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**REPRESENTATIVES Willamowski, Hughes, Faber, Womer Benjamin, Latta,
Schmidt, Woodard, D. Miller, Coates, Distel, Schneider, Salerno, Key
SENATOR Oelslager**

A B I L L

To amend section 5120.17 of the Revised Code to modify
the administrative procedures for inmate transport
or transfer to psychiatric hospitals.

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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

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to others as manifested by evidence of recent homicidal or other
violent behavior, evidence of recent threats that place another in
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 or retained 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.

(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.

(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.

(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
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 of the department or that
officer's designee and either a psychiatrist employed or retained
by the department or, in the absence of a psychiatrist, a
psychologist employed or retained by the department determines

that the inmate is mentally ill, presents an immediate danger to 143
self or others, and requires hospital-level care. 144

(2) The department may transfer an inmate to a psychiatric 145
hospital under an uncontested transfer order if both of the 146
following apply: 147

(a) A psychiatrist employed or retained by the department 148
determines all of the following apply: 149

(i) The inmate has a mental illness or is a mentally ill 150
person subject to hospitalization. 151

(ii) The inmate requires hospital care to address the mental 152
illness. 153

(iii) The inmate has the mental capacity to make a reasoned 154
choice regarding the inmate's transfer to a hospital. 155

(b) The inmate agrees to a transfer to a hospital. 156

(3) The written notice and the hearing required under 157
divisions (B)(1) and (2) of this section are not required for an 158
emergency transfer or uncontested transfer under division (C)(1) 159
or (2) of this section. 160

(4) After an emergency transfer under division (C)(1) of this 161
section, the department shall hold a hearing for continued 162
hospitalization within five working days after admission of the 163
transferred inmate to the psychiatric hospital. The department 164
shall hold subsequent hearings pursuant to division (F) of this 165
section at the same intervals as required for inmate patients who 166
are transported to a psychiatric hospital under division (B)(4) of 167
this section. 168

(5) After an uncontested transfer under division (C)(2) of 169
this section, the inmate may withdraw consent to the transfer in 170
writing at any time. Upon the inmate's withdrawal of consent, the 171
hospital shall discharge the inmate, or, within five working days, 172

the department shall hold a hearing for continued hospitalization. 173
The department shall hold subsequent hearings pursuant to division 174
(F) of this section at the same time intervals as required for 175
inmate patients who are transported to a psychiatric hospital 176
under division (B)(4) of this section. 177

(D)(1) If an independent decision-maker, pursuant to division 178
(B)(4) of this section, orders an inmate transported to a 179
psychiatric hospital or if an inmate is transferred pursuant to 180
division (C)(1) or (2) of this section, the staff of the 181
psychiatric hospital shall examine the inmate patient when 182
admitted to the psychiatric hospital as soon as practicable after 183
the inmate patient arrives at the hospital and no later than 184
twenty-four hours after the time of arrival. The attending 185
physician responsible for the inmate patient's care shall give the 186
inmate patient all information necessary to enable the patient to 187
give a fully informed, intelligent, and knowing consent to the 188
treatment the inmate patient will receive in the hospital. The 189
attending physician shall tell the inmate patient the expected 190
physical and medical consequences of any proposed treatment and 191
shall give the inmate patient the opportunity to consult with 192
another psychiatrist at the hospital and with the inmate advisor. 193

(2) No inmate patient who is transported or transferred to a 194
psychiatric hospital pursuant to division (B)(4) or (C)(1) or (2) 195
of this section and who is in the physical custody of the 196
department of rehabilitation and correction shall be subjected to 197
any of the following procedures: 198

- (a) Convulsive therapy; 199
- (b) Major aversive interventions; 200
- (c) Any unusually hazardous treatment procedures; 201
- (d) Psychosurgery. 202

~~(D)~~(E) The warden of the psychiatric hospital or the warden's 203

designee shall ensure that an inmate patient hospitalized pursuant 204
to this section receives or has all of the following: 205

(1) Receives sufficient professional care within twenty days 206
of admission to ensure that an evaluation of the inmate patient's 207
current status, differential diagnosis, probable prognosis, and 208
description of the current treatment plan have been formulated and 209
are stated on the inmate patient's official chart; 210

(2) Has a written treatment plan consistent with the 211
evaluation, diagnosis, prognosis, and goals of treatment; 212

(3) Receives treatment consistent with the treatment plan; 213

(4) Receives periodic reevaluations of the treatment plan by 214
the professional staff at intervals not to exceed thirty days; 215

(5) Is provided with adequate medical treatment for physical 216
disease or injury; 217

(6) Receives humane care and treatment, including, without 218
being limited to, the following: 219

(a) Access to the facilities and personnel required by the 220
treatment plan; 221

(b) A humane psychological and physical environment; 222

(c) The right to obtain current information concerning the 223
treatment program, the expected outcomes of treatment, and the 224
expectations for the inmate patient's participation in the 225
treatment program in terms that the inmate patient reasonably can 226
understand; 227

(d) Opportunity for participation in programs designed to 228
help the inmate patient acquire the skills needed to work toward 229
discharge from the psychiatric hospital; 230

(e) The right to be free from unnecessary or excessive 231
medication and from unnecessary restraints or isolation; 232

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

~~(E)~~(F) The department shall hold a hearing for the continued hospitalization of an inmate patient who is transported or transferred to a psychiatric hospital pursuant to division (B)(4) or (C)(1) of this section prior to the expiration of the initial thirty-day period of hospitalization ~~and, if necessary, at ninety-day intervals after the first hearing for continued hospitalization.~~ The department shall hold any subsequent hearings, if necessary, not later than ninety days after the first thirty-day hearing and then not later than each one hundred and eighty days after the immediately prior hearing. An independent decision-maker shall conduct the hearings at the psychiatric hospital in which the inmate patient is confined. The inmate patient shall be afforded all of the rights set forth in this section for the hearing prior to transfer to the psychiatric hospital. The department may not waive a hearing for continued commitment. A hearing for continued commitment is mandatory, ~~and neither the department nor the inmate patient may waive for an inmate patient transported or transferred to a psychiatric hospital pursuant to division (B)(4) or (C)(1) of this section unless the inmate patient has the capacity to make a reasoned choice to execute a waiver and waives the hearing in writing. An inmate patient who is transferred to a psychiatric hospital pursuant to an uncontested transfer under division (C)(2) of this section and who has scheduled hearings after withdrawal of consent for hospitalization may waive any of the scheduled hearings if the inmate has the capacity to make a reasoned choice and executes a written waiver of the hearing.~~

If upon completion of the hearing the independent decision-maker does not find by clear and convincing evidence that

the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order the inmate patient's discharge from the psychiatric hospital. If the independent decision-maker finds by clear and convincing evidence that the inmate patient is a mentally ill person subject to hospitalization, the independent decision-maker shall order that the inmate patient remain at the psychiatric hospital for ~~another period not to exceed ninety days~~ continued hospitalization until the next required hearing.

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

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

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

~~(H)~~(I) If an inmate patient who is a mentally ill person subject to hospitalization is to be released from a psychiatric hospital because of the expiration of the inmate patient's stated prison term, the warden of the psychiatric hospital, at least fourteen days before the expiration date, may file an affidavit under section 5122.11 or 5123.71 of the Revised Code with the

probate court in the county where the psychiatric hospital is 297
located or the probate court in the county where the inmate will 298
reside, alleging that the inmate patient is a mentally ill person 299
subject to hospitalization by court order or a mentally retarded 300
person subject to institutionalization by court order, whichever 301
is applicable. The proceedings in the probate court shall be 302
conducted pursuant to Chapter 5122. or 5123. of the Revised Code 303
except as modified by this division. 304

Upon the request of the inmate patient, the probate court 305
shall grant the inmate patient an initial hearing under section 306
5122.141 of the Revised Code or a probable cause hearing under 307
section 5123.75 of the Revised Code before the expiration of the 308
stated prison term. After holding a full hearing, the probate 309
court shall make a disposition authorized by section 5122.15 or 310
5123.76 of the Revised Code before the date of the expiration of 311
the stated prison term ~~unless the court grants a continuance of~~ 312
~~the hearing at the request of the inmate patient or the inmate~~ 313
~~patient's counsel~~. No inmate patient shall be held in the custody 314
of the department of rehabilitation and correction past the date 315
of the expiration of the inmate patient's stated prison term. 316

~~(I)~~(J) The department of rehabilitation and correction shall 317
set standards for treatment provided to inmate patients, 318
consistent where applicable with the standards set by the joint 319
commission on accreditation of healthcare organizations. 320

~~(J)~~(K) A certificate, application, record, or report that is 321
made in compliance with this section and that directly or 322
indirectly identifies an inmate or former inmate whose 323
hospitalization has been sought under this section is 324
confidential. No person shall disclose the contents of any 325
certificate, application, record, or report of that nature or any 326
other psychiatric or medical record or report regarding a mentally 327
ill inmate unless one of the following applies: 328

(1) The person identified, or the person's legal guardian, if 329
any, consents to disclosure, and the ~~director of~~ chief clinical 330
officer or designee of mental health services ~~and psychiatry~~ of 331
the department of rehabilitation and correction determines that 332
disclosure is in the best interests of the person. 333

(2) Disclosure is required by a court order signed by a 334
judge. 335

(3) An inmate patient seeks access to the inmate patient's 336
own psychiatric and medical records, unless access is specifically 337
restricted in the treatment plan for clear treatment reasons. 338

(4) Hospitals and other institutions and facilities within 339
the department of rehabilitation and correction may exchange 340
psychiatric records and other pertinent information with other 341
hospitals, institutions, and facilities of the department, but the 342
information that may be released about an inmate patient is 343
limited to medication history, physical health status and history, 344
summary of course of treatment in the hospital, summary of 345
treatment needs, and a discharge summary, if any. 346

(5) An inmate patient's family member who is involved in 347
planning, providing, and monitoring services to the inmate patient 348
may receive medication information, a summary of the inmate 349
patient's diagnosis and prognosis, and a list of the services and 350
personnel available to assist the inmate patient and family if the 351
attending physician determines that disclosure would be in the 352
best interest of the inmate patient. No disclosure shall be made 353
under this division unless the inmate patient is notified of the 354
possible disclosure, receives the information to be disclosed, and 355
does not object to the disclosure. 356

(6) The department of rehabilitation and correction may 357
exchange psychiatric hospitalization records, other mental health 358
treatment records, and other pertinent information with county 359

sheriffs' offices, hospitals, institutions, and facilities of the
department of mental health and with community mental health
agencies and boards of alcohol, drug addiction, and mental health
services with which the department of mental health has a current
agreement for patient care or services to ensure continuity of
care. Disclosure under this division is limited to records
regarding ~~the inmate patient's~~ a mentally ill inmate's medication
history, physical health status and history, summary of course of
treatment, summary of 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 mentally ill inmate ~~patient~~ is notified of the
possible disclosure and consents to the disclosure.

(b) The mentally ill 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.