

As Introduced

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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 of behavior that indicates~~ 34
~~all of the 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) If not treated and based on the person's prior 41
history, the person is reasonably expected to suffer mental 42
deterioration and, as a result of that deterioration, meet one 43
of the standards specified in division (B) (1), (2), (3), or (4) 44
of this section. 45

<u>(6)(a)</u> Would benefit from treatment as manifested by	46
evidence of behavior that indicates all of the following:	47
(i) The person is unlikely to survive safely in the	48
community without supervision, based on a clinical	49
determination.	50
(ii) The person has a history of lack of compliance with	51
treatment for mental illness and one of the following applies:	52
(I) At least twice within the thirty-six months prior to	53
the filing of an affidavit seeking court-ordered treatment of	54
the person under section 5122.111 of the Revised Code, the lack	55
of compliance has been a significant factor in necessitating	56
hospitalization in a hospital or receipt of services in a	57
forensic or other mental health unit of a correctional facility,	58
provided that the thirty-six-month period shall be extended by	59
the length of any hospitalization or incarceration of the person	60
that occurred within the thirty-six-month period.	61
(II) Within the forty-eight months prior to the filing of	62
an affidavit seeking court-ordered treatment of the person under	63
section 5122.111 of the Revised Code, the lack of compliance	64
resulted in one or more acts of serious violent behavior toward	65
self or others or threats of, or attempts at, serious physical	66
harm to self or others, provided that the forty-eight-month	67
period shall be extended by the length of any hospitalization or	68
incarceration of the person that occurred within the forty-	69
eight-month period.	70
(iii) The person, as a result of the person's mental	71
illness, is unlikely to voluntarily participate in necessary	72
treatment.	73
(iv) In view of the person's treatment history and current	74

behavior, the person is in need of treatment in order to prevent 75
a relapse or deterioration that would be likely to result in 76
substantial risk of serious harm to the person or others. 77

(b) An individual who meets only the criteria described in 78
division ~~(B) (5) (a)~~ (B) (6) (a) of this section is not subject to 79
hospitalization. 80

(C) (1) "Patient" means, subject to division (C) (2) of this 81
section, a person who is admitted either voluntarily or 82
involuntarily to a hospital or other place under section 83
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code 84
subsequent to a finding of not guilty by reason of insanity or 85
incompetence to stand trial or under this chapter, who is under 86
observation or receiving treatment in such place. 87

(2) "Patient" does not include a person admitted to a 88
hospital or other place under section 2945.39, 2945.40, 89
2945.401, or 2945.402 of the Revised Code to the extent that the 90
reference in this chapter to patient, or the context in which 91
the reference occurs, is in conflict with any provision of 92
sections 2945.37 to 2945.402 of the Revised Code. 93

(D) "Licensed physician" means a person licensed under the 94
laws of this state to practice medicine or a medical officer of 95
the government of the United States while in this state in the 96
performance of the person's official duties. 97

(E) "Psychiatrist" means a licensed physician who has 98
satisfactorily completed a residency training program in 99
psychiatry, as approved by the residency review committee of the 100
American medical association, the committee on post-graduate 101
education of the American osteopathic association, or the 102
American osteopathic board of neurology and psychiatry, or who 103

on July 1, 1989, has been recognized as a psychiatrist by the 104
Ohio state medical association or the Ohio osteopathic 105
association on the basis of formal training and five or more 106
years of medical practice limited to psychiatry. 107

(F) "Hospital" means a hospital or inpatient unit licensed 108
by the department of mental health and addiction services under 109
section 5119.33 of the Revised Code, and any institution, 110
hospital, or other place established, controlled, or supervised 111
by the department under Chapter 5119. of the Revised Code. 112

(G) "Public hospital" means a facility that is tax- 113
supported and under the jurisdiction of the department of mental 114
health and addiction services. 115

(H) "Community mental health services provider" means an 116
agency, association, corporation, individual, or program that 117
provides community mental health services that are certified by 118
the director of mental health and addiction services under 119
section 5119.36 of the Revised Code. 120

(I) "Licensed clinical psychologist" means a person who 121
holds a current, valid psychologist license issued under section 122
4732.12 of the Revised Code, and in addition, meets the 123
educational requirements set forth in division (B) of section 124
4732.10 of the Revised Code and has a minimum of two years' 125
full-time professional experience, or the equivalent as 126
determined by rule of the state board of psychology, at least 127
one year of which shall be a predoctoral internship, in clinical 128
psychological work in a public or private hospital or clinic or 129
in private practice, diagnosing and treating problems of mental 130
illness or intellectual disability under the supervision of a 131
psychologist who is licensed or who holds a diploma issued by 132
the American board of professional psychology, or whose 133

qualifications are substantially similar to those required for 134
licensure by the state board of psychology when the supervision 135
has occurred prior to enactment of laws governing the practice 136
of psychology. 137

(J) "Health officer" means any public health physician; 138
public health nurse; or other person authorized or designated by 139
a city or general health district or a board of alcohol, drug 140
addiction, and mental health services to perform the duties of a 141
health officer under this chapter. 142

(K) "Chief clinical officer" means the medical director of 143
a hospital, community mental health services provider, or board 144
of alcohol, drug addiction, and mental health services, or, if 145
there is no medical director, the licensed physician responsible 146
for the treatment provided by a hospital or community mental 147
health services provider. The chief clinical officer may 148
delegate to the attending physician responsible for a patient's 149
care the duties imposed on the chief clinical officer by this 150
chapter. In the case of a community mental health services 151
provider, the chief clinical officer shall be designated by the 152
governing body of the services provider and shall be a licensed 153
physician or licensed clinical psychologist who supervises 154
diagnostic and treatment services. A licensed physician or 155
licensed clinical psychologist designated by the chief clinical 156
officer may perform the duties and accept the responsibilities 157
of the chief clinical officer in the chief clinical officer's 158
absence. 159

(L) "Working day" or "court day" means Monday, Tuesday, 160
Wednesday, Thursday, and Friday, except when such day is a 161
holiday. 162

(M) "Indigent" means unable without deprivation of 163

satisfaction of basic needs to provide for the payment of an attorney and other necessary expenses of legal representation, including expert testimony.

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

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

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

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

(R) "Expunge" means:

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

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

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

(4) That all rights and privileges are restored, and that the person, the court, and any other person may properly reply

that no such record exists, as to any matter expunged.	192
(S) "Residence" means a person's physical presence in a	193
county with intent to remain there, except that:	194
(1) If a person is receiving a mental health service at a	195
facility that includes nighttime sleeping accommodations,	196
residence means that county in which the person maintained the	197
person's primary place of residence at the time the person	198
entered the facility;	199
(2) If a person is committed pursuant to section 2945.38,	200
2945.39, 2945.40, 2945.401, or 2945.402 of the Revised Code,	201
residence means the county where the criminal charges were	202
filed.	203
When the residence of a person is disputed, the matter of	204
residence shall be referred to the department of mental health	205
and addiction services for investigation and determination.	206
Residence shall not be a basis for a board of alcohol, drug	207
addiction, and mental health services to deny services to any	208
person present in the board's service district, and the board	209
shall provide services for a person whose residence is in	210
dispute while residence is being determined and for a person in	211
an emergency situation.	212
(T) "Admission" to a hospital or other place means that a	213
patient is accepted for and stays at least one night at the	214
hospital or other place.	215
(U) "Prosecutor" means the prosecuting attorney, village	216
solicitor, city director of law, or similar chief legal officer	217
who prosecuted a criminal case in which a person was found not	218
guilty by reason of insanity, who would have had the authority	219
to prosecute a criminal case against a person if the person had	220

not been found incompetent to stand trial, or who prosecuted a 221
case in which a person was found guilty. 222

(V) (1) "Treatment plan" means a written statement of 223
reasonable objectives and goals for an individual established by 224
the treatment team, with specific criteria to evaluate progress 225
towards achieving those objectives. 226

(2) The active participation of the patient in 227
establishing the objectives and goals shall be documented. The 228
treatment plan shall be based on patient needs and include 229
services to be provided to the patient while the patient is 230
hospitalized, after the patient is discharged, or in an 231
outpatient setting. The treatment plan shall address services to 232
be provided. In the establishment of the treatment plan, 233
consideration should be given to the availability of services, 234
which may include but are not limited to all of the following: 235

(a) Community psychiatric supportive treatment; 236

(b) Assertive community treatment; 237

(c) Medications; 238

(d) Individual or group therapy; 239

(e) Peer support services; 240

(f) Financial services; 241

(g) Housing or supervised living services; 242

(h) Alcohol or substance abuse treatment; 243

(i) Any other services prescribed to treat the patient's 244
mental illness and to either assist the patient in living and 245
functioning in the community or to help prevent a relapse or a 246
deterioration of the patient's current condition. 247

(3) If the person subject to the treatment plan has 248
executed an advance directive for mental health treatment, the 249
treatment team shall consider any directions included in such 250
advance directive in developing the treatment plan. 251

(W) "Community control sanction" has the same meaning as 252
in section 2929.01 of the Revised Code. 253

(X) "Post-release control sanction" has the same meaning 254
as in section 2967.01 of the Revised Code. 255

(Y) "Local correctional facility" has the same meaning as 256
in section 2903.13 of the Revised Code. 257

(Z) "Clinical nurse specialist" and "certified nurse 258
practitioner" have the same meanings as in section 4723.01 of 259
the Revised Code. 260

Sec. 5122.10. (A) (1) Any of the following who has reason 261
to believe that a person is a mentally ill person subject to 262
court order ~~and represents a substantial risk of physical harm~~ 263
~~to self or others if allowed to remain at liberty pending~~ 264
~~examination~~ may take the person into custody and may immediately 265
transport the person to a hospital or, notwithstanding section 266
5119.33 of the Revised Code, to a general hospital not licensed 267
by the department of mental health and addiction services where 268
the person may be held for the period prescribed in this 269
section: 270

(a) A psychiatrist; 271

(b) A licensed physician; 272

(c) A licensed clinical psychologist; 273

(d) A clinical nurse specialist who is certified as a 274
psychiatric-mental health CNS by the American nurses 275

credentialing center;	276
(e) A certified nurse practitioner who is certified as a psychiatric-mental health NP by the American nurses credentialing center;	277 278 279
(f) A health officer;	280
(g) A parole officer;	281
(h) A police officer;	282
(i) A sheriff.	283
(2) If the chief of the adult parole authority or a parole or probation officer with the approval of the chief of the authority has reason to believe that a parolee, an offender under a community control sanction or post-release control sanction, or an offender under transitional control 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, the chief or officer may take the parolee or offender into custody and may immediately transport the parolee or offender to a hospital or, notwithstanding section 5119.33 of the Revised Code, to a general hospital not licensed by the department of mental health and addiction services where the parolee or offender may be held for the period prescribed in this section.	284 285 286 287 288 289 290 291 292 293 294 295 296 297
(B) A written statement shall be given to the hospital by the individual authorized under division (A) (1) or (2) of this section to transport the person. The statement shall specify the circumstances under which such person was taken into custody and the reasons for the belief that the 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	298 299 300 301 302 303 304

~~liberty pending examination.~~ This statement shall be made 305
available to the respondent or the respondent's attorney upon 306
request of either. 307

(C) Every reasonable and appropriate effort shall be made 308
to take persons into custody in the least conspicuous manner 309
possible. A person taking the respondent into custody pursuant 310
to this section shall explain to the respondent: the name and 311
professional designation and affiliation of the person taking 312
the respondent into custody; that the custody-taking is not a 313
criminal arrest; and that the person is being taken for 314
examination by mental health professionals at a specified mental 315
health facility identified by name. 316

(D) If a person taken into custody under this section is 317
transported to a general hospital, the general hospital may 318
admit the person, or provide care and treatment for the person, 319
or both, notwithstanding section 5119.33 of the Revised Code, 320
but by the end of twenty-four hours after arrival at the general 321
hospital, the person shall be transferred to a hospital as 322
defined in section 5122.01 of the Revised Code. 323

(E) A person transported or transferred to a hospital or 324
community mental health services provider under this section 325
shall be examined by the staff of the hospital or services 326
provider within twenty-four hours after arrival at the hospital 327
or services provider. If to conduct the examination requires 328
that the person remain overnight, the hospital or services 329
provider shall admit the person in an unclassified status until 330
making a disposition under this section. After the examination, 331
if the chief clinical officer of the hospital or services 332
provider believes that the person is not a mentally ill person 333
subject to court order, the chief clinical officer shall release 334

or discharge the person immediately unless a court has issued a 335
temporary order of detention applicable to the person under 336
section 5122.11 of the Revised Code. After the examination, if 337
the chief clinical officer believes that the person is a 338
mentally ill person subject to court order, the chief clinical 339
officer may detain the person for not more than three court days 340
following the day of the examination and during such period 341
admit the person as a voluntary patient under section 5122.02 of 342
the Revised Code or file an affidavit under section 5122.11 of 343
the Revised Code. If neither action is taken and a court has not 344
otherwise issued a temporary order of detention applicable to 345
the person under section 5122.11 of the Revised Code, the chief 346
clinical officer shall discharge the person at the end of the 347
three-day period unless the person has been sentenced to the 348
department of rehabilitation and correction and has not been 349
released from the person's sentence, in which case the person 350
shall be returned to that department. 351

Section 2. That existing sections 5122.01 and 5122.10 of 352
the Revised Code are hereby repealed. 353