

2017 Regular Session

HOUSE BILL NO. 395

BY REPRESENTATIVE DUSTIN MILLER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MENTAL HEALTH: Amends the procedures for involuntary mental health treatment

1 AN ACT

2 To amend and reenact R.S. 28:2(1), 54(A) and (C), 55(A) through (D) and (E)(1) and (5),
3 56(C) and (G)(1) and (4), 59(A) through (C), 454.6(A)(introductory paragraph), (5),
4 and (6) and (B) and to enact R.S. 28:52.2(C) and 454.6(A)(7), relative to involuntary
5 mental health treatment; to extend the maximum length of time of treatment for a
6 patient granted a conditional discharge; to make technical corrections; to require
7 formal voluntary admission upon request of qualifying individuals; to provide for
8 judicial commitment hearings; to provide for commitment of prisoners; to establish
9 an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 28:2(1), 54(A) and (C), 55(A) through (D) and (E)(1) and (5), 56(C)
12 and (G)(1) and (4), 59(A) through (C), 454.6(A)(introductory paragraph), (5), and (6) and
13 (B) are hereby amended and reenacted and R.S. 28:52.2(C) and 454.6(A)(7) are hereby
14 enacted to read as follows:

15 §2. Definitions

16 Whenever used in this Title, the masculine shall include the feminine, the
17 singular shall include the plural, and the following definitions shall apply:

18 (1) "Conditional discharge" means the physical release of a judicially
19 committed person from a treatment facility by the director or by the court. The
20 patient may be required to report for outpatient treatment as a condition of his

1 release. The judicial commitment of such persons shall remain in effect for a period
2 of up to one hundred ~~twenty~~ eighty days and during this time the person may be
3 hospitalized involuntarily for appropriate medical reasons upon court order.

4 * * *

5 §52.2. Formal voluntary admission

6 * * *

7 C. A person civilly committed pursuant to Code of Criminal Procedure
8 Article 648(B)(3) shall not be denied a request for formal voluntary admission if the
9 patient meets the requirements of R.S. 28:52(G).

10 * * *

11 §54. Judicial commitment; procedure

12 A. ~~Any~~ The department or any person of legal age may file with the court
13 a petition which asserts his belief that a person is suffering from mental illness which
14 contributes or causes that person to be a danger to himself or others or to be gravely
15 disabled, or is suffering from substance abuse which contributes or causes that
16 person to be a danger to himself or others or to be gravely disabled and may thereby
17 request a hearing. The petition may be filed in the judicial district in which the
18 respondent is confined, or if not confined, in the judicial district where he resides or
19 may be found. The hearing shall not be transferred to another district except for
20 good cause shown. A petitioner who is unable to afford an attorney may seek the
21 assistance of any legal aid society or similar agency if available.

22 * * *

23 C.(1) Upon the filing of the petition, the court shall assign a time, not later
24 than eighteen calendar days thereafter, ~~shall assign and~~ and a place for a hearing upon the
25 petition, and shall cause reasonable notice thereof to be ~~given~~ delivered at least ten
26 days prior to the hearing to the respondent, respondent's attorney, ~~and the petitioner,~~
27 and the Louisiana Department of Health, bureau of legal services.

28 (2) The notice shall inform ~~such~~ the respondent of all of the following:

29 (a) ~~that~~ That he has a right to be present at the hearing;

1 (b) ~~that~~ That he has a right to counsel;

(c) ~~that~~ That he, if indigent or otherwise qualified, has the right to have
counsel appointed to represent him by the Mental Health Advocacy Service, ~~and~~.

4 (d) ~~that~~ That he has the right to cross examine witnesses testifying at any
5 hearing on ~~such~~ the application.

6 * * *

7 §55. Judicial hearings

8 A. At the appointed time, the court shall conduct a hearing on the petition
9 for judicial commitment. Before the hearing, the respondent may move for a change
10 of venue to the parish of his domicile, which motion shall be granted only for
11 compelling reasons. If the respondent is confined to a hospital, the judge of the court
12 where the petition was filed may hold the hearing on such commitment at the
13 treatment facility where the person is confined, if in the opinion of at least one of the
14 physicians appointed by the court to examine him, it will be detrimental to his health,
15 welfare, or dignity to travel to the court where the petition was filed.

B. The court shall provide the respondent a reasonable opportunity to select his own counsel. In the event the respondent does not select counsel and is unable to pay for counsel, or in the event counsel selected by the respondent refuses to represent ~~said~~ the respondent or is not available for such representation, then the court shall appoint counsel for the respondent provided by the mental health advocacy service. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by the respondent or the petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.

C.(1) The respondent shall have the right to privately ~~retained~~ retain and ~~paid~~ pay counsel at any time. However, all respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the mental health advocacy service, the court shall contact the office of the mental health

1 advocacy service and request the assignment of an attorney who will be appointed.

2 In cases where the mental health advocacy service is unable to provide
3 representation, the court shall select and appoint an attorney to represent the
4 respondent, whose fee shall be set by the court.

5 (2) An attorney appointed to represent a person by a court pursuant to this
6 Title has a continuing duty toward that person even after admission. That duty shall
7 include, but not be limited to, follow-up investigation of the circumstances of the
8 person and representation in subsequent proceedings relating to admission, status,
9 and discharge. The duty shall continue until it is terminated by the court making the
10 appointment.

11 D. On the day appointed, the hearing shall take precedence over all other
12 matters, except pending cases of the same type, and shall be a closed hearing. The
13 court shall conduct the hearing in as formal a manner as is possible under the
14 circumstances and shall admit evidence according to the usual rules of evidence.
15 Witnesses and evidence tending to show that the person who is the subject of the
16 petition is a proper subject for judicial commitment shall be presented first. The
17 respondent has a right to be present unless the court finds that he knowingly,
18 voluntarily, and intelligently waives his presence. The respondent or his counsel
19 shall have the right to present evidence and cross examine witnesses who may testify
20 at the hearing. If the department is not the petitioner, the department or its counsel
21 may present evidence, call witnesses, and cross-examine any witness testifying at the
22 hearing. If the respondent is present at the hearing and is medicated, the court shall
23 be informed of the medication and its common effects. If the respondent or his
24 attorney notifies the court not less than three days before the hearing that he wishes
25 to cross examine the examining physicians, the court shall order such physicians to
26 appear in person or by deposition. The court shall cause a recording of the testimony
27 of the hearing to be made, which shall be transcribed only in the event of an appeal
28 from the judgment. A copy of such transcript shall be furnished without charge, to

1 any appellant whom the court finds unable to pay for the same. The cost of ~~such~~ the
2 transcript shall be paid from funds appropriated to the judicial department.

3 E.(1) If the court finds by clear and convincing evidence that the respondent
4 is dangerous to self or others or is gravely disabled, as a result of substance abuse or
5 mental illness, it shall render a judgment for his commitment. After considering all
6 relevant circumstances, including clinical recommendations and any preference of
7 the respondent or his family, the court shall determine whether the respondent should
8 be committed to a treatment facility which is medically suitable and least restrictive
9 of the respondent's liberty. However, if the placement determined by the court is
10 unavailable, the court ~~shall~~ may commit the respondent to the Louisiana Department
11 of Health for appropriate placement in a state treatment facility subject to availability
12 of department resources until such time as an opening is available for transfer to the
13 treatment center determined by the court, ~~unless the respondent waives the~~
14 ~~requirement for such transfer. Within fifteen days following an alternative~~
15 ~~placement, the department shall submit a report to the court stating the reasons for~~
16 ~~such placement and seeking court approval of the placement. If the department is~~
17 ~~not the petitioner, the parties shall first consult with the department or its counsel~~
18 ~~before entering into a judgment stipulating to a commitment of the respondent to the~~
19 department.

20 * * *

21 (5) The court order shall order a suitable person to convey ~~such person~~ the
22 respondent to the treatment facility and deliver ~~respondent, together with~~ a copy of
23 the judgment and certificates, with the respondent, to the director. In appointing a
24 person to execute the order, the court should give preference to a near relative or
25 friend of the respondent.

26 * * *

27 §56. Judicial commitment; review; appeals

28 * * *

1 C. Notwithstanding an order of judicial commitment, the director of the
2 treatment facility to which the individual is committed is encouraged to explore
3 treatment measures that are medically appropriate and less restrictive. The ~~director~~
4 ~~may at any time convert an involuntary commitment~~ may be converted to a voluntary
5 one ~~should he deem that action medically appropriate. He~~ in accordance with R.S.
6 28:52 or 52.2. The director or administrator of the treatment facility shall inform the
7 court of any action in that regard. The director may discharge any patient if in his
8 opinion, or upon recommendation of the treating physician, discharge is appropriate.
9 The director shall not be legally responsible to any person for the subsequent acts or
10 behavior of a patient discharged in good faith.

11 * * *

12 G.(1) A person who is judicially committed may be conditionally discharged
13 for a period of up to one hundred ~~twenty~~ eighty days by the director or by the court.
14 The patient may be required to report for outpatient treatment as a condition of his
15 release. The terms and conditions of the conditional discharge shall be specifically
16 set forth in writing and signed by the patient. A copy of the conditional discharge
17 shall be given to the patient and explained to him before he is discharged.

18 * * *

19 (4) An extension of a conditional discharge may be granted upon application
20 by the department or by the director of the treatment facility to the court and
21 notification to respondent's counsel of record. The court may grant the extension of
22 the conditional discharge for a period of up to one hundred ~~twenty~~ eighty days, with
23 annual renewals thereafter. ~~No further extension may be made without a~~
24 ~~contradictory hearing.~~ The burden of proof is on the department or the director of
25 the treatment facility to show why ~~continued treatment~~ continuation of the
26 conditional discharge is necessary.

27 * * *

§59. Commitment of prisoners

A. Any person ~~acquitted of a crime or misdemeanor~~ found not guilty by reason of insanity ~~or mental defect~~ by a criminal court may be ~~committed~~ ordered to the proper institution in accordance with Code of Criminal Procedure Arts. 654 et seq.

B. Any person who is determined to lack the capacity to proceed, who will not attain the capacity to proceed with his trial in the foreseeable future, and who is not a danger to himself or others, shall be discharged in accordance with Code of Criminal Procedure Arts. 648 et seq. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted ~~within seventy-two hours~~ pursuant to Code of Criminal Procedure Article 648 et seq. after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving a sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court.

* * *

§454.6. Judicial hearings; commitments

A. The hearing shall take precedence over all other matters, except pending cases of the same type, and shall be a closed hearing. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall adhere to the following:

* * *

1 (5) If the department is not the petitioner, the department or its counsel may
2 present evidence, call witnesses, and cross-examine any witness testifying at the
3 hearing.

4 (6) If the respondent is present at the hearing and is medicated, the court
5 shall be informed of the medication and its common effects.

6 ~~(6)~~ (7) The court shall cause a recording of the testimony of the hearing to
7 be made, which shall be transcribed only in the event of an appeal from the
8 judgment.

9 B. If the court finds by clear and convincing evidence that the respondent has
10 a developmental disability and is either dangerous to himself or dangerous to others,
11 it may render a judgment for his commitment. Courts committing persons to the
12 custody of the department shall not make such commitments to specific private or
13 public facilities but shall only commit such individuals to the department. If the
14 department is not the petitioner, the parties shall first consult with the department or
15 its counsel before entering into a judgment stipulating to a commitment of the
16 respondent to the department.

17 * * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 395 Original

2017 Regular Session

Dustin Miller

Abstract: Updates provisions relative to judicial commitment and mental health treatment.

Present law provides that a judicial commitment shall remain in effect for a period of up to 120 days.

Proposed law extends the period of time to 180 days.

Proposed law authorizes a person who is civilly committed by a criminal court to request a formal voluntary admission if the person meets the requirements for such admission.

Proposed law makes technical corrections to the provisions of law regarding judicial commitment and updates terminology.

Present law sets forth the procedure for a hearing on a petition for judicial commitment.

Proposed law retains present law and specifies that the hearing shall take precedence over all other matters, except pending cases of the same type, and shall be a closed hearing. Further authorizes the La. Dept. of Health, if not the petitioner, to present evidence, call witnesses, and cross-examine any witness testifying at the hearing.

Proposed law requires the parties to the hearing, if the La. Dept. of Health is not the petitioner, to consult with the department before entering into a stipulated judgment committing the patient to the department.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 28:2(1), 54(A) and (C), 55(A)-(D) and (E)(1) and (5), 56(C) and (G)(1) and (4), 59(A)-(C), 454.6(A)(intro. para.), (5), and (6) and (B); Adds R.S. 28:52.2(C) and 454.6(A)(7))