Ohio Legislative Service Commission

Bill Analysis

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H.B. 104

130th General Assembly
(As Introduced)

Reps. Ruhl, and Stautberg, Gonzales, Sprague, Hackett, Butler

BILL SUMMARY

- Changes the term "mentally ill person subject to hospitalization by court order" that is used in R.C. Chapter 5122. to "mentally ill person subject to court order," makes modifications to the definition of that term, and makes conforming changes in the term in various sections throughout the Revised Code that also use the term.

- Modifies the term "treatment plan" as used with respect to persons committed or hospitalized under R.C. Chapter 5122.

- In the provisions that pertain to proceedings for hospitalization of a mentally ill person pursuant to court order, specifies that the proceedings are for court-ordered treatment rather than hospitalization, clarifies 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 requires that the affidavit 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.

- In the provision requiring an investigation when an affidavit for court-ordered treatment is filed, clarifies that the probate court is the involved court and specifies that the purpose of the investigation includes the determination of the availability of outpatient services.

- Modifies the law regarding the court-ordered 90-day commitment of a mentally ill individual by: (1) 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, and (2) replacing the term "environment" with the term "setting" in a provision that specifies what is to be done if a specified person or entity determines during the 90-day period that the individual's treatment needs could be equally well met in a less restrictive setting.

- Adds the term "commitment" in several places in provisions that currently pertain to voluntary admission of an individual who has been committed or for whom commitment proceedings have been commenced, to the possible discharge of an individual at the end of a 90-day commitment period if the individual has not already been discharged or voluntarily admitted, and to confidentiality of most documents that pertain to possible court-ordered hospitalization of an individual.

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CONTENT AND OPERATION

The bill makes several changes to the laws governing court-ordered commitment of and treatment provided to mentally ill persons.

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

Existing law

Revised Code Chapter 5122. provides for court-ordered care for a person determined to be 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] R.C. 5122.01(B).

(1) The person 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) 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 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) The person 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*.

Operation of the bill

The bill modifies this definition by removing from the term the reference to "hospitalization by," removing the italicized language from (4), above, under "**Existing law**," and modifying (4), above, to read as follows:

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

(a) The substantial likelihood that, if the person is not treated, the person's current condition will further deteriorate to the point that the person will meet criteria in (1), (2), or (3), above, under "**Existing law**."

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

(c) The likelihood that the person will not voluntarily participate in treatment despite a risk of serious impairment or injury to self or others.

Cross-reference changes

Thirty-two sections of the Revised Code use the term "mentally ill person subject to hospitalization by court order." With three exceptions, the definition of the term described above in "**Definition of "mentally ill person subject to hospitalization by court order"**" expressly applies to all of the sections. The three sections that are exceptions, R.C. 2923.1213, 5924.503, and 5924.504, do not define, or incorporate a definition for, the term. The bill modifies 29 of the sections that use the term to reflect

the change of the definition of the term to "mentally ill person subject to court order" that is described above.[2] The other three sections that use the term were recently enacted, taking effect on September 28, 2012 – they are not included in the bill and the term as used in those sections is not modified by the bill.[3]

Definition of "treatment plan"

Under existing law, the chief clinical officer of the hospital in which one or more mentally ill persons are hospitalized or committed under R.C. Chapter 5122. or the officer's designee must assure that all such patients:[4]

(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 counsel or to the legal rights service;

(3) Receive treatment consistent with the treatment plan, under standards set by the Department of Mental Health;

(4) Receive periodic reevaluations of the treatment plan by the professional staff at intervals not to exceed 90 days;

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

(6) Receive humane care and treatment, including without limitation seven specified types of care or treatment.

If the chief clinical officer of the hospital is unable to provide the treatment required by (3), (5), and (6) above for any patient, the officer must immediately notify the patient, the court, the Ohio Protection and Advocacy System, 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

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[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, 5122.311, 5139.54, 5305.22, 5907.06, and 5907.09.

[3] R.C. 5924.503, 5924.504, and 5924.506, not in the bill.

[4] R.C. 5122.27.

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 (modified to "mentally ill person subject to court order" under the bill) 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.* The bill also specifies that, if the person subject to the treatment plan has executed an advanced directive for mental health treatment, the treatment team must consider any directions included in the advanced directive in developing the treatment plan.[5]

In addition to the provisions described above, six other Revised Code sections use the term "treatment plan" as it is defined in the preceding paragraph. They include sections that provide for admission of voluntary patients who are mentally ill, probate court hearings for a person whose hospitalization or commitment, etc., is sought, trial visits for patients, tasks and labor by patients, rights of patients, and disclosure of information regarding patients.[6] The change in the definition of the term that is described in the preceding paragraph applies to all six of those other sections.

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[5] R.C. 5122.01(V).

[6] R.C. 5122.15 and 5122.31; R.C. 5122.02, 5122.22, 5122.28, and 5122.29, not in the bill.

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 and a statement of alleged facts sufficient to indicate probable cause to believe that the person is within the specified category or categories. 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 as enacted by the bill (see "**Affidavit of mental illness**" at the end of this 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 bill's definition of "mentally ill person subject to court order" as described above.[7]

Investigation

Under existing law, upon receipt of the above-described affidavit initiating hospitalization proceedings, 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 (modified to "mentally ill person subject to court order" in this, and several other places in the provision, under the bill) 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

[7] R.C. 5122.11.

including outpatient treatment are available, unless the board or agency has already performed that screening.[8]

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.[9] 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 in this, and several other places in the provision, 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:[10]

(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 clarifies that commitment of a respondent is to a place or with a person, *board, or agency* and that the respondent is to be committed under the

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[8] R.C. 5122.13.

[9] R.C. 5122.15(A).

[10] R.C. 5122.15(C).

provisions described above.[11] It also specifies that a jail or other "local correctional facility" is not a suitable facility for purposes of a commitment under the provision described in (6), above. As used in this provision, a "local correctional facility is a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.[12]

Under existing law, during the 90-day commitment period described above, the hospital; facility; board of alcohol, drug addiction, and mental health services; agency the board designates; or person must examine and treat the individual. The bill replaces the reference to "agency the board designates" with "agency," and it 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:[13]

(1) The respondent must be released from the care of the hospital, *board* (added by the bill), 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;

(2) The hospital, *board* (added by the bill), 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.

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[11] R.C. 5122.15(E).

[12] R.C. 5122.15(D)(6); also R.C. 5122.01(Y) (incorporating R.C. 2903.13(D)(4) by reference).

[13] R.C. 5122.15(F).

The court must dismiss the case or order placement in the least restrictive *setting* (instead of "environment").[14]

Under the bill, generally any person who has been committed or for whom proceedings for *treatment* (instead of "hospitalization") have been commenced, may apply at any time for voluntary admission *or commitment* (added by the bill) to the hospital, facility, agency, board, or person to which the person was committed.[15] 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* (added by the bill), 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.[16] 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* (added by the bill) specified above in (1) through (6) following the first paragraph of this section.[17]

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.[18]

Affidavit of mental illness

The bill provides that, to initiate proceedings for court-ordered treatment of a person under the provisions described above in "**Judicial hospitalization – filing of**

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[14] *Id.*

[15] R.C. 5122.15(G)(1).

[16] R.C. 5122.15(H).

[17] *Id.*

[18] R.C. 5122.31(A).

affidavit," a person or persons must file an affidavit with the probate court that is identical in form and content to the following:[19]

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 substantial likelihood that, if the person is not treated, the person's current condition will further deteriorate to the point that the person will meet criteria in one of the three prior paragraphs.

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

(c) The likelihood that the person will not voluntarily participate in treatment despite a risk of serious impairment or injury to self or others.

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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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[19] 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
……	Legal Guardian	…… ……
……	Spouse	…… ……
……	Adult Next of Kin	…… ……
……	Adult Next of Kin	…… ……

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

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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	03-19-13

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