



# ENACTMENT NEWS

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## Senate Bill 43 Civil Commitment

On June 17, 2014, the Governor signed Senate Bill 43 (Burke, Tavares) that clarifies a probate judge's authority to order a person to out-patient mental health treatment in certain instances. The Act will become effective on September 17, 2014.

### Standard for Ordering Treatment

The bill creates a new avenue for ordering mental health treatment under R.C. § 5122.01(B) and states that a jail or other correctional facility is not a suitable placement for people ordered to treatment under division (B). R.C. 5122.15(C)(6). The new section provides that a person can be ordered into treatment if he/she would benefit from treatment by evidence that indicates:

- 1) Based on a clinical determination, it is unlikely that the person will survive safely in the community;
- 2) The person is unlikely to volunteer for treatment;
- 3) Treatment is needed in order to prevent a deterioration that would likely result in a substantial risk of serious harm to the person or others; **AND**
- 4) The person has a history of lack of compliance with treatment and one of the following:
  - a. At least twice in the last 36 months, lack of compliance has necessitated hospitalization or mental health treatment in a correctional facility; **OR**
  - b. At least once in the last 48 months, the person has committed or attempted to commit a serious violent act to him/herself or another. R.C. 5122.01(B)(a).

The bill prohibits the hospitalization of an individual who meets only the criteria of this new section. Individuals subject to this provision may only be committed to outpatient treatment. R.C. 5122.01(B)(b).

### Initiating Proceedings for Treatment

The bill requires that an affidavit be filed *in the county where the person subject to the order resides* to begin a proceeding for outpatient treatment. The affidavit must be identical to the form provided by the bill in Revised Code section 5122.111. The bill allows the court to assess a \$25.00 filing fee, but it can be waived for indigency or *good cause shown* (for example, the court could waive the fee for a hospital that files these affidavits on behalf of its patients). R.C. 2101.16(A)(75) and (B)(3). These provisions of the bill present a deviation from current practices because initial hearings on an affidavit will now typically need to take place in the probate court in the respondent's county of residence and not exclusively in a county that hosts a state mental health hospital. R.C. 5122.11.

The bill further provides that if a probate court issues a temporary order of detention, transferring a respondent to a state mental health hospital for hospitalization under R.C. § 5122.11, the ordering probate court retains jurisdiction over that person for purposes of outpatient mental health treatment once they are released from the hospital.

### Investigating the Allegations in the Affidavit

Upon receipt of this affidavit, the bill requires the court to send a copy to the board of alcohol, drug addiction, and mental health services or its designee within two business days (unless that entity has already conducted a

screening). The board must assist the court in determining whether the individual is subject to court-ordered treatment and whether alternatives to hospitalization are available. R.C. 5122.13.

#### **Ordering Outpatient Treatment**

If, after a full hearing, the court determines by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court must order the person to receive treatment for a period of 90 days. R.C. 5122.15(C). If at any time after this 90 day period, the person consents to voluntary treatment, the treatment provider must notify the court (as well as the respondent, respondent's counsel and an attorney designated by the board) and provide the court with a report of its findings. The court may then dismiss the case upon reviewing the facts. R.C. 5122.15(H).

If a person ordered to outpatient treatment begins to show signs of decompensation or has failed to comply with their treatment plan, the treatment provider may notify the court of the problem by submitting a report. The court must then "promptly" schedule a hearing and send notice to the board. At the hearing, the board and treatment provider must provide the court with a plan for alternative treatment (if any plan exists), or recommend that the court discontinue the treatment. The court may consider these options but **may not** impose criminal sanctions that result in confinement in a jail or other corrections facility, nor may it order the person into a more restrictive placement or in-patient hospitalization unless the person qualifies under the criteria outlined in R.C. § 5122.01(B)(1), (2), (3), or (4). R.C. 5122.15(N).

#### **Involuntary Treatment for Drug/Alcohol Addiction**

The bill provides that costs associated with representing someone ordered to alcohol or drug abuse treatment under R.C. § 5119.91 to 5119.98 must be paid for by the probate court. The county may seek reimbursement for these costs from the Department of Mental Health. R.C. 5122.43(A)(7).