

**As Reported by the House Criminal Justice Committee**

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**Sub. H. B. No. 355**

**REPRESENTATIVES Willamowski, Hughes, Faber, Womer Benjamin, Latta**

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**A B I L L**

To amend section 5120.17 of the Revised Code to modify 1  
the administrative procedures for inmate transport 2  
or transfer to psychiatric hospitals. 3

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

**Section 1.** That section 5120.17 of the Revised Code be 4  
amended as follows: 5

**Sec. 5120.17.** (A) As used in this section: 6

(1) "Mental illness" means a substantial disorder of thought, 7  
mood, perception, orientation, or memory that grossly impairs 8  
judgment, behavior, capacity to recognize reality, or ability to 9  
meet the ordinary demands of life. 10

(2) "Mentally ill person subject to hospitalization" means a 11  
mentally ill person to whom any of the following applies because 12  
of the person's mental illness: 13

(a) The person represents a substantial risk of physical harm 14  
to the person as manifested by evidence of threats of, or attempts 15  
at, suicide or serious self-inflicted bodily harm. 16

(b) The person represents a substantial risk of physical harm 17  
to others as manifested by evidence of recent homicidal or other 18  
violent behavior, evidence of recent threats that place another in 19

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; 51

(b) The services to be provided to the inmate patient during 52  
the inmate patient's hospitalization; 53

(c) The services to be provided to the inmate patient after 54  
discharge from the hospital, including, but not limited to, 55  
housing and mental health services provided at the state 56  
correctional institution to which the inmate patient returns after 57  
discharge or community mental health services. 58

(7) "Mentally retarded person subject to institutionalization 59  
by court order" has the same meaning as in section 5123.01 of the 60  
Revised Code. 61

(8) "Emergency transfer" means the transfer of a mentally ill 62  
inmate to a psychiatric hospital when the inmate presents an 63  
immediate danger to self or others and requires hospital-level 64  
care. 65

(9) "Uncontested transfer" means the transfer of a mentally 66  
ill inmate to a psychiatric hospital when the inmate has the 67  
mental capacity to, and has waived, the hearing required by 68  
division (B) of this section. 69

(10)(a) "Independent decision-maker" means a person who is 70  
employed or retained by the department of rehabilitation and 71  
correction and is appointed by the chief or chief clinical officer 72  
of mental health services as a hospitalization hearing officer to 73  
conduct due process hearings. 74

(b) An independent decision-maker who presides over any 75  
hearing or issues any order pursuant to this section shall be a 76  
psychiatrist, psychologist, or attorney, shall not be specifically 77  
associated with the institution in which the inmate who is the 78  
subject of the hearing or order resides at the time of the hearing 79  
or order, and previously shall not have had any treatment 80  
relationship with nor have represented in any legal proceeding the 81

inmate who is the subject of the order. 82

(B)(1) ~~If~~ Except as provided in division (C) of this section, 83  
if the warden of a state correctional institution or the warden's 84  
designee believes that an inmate should be transferred from the 85  
institution to a psychiatric hospital, the department shall hold a 86  
hearing to determine whether the inmate is a mentally ill person 87  
subject to hospitalization. The department shall conduct the 88  
hearing at the state correctional institution in which the inmate 89  
is confined, and the department shall provide qualified ~~and~~ 90  
independent assistance to the inmate for the hearing. An 91  
independent decision-maker provided by the department shall 92  
preside at the hearing and determine whether the inmate is a 93  
mentally ill person subject to hospitalization. 94

(2) ~~Prior~~ Except as provided in division (C) of this section, 95  
prior to the hearing held pursuant to division (B)(1) of this 96  
section, the warden or the warden's designee shall give written 97  
notice to the inmate that the department is considering 98  
transferring the inmate to a psychiatric hospital, that it will 99  
hold a hearing on the proposed transfer at which the inmate may be 100  
present, that at the hearing the inmate has the rights described 101  
in division (B)(3) of this section, and that the department will 102  
provide qualified ~~and~~ independent assistance to the inmate with 103  
respect to the hearing. The department shall not hold the hearing 104  
until the inmate has received written notice of the proposed 105  
transfer and has had sufficient time to consult with the person 106  
appointed by the department to provide assistance to the inmate 107  
and to prepare for a presentation at the hearing. 108

(3) At the hearing held pursuant to division (B)(1) of this 109  
section, the department shall disclose to the inmate the evidence 110  
that it relies upon for the transfer and shall give the inmate an 111  
opportunity to be heard. Unless the independent decision-maker 112  
finds good cause for not permitting it, the inmate may present 113

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

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(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.

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

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(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  
self or others, and requires hospital-level care.

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(2) The department may transfer an inmate to a psychiatric

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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	233
department consistent with rules, policy, and procedure of the	234



department. 235

~~(E)(F)~~ The department shall hold a hearing for the continued 236  
hospitalization of an inmate patient who is transported or 237  
transferred to a psychiatric hospital pursuant to division (B)(4) 238  
or (C)(1) of this section prior to the expiration of the initial 239  
thirty-day period of hospitalization ~~and, if necessary, at~~ 240  
~~ninety day intervals after the first hearing for continued~~ 241  
hospitalization. The department shall hold any subsequent 242  
hearings, if necessary, not later than ninety days after the first 243  
thirty-day hearing and then not later than each one hundred and 244  
eighty days after the immediately prior hearing. An independent 245  
decision-maker shall conduct the hearings at the psychiatric 246  
hospital in which the inmate patient is confined. The inmate 247  
patient shall be afforded all of the rights set forth in this 248  
section for the hearing prior to transfer to the psychiatric 249  
hospital. The department may not waive a hearing for continued 250  
commitment. A hearing for continued commitment is mandatory, and 251  
~~neither the department nor the inmate patient may waive for an~~ 252  
inmate patient transported or transferred to a psychiatric 253  
hospital pursuant to division (B)(4) or (C)(1) of this section 254  
unless the inmate patient has the capacity to make a reasoned 255  
choice to execute a waiver and waives the hearing in writing. An 256  
inmate patient who is transferred to a psychiatric hospital 257  
pursuant to an uncontested transfer under division (C)(2) of this 258  
section and who has scheduled hearings after withdrawal of consent 259  
for hospitalization may waive any of the scheduled hearings if the 260  
inmate has the capacity to make a reasoned choice and executes a 261  
written waiver of the hearing. 262

If upon completion of the hearing the independent 263  
decision-maker does not find by clear and convincing evidence that 264  
the inmate patient is a mentally ill person subject to 265  
hospitalization, the independent decision-maker shall order the 266

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  
located or the probate court in the county where the inmate will

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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 360  
department of mental health and with community mental health 361  
agencies and boards of alcohol, drug addiction, and mental health 362

services with which the department of mental health has a current 363  
agreement for patient care or services to ensure continuity of 364  
care. Disclosure under this division is limited to records 365  
regarding ~~the inmate patient's~~ a mentally ill inmate's medication 366  
history, physical health status and history, summary of course of 367  
treatment, summary of treatment needs, and a discharge summary, if 368  
any. No office, department, agency, or board shall disclose the 369  
records and other information unless one of the following applies: 370

(a) The mentally ill inmate ~~patient~~ is notified of the 371  
possible disclosure and consents to the disclosure. 372

(b) The mentally ill inmate ~~patient~~ is notified of the 373  
possible disclosure, an attempt to gain the consent of the inmate 374  
is made, and the office, department, agency, or board documents 375  
the attempt to gain consent, the inmate's objections, if any, and 376  
the reasons for disclosure in spite of the inmate's objections. 377

(7) Information may be disclosed to staff members designated 378  
by the director of rehabilitation and correction for the purpose 379  
of evaluating the quality, effectiveness, and efficiency of 380  
services and determining if the services meet minimum standards. 381

~~(K)~~ The name of an inmate patient shall not be retained with 382  
the information obtained during the evaluations. 383

(L) The director of rehabilitation and correction may adopt 384  
rules setting forth guidelines for the procedures required under 385  
divisions (B), (C)(1), and (C)(2) of this section. 386

**Section 2.** That existing section 5120.17 of the Revised Code 387  
is hereby repealed. 388