

As Introduced

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H. B. No. 249

Representatives Galonski, Hillyer

Cosponsors: Representatives Carruthers, Humphrey, Miller, A., Seitz

A BILL

To amend sections 5122.01 and 5122.10 of the
Revised Code to make changes to the law
regarding involuntary treatment for persons with
a mental illness subject to court order.

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

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

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

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

(B) "Person with a mental illness subject to court order"
means a person with a mental illness who, because of the
person's illness:

(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; 18

(2) Represents a substantial risk of physical harm to 19
others as manifested by evidence of recent homicidal or other 20
violent behavior, evidence of recent threats that place another 21
in reasonable fear of violent behavior and serious physical 22
harm, or other evidence of present dangerousness; 23

(3) Represents a substantial and immediate risk of serious 24
physical impairment or injury to self as manifested by evidence 25
that the person is unable to provide for and is not providing 26
for the person's basic physical needs because of the person's 27
mental illness and that appropriate provision for those needs 28
cannot be made immediately available in the community; 29

(4) Would benefit from treatment for the person's mental 30
illness and is in need of such treatment as manifested by 31
evidence of behavior that creates a grave and imminent risk to 32
substantial rights of others or the person; 33

~~(5)(a)~~ (5) Represents a substantial risk of harm to self 34
or others as manifested by evidence that indicates all of the 35
following: 36

(a) The person's judgment is impaired by a lack of 37
understanding of having an illness or a need for treatment, or 38
both. 39

(b) The person refuses treatment or is not adhering to 40
prescribed treatment. 41

(c) The person has been diagnosed with one or more of the 42
following conditions as defined in the most recent edition of 43
the diagnostic and statistical manual of mental disorders 44
published by the American psychiatric association: 45

<u>(i) Schizophrenia;</u>	46
<u>(ii) Schizoaffective disorder;</u>	47
<u>(iii) Bipolar disorder;</u>	48
<u>(iv) Delusional disorder;</u>	49
<u>(v) Major depressive disorder.</u>	50
<u>(d) If not treated and based on the person's prior</u>	51
<u>history, the person is reasonably expected to suffer mental</u>	52
<u>deterioration and, as a result of that deterioration, meet one</u>	53
<u>of the standards specified in division (B)(1), (2), (3), or (4)</u>	54
<u>of this section.</u>	55
<u>(6)(a) Would benefit from treatment as manifested by</u>	56
evidence of behavior that indicates all of the following:	57
(i) The person is unlikely to survive safely in the	58
community without supervision, based on a clinical	59
determination.	60
(ii) The person has a history of lack of compliance with	61
treatment for mental illness and one of the following applies:	62
(I) At least twice within the thirty-six months prior to	63
the filing of an affidavit seeking court-ordered treatment of	64
the person under section 5122.111 of the Revised Code, the lack	65
of compliance has been a significant factor in necessitating	66
hospitalization in a hospital or receipt of services in a	67
forensic or other mental health unit of a correctional facility,	68
provided that the thirty-six-month period shall be extended by	69
the length of any hospitalization or incarceration of the person	70
that occurred within the thirty-six-month period.	71
(II) Within the forty-eight months prior to the filing of	72

an affidavit seeking court-ordered treatment of the person under 73
section 5122.111 of the Revised Code, the lack of compliance 74
resulted in one or more acts of serious violent behavior toward 75
self or others or threats of, or attempts at, serious physical 76
harm to self or others, provided that the forty-eight-month 77
period shall be extended by the length of any hospitalization or 78
incarceration of the person that occurred within the forty- 79
eight-month period. 80

(iii) The person, as a result of the person's mental 81
illness, is unlikely to voluntarily participate in necessary 82
treatment. 83

(iv) In view of the person's treatment history and current 84
behavior, the person is in need of treatment in order to prevent 85
a relapse or deterioration that would be likely to result in 86
substantial risk of serious harm to the person or others. 87

(b) An individual who meets only the criteria described in 88
division ~~(B) (5) (a)~~ (B) (6) (a) of this section is not subject to 89
hospitalization. 90

(C) (1) "Patient" means, subject to division (C) (2) of this 91
section, a person who is admitted either voluntarily or 92
involuntarily to a hospital or other place under section 93
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code 94
subsequent to a finding of not guilty by reason of insanity or 95
incompetence to stand trial or under this chapter, who is under 96
observation or receiving treatment in such place. 97

(2) "Patient" does not include a person admitted to a 98
hospital or other place under section 2945.39, 2945.40, 99
2945.401, or 2945.402 of the Revised Code to the extent that the 100
reference in this chapter to patient, or the context in which 101

the reference occurs, is in conflict with any provision of 102
sections 2945.37 to 2945.402 of the Revised Code. 103

(D) "Licensed physician" means a person licensed under the 104
laws of this state to practice medicine or a medical officer of 105
the government of the United States while in this state in the 106
performance of the person's official duties. 107

(E) "Psychiatrist" means a licensed physician who has 108
satisfactorily completed a residency training program in 109
psychiatry, as approved by the residency review committee of the 110
American medical association, the committee on post-graduate 111
education of the American osteopathic association, or the 112
American osteopathic board of neurology and psychiatry, or who 113
on July 1, 1989, has been recognized as a psychiatrist by the 114
Ohio state medical association or the Ohio osteopathic 115
association on the basis of formal training and five or more 116
years of medical practice limited to psychiatry. 117

(F) "Hospital" means a hospital or inpatient unit licensed 118
by the department of mental health and addiction services under 119
section 5119.33 of the Revised Code, and any institution, 120
hospital, or other place established, controlled, or supervised 121
by the department under Chapter 5119. of the Revised Code. 122

(G) "Public hospital" means a facility that is tax- 123
supported and under the jurisdiction of the department of mental 124
health and addiction services. 125

(H) "Community mental health services provider" means an 126
agency, association, corporation, individual, or program that 127
provides community mental health services that are certified by 128
the director of mental health and addiction services under 129
section 5119.36 of the Revised Code. 130

(I) "Licensed clinical psychologist" means a person who 131
holds a current, valid psychologist license issued under section 132
4732.12 of the Revised Code, and in addition, meets the 133
educational requirements set forth in division (B) of section 134
4732.10 of the Revised Code and has a minimum of two years' 135
full-time professional experience, or the equivalent as 136
determined by rule of the state board of psychology, at least 137
one year of which shall be a predoctoral internship, in clinical 138
psychological work in a public or private hospital or clinic or 139
in private practice, diagnosing and treating problems of mental 140
illness or intellectual disability under the supervision of a 141
psychologist who is licensed or who holds a diploma issued by 142
the American board of professional psychology, or whose 143
qualifications are substantially similar to those required for 144
licensure by the state board of psychology when the supervision 145
has occurred prior to enactment of laws governing the practice 146
of psychology. 147

(J) "Health officer" means any public health physician; 148
public health nurse; or other person authorized or designated by 149
a city or general health district or a board of alcohol, drug 150
addiction, and mental health services to perform the duties of a 151
health officer under this chapter. 152

(K) "Chief clinical officer" means the medical director of 153
a hospital, community mental health services provider, or board 154
of alcohol, drug addiction, and mental health services, or, if 155
there is no medical director, the licensed physician responsible 156
for the treatment provided by a hospital or community mental 157
health services provider. The chief clinical officer may 158
delegate to the attending physician responsible for a patient's 159
care the duties imposed on the chief clinical officer by this 160
chapter. In the case of a community mental health services 161

provider, the chief clinical officer shall be designated by the 162
governing body of the services provider and shall be a licensed 163
physician or licensed clinical psychologist who supervises 164
diagnostic and treatment services. A licensed physician or 165
licensed clinical psychologist designated by the chief clinical 166
officer may perform the duties and accept the responsibilities 167
of the chief clinical officer in the chief clinical officer's 168
absence. 169

(L) "Working day" or "court day" means Monday, Tuesday, 170
Wednesday, Thursday, and Friday, except when such day is a 171
holiday. 172

(M) "Indigent" means unable without deprivation of 173
satisfaction of basic needs to provide for the payment of an 174
attorney and other necessary expenses of legal representation, 175
including expert testimony. 176

(N) "Respondent" means the person whose detention, 177
commitment, hospitalization, continued hospitalization or 178
commitment, or discharge is being sought in any proceeding under 179
this chapter. 180

(O) "Ohio protection and advocacy system" has the same 181
meaning as in section 5123.60 of the Revised Code. 182

(P) "Independent expert evaluation" means an evaluation 183
conducted by a licensed clinical psychologist, psychiatrist, or 184
licensed physician who has been selected by the respondent or 185
the respondent's counsel and who consents to conducting the 186
evaluation. 187

(Q) "Court" means the probate division of the court of 188
common pleas. 189

(R) "Expunge" means: 190

(1) The removal and destruction of court files and 191
records, originals and copies, and the deletion of all index 192
references; 193

(2) The reporting to the person of the nature and extent 194
of any information about the person transmitted to any other 195
person by the court; 196

(3) Otherwise insuring that any examination of court files 197
and records in question shall show no record whatever with 198
respect to the person; 199

(4) That all rights and privileges are restored, and that 200
the person, the court, and any other person may properly reply 201
that no such record exists, as to any matter expunged. 202

(S) "Residence" means a person's physical presence in a 203
county with intent to remain there, except that: 204

(1) If a person is receiving a mental health service at a 205
facility that includes nighttime sleeping accommodations, 206
residence means that county in which the person maintained the 207
person's primary place of residence at the time the person 208
entered the facility; 209

(2) If a person is committed pursuant to section 2945.38, 210
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code, 211
residence means the county where the criminal charges were 212
filed. 213

When the residence of a person is disputed, the matter of 214
residence shall be referred to the department of mental health 215
and addiction services for investigation and determination. 216
Residence shall not be a basis for a board of alcohol, drug 217
addiction, and mental health services to deny services to any 218
person present in the board's service district, and the board 219

shall provide services for a person whose residence is in 220
dispute while residence is being determined and for a person in 221
an emergency situation. 222

(T) "Admission" to a hospital or other place means that a 223
patient is accepted for and stays at least one night at the 224
hospital or other place. 225

(U) "Prosecutor" means the prosecuting attorney, village 226
solicitor, city director of law, or similar chief legal officer 227
who prosecuted a criminal case in which a person was found not 228
guilty by reason of insanity, who would have had the authority 229
to prosecute a criminal case against a person if the person had 230
not been found incompetent to stand trial, or who prosecuted a 231
case in which a person was found guilty. 232

(V) (1) "Treatment plan" means a written statement of 233
reasonable objectives and goals for an individual established by 234
the treatment team, with specific criteria to evaluate progress 235
towards achieving those objectives. 236

(2) The active participation of the patient in 237
establishing the objectives and goals shall be documented. The 238
treatment plan shall be based on patient needs and include 239
services to be provided to the patient while the patient is 240
hospitalized, after the patient is discharged, or in an 241
outpatient setting. The treatment plan shall address services to 242
be provided. In the establishment of the treatment plan, 243
consideration should be given to the availability of services, 244
which may include but are not limited to all of the following: 245

(a) Community psychiatric supportive treatment; 246

(b) Assertive community treatment; 247

(c) Medications; 248

(d) Individual or group therapy;	249
(e) Peer support services;	250
(f) Financial services;	251
(g) Housing or supervised living services;	252
(h) Alcohol or substance abuse treatment;	253
(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.	254 255 256 257
(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.	258 259 260 261
(W) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	262 263
(X) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.	264 265
(Y) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code.	266 267
(Z) "Clinical nurse specialist" and "certified nurse practitioner" have the same meanings as in section 4723.01 of the Revised Code.	268 269 270
Sec. 5122.10. (A) (1) Any of the following who has reason to believe that a person is a person with a mental illness 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	271 272 273 274 275

immediately transport the person to a hospital or, 276
notwithstanding section 5119.33 of the Revised Code, to a 277
general hospital not licensed by the department of mental health 278
and addiction services where the person may be held for the 279
period prescribed in this section: 280

(a) A psychiatrist; 281

(b) A licensed physician; 282

(c) A licensed clinical psychologist; 283

(d) A clinical nurse specialist who is certified as a 284
psychiatric-mental health CNS by the American nurses 285
credentialing center; 286

(e) A certified nurse practitioner who is certified as a 287
psychiatric-mental health NP by the American nurses 288
credentialing center; 289

(f) A health officer; 290

(g) A parole officer; 291

(h) A police officer; 292

(i) A sheriff; 293

(j) A state highway patrol trooper. 294

(2) If the chief of the adult parole authority or a parole 295
or probation officer with the approval of the chief of the 296
authority has reason to believe that a parolee, an offender 297
under a community control sanction or post-release control 298
sanction, or an offender under transitional control is a person 299
with a mental illness subject to court order and represents a 300
substantial risk of ~~physical~~ harm to self or others if allowed 301
to remain at liberty pending examination, the chief or officer 302

may take the parolee or offender into custody and may 303
immediately transport the parolee or offender to a hospital or, 304
notwithstanding section 5119.33 of the Revised Code, to a 305
general hospital not licensed by the department of mental health 306
and addiction services where the parolee or offender may be held 307
for the period prescribed in this section. 308

~~(B)~~ (B) (1) A written statement shall be given to the 309
hospital by the individual authorized under division (A) (1) or 310
(2) of this section to transport the person. The statement shall 311
specify the circumstances under which such person was taken into 312
custody and the reasons for the belief that the person is a 313
person with a mental illness subject to court order and 314
represents a substantial risk of ~~physical~~ harm to self or others 315
if allowed to remain at liberty pending examination. This 316
statement shall be made available to the respondent or the 317
respondent's attorney upon request of either. 318

A statement is not invalid if given to a general hospital 319
when a person is transported to the general hospital under 320
division (D) of this section or if the statement identifies a 321
general hospital as the receiving hospital. A general hospital 322
that receives a statement shall transmit the statement to a 323
hospital as defined in section 5122.01 of the Revised Code when 324
transferring a person to the hospital in accordance with this 325
section. 326

(2) If an individual authorized under division (A) (1) or 327
(2) of this section to transport a person is transporting a 328
person the individual believes to be a person with a mental 329
illness subject to court order under division (B) (5) of section 330
5122.01 of the Revised Code, the individual shall specify, in 331
addition to the written statement required under division (B) (1) 332

of this section, any available relevant information about the 333
history of the person's mental illness, if the individual 334
determines that the additional information has a reasonable 335
bearing on the decision to transport the person. The additional 336
information shall include information from anyone who has 337
provided mental health or related support services to the person 338
being transported, information from one or more family members 339
of the person being transported, or information from the person 340
being transported or anyone designated to speak on the person's 341
behalf. 342

(C) Every reasonable and appropriate effort shall be made 343
to take persons into custody in the least conspicuous manner 344
possible. A person taking the respondent into custody pursuant 345
to this section shall explain to the respondent: the name and 346
professional designation and affiliation of the person taking 347
the respondent into custody; that the custody-taking is not a 348
criminal arrest; and that the person is being taken for 349
examination by mental health professionals at a specified mental 350
health facility identified by name. 351

(D) ~~If~~ Except as otherwise provided in this section, if a 352
person taken into custody under this section is transported to a 353
general hospital, the general hospital may admit the person, or 354
provide care and treatment for the person, or both, 355
notwithstanding section 5119.33 of the Revised Code, but by the 356
end of twenty-four hours after arrival at the general hospital, 357
the person shall be transferred to a hospital as defined in 358
section 5122.01 of the Revised Code. 359

(E) If a person taken into custody and transported to a 360
general hospital as described in division (D) of this section is 361
not medically stable at the end of the twenty-four-hour period 362

described in that division, the general hospital may continue to 363
provide care and treatment for the person until a treating 364
physician deems the person to be medically stable to be 365
transferred to a hospital as defined in section 5122.01 of the 366
Revised Code. 367

(F) If a person taken into custody and transported to a 368
general hospital as described in division (D) of this section is 369
unable to be transferred to a hospital as defined in section 370
5122.01 of the Revised Code within twenty-four hours because of 371
an inability to identify a hospital willing to accept the 372
person, the general hospital may continue to provide care and 373
treatment to the person until the person can be transferred to a 374
hospital willing to accept the person. 375

(G) If a licensed physician responsible for diagnosing or 376
treating mental illness, a licensed clinical psychologist, a 377
psychiatrist, or a health officer examines an individual 378
described in division (D), (E), or (F) of this section at a 379
general hospital and determines that the person is not a person 380
with mental illness subject to court order, the general hospital 381
may release or discharge the person if the person is medically 382
stable, unless a court has issued a temporary order of detention 383
applicable to the person under section 5122.11 of the Revised 384
Code. Nothing in this section shall be construed as requiring a 385
general hospital to have the resources for or to provide a 386
licensed physician responsible for diagnosing or treating mental 387
illness, a licensed clinical psychologist, a psychiatrist, or a 388
health officer to make a determination whether a person is a 389
person with a mental illness subject to court order. 390

(H) A person transported or transferred to a hospital or 391
community mental health services provider under this section 392

shall be examined by the staff of the hospital or services 393
provider within twenty-four hours after arrival at the hospital 394
or services provider. If to conduct the examination requires 395
that the person remain overnight, the hospital or services 396
provider shall admit the person in an unclassified status until 397
making a disposition under this section. After the examination, 398
if the chief clinical officer of the hospital or services 399
provider believes that the person is not a person with a mental 400
illness subject to court order, the chief clinical officer shall 401
release or discharge the person immediately unless a court has 402
issued a temporary order of detention applicable to the person 403
under section 5122.11 of the Revised Code. After the 404
examination, if the chief clinical officer believes that the 405
person is a person with a mental illness subject to court order, 406
the chief clinical officer may detain the person for not more 407
than three court days following the day of the examination and 408
during such period admit the person as a voluntary patient under 409
section 5122.02 of the Revised Code or file an affidavit under 410
section 5122.11 of the Revised Code. If neither action is taken 411
and a court has not otherwise issued a temporary order of 412
detention applicable to the person under section 5122.11 of the 413
Revised Code, the chief clinical officer shall discharge the 414
person at the end of the three-day period unless the person has 415
been sentenced to the department of rehabilitation and 416
correction and has not been released from the person's sentence, 417
in which case the person shall be returned to that department. 418

Section 2. That existing sections 5122.01 and 5122.10 of 419
the Revised Code are hereby repealed. 420