

As Reported by the House Civil Justice Committee

134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 439

Representatives Galonski, Hillyer

**Cosponsors: Representatives Brent, Jarrells, Lightbody, Miller, A., Miller, J.,
Sobecki, Troy**

A BILL

To amend sections 5122.01 and 5122.10 of the 1
Revised Code to make changes to the law 2
regarding involuntary treatment for mentally ill 3
persons subject to a court order. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5122.01 and 5122.10 of the 5
Revised Code be amended to read as follows: 6

Sec. 5122.01. As used in this chapter and Chapter 5119. of 7
the Revised Code: 8

(A) "Mental illness" means a substantial disorder of 9
thought, mood, perception, orientation, or memory that grossly 10
impairs judgment, behavior, capacity to recognize reality, or 11
ability to meet the ordinary demands of life. 12

(B) "Mentally ill person subject to court order" means a 13
mentally ill person who, because of the person's illness: 14

(1) Represents a substantial risk of physical harm to self 15
as manifested by evidence of threats of, or attempts at, suicide 16

or serious self-inflicted bodily harm; 17

(2) Represents a substantial risk of physical harm to 18
others as manifested by evidence of recent homicidal or other 19
violent behavior, evidence of recent threats that place another 20
in reasonable fear of violent behavior and serious physical 21
harm, or other evidence of present dangerousness; 22

(3) Represents a substantial and immediate risk of serious 23
physical impairment or injury to self as manifested by evidence 24
that the person is unable to provide for and is not providing 25
for the person's basic physical needs because of the person's 26
mental illness and that appropriate provision for those needs 27
cannot be made immediately available in the community; 28

(4) Would benefit from treatment for the person's mental 29
illness and is in need of such treatment as manifested by 30
evidence of behavior that creates a grave and imminent risk to 31
substantial rights of others or the person; 32

~~(5)(a)~~ (5) Represents a substantial risk of harm to self 33
or others as manifested by evidence that indicates all of the 34
following: 35

(a) The person's judgment is impaired by a lack of 36
understanding of having an illness or a need for treatment, or 37
both. 38

(b) The person refuses treatment or is not adhering to 39
prescribed treatment. 40

(c) The person has been diagnosed with one or more of the 41
following conditions as defined in the most recent edition of 42
the diagnostic and statistical manual of mental disorders 43
published by the American psychiatric association: 44

<u>(i) Schizophrenia;</u>	45
<u>(ii) Schizoaffective disorder;</u>	46
<u>(iii) Bipolar disorder;</u>	47
<u>(iv) Delusional disorder;</u>	48
<u>(v) Major depressive disorder.</u>	49
<u>(d) If not treated and based on the person's prior</u>	50
<u>history, the person is reasonably expected to suffer mental</u>	51
<u>deterioration and, as a result of that deterioration, meet one</u>	52
<u>of the standards specified in division (B) (1), (2), (3), or (4)</u>	53
<u>of this section.</u>	54
<u>(6) (a) Would benefit from treatment as manifested by</u>	55
evidence of behavior that indicates all of the following:	56
(i) The person is unlikely to survive safely in the	57
community without supervision, based on a clinical	58
determination.	59
(ii) The person has a history of lack of compliance with	60
treatment for mental illness and one of the following applies:	61
(I) At least twice within the thirty-six months prior to	62
the filing of an affidavit seeking court-ordered treatment of	63
the person under section 5122.111 of the Revised Code, the lack	64
of compliance has been a significant factor in necessitating	65
hospitalization in a hospital or receipt of services in a	66
forensic or other mental health unit of a correctional facility,	67
provided that the thirty-six-month period shall be extended by	68
the length of any hospitalization or incarceration of the person	69
that occurred within the thirty-six-month period.	70
(II) Within the forty-eight months prior to the filing of	71

an affidavit seeking court-ordered treatment of the person under 72
section 5122.111 of the Revised Code, the lack of compliance 73
resulted in one or more acts of serious violent behavior toward 74
self or others or threats of, or attempts at, serious physical 75
harm to self or others, provided that the forty-eight-month 76
period shall be extended by the length of any hospitalization or 77
incarceration of the person that occurred within the forty- 78
eight-month period. 79

(iii) The person, as a result of the person's mental 80
illness, is unlikely to voluntarily participate in necessary 81
treatment. 82

(iv) In view of the person's treatment history and current 83
behavior, the person is in need of treatment in order to prevent 84
a relapse or deterioration that would be likely to result in 85
substantial risk of serious harm to the person or others. 86

(b) An individual who meets only the criteria described in 87
division ~~(B) (5) (a)~~ (B) (6) (a) of this section is not subject to 88
hospitalization. 89

(C) (1) "Patient" means, subject to division (C) (2) of this 90
section, a person who is admitted either voluntarily or 91
involuntarily to a hospital or other place under section 92
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code 93
subsequent to a finding of not guilty by reason of insanity or 94
incompetence to stand trial or under this chapter, who is under 95
observation or receiving treatment in such place. 96

(2) "Patient" does not include a person admitted to a 97
hospital or other place under section 2945.39, 2945.40, 98
2945.401, or 2945.402 of the Revised Code to the extent that the 99
reference in this chapter to patient, or the context in which 100

the reference occurs, is in conflict with any provision of 101
sections 2945.37 to 2945.402 of the Revised Code. 102

(D) "Licensed physician" means a person licensed under the 103
laws of this state to practice medicine or a medical officer of 104
the government of the United States while in this state in the 105
performance of the person's official duties. 106

(E) "Psychiatrist" means a licensed physician who has 107
satisfactorily completed a residency training program in 108
psychiatry, as approved by the residency review committee of the 109
American medical association, the committee on post-graduate 110
education of the American osteopathic association, or the 111
American osteopathic board of neurology and psychiatry, or who 112
on July 1, 1989, has been recognized as a psychiatrist by the 113
Ohio state medical association or the Ohio osteopathic 114
association on the basis of formal training and five or more 115
years of medical practice limited to psychiatry. 116

(F) "Hospital" means a hospital or inpatient unit licensed 117
by the department of mental health and addiction services under 118
section 5119.33 of the Revised Code, and any institution, 119
hospital, or other place established, controlled, or supervised 120
by the department under Chapter 5119. of the Revised Code. 121

(G) "Public hospital" means a facility that is tax- 122
supported and under the jurisdiction of the department of mental 123
health and addiction services. 124

(H) "Community mental health services provider" means an 125
agency, association, corporation, individual, or program that 126
provides community mental health services that are certified by 127
the director of mental health and addiction services under 128
section 5119.36 of the Revised Code. 129

(I) "Licensed clinical psychologist" means a person who 130
holds a current, valid psychologist license issued under section 131
4732.12 of the Revised Code, and in addition, meets the 132
educational requirements set forth in division (B) of section 133
4732.10 of the Revised Code and has a minimum of two years' 134
full-time professional experience, or the equivalent as 135
determined by rule of the state board of psychology, at least 136
one year of which shall be a predoctoral internship, in clinical 137
psychological work in a public or private hospital or clinic or 138
in private practice, diagnosing and treating problems of mental 139
illness or intellectual disability under the supervision of a 140
psychologist who is licensed or who holds a diploma issued by 141
the American board of professional psychology, or whose 142
qualifications are substantially similar to those required for 143
licensure by the state board of psychology when the supervision 144
has occurred prior to enactment of laws governing the practice 145
of psychology. 146

(J) "Health officer" means any public health physician; 147
public health nurse; or other person authorized or designated by 148
a city or general health district or a board of alcohol, drug 149
addiction, and mental health services to perform the duties of a 150
health officer under this chapter. 151

(K) "Chief clinical officer" means the medical director of 152
a hospital, community mental health services provider, or board 153
of alcohol, drug addiction, and mental health services, or, if 154
there is no medical director, the licensed physician responsible 155
for the treatment provided by a hospital or community mental 156
health services provider. The chief clinical officer may 157
delegate to the attending physician responsible for a patient's 158
care the duties imposed on the chief clinical officer by this 159
chapter. In the case of a community mental health services 160

provider, the chief clinical officer shall be designated by the 161
governing body of the services provider and shall be a licensed 162
physician or licensed clinical psychologist who supervises 163
diagnostic and treatment services. A licensed physician or 164
licensed clinical psychologist designated by the chief clinical 165
officer may perform the duties and accept the responsibilities 166
of the chief clinical officer in the chief clinical officer's 167
absence. 168

(L) "Working day" or "court day" means Monday, Tuesday, 169
Wednesday, Thursday, and Friday, except when such day is a 170
holiday. 171

(M) "Indigent" means unable without deprivation of 172
satisfaction of basic needs to provide for the payment of an 173
attorney and other necessary expenses of legal representation, 174
including expert testimony. 175

(N) "Respondent" means the person whose detention, 176
commitment, hospitalization, continued hospitalization or 177
commitment, or discharge is being sought in any proceeding under 178
this chapter. 179

(O) "Ohio protection and advocacy system" has the same 180
meaning as in section 5123.60 of the Revised Code. 181

(P) "Independent expert evaluation" means an evaluation 182
conducted by a licensed clinical psychologist, psychiatrist, or 183
licensed physician who has been selected by the respondent or 184
the respondent's counsel and who consents to conducting the 185
evaluation. 186

(Q) "Court" means the probate division of the court of 187
common pleas. 188

(R) "Expunge" means: 189

(1) The removal and destruction of court files and 190
records, originals and copies, and the deletion of all index 191
references; 192

(2) The reporting to the person of the nature and extent 193
of any information about the person transmitted to any other 194
person by the court; 195

(3) Otherwise insuring that any examination of court files 196
and records in question shall show no record whatever with 197
respect to the person; 198

(4) That all rights and privileges are restored, and that 199
the person, the court, and any other person may properly reply 200
that no such record exists, as to any matter expunged. 201

(S) "Residence" means a person's physical presence in a 202
county with intent to remain there, except that: 203

(1) If a person is receiving a mental health service at a 204
facility that includes nighttime sleeping accommodations, 205
residence means that county in which the person maintained the 206
person's primary place of residence at the time the person 207
entered the facility; 208

(2) If a person is committed pursuant to section 2945.38, 209
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code, 210
residence means the county where the criminal charges were 211
filed. 212

When the residence of a person is disputed, the matter of 213
residence shall be referred to the department of mental health 214
and addiction services for investigation and determination. 215
Residence shall not be a basis for a board of alcohol, drug 216
addiction, and mental health services to deny services to any 217
person present in the board's service district, and the board 218

shall provide services for a person whose residence is in 219
dispute while residence is being determined and for a person in 220
an emergency situation. 221

(T) "Admission" to a hospital or other place means that a 222
patient is accepted for and stays at least one night at the 223
hospital or other place. 224

(U) "Prosecutor" means the prosecuting attorney, village 225
solicitor, city director of law, or similar chief legal officer 226
who prosecuted a criminal case in which a person was found not 227
guilty by reason of insanity, who would have had the authority 228
to prosecute a criminal case against a person if the person had 229
not been found incompetent to stand trial, or who prosecuted a 230
case in which a person was found guilty. 231

(V) (1) "Treatment plan" means a written statement of 232
reasonable objectives and goals for an individual established by 233
the treatment team, with specific criteria to evaluate progress 234
towards achieving those objectives. 235

(2) The active participation of the patient in 236
establishing the objectives and goals shall be documented. The 237
treatment plan shall be based on patient needs and include 238
services to be provided to the patient while the patient is 239
hospitalized, after the patient is discharged, or in an 240
outpatient setting. The treatment plan shall address services to 241
be provided. In the establishment of the treatment plan, 242
consideration should be given to the availability of services, 243
which may include but are not limited to all of the following: 244

(a) Community psychiatric supportive treatment; 245

(b) Assertive community treatment; 246

(c) Medications; 247

(d) Individual or group therapy;	248
(e) Peer support services;	249
(f) Financial services;	250
(g) Housing or supervised living services;	251
(h) Alcohol or substance abuse treatment;	252
(i) 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.	253 254 255 256
(3) If the person subject to the treatment plan has executed an advance directive for mental health treatment, the treatment team shall consider any directions included in such advance directive in developing the treatment plan.	257 258 259 260
(W) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	261 262
(X) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.	263 264
(Y) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code.	265 266
(Z) "Clinical nurse specialist" and "certified nurse practitioner" have the same meanings as in section 4723.01 of the Revised Code.	267 268 269
Sec. 5122.10. (A) (1) Any of the following who has reason to believe that a person is a mentally ill person subject to court order and represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination may take the person into custody and may immediately	270 271 272 273 274

transport the person to a hospital or, notwithstanding section 275
5119.33 of the Revised Code, to a general hospital not licensed 276
by the department of mental health and addiction services where 277
the person may be held for the period prescribed in this 278
section: 279

(a) A psychiatrist; 280

(b) A licensed physician; 281

(c) A licensed clinical psychologist; 282

(d) A clinical nurse specialist who is certified as a 283
psychiatric-mental health CNS by the American nurses 284
credentialing center; 285

(e) A certified nurse practitioner who is certified as a 286
psychiatric-mental health NP by the American nurses 287
credentialing center; 288

(f) A health officer; 289

(g) A parole officer; 290

(h) A police officer; 291

(i) A sheriff. 292

(2) If the chief of the adult parole authority or a parole 293
or probation officer with the approval of the chief of the 294
authority has reason to believe that a parolee, an offender 295
under a community control sanction or post-release control 296
sanction, or an offender under transitional control is a 297
mentally ill person subject to court order and represents a 298
substantial risk of ~~physical~~ harm to self or others if allowed 299
to remain at liberty pending examination, the chief or officer 300
may take the parolee or offender into custody and may 301

immediately transport the parolee or offender to a hospital or, 302
notwithstanding section 5119.33 of the Revised Code, to a 303
general hospital not licensed by the department of mental health 304
and addiction services where the parolee or offender may be held 305
for the period prescribed in this section. 306

~~(B)~~ (B) (1) A written statement shall be given to the 307
hospital by the individual authorized under division (A) (1) or 308
(2) of this section to transport the person. The statement shall 309
specify the circumstances under which such person was taken into 310
custody and the reasons for the belief that the person is a 311
mentally ill person subject to court order and represents a 312
substantial risk of ~~physical~~ harm to self or others if allowed 313
to remain at liberty pending examination. This statement shall 314
be made available to the respondent or the respondent's attorney 315
upon request of either. 316

A statement is not invalid if given to a general hospital 317
when a person is transported to the general hospital under 318
division (D) of this section or if the statement identifies a 319
general hospital as the receiving hospital. A general hospital 320
that receives a statement shall transmit the statement to a 321
hospital as defined in section 5122.01 of the Revised Code when 322
transferring a person to the hospital in accordance with this 323
section. 324

(2) If an individual authorized under division (A) (1) or 325
(2) of this section to transport a person is transporting a 326
person the individual believes to be a mentally ill person 327
subject to a court order under division (B) (5) of section 328
5122.01 of the Revised Code, the individual shall specify, in 329
addition to the written statement required under division (B) (1) 330
of this section, any available relevant information about the 331

history of the person's mental illness, if the individual 332
determines that the additional information has a reasonable 333
bearing on the decision to transport the person. The additional 334
information shall include information from anyone who has 335
provided mental health or related support services to the person 336
being transported, information from one or more family members 337
of the person being transported, or information from the person 338
being transported or anyone designated to speak on the person's 339
behalf. 340

(C) Every reasonable and appropriate effort shall be made 341
to take persons into custody in the least conspicuous manner 342
possible. A person taking the respondent into custody pursuant 343
to this section shall explain to the respondent: the name and 344
professional designation and affiliation of the person taking 345
the respondent into custody; that the custody-taking is not a 346
criminal arrest; and that the person is being taken for 347
examination by mental health professionals at a specified mental 348
health facility identified by name. 349

(D) ~~If~~ Except as otherwise provided in this section, if a 350
person taken into custody under this section is transported to a 351
general hospital, the general hospital may admit the person, or 352
provide care and treatment for the person, or both, 353
notwithstanding section 5119.33 of the Revised Code, but by the 354
end of twenty-four hours after arrival at the general hospital, 355
the person shall be transferred to a hospital as defined in 356
section 5122.01 of the Revised Code. 357

(E) If a person taken into custody and transported to a 358
general hospital as described in division (D) of this section is 359
not medically stable at the end of the twenty-four-hour period 360
described in that division, the general hospital may continue to 361

provide care and treatment for the person until a treating 362
physician deems the person to be medically stable to be 363
transferred to a hospital as defined in section 5122.01 of the 364
Revised Code. 365

(F) If a person taken into custody and transported to a 366
general hospital as described in division (D) of this section is 367
unable to be transferred to a hospital as defined in section 368
5122.01 of the Revised Code within twenty-four hours because of 369
an inability to identify a hospital willing to accept the 370
person, the general hospital may continue to provide care and 371
treatment to the person until the person can be transferred to a 372
hospital willing to accept the person. 373

(G) If a licensed physician responsible for diagnosing or 374
treating mental illness, a licensed clinical psychologist, a 375
psychiatrist, or a health officer examines an individual 376
described in division (D), (E), or (F) of this section at a 377
general hospital and determines that the person is not a 378
mentally ill person subject to a court order, the general 379
hospital may release or discharge the person if the person is 380
medically stable, unless a court has issued a temporary order of 381
detention applicable to the person under section 5122.11 of the 382
Revised Code. Nothing in this section shall be construed as 383
requiring a general hospital to have the resources for or 384
provide a licensed physician responsible for diagnosing or 385
treating mental illness, a licensed clinical psychologist, a 386
psychiatrist, or a health officer to make a determination 387
whether a person is a mentally ill person subject to a court 388
order. 389

(H) A person transported or transferred to a hospital or 390
community mental health services provider under this section 391

shall be examined by the staff of the hospital or services 392
provider within twenty-four hours after arrival at the hospital 393
or services provider. If to conduct the examination requires 394
that the person remain overnight, the hospital or services 395
provider shall admit the person in an unclassified status until 396
making a disposition under this section. After the examination, 397
if the chief clinical officer of the hospital or services 398
provider believes that the person is not a mentally ill person 399
subject to court order, the chief clinical officer shall release 400
or discharge the person immediately unless a court has issued a 401
temporary order of detention applicable to the person under 402
section 5122.11 of the Revised Code. After the examination, if 403
the chief clinical officer believes that the person is a 404
mentally ill person subject to court order, the chief clinical 405
officer may detain the person for not more than three court days 406
following the day of the examination and during such period 407
admit the person as a voluntary patient under section 5122.02 of 408
the Revised Code or file an affidavit under section 5122.11 of 409
the Revised Code. If neither action is taken and a court has not 410
otherwise issued a temporary order of detention applicable to 411
the person under section 5122.11 of the Revised Code, the chief 412
clinical officer shall discharge the person at the end of the 413
three-day period unless the person has been sentenced to the 414
department of rehabilitation and correction and has not been 415
released from the person's sentence, in which case the person 416
shall be returned to that department. 417

Section 2. That existing sections 5122.01 and 5122.10 of 418
the Revised Code are hereby repealed. 419