



Ohio Legislative Service Commission

Bill Analysis

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S.B. 350

129th General Assembly
(As Introduced)

Sens. Burke, Seitz, Jones

BILL SUMMARY

- Changes the term "mentally ill person subject to hospitalization by court order" to "mentally ill person subject to court order," makes modifications to the definition of that term, and makes conforming changes regarding the term in various sections throughout the Revised Code.
- Modifies the term "treatment plan" as used with respect to persons committed or hospitalized under R.C. Chapter 5122.
- Provides that the affidavit filed for proceedings for court-ordered treatment of mentally ill persons subject to court order be filed with the probate court and be in a form prescribed by the Revised Code instead of by the Department of Mental Health.
- Provides the language that must be in the affidavit that is filed for proceedings for court-ordered treatment of mentally ill persons subject to court order.
- Modifies the law regarding the 90-day commitment of an individual by providing that if the individual is receiving treatment in an outpatient setting, or receives treatment in an outpatient setting during a subsequent period of continued commitment, the board, agency, or person to whom the individual is committed must determine the appropriate outpatient treatment for the individual.

CONTENT AND OPERATION

Court-ordered care for the mentally ill

Definition of "mentally ill person subject to hospitalization by court order"

Revised Code Chapter 5122. provides for court-ordered care for a "mentally ill person subject to hospitalization by court order." Under existing law, a "mentally ill person subject to *hospitalization by court order*" means a mentally ill person who, because of the person's illness, meets any of the following criteria:¹

(1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious 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;

(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.*

The bill modifies this definition by removing from the term the reference to "hospitalization by," removes the italicized language from (4), above, and moves (4) to read as follows:

(4) Would benefit from treatment due to all of the following:

(a) The person is unlikely to voluntarily participate in treatment.

(b) The person has demonstrated difficulty in adhering to prescribed treatment.

¹ R.C. 5122.01(B).

(c) The likelihood that, if the person is not treated, the person's current condition will deteriorate to the point that the person will meet the criterion in (1), (2), or (3), above.

Cross-reference changes

Numerous sections of the Revised Code include the term "mentally ill person subject to hospitalization by court order." The bill modifies these sections to reflect the change of the term to "mentally ill person subject to court order."²

Definition of "treatment plan"

Under existing law, the chief clinical officer of the hospital in which a mentally person is hospitalized or committed under R.C. Chapter 5122. or his designee must assure that all such patients:³

(1) Receive, within 20 days of their admission sufficient professional care to assure that an evaluation of current status, differential diagnosis, probable prognosis, and description of the current treatment plan is stated on the official chart;

(2) Have a *written treatment plan* consistent with the evaluation, diagnosis, prognosis, and goals which must be provided, upon request of the patient or patient's counsel, to the patient's counsel and to any private physician or licensed clinical psychologist designated by the patient or his counsel or to the legal rights service;

(3) Receive treatment consistent with the treatment plan;

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

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

(6) Receive humane care and treatment;

(7) Be notified of their rights under the law within 24 hours of admission, according to rules established by the Legal Rights Service.

If the chief clinical officer of the hospital is unable to provide the treatment required by (3), (4), and (5) above for any patient, the officer must immediately notify

² R.C. 2151.011, 2151.23, 2923.125, 2923.1213, 2923.13, 2945.37, 2945.38, 2945.39, 2945.40, 2945.401, 2967.22, 5119.23, 5120.17, 5122.03, 5122.05, 5122.10, 5122.11, 5122.13, 5122.141, 5122.15, 5122.19, 5122.21, 5122.27, 5122.30, 5122.31, 5122.311, 5139.54, 5305.22, 59059.06, and 5907.09.

³ R.C. 5122.27.

the patient, the court, the Legal Rights Service, the Director of Mental Health, and the patient's counsel and legal guardian, if known. If within ten days after receipt of such notification, the Director is unable to effect a transfer of the patient to a hospital, community mental health agency, or other medical facility where treatment is available, or has not received an order of the court to the contrary, the involuntary commitment of any patient hospitalized pursuant to R.C. Chapter 5122. and defined as a mentally ill person subject to hospitalization by court order must be automatically terminated.

Under existing law, "treatment plan" means a written statement of reasonable objectives and goals for an individual established by the treatment team, with specific criteria to evaluate progress towards achieving those objectives. The active participation of the patient in establishing the objectives and goals must be documented. The treatment plan must be based on patient needs and include services to be provided to the patient while the patient is hospitalized and after the patient is discharged. The treatment plan must address services to be provided upon discharge, including, but not limited to housing, financial, and vocational services. The bill modifies this term by providing that the treatment plan must be based on patient needs and include services while the patient is hospitalized, after the patient is discharged, *or in an outpatient setting*. The treatment plan still must address services to be provided, but not specifically upon discharge. The bill provides that the services *may include, but are not limited to, all of the following: (1) community psychiatric supportive treatment, (2) assertive community treatment, (3) medications, (4) individual or group therapy, (5) peer support services, (6) financial services, (7) housing or supervised living services, (8) alcohol or substance abuse treatment, and (9) any other services prescribed to treat the patient's mental illness and to either assist the patient in living and functioning in the community or to help prevent a relapse or a deterioration of the patient's current condition.*⁴

Judicial hospitalization-filing of affidavit

Under existing law, proceedings for the hospitalization of a mentally ill person subject to hospitalization by court order must be commenced by the filing of an affidavit in the manner and form prescribed by the Department of Mental Health, by any person or persons with the court, either on reliable information or actual knowledge, whichever is determined to be proper by the court. The affidavit must contain an allegation setting forth the specific categories under the definition of a "mentally ill person subject to hospitalization by court order" upon which the jurisdiction of the court is based. The bill specifies that the proceedings are for *court-ordered treatment*, rather than hospitalization of a person. The affidavit is to be in a form prescribed by R.C. 5122.111 (see "**Affidavit of mental illness**" at the end of this

⁴ R.C. 5122.01(V).

analysis), and the affidavit must be filed with the *probate* court. The bill also provides that the required allegation in the affidavit be based on categories in the definition of "mentally ill person subject to court order."⁵

Investigation

Under existing law, upon receipt of the above-described affidavit, the court must refer the affidavit to the board of alcohol, drug addiction, and mental health services or an agency the board designates to assist the court in determining whether the respondent is subject to hospitalization and whether alternative services are available, unless the agency or board has already performed such screening. The board or agency must review the allegations of the affidavit and other information relating to whether or not the person named in the affidavit or statement is a mentally ill person subject to hospitalization by court order and the availability of appropriate treatment alternatives.

The bill modifies existing law regarding the investigation by the board of alcohol, drug addiction, and mental health services or the agency the board designates by specifying that the *probate* court must refer the affidavit described above to the board or agency and that the board or agency is to assist the probate court in determining whether the respondent is subject to hospitalization and whether alternative services *including outpatient treatment* are available, unless the board or agency has already performed that screening.⁶

Full hearing for person involuntarily placed in a hospital or other designated place

Existing law provides that a full hearing for a person involuntarily placed in a hospital or other designated place pursuant to the filing of the above-described affidavit must be conducted by a judge of the probate court or a referee designated by a judge of the probate court.⁷ If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to hospitalization by court order (modified to "mentally ill person subject to court order" under the bill), the court must order the respondent for a period of not to exceed 90 days to any of the following:⁸

⁵ R.C. 5122.11.

⁶ R.C. 5122.13.

⁷ R.C. 5122.15(A).

⁸ R.C. 5122.15(C).

(1) A hospital operated by the Department of Mental Health if the respondent is committed pursuant to R.C. 5139.08;

(2) A nonpublic hospital;

(3) The Veterans' Administration or other agency of the United States government;

(4) A board of alcohol, drug addiction, and mental health services or agency the board designates;

(5) Receive private psychiatric or psychological care and treatment;

(6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent.

In determining the place to which, or the person to whom, the respondent is to be committed, the court must consider the diagnosis, prognosis, preferences of the respondent and the projected treatment plan for the respondent and must order the implementation of the least restrictive alternative available and consistent with treatment goals. The bill specifies that the respondent is to be committed with a person, *board, or agency* and that the respondent is to be committed under the provisions described above.⁹

Under existing law, during the 90-day commitment period described above, the hospital; facility; board of alcohol, drug addiction, and mental health services; agency; or person must examine and treat the individual. The bill additionally provides that *if the individual is receiving treatment in an outpatient setting, or receives treatment in an outpatient setting during a subsequent period of continued commitment, the board, agency, or person to whom the individual is committed must determine the appropriate outpatient treatment for the individual.* The bill modifies existing law to provide that if, at any time prior to the expiration of the 90-day period, it is determined by the hospital, facility, board, agency, or person that the respondent's treatment needs could be equally well met in an available less restrictive *setting* (instead of "environment"), both of the following apply:¹⁰

(1) The respondent must be released from the care of the hospital, *board, agency, facility, or person* immediately and must be referred to the court together with a report of the findings and recommendations of the hospital, *board, agency, facility, or person*;

⁹ R.C. 5122.15(E).

¹⁰ R.C. 5122.15(F).

(2) The hospital, *board*, agency, facility, or person must notify the respondent's counsel or the attorney designated by a board of alcohol, drug addiction, and mental health services or, if the respondent was committed to a board or an agency designated by the board, it must place the respondent in the least restrictive *setting* (instead of "environment") available consistent with treatment goals and notify the court and the respondent's counsel of the placement.

The court must dismiss the case or order placement in the least restrictive *setting* (instead of "environment").¹¹

Under the bill, generally any person who has been committed or for whom proceedings for *treatment* have been commenced, may apply at any time for voluntary admission *or commitment* to the hospital, facility, agency, board, or person to which the person was committed.¹² If, at the end of the first 90-day period or any subsequent period of continued commitment, there has been no disposition of the case, either by discharge or voluntary admission *or commitment*, the hospital, facility, board, agency, or person must discharge the patient immediately, unless at least ten days before the expiration of the period the attorney the board designates or the prosecutor files with the court an application for continued commitment.¹³ If the court, after a hearing for continued commitment finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court may order continued commitment at places *or to persons* specified above in (1) through (6) above.¹⁴

Confidentiality

The bill modifies existing law by providing that all certificates, applications, records, and reports made for the purpose of R.C. Ch. 5122. and R.C. 2945.38, 2945.39, 2945.40, 2945.401, and 2945.402, other than court journal entries or court docket entries, and directly or indirectly identifying a patient or former patient or person whose hospitalization *or commitment* (added by the bill) has been sought under R.C. Ch. 5122. must be kept confidential and can only be disclosed to certain persons under certain circumstances.¹⁵

¹¹ *Id.*

¹² R.C. 5122.15(G)(1).

¹³ R.C. 5122.15(H).

¹⁴ *Id.*

¹⁵ R.C. 5122.31(A).

Affidavit of mental illness

The bill provides that, to initiate proceedings for court-ordered treatment of a person, a person or persons must file an affidavit with the probate court that is identical in form and content to the following:¹⁶

AFFIDAVIT OF MENTAL ILLNESS

The State of Ohio

..... County, ss.

..... Court

.....

the undersigned, residing at

.....

says, that he/she has information to believe or has actual knowledge that

.....

(Please specify specific category(ies) below with an X.)

Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;

Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior or evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm or other evidence of present dangerousness;

Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence of being unable to provide for and of not providing for basic physical needs because of mental illness and that appropriate provision for such needs cannot be made immediately available in the community; or

Would benefit from court-ordered treatment due to all of the following:

- (a) The person is unlikely to voluntarily participate in treatment.
- (b) The person has demonstrated difficulty in adhering to prescribed treatment.
- (c) The likelihood that, if the person is not treated, the person's current condition will deteriorate to the point that the person will meet the criterion in one of the three prior paragraphs.

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(Name of the party filing the affidavit) further says that the facts supporting this belief are as follows:

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¹⁶ R.C. 5122.111.



These facts being sufficient to indicate probable cause that the above said person is a mentally ill person subject to court order.

Name of Patient's Last Physician or Licensed Clinical Psychologist

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Address of Patient's Last Physician or Licensed Clinical Psychologist

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The name and address of respondent's legal guardian, spouse, and adult next of kin are:

Name	Kinship	Address
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	Legal Guardian	
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	Spouse	
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	Adult Next of Kin	
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	Adult Next of Kin	
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The following constitutes additional information that may be necessary for the purpose of determining residence:

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Dated this day of, 20...



Signature of the party filing the affidavit

Sworn to before me and signed in my presence on the day and year above dated.

Signature of Probate Judge

Signature of Deputy Clerk

WAIVER

I, the undersigned party filing the affidavit hereby waive the issuing and service of notice of the hearing on said affidavit, and voluntarily enter my appearance herein.

Dated this day of, 20...

Signature of the party filing the affidavit

Technical changes

The bill makes various technical and conforming changes, including gender neutralization.

HISTORY

ACTION	DATE
Introduced	05-23-12

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