

SENATE BILL NO. 182

BY SENATORS GRAY, ALARIO, AMEDEE, BROOME, CASSIDY, CHAISSON, CHEEK, CRAVINS, CROWE, DORSEY, DUPLESSIS, DUPRE, ERDEY, B. GAUTREAUX, N. GAUTREAUX, HEBERT, HEITMEIER, JACKSON, KOSTELKA, LAFLEUR, LONG, MARIONNEAUX, MARTINY, MCPHERSON, MICHOT, MORRISH, MOUNT, MURRAY, NEVERS, QUINN, RISER, SHAW, SHEPHERD, SMITH, THOMPSON AND WALSWORTH AND REPRESENTATIVES ANDERS, ARNOLD, AUBERT, BARROW, BURRELL, CHAMPAGNE, CORTEZ, CROMER, GISCLAIR, ELBERT GUILLORY, HARDY, HINES, HOFFMANN, HONEY, HOWARD, HUTTER, GIROD JACKSON, MICHAEL JACKSON, KATZ, LAFONTA, LEGER, MARCHAND, MILLS, MORRELL, NORTON, PEARSON, RICHARD, RICHARDSON, RICHMOND, ROBIDEAUX, SCHRODER, SMILEY, PATRICIA SMITH, TEMPLET, TRAHAN, WADDELL, WILLIAMS AND WOOTON

1 AN ACT

2 To amend and reenact R.S. 28:53.2(B), (C), (D), (E), (F), and (G), and to enact R.S.
3 28:53.2(H) and Part III-A of Chapter 1 of Title 28 of the Louisiana Revised Statutes
4 of 1950, to be comprised of R.S. 28:67 through 76, relative to involuntary outpatient
5 treatment for behavioral health services; to provide for criteria for involuntary
6 outpatient treatment; to provide for judicial procedure; to provide for an order of
7 custody; to provide for a written treatment plan; to provide for an appeal; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 28:53.2(B), (C), (D), (E), (F), and (G), are hereby amended and
11 reenacted, and R.S. 28:53.2(H) is hereby enacted to read as follows:

12 §53.2. Order for custody; grounds; civil liability; criminal penalty for making a
13 false statement

14 * * *

15 **B. Any parish coroner or judge of a court of competent jurisdiction may**
16 **order that a person be taken into protective custody and transported to a**
17 **treatment facility or the office of the coroner for immediate examination when**
18 **a physician, psychiatric mental health nurse practitioner, psychologist or**

1 assigned case manager pursuant to Part III-A of Chapter 1 of Title 28 of the
 2 Louisiana Revised Statutes of 1950, presents to the coroner an order of
 3 involuntary outpatient treatment, and executes a statement specifying that there
 4 is substantial evidence that the patient is not in compliance with the order and
 5 there are reasonable grounds to believe that he poses a significant risk of being
 6 a danger to self or others.

7 ~~B.~~ C. The order for custody shall be in writing, in the name of the state of
 8 Louisiana, signed by the district judge or parish coroner, and shall state the
 9 following:

10 (1) The date and hour of issuance and the municipality or parish where
 11 issued.

12 (2) The name of the person to be taken into custody, or if his name is not
 13 known a designation of the person by any name or description by which he can be
 14 identified with reasonable certainty.

15 (3) A description of the acts or threats which have led to the belief that the
 16 person is mentally ill or suffering from substance abuse and is in need of immediate
 17 hospitalization to protect the person or others from physical harm, and

18 (4) That the person shall be taken to a community mental health center, a
 19 public or private general hospital, a public or private mental hospital, coroner's office
 20 or a detoxification center.

21 (5) That law enforcement officers are to use reasonable and necessary
 22 precautions when appropriate, in the execution of an order for custody pursuant to
 23 Subsection A and Paragraph (G)(1) of this Section, to avoid a violent encounter with
 24 the person being taken into custody. For the purposes of this Paragraph, "reasonable
 25 and necessary precautions" include crisis management strategies.

26 ~~E.~~ D. The order for custody shall be effective for seventy-two hours from its
 27 issuance and shall be delivered to the coroner or director of the treatment facility by
 28 the individual who has transported the person. The date and hour that the person is
 29 taken into protective custody shall be written on the order. Without delay, and in no
 30 event more than twelve hours after being taken into protective custody, the person

1 shall be delivered to a treatment facility or the office of the coroner or he shall be
2 released. Upon arrival, the person in custody shall be examined immediately by the
3 coroner or, if at a treatment facility, by a physician, preferably a psychiatrist, medical
4 psychologist or psychiatric mental health nurse practitioner, who shall determine if
5 the person shall be voluntarily admitted, admitted by emergency certificate, admitted
6 as a noncontested admission, or discharged. The person in custody shall be examined
7 within twelve hours of his arrival at the treatment facility or coroner's office or he
8 shall be released.

9 ~~D.~~ E. Coroners and assistant coroners who act in good faith to order persons
10 to be taken into protective custody and transported for examination in accordance
11 with this Section shall not be civilly liable for damages to such persons resulting
12 from those actions.

13 ~~E.~~ F. Any person who is found guilty of executing a statement that another
14 person is mentally ill or suffering from substance abuse and is in need of immediate
15 treatment to protect the person or others that the affiant knows or should know is
16 false may be imprisoned, with or without hard labor, for not more than one year, or
17 fined not more than one thousand dollars.

18 ~~F.~~ G.(1) If refused or obstructed from admittance, any elected coroner or his
19 support staff, accompanied by a law enforcement officer, who has announced his
20 authority and purpose, may apply to a court of competent jurisdiction for an order
21 to break open an outer or inner door or window of any vehicle, water craft, aircraft,
22 structure or dwelling in order to restrain and transport the person subject to a request
23 and order for protective custody and examination after a mental health professional
24 has intervened and attempted to counsel the person regarding his voluntary
25 surrender.

26 (2) The application for a court order allowing forcible entry pursuant to
27 Paragraph (1) of this Subsection shall be accompanied by a copy of the order for
28 protective custody and an affidavit of the coroner or his support staff reciting facts
29 establishing probable cause for forced entry. In exceptional circumstances, the facts
30 supporting the order and the exceptional circumstances may be relayed orally,

1 including telephonically, to the judge, and the order of the judge may be issued
2 orally. In such cases, a copy of the order for protective custody and an affidavit
3 containing the information relayed orally to the judge, including any telephonic
4 communication, shall be provided to the judge within twenty-four hours of taking the
5 person into protective custody. Upon the timely presentation of the copy of the order
6 for protective custody and the affidavit of the oral communications, the judge shall
7 issue a written order acknowledging receipt of the required information and of his
8 oral order allowing forcible entry.

9 (3) Any elected coroner or his support staff, accompanied by a law
10 enforcement officer required to make a forceful entry to comply with a request and
11 order for protective custody shall be immune from civil liability for or resulting from
12 any act, decision, omission, communication, or any act or failure to act, made in
13 good faith while engaged in the performance of his duty.

14 (4) The civil immunity provided for in this Subsection shall not extend to any
15 action for the serious bodily injury or wrongful death occasioned as a result of the
16 restraint or transportation of the person subject to the request and order for protective
17 custody. Neither shall such immunity from civil liability extend to actions by any
18 third party who is physically injured during the execution of a request and order for
19 protective custody.

20 ~~G. H.~~(1) Public and private general hospitals and their personnel who provide
21 services in good faith for defined commitments in this Part shall not be liable for
22 damages suffered by the patient as a result of the commitment or damages caused by
23 the patient during the term of the commitment, unless the damage or injury was
24 caused by willful or wanton negligence or gross misconduct. This limitation of
25 liability shall only apply to public and private general hospital personnel who within
26 the preceding twelve-month period have received appropriate training in nonviolent
27 crisis intervention and such training has been documented in their personnel files.
28 The training shall be provided by an instructor who has attended a course in crisis
29 intervention taught by a certified instructor.

30 (2) The provisions of this Subsection shall not affect the provisions of R.S.

1 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42
2 ~~USE U.S.C.~~ 1395dd.

3 Section 2. Part III-A of Chapter 1 of Title 28 of the Louisiana Revised Statutes of
4 1950, comprised of R.S. 28:67 through 76, is hereby enacted to read as follows:

5 **PART III-A. ASSISTIVE OUTPATIENT TREATMENT**

6 **§67. Criteria for civil involuntary outpatient treatment**

7 **A. A patient may be ordered to obtain civil involuntary outpatient**
8 **treatment if the court finds that all of the following conditions apply:**

9 **(1) The patient is eighteen years of age or older.**

10 **(2) The patient is suffering from a mental illness.**

11 **(3) The patient is unlikely to survive safely in the community without**
12 **supervision, based on a clinical determination.**

13 **(4) The patient has a history of lack of compliance with treatment for**
14 **mental illness that has resulted in either of the following:**

15 **(a) At least twice within the last thirty-six months, the lack of compliance**
16 **with treatment for mental illness has been a significant factor resulting in an**
17 **emergency certificate for hospitalization, or receipt of services in a forensic or**
18 **other mental health unit of a correctional facility or a local correctional facility,**
19 **not including any period during which the person was hospitalized or**
20 **incarcerated immediately preceding the filing of the petition.**

21 **(b) One or more acts of serious violent behavior toward self or others or**
22 **threats of, or attempts of, serious physical harm to self or others within the last**
23 **thirty-six months as a result of mental illness, not including any period in which**
24 **the person was hospitalized or incarcerated immediately preceding the filing of**
25 **the petition.**

26 **(5) The patient is, as a result of his mental illness, unlikely to voluntarily**
27 **participate in the recommended treatment pursuant to the treatment plan.**

28 **(6) In view of the treatment history and current behavior of the patient,**
29 **the patient is in need of involuntary outpatient treatment to prevent a relapse**
30 **or deterioration which would be likely to result in the patient becoming**

1 dangerous to self or others as defined in R.S. 28:2.

2 (7) It is likely that the patient will benefit from involuntary outpatient
3 treatment.

4 B. If the patient has executed an advance directive as defined in R.S.
5 28:221, any directions included in the directive shall be taken into account by
6 the court in determining the written treatment plan.

7 Nothing herein shall preclude a person with an advance directive from
8 being subject to a petition pursuant to this Part.

9 §68. Petition to the court

10 A. A petition for an order authorizing involuntary outpatient treatment
11 may be filed in the judicial district in the parish in which the patient is present
12 or reasonably believed to be present. A petition to obtain an order authorizing
13 involuntary outpatient treatment may be initiated by one of the following
14 persons:

15 (1) The director of a hospital in which the patient is hospitalized.

16 (2) The director of an emergency receiving center in which the patient
17 is receiving services.

18 (3) The director of the human service district, or his designee, or the
19 manager of the regional office of the Department of Health and Hospitals, office
20 of mental health, or his designee, in the parish in which the patient is present or
21 reasonably believed to be present.

22 §69. Petition

23 A. The petition shall contain the facts which are the basis of the assertion
24 that the patient meets each of the criteria in R.S. 28:67, that he is present or
25 reasonably believed to be present in the parish where filed, and provide the
26 respondent with adequate notice and knowledge relative to the nature of the
27 proceeding.

28 B. The petition shall be accompanied by an affidavit of a physician,
29 psychiatric mental health nurse practitioner or psychologist, who shall not be
30 the petitioner, and shall state either of the following:

1 (1) Such physician, psychiatric mental health nurse practitioner or
2 psychologist has examined the patient no more than ten days prior to the
3 submission of the petition, he recommended involuntary outpatient treatment
4 for the patient, and he is willing and able to testify at the hearing on the petition.

5 (2) No more than ten days prior to the filing of the petition, such
6 physician, psychiatric mental health nurse practitioner or psychologist or his
7 designee has made appropriate attempts to elicit the cooperation of the patient
8 but has not been successful in persuading him to submit to an examination, that
9 such physician, psychiatric mental health nurse practitioner or psychologist has
10 reason to suspect that the patient meets the criteria for involuntary outpatient
11 treatment, and he is willing and able to examine the patient and testify at the
12 hearing on the petition.

13 §70. Procedure

14 A. Upon the filing of the petition, the court shall assign a time and place
15 for a hearing, which may be conducted before any judge in the judicial district,
16 within five days, and shall cause reasonable notice thereof and a copy of the
17 petition to be served upon the respondent, respondent's attorney, the petitioner
18 and the director of the human service district or the regional manager of the
19 Department of Health and Hospitals, office of mental health, in the parish
20 where the petition has been filed. The notice shall inform the respondent that
21 he has a right to be present, a right to counsel, which may be appointed, if he is
22 indigent or otherwise qualified, has the right to counsel appointed to represent
23 him by the Mental Health Advocacy Service; and a right to cross examine
24 witnesses. Continuances shall be granted only for good cause shown.

25 B. The court shall conduct a hearing on the petition which shall take
26 precedence over all other matters, except pending cases of the same type. The
27 court shall admit evidence according to the Louisiana Code of Evidence.
28 Witnesses and evidence tending to show that the patient is a proper subject for
29 outpatient placement shall be presented first. If the patient does not appear at
30 the hearing, and service of process was proper and appropriate attempts to

1 elicit attendance failed, the court may conduct the hearing in the absence of the
2 patient, but the court shall state the factual basis for conducting the hearing
3 without the patient.

4 C. The court shall not order involuntary outpatient treatment unless an
5 examining physician, psychiatric mental health nurse practitioner or
6 psychologist who has personally examined the patient within the time period
7 commencing ten days before the filing of the petition, testifies at the hearing.

8 D. If the patient has refused to be examined by a physician, psychiatric
9 mental health nurse practitioner or psychologist, the court may request the
10 subject to consent to an examination by a physician, psychiatric mental health
11 nurse practitioner or psychologist appointed by the court. If the patient does not
12 consent and the court finds reasonable cause to believe that the allegations in
13 the petition are true, the court may order peace officers, police officers or the
14 sheriff's department to take the patient into custody and transport him to a
15 hospital or emergency receiving center for examination. Retention of the
16 patient in accordance with the court order shall not exceed twenty-four hours.
17 The examination of the patient may be performed by the physician, psychiatric
18 mental health nurse practitioner or psychologist whose affidavit accompanied
19 the petition pursuant to R.S. 28:69(B), if he is privileged or otherwise authorized
20 by the hospital or emergency receiving center. If such examination is
21 performed by another physician, psychiatric mental health nurse practitioner
22 or psychologist, he shall be authorized to consult with the physician, psychiatric
23 mental health nurse practitioner or psychologist whose affidavit accompanied
24 the petition regarding the issues of whether the allegations in the petition are
25 true and whether the patient meets the criteria for involuntary outpatient
26 treatment.

27 E. A physician, psychiatric mental health nurse practitioner or
28 psychologist who testifies pursuant to Subsection C of this Section shall state the
29 facts which support the allegation that the patient meets each of the criteria for
30 involuntary outpatient treatment, the treatment is the least restrictive

1 alternative, the recommended involuntary outpatient treatment and the
2 rationale. If the recommended involuntary outpatient treatment includes
3 medication, the testimony of the physician, psychiatric mental health nurse
4 practitioner or medical psychologist shall describe the types or classes of
5 medication which should be authorized, the beneficial and detrimental physical
6 and mental effects of such medication, and whether the medication should be
7 self-administered or administered by authorized personnel.

8 F. The patient shall be afforded an opportunity to present evidence, to
9 call witnesses on his behalf, and to cross-examine adverse witnesses.

10 §71. Written treatment plan

11 A. The court shall not order involuntary outpatient treatment unless an
12 examining physician, psychiatric mental health nurse practitioner or
13 psychologist appointed by the appropriate director of the human service district
14 or regional manager of the Department of Health and Hospitals, office of
15 mental health, develops and provides to the court a proposed written treatment
16 plan. The written treatment plan shall be developed by a treatment team which
17 shall include a case manager, clinical social worker and licensed physician,
18 psychiatrist, psychiatric mental health nurse practitioner or psychologist and
19 other specialized service providers as deemed appropriate by the director or
20 regional manager as well as the patient and upon his request, an individual
21 significant to him and concerned with his welfare. The written treatment plan
22 shall include appropriate services to provide care coordination. Such services
23 shall include case management services or assertive community treatment
24 teams. The written treatment plan shall also include appropriate categories of
25 services, as set forth in Subsection E of this Section, which such team
26 recommends the patient should receive. If the written treatment plan includes
27 medication, it shall state whether the medication should be self-administered or
28 administered by authorized personnel, and shall specify type and dosage range
29 of medication most likely to provide maximum benefit for the patient.

30 B. If the written treatment plan includes alcohol or substance abuse

1 counseling and treatment, it may include a provision requiring testing for either
2 alcohol or illegal substances provided the clinical basis for recommending such
3 plan provides sufficient facts for the court to find all of the following:

4 (1) The patient has a history of alcohol or substance abuse that is
5 clinically related to the mental illness.

6 (2) Testing is necessary to prevent a relapse or deterioration.

7 C. The plan shall be provided to the court no later than the date of the
8 hearing on the petition.

9 D. The court shall not order involuntary outpatient treatment unless a
10 physician, psychiatric mental health nurse practitioner or psychologist testifies
11 regarding the categories of involuntary outpatient treatment recommended, the
12 rationale for each category, facts which establish that such treatment is the least
13 restrictive alternative, and, if recommended, the beneficial and detrimental
14 physical and mental effects of medication, and whether such medication should
15 be self-administered or administered by an authorized professional.

16 E.(1) Services shall include but are not limited to the following:

17 (a) Assertive community treatment.

18 (b) Case management which is defined as the assignment of the
19 administration of care for an outpatient individual with a serious mental illness
20 to a single person or team, including all necessary medical and mental health
21 care and associated supportive services.

22 (2) Services may include, but are not limited to, the following:

23 (a) Medication.

24 (b) Laboratory testing to include periodic blood testing for therapeutic
25 metabolic effects, toxicology testing and breath analysis.

26 (c) Individual or group therapy.

27 (d) Day or partial day programming activities.

28 (e) Education and vocational rehabilitation training.

29 (f) Alcohol or substance abuse treatment.

30 (g) Supervised living.

1 (h) Transportation.

2 §72. Disposition

3 A. If the court determines that the patient does not meet the criteria for
4 involuntary outpatient treatment, the court shall dismiss the petition.

5 B. If the court finds by clear and convincing evidence that the patient
6 meets the criteria for involuntary outpatient treatment, and no less restrictive
7 alternative is feasible, the court shall order that the patient receive involuntary
8 outpatient treatment for an initial period not to exceed six months. The court
9 shall state reasons why the proposed treatment plan is the least restrictive
10 treatment appropriate and feasible for the patient. The order shall state the
11 categories of involuntary outpatient treatment as set forth in R.S. 28:71, which
12 the patient is to receive, and the court may not order treatment that has not
13 been recommended by the physician, psychiatric mental health nurse
14 practitioner or psychologist in consultation with the treatment team and
15 included in the written treatment plan. The plan shall be certified by the
16 director of the human service district or the regional manager of the
17 Department of Health and Hospitals, office of mental health, responsible for
18 services in the district where the petition is filed, as offering services which are
19 available through their offices. The court shall not order an outpatient
20 commitment unless the director or regional manager so certifies.

21 C. If the court finds by clear and convincing evidence that the patient
22 meets the criteria for involuntary outpatient treatment, and a written proposed
23 treatment plan has not been submitted, the court shall order the director of the
24 human service district or the regional manager of the Department of Health and
25 Hospitals, office of mental health, to provide a plan and testimony within five
26 days of the date of the order.

27 D. The court may order the patient to self administer psychotropic drugs
28 or accept the administration of such drugs by authorized personnel as part of
29 an involuntary outpatient treatment program. The order shall specify the type
30 and dosage range of psychotropic drugs and it shall be effective for the duration

1 of such involuntary outpatient treatment.

2 E. If the petitioner is the director of a hospital that operates an
3 involuntary outpatient treatment program, the court order shall direct the
4 hospital to provide all categories of involuntary outpatient treatment services.
5 If the hospital does not have such a program or if the patient is discharged to
6 a different district or region, or if the director of the human service district or
7 regional manager for the Department of Health and Hospitals, office of mental
8 health, has filed the petition and certified services are available, the court order
9 shall require the appropriate director or regional manager to provide for all
10 categories of involuntary outpatient treatment services.

11 F. The director or regional manager shall apply for court approval prior
12 to instituting a proposed material change in the involuntary outpatient
13 treatment order unless such change is contemplated in the order. For purposes
14 of this Subsection, a material change shall mean an addition or deletion of a
15 category of involuntary outpatient treatment service, or any deviation without
16 the consent of the patient from the terms of an existing order relating to the
17 administration of psychotropic drugs, or a change of residence from one district
18 or region to another. Any application for court approval shall be served upon
19 all persons required to be served with notice of a petition for an order
20 authorizing involuntary outpatient treatment. Either party may move for a
21 hearing on the application. If a motion is not filed within five days from the date
22 the application is filed, the court shall grant the application.

23 G. Failure to comply with an order of assisted outpatient treatment shall
24 not be grounds, in and of itself, for involuntary civil commitment or a finding
25 of contempt of court.

26 **§73. Application for additional periods of treatment**

27 A. The court order for outpatient treatment shall expire at the end of the
28 specified period unless a petition for an extension has been filed. If the director
29 or regional manager determines that a patient requires further involuntary
30 outpatient treatment, he shall file a petition for continued treatment prior to the

1 expiration of the initial involuntary outpatient treatment ordered by the court.
2 If a patient has been ordered to receive outpatient treatment for four
3 consecutive one hundred eighty day periods, the period of any subsequent order
4 may exceed one hundred eighty days but shall not exceed one year.

5 B. The procedure for obtaining an extension shall be the same as for
6 obtaining the original order. However, the time periods provided in R.S.
7 28:67(A)(4) shall not be applicable in determining the appropriateness of the
8 extension. The court order requiring blood or laboratory testing shall be
9 subject to review after six months by the physician, psychiatric mental health
10 nurse practitioner or psychologist who developed the written treatment plan or
11 who is designated by the director, and the blood or laboratory testing may be
12 terminated without further action of the court.

13 §74. Application to stay, vacate or modify

14 In addition to any right or remedy available by law, the patient may
15 apply to the court to stay, vacate, or modify the order and he shall notify the
16 director or manager of his application.

17 §75. Appeals

18 Review of an order issued pursuant to this Part shall be in accordance
19 with R.S. 28:56 (D) and (E).

20 §76. Failure to comply with involuntary outpatient treatment

21 A. When a physician, psychiatric mental health nurse practitioner or
22 psychologist determines the patient has failed to comply with the ordered
23 treatment, efforts were made to solicit compliance by the district, the region,
24 case manager or assertive community treatment provider, and the patient may
25 be in need of involuntary admission to a treatment facility, he may execute an
26 emergency certificate in accordance with R.S. 28:53, request an order for
27 custody in accordance with R.S. 28:53.2, or seek a judicial commitment in
28 accordance with R.S. 28:54.

29 B. If the patient refuses to take medication or refuses to take or fails blood or
30 other laboratory tests as required by court order, the physician, psychiatric mental

1 health nurse practitioner or psychologist may consider his refusal in determining
2 whether the patient is in need of inpatient treatment services.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____