

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

9 Be it enacted by the Legislature of Louisiana:

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

14 §52.2. Formal voluntary admission

15 \* \* \*

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

19 \* \* \*

1           §54. Judicial commitment; procedure

2           A. ~~Any~~ The department or any person of legal age may file with the court  
3           a petition which asserts his belief that a person is suffering from mental illness which  
4           contributes or causes that person to be a danger to himself or others or to be gravely  
5           disabled, or is suffering from substance abuse which contributes or causes that  
6           person to be a danger to himself or others or to be gravely disabled and may thereby  
7           request a hearing. The petition may be filed in the judicial district in which the  
8           respondent is confined, or if not confined, in the judicial district where he resides or  
9           may be found. The hearing shall not be transferred to another district except for  
10          good cause shown. A petitioner who is unable to afford an attorney may seek the  
11          assistance of any legal aid society or similar agency if available.

12                                   \*       \*       \*

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

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

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

20          (b) ~~that~~ Thathe has a right to counsel;

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

23          (d) ~~that~~ Thathe has the right to cross examine witnesses testifying at any  
24          hearing on ~~such~~ the application.

25                                   \*       \*       \*

26          §55. Judicial hearings

27          A. At the appointed time, the court shall conduct a hearing on the petition  
28          for judicial commitment. Before the hearing, the respondent may move for a change  
29          of venue to the parish of his domicile, which motion shall be granted only for

1 compelling reasons. If the respondent is confined to a hospital, the judge of the court  
2 where the petition was filed may hold the hearing on such commitment at the  
3 treatment facility where the person is confined, if in the opinion of at least one of the  
4 physicians appointed by the court to examine him, it will be detrimental to his health,  
5 welfare, or dignity to travel to the court where the petition was filed.

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

16 C.(1) The respondent shall have the right to privately ~~retained~~ retain and ~~paid~~  
17 pay counsel at any time. However, all respondents must be represented by counsel  
18 as early as possible in every proceeding. If attorneys are available through the  
19 mental health advocacy service, the court shall contact the ~~office of the~~ mental health  
20 advocacy service and request the assignment of an attorney who will be appointed.  
21 In cases where the mental health advocacy service is unable to provide  
22 representation, the court shall select and appoint an attorney to represent the  
23 respondent, whose fee shall be set by the court.

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

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

22           E.(1) If the court finds by clear and convincing evidence that the respondent  
23 is dangerous to self or others or is gravely disabled, as a result of substance abuse or  
24 mental illness, it shall render a judgment for his commitment. After considering all  
25 relevant circumstances, including clinical recommendations and any preference of  
26 the respondent or his family, the court shall determine whether the respondent should  
27 be committed to a treatment facility which is medically suitable and least restrictive  
28 of the respondent's liberty. However, if the placement determined by the court is  
29 unavailable, the court ~~shall~~ may commit the respondent to the Louisiana Department

1 of Health for appropriate placement in a state treatment facility subject to availability  
2 of department resources until such time as an opening is available for transfer to the  
3 treatment center determined by the court, ~~unless the respondent waives the~~  
4 ~~requirement for such transfer. Within fifteen days following an alternative~~  
5 ~~placement, the department shall submit a report to the court stating the reasons for~~  
6 ~~such placement and seeking court approval of the placement. If the department is~~  
7 ~~not the petitioner, the parties shall first consult with the department or its counsel~~  
8 ~~before entering into a judgment stipulating to a commitment of the respondent to the~~  
9 ~~department.~~

10 \* \* \*

11 (5) The court order shall order a suitable person to convey ~~such person~~ the  
12 respondent to the treatment facility and deliver ~~respondent, together with~~ a copy of  
13 the judgment and certificates, with the respondent, to the director. In appointing a  
14 person to execute the order, the court should give preference to a near relative or  
15 friend of the respondent.

16 \* \* \*

17 §56. Judicial commitment; review; appeals

18 \* \* \*

19 C. Notwithstanding an order of judicial commitment, the director of the  
20 treatment facility to which the individual is committed is encouraged to explore  
21 treatment measures that are medically appropriate and less restrictive. The ~~director~~  
22 ~~may at any time convert an~~ involuntary commitment may be converted to a voluntary  
23 one ~~should he deem that action medically appropriate. He~~ in accordance with R.S.  
24 28:52 or 52.2. The director or administrator of the treatment facility shall inform the  
25 court of any action in that regard. The director may discharge any patient if in his  
26 opinion, or upon recommendation of the treating physician, discharge is appropriate.  
27 The director shall not be legally responsible to any person for the subsequent acts or  
28 behavior of a patient discharged in good faith.

29 \* \* \*

1 G.

2 \* \* \*

3 (4) An extension of a conditional discharge may be granted upon application  
4 by the department or by the director of the treatment facility to the court and  
5 notification to respondent's counsel of record. The court may grant the extension of  
6 the conditional discharge for a period of up to one hundred twenty days. No further  
7 extension may be made without a contradictory hearing. The burden of proof is on  
8 the department or the director of the treatment facility to show why ~~continued~~  
9 ~~treatment~~ continuation of the conditional discharge is necessary.

10 \* \* \*

11 §59. Commitment of prisoners

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

16 B. Any person who is determined to lack the capacity to proceed, who will  
17 not attain the capacity to proceed with his trial in the foreseeable future, and who is  
18 not a danger to himself or others, shall be discharged in accordance with Code of  
19 Criminal Procedure Arts. 648 et seq. However, this release is without prejudice to  
20 any right the state may have to institute civil commitment proceedings pursuant to  
21 R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment  
22 facility for a reasonable time period pending the judicial commitment hearing. If  
23 judicial commitment proceedings are necessary, they shall be instituted ~~within~~  
24 ~~seventy-two hours~~ pursuant to Code of Criminal Procedure Article 648(B)(3) after  
25 a determination that the person will not attain the capacity to proceed with his trial.

26 C. Any person serving a sentence who becomes mentally ill may be  
27 committed to the proper institution in the manner provided for judicial commitment  
28 by the district court of the place of incarceration and contradictorily with the

1 superintendent of the place of incarceration or with the sheriff of that parish. The  
2 period of commitment shall be credited against the sentence imposed by the court.

3 \* \* \*

4 §454.6. Judicial hearings; commitments

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

9 \* \* \*

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

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

15 ~~(6)~~ (7) The court shall cause a recording of the testimony of the hearing to  
16 be made, which shall be transcribed only in the event of an appeal from the  
17 judgment.

18 B. If the court finds by clear and convincing evidence that the respondent has  
19 a developmental disability and is either dangerous to himself or dangerous to others,  
20 it may render a judgment for his commitment. Courts committing persons to the  
21 custody of the department shall not make such commitments to specific private or  
22 public facilities but shall only commit such individuals to the department. If the  
23 department is not the petitioner, the parties shall first consult with the department or  
24 its counsel before entering into a judgment stipulating to a commitment of the  
25 respondent to the department.

26 \* \* \*

27 Section 2. This Act shall become effective upon signature by the governor or, if not  
28 signed by the governor, upon expiration of the time for bills to become law without signature  
29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
- 2 effective on the day following such approval.

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### 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)]

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HB 395 Engrossed

2017 Regular Session

Dustin Miller

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

Present law provides for the involuntary judicial commitment of individuals for mental health treatment.

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.

Proposed law authorizes the La. Dept. of Health (LDH), if not the petitioner, to present evidence, call witnesses, and cross-examine witnesses testifying at the hearing. Further limits LDH to presenting evidence and testimony regarding the placement of the respondent in proceedings for judicial commitment based upon mental illness or substance use disorders.

Proposed law requires the parties to the hearing, if LDH 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. 28:54(A) and (C), 55(A)-(D) and (E)(1) and (5), 56(C) and (G)(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))

### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Delete proposed law extending the maximum length of time for the conditional discharge of an individual subject to a judicial commitment.
2. Limit LDH to presenting evidence regarding the placement of the respondent in proceedings for judicial commitment based upon mental illness or substance use disorders.

3. Restore present law provisions requiring a contradictory hearing prior to the extension of a conditional release.
4. Make technical changes.