

As Introduced

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H. B. No. 355

REPRESENTATIVE Willamowski

A B I L L

To amend section 5120.17 of the Revised Code to modify
the administrative procedures for inmate
commitments to correctional institutions.

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

Section 1. That section 5120.17 of the Revised Code be
amended as follows:

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Sec. 5120.17. (A) As used in this section:

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(1) "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.

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(2) "Mentally ill person subject to hospitalization" means a
mentally ill person to whom any of the following applies because
of the person's mental illness:

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(a) The person represents a substantial risk of physical harm
to the person as manifested by evidence of threats of, or attempts
at, suicide or serious self-inflicted bodily harm.

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(b) The person represents a substantial risk of physical harm
to others as manifested by evidence of recent homicidal or other
violent behavior, evidence of recent threats that place another in

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reasonable fear of violent behavior and serious physical harm, or
other evidence of present dangerousness.

(c) The person represents a substantial and immediate risk of
serious physical impairment or injury to the person as manifested
by evidence that the person is unable to provide for and is not
providing for the person's basic physical needs because of the
person's mental illness and that appropriate provision for those
needs cannot be made immediately available in the ~~community~~
correctional institution in which the inmate is currently housed.

(d) The person would benefit from treatment in a hospital for
the person's mental illness and is in need of treatment in a
hospital as manifested by evidence of behavior that creates a
grave and imminent risk to substantial rights of others or the
person.

(3) "Psychiatric hospital" means a facility that is operated
by the department of rehabilitation and correction, is designated
as a psychiatric hospital, is licensed by the department of mental
health pursuant to section 5119.20 of the Revised Code, and is in
substantial compliance with the standards set by the joint
commission on accreditation of healthcare organizations.

(4) "Inmate patient" means an inmate who is admitted to a
psychiatric hospital.

(5) "Admitted" to a psychiatric hospital means being accepted
for and staying at least one night at the psychiatric hospital.

(6) "Treatment plan" means a written statement of reasonable
objectives and goals for an inmate patient that is based on the
needs of the inmate patient and that is established by the
treatment team, with the active participation of the inmate
patient and with documentation of that participation. "Treatment
plan" includes all of the following:

(a) The specific criteria to be used in evaluating progress

toward achieving the objectives and goals;

(b) The services to be provided to the inmate patient during the inmate patient's hospitalization;

(c) The services to be provided to the inmate patient after discharge from the hospital, including, but not limited to, housing and mental health services provided at the state correctional institution to which the inmate patient returns after discharge or community mental health services.

(7) "Mentally retarded person subject to institutionalization by court order" has the same meaning as in section 5123.01 of the Revised Code.

(8) "Emergency transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate presents an immediate danger to self or others and requires hospital-level care.

(9) "Uncontested transfer" means the transfer of a mentally ill inmate to a psychiatric hospital when the inmate has the mental capacity to, and has waived, the hearing required by division (B) of this section.

(10)(a) "Independent decision-maker" means a person who is employed by the department of rehabilitation and correction and is appointed by the chief or chief clinical officer of mental health services as a hospitalization hearing officer to conduct due process hearings.

(b) An independent decision-maker who presides over any hearing or issues any order pursuant to this section shall be a psychiatrist, psychologist, or attorney, shall not be specifically associated with the institution in which the inmate who is the subject of the hearing or order resides at the time of the hearing or order, and previously shall not have had any treatment relationship with nor have represented in any legal proceeding the

inmate who is the subject of the order.

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(B)(1) ~~If~~ Except as provided in division (C) of this section,
if the warden of a state correctional institution or the warden's
designee believes that an inmate should be transferred from the
institution to a psychiatric hospital, the department shall hold a
hearing to determine whether the inmate is a mentally ill person
subject to hospitalization. The department shall conduct the
hearing at the state correctional institution in which the inmate
is confined, and the department shall provide qualified ~~and~~
independent assistance to the inmate for the hearing. An
independent decision-maker provided by the department shall
preside at the hearing and determine whether the inmate is a
mentally ill person subject to hospitalization.

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(2) ~~Prior~~ Except as provided in division (C) of this section,
prior to the hearing held pursuant to division (B)(1) of this
section, the warden or the warden's designee shall give written
notice to the inmate that the department is considering
transferring the inmate to a psychiatric hospital, that it will
hold a hearing on the proposed transfer at which the inmate may be
present, that at the hearing the inmate has the rights described
in division (B)(3) of this section, and that the department will
provide qualified ~~and~~ independent assistance to the inmate with
respect to the hearing. The department shall not hold the hearing
until the inmate has received written notice of the proposed
transfer and has had sufficient time to consult with the person
appointed by the department to provide assistance to the inmate
and to prepare for a presentation at the hearing.

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(3) At the hearing held pursuant to division (B)(1) of this
section, the department shall disclose to the inmate the evidence
that it relies upon for the transfer and shall give the inmate an
opportunity to be heard. Unless the independent decision-maker
finds good cause for not permitting it, the inmate may present

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documentary evidence and the testimony of witnesses at the hearing
and may confront and cross-examine witnesses called by the
department.

(4) If the independent decision-maker does not find clear and
convincing evidence that the inmate is a mentally ill person
subject to hospitalization, the department shall not transfer the
inmate to a psychiatric hospital but shall continue to confine the
inmate in the same state correctional institution or in another
state correctional institution that the department considers
appropriate. If the independent decision-maker finds clear and
convincing evidence that the inmate is a mentally ill person
subject to hospitalization, the decision-maker shall order that
the inmate be transported to a psychiatric hospital for
observation and treatment for a period of not longer than thirty
days. After the hearing, the independent decision-maker shall
submit to the department a written decision that states one of the
findings described in division (B)(4) of this section, the
evidence that the decision-maker relied on in reaching that
conclusion, and, if the decision is that the inmate should be
transferred, the reasons for the transfer.

~~(5) The director of rehabilitation and correction shall adopt
rules setting forth guidelines for the procedures required under
division (B) of this section.~~

(C)(1) The department may transfer an inmate to a psychiatric
hospital under an emergency transfer order if the chief clinical
officer of mental health services or that officer's designee and
either a psychiatrist or, in the absence of a psychiatrist, a
psychologist determines that the inmate is mentally ill, presents
an immediate danger to self or others, and requires hospital-level
care.

(2) The department may transfer an inmate to a psychiatric
hospital under an uncontested transfer order if both of the

following apply:

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(a) A psychiatrist determines all of the following apply:

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(i) The inmate has a mental illness or is a mentally ill
person subject to hospitalization.

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(ii) The inmate requires hospital care to address the mental
illness.

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(iii) The inmate has the mental capacity to make a reasoned
choice regarding the inmate's transfer to a hospital.

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(b) The inmate agrees to a transfer to a hospital.

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(3) The written notice and the hearing required under
divisions (B)(1) and (2) of this section are not required for an
emergency transfer or uncontested transfer under division (C)(1)
or (2) of this section.

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(4) After an emergency transfer under division (C)(1) of this
section, the department shall hold a hearing for continued
hospitalization within five working days after admission of the
transferred inmate to the psychiatric hospital. The department
shall hold subsequent hearings pursuant to division (F) of this
section at the same intervals as required for inmate patients who
are transported to a psychiatric hospital under division (B)(4) of
this section.

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(5) After an uncontested transfer under division (C)(2) of
this section, the inmate may withdraw consent to the transfer in
writing at any time. Upon the inmate's withdrawal of consent, the
hospital shall discharge the inmate, or, within five working days,
the department shall hold a hearing for continued hospitalization.
The department shall hold subsequent hearings pursuant to division
(F) of this section at the same time intervals as required for
inmate patients who are transported to a psychiatric hospital
under division (B)(4) of this section.

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(D)(1) If an independent decision-maker, pursuant to division 176
(B)(4) of this section, orders an inmate transported to a 177
psychiatric hospital or if an inmate is transferred pursuant to 178
division (C)(1) or (2) of this section, the staff of the 179
psychiatric hospital shall examine the inmate patient when 180
admitted to the psychiatric hospital as soon as practicable after 181
the inmate patient arrives at the hospital and no later than 182
twenty-four hours after the time of arrival. The attending 183
physician responsible for the inmate patient's care shall give the 184
inmate patient all information necessary to enable the patient to 185
give a fully informed, intelligent, and knowing consent to the 186
treatment the inmate patient will receive in the hospital. The 187
attending physician shall tell the inmate patient the expected 188
physical and medical consequences of any proposed treatment and 189
shall give the inmate patient the opportunity to consult with 190
another psychiatrist at the hospital and with the inmate advisor. 191

(2) No inmate patient who is transported or transferred to a 192
psychiatric hospital pursuant to division (B)(4) or (C)(1) or (2) 193
of this section and who is in the physical custody of the 194
department of rehabilitation and correction shall be subjected to 195
any of the following procedures: 196

- (a) Convulsive therapy; 197
- (b) Major aversive interventions; 198
- (c) Any unusually hazardous treatment procedures; 199
- (d) Psychosurgery. 200

~~(D)~~(E) The warden of the psychiatric hospital or the warden's 201
designee shall ensure that an inmate patient hospitalized pursuant 202
to this section receives or has all of the following: 203

(1) Receives sufficient professional care within twenty days 204
of admission to ensure that an evaluation of the inmate patient's 205
current status, differential diagnosis, probable prognosis, and 206

description of the current treatment plan have been formulated and 207
are stated on the inmate patient's official chart; 208

(2) Has a written treatment plan consistent with the 209
evaluation, diagnosis, prognosis, and goals of treatment; 210

(3) Receives treatment consistent with the treatment plan; 211

(4) Receives periodic reevaluations of the treatment plan by 212
the professional staff at intervals not to exceed thirty days; 213

(5) Is provided with adequate medical treatment for physical 214
disease or injury; 215

(6) Receives humane care and treatment, including, without 216
being limited to, the following: 217

(a) Access to the facilities and personnel required by the 218
treatment plan; 219

(b) A humane psychological and physical environment; 220

(c) The right to obtain current information concerning the 221
treatment program, the expected outcomes of treatment, and the 222
expectations for the inmate patient's participation in the 223
treatment program in terms that the inmate patient reasonably can 224
understand; 225

(d) Opportunity for participation in programs designed to 226
help the inmate patient acquire the skills needed to work toward 227
discharge from the psychiatric hospital; 228

(e) The right to be free from unnecessary or excessive 229
medication and from unnecessary restraints or isolation; 230

(f) All other rights afforded inmates in the custody of the 231
department consistent with rules, policy, and procedure of the 232
department. 233

~~(E)~~(F) The department shall hold a hearing for the continued 234
hospitalization of an inmate patient who is transported or 235

transferred to a psychiatric hospital pursuant to division (B)(4) 236
or (C)(1) of this section prior to the expiration of the initial 237
thirty-day period of hospitalization ~~and, if necessary, at~~ 238
~~ninety-day intervals after the first hearing for continued~~ 239
hospitalization. The department shall hold any subsequent 240
hearings, if necessary, not later than ninety days after the first 241
thirty-day hearing and then not later than each one hundred and 242
eighty days after the immediately prior hearing. An independent 243
decision-maker shall conduct the hearings at the psychiatric 244
hospital in which the inmate patient is confined. The inmate 245
patient shall be afforded all of the rights set forth in this 246
section for the hearing prior to transfer to the psychiatric 247
hospital. The department may not waive a hearing for continued 248
commitment. A hearing for continued commitment is mandatory, ~~and~~ 249
~~neither the department nor the inmate patient may waive for an~~ 250
inmate patient transported or transferred to a psychiatric 251
hospital pursuant to division (B)(4) or (C)(1) of this section 252
unless the inmate patient has the capacity to make a reasoned 253
choice to execute a waiver and waives the hearing in writing. An 254
inmate patient who is transferred to a psychiatric hospital 255
pursuant to an uncontested transfer under division (C)(2) of this 256
section and who has scheduled hearings after withdrawal of consent 257
for hospitalization may waive any of the scheduled hearings if the 258
inmate has the capacity to make a reasoned choice and executes a 259
written waiver of the hearing. 260

If upon completion of the hearing the independent 261
decision-maker does not find by clear and convincing evidence that 262
the inmate patient is a mentally ill person subject to 263
hospitalization, the independent decision-maker shall order the 264
inmate patient's discharge from the psychiatric hospital. If the 265
independent decision-maker finds by clear and convincing evidence 266
that the inmate patient is a mentally ill person subject to 267
hospitalization, the independent decision-maker shall order that 268

the inmate patient remain at the psychiatric hospital for another 269
~~period not to exceed ninety days~~ continued hospitalization until 270
the next required hearing. 271

If at any time prior to the ~~expiration of the ninety-day~~ 272
~~period, the warden of the psychiatric hospital or the warden's~~ 273
~~designee~~ next required hearing for continued hospitalization, the 274
medical director of the hospital or the attending physician 275
determines that the treatment needs of the inmate patient could be 276
met equally well in an available and appropriate less restrictive 277
state correctional institution or unit, the ~~warden or the warden's~~ 278
~~designee~~ medical director or attending physician may discharge the 279
inmate to that facility. 280

~~(F)~~(G) An inmate patient is entitled to the credits toward 281
the reduction of the inmate patient's stated prison term pursuant 282
to Chapters 2967. and 5120. of the Revised Code under the same 283
terms and conditions as if the inmate patient were in any other 284
institution of the department of rehabilitation and correction. 285

~~(G)~~(H) The adult parole authority may place an inmate patient 286
on parole or under post-release control directly from a 287
psychiatric hospital. 288

~~(H)~~(I) If an inmate patient who is a mentally ill person 289
subject to hospitalization is to be released from a psychiatric 290
hospital because of the expiration of the inmate patient's stated 291
prison term, the warden of the psychiatric hospital, at least 292
fourteen days before the expiration date, may file an affidavit 293
under section 5122.11 or 5123.71 of the Revised Code with the 294
probate court in the county where the psychiatric hospital is 295
located or the probate court in the county where the inmate will 296
reside, alleging that the inmate patient is a mentally ill person 297
subject to hospitalization by court order or a mentally retarded 298
person subject to institutionalization by court order, whichever 299
is applicable. The proceedings in the probate court shall be 300

conducted pursuant to Chapter 5122. or 5123. of the Revised Code
except as modified by this division.

Upon the request of the inmate patient, the probate court
shall grant the inmate patient an initial hearing under section
5122.141 of the Revised Code or a probable cause hearing under
section 5123.75 of the Revised Code before the expiration of the
stated prison term. After holding a full hearing, the probate
court shall make a disposition authorized by section 5122.15 or
5123.76 of the Revised Code before the date of the expiration of
the stated prison term ~~unless the court grants a continuance of
the hearing at the request of the inmate patient or the inmate
patient's counsel.~~ No inmate patient shall be held in the custody
of the department of rehabilitation and correction past the date
of the expiration of the inmate patient's stated prison term.

~~(I)~~(J) The department of rehabilitation and correction shall
set standards for treatment provided to inmate patients,
consistent where applicable with the standards set by the joint
commission on accreditation of healthcare organizations.

~~(J)~~(K) A certificate, application, record, or report that is
made in compliance with this section and that directly or
indirectly identifies an inmate or former inmate whose
hospitalization has been sought under this section is
confidential. No person shall disclose the contents of any
certificate, application, record, or report of that nature unless
one of the following applies:

(1) The person identified, or the person's legal guardian, if
any, consents to disclosure, and the ~~director of~~ chief clinical
~~officer or designee of mental health services and psychiatry~~ of
the department of rehabilitation and correction determines that
disclosure is in the best interests of the person.

(2) Disclosure is required by a court order signed by a
judge.

(3) An inmate patient seeks access to the inmate patient's 333
own psychiatric and medical records, unless access is specifically 334
restricted in the treatment plan for clear treatment reasons. 335

(4) Hospitals and other institutions and facilities within 336
the department of rehabilitation and correction may exchange 337
psychiatric records and other pertinent information with other 338
hospitals, institutions, and facilities of the department, but the 339
information that may be released about an inmate patient is 340
limited to medication history, physical health status and history, 341
summary of course of treatment in the hospital, summary of 342
treatment needs, and a discharge summary, if any. 343

(5) An inmate patient's family member who is involved in 344
planning, providing, and monitoring services to the inmate patient 345
may receive medication information, a summary of the inmate 346
patient's diagnosis and prognosis, and a list of the services and 347
personnel available to assist the inmate patient and family if the 348
attending physician determines that disclosure would be in the 349
best interest of the inmate patient. No disclosure shall be made 350
under this division unless the inmate patient is notified of the 351
possible disclosure, receives the information to be disclosed, and 352
does not object to the disclosure. 353

(6) The department of rehabilitation and correction may 354
exchange psychiatric hospitalization records, other mental health 355
treatment records, and other pertinent information with county 356
sheriffs' offices, hospitals, institutions, and facilities of the 357
department of mental health and with community mental health 358
agencies and boards of alcohol, drug addiction, and mental health 359
services with which the department of mental health has a current 360
agreement for patient care or services to ensure continuity of 361
care. Disclosure under this division is limited to records 362
regarding the inmate patient's medication history, physical health 363
status and history, summary of course of treatment, summary of 364

treatment needs, and a discharge summary, if any. No office,
department, agency, or board shall disclose the records and other
information unless one of the following applies:

(a) The inmate patient is notified of the possible disclosure
and consents to the disclosure.

(b) The inmate patient is notified of the possible
disclosure, an attempt to gain the consent of the inmate is made,
and the office, department, agency, or board documents the attempt
to gain consent, the inmate's objections, if any, and the reasons
for disclosure in spite of the inmate's objections.

(7) Information may be disclosed to staff members designated
by the director of rehabilitation and correction for the purpose
of evaluating the quality, effectiveness, and efficiency of
services and determining if the services meet minimum standards.

~~(K)~~ The name of an inmate patient shall not be retained with
the information obtained during the evaluations.

(L) The director of rehabilitation and correction may adopt
rules setting forth guidelines for the procedures required under
divisions (B), (C)(1), and (C)(2) of this section.

Section 2. That existing section 5120.17 of the Revised Code
is hereby repealed.