or the person in custody must be released and the proceedings terminated.

Ohio law also provides for emergency admission, and various places of temporary detention, of mentally ill persons taken into custody pursuant to emergency and judicial hospital proceedings. Ohio law prohibits persons who are being treated by spiritual means by prayer alone, in accordance with a recognized religious method of healing, from being involuntarily committed unless the court determines that the person represents a substantial risk of impairment or injury to self or others. Any person involuntarily hospitalized or otherwise in custody due to mental illness must be notified of the person's rights regarding legal counsel, medical or psychological assistance, independent expert evaluation of the person's mental condition, and to a hearing to determine whether the person is a mentally ill person subject to hospitalization by court order. If a person is taken into custody pursuant to emergency or judicial hospitalization proceedings and released before an initial hearing, a court that made a file or record relating to the person must expunge it.

HISTORY

ACTION	DATE
Introduced	08-21-07

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self-inflicted bodily harm, (2) 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) represents a substantial and immediate risk of serious physical impairment or injury to self 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, or (4) would benefit from treatment in a hospital for the person's mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the person (R.C. 5122.01(B)).