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ARTICLE 11

RELATING TO COURTS AND STATE HOSPITALS

SECTION 1. Section 8-8-1 of the General Laws in Chapter 8-8 entitled "District Court" is hereby amended to read as follows:

8-8-1. District Court established -- Chief and associate justices.

There is established a district court for the state of Rhode Island which shall consist of a chief judge and ~~thirteen (13)~~ fourteen (14) associate judges. The district court shall be a court of record and shall have a seal with such words and devices as it shall adopt.

SECTION 2. Chapter 8-8 of the General Laws entitled "District Court" is hereby amended by adding thereto the following section:

8-8-1.2. Mental health treatment calendar.

(a) Findings and declarations. The general assembly finds and declares as follows:

(1) Mental illness is a prevalent and persistent issue in Rhode Island within the criminal population in general and the incarcerated population in particular. Approximately one-fifth (1/5) of all inmates at the adult correctional institutions have a diagnosed mental illness, while nearly eighty percent (80%) have a history of substance abuse. Many suffer from both maladies.

(2) Mental illness can often go unrecognized and untreated, leaving some individuals to suffer and spiral downward until they are caught in the criminal justice system. These individuals often become trapped in a cycle of repeated prosecution and incarceration.

(3) Individuals with mental illness who are charged with crimes can benefit from alternatives to incarceration when feasible, and when permitted to obtain proper treatment for persistent mental health and substance abuse disorders through a jail diversion treatment program that recognizes their special set of circumstances while at the same time providing accountability for their wrong-doing and providing for the safety of the public.

(b) The district court shall create a voluntary mental health treatment calendar to better address individuals who suffer from mental illness and are charged with a misdemeanor. The district court will provide the tools and skills necessary to address these individuals' unique challenges thus helping them develop the insight needed to reintegrate successfully into society and maintain a productive and law-abiding lifestyle within the community.

(c) There shall be established, funded and staffed a mental health alternative sentencing

1 and treatment calendar within the jurisdiction of the district court for hearing, addressing and
2 disposing of certain misdemeanor offenses in an effort to direct eligible defendants into a court
3 program that integrates support and treatment plans with the judicial process, potentially resulting
4 in alternatives to traditional prosecution, sentencing and incarceration; reducing the risk of
5 recidivism; realizing cost savings for the state and increasing public safety. Successful completion
6 may result in a full dismissal of charges or in reduced charges and alternative sentencing. The
7 mental health treatment calendar shall be overseen by a district court judge to be appointed pursuant
8 to chapter 16.1 of title 8, subject to an appropriation made by the general assembly.

9 (d) The chief judge of the district court shall create a mental health treatment calendar in
10 the district court and shall assign a district court judge and associated personnel to the extent
11 necessary to hear and decide all criminal actions involving offenses committed by defendants
12 accepted into the program. [The calendar shall be called the mental health treatment calendar.]

13 (e) An eligible defendant is any person who stands charged in a district court complaint
14 with one or more misdemeanors, and:

15 (1) Suffers from a mental, behavioral or emotional disorder resulting in serious functional
16 impairment which substantially interferes with or limits one or more major life activities; and

17 (2) Is determined by the court to be appropriate for participation in the mental health
18 treatment calendar.

19 (3) An individual's history of substance and alcohol abuse may also be considered to the
20 extent necessary to make a proper diagnosis of a co-occurring disorder.

21 SECTION 3. Section 9-5-9 of the General Laws in Chapter 9-5 entitled "Writs, Summons
22 and Process" is hereby amended to read as follows:

23 **9-5-9. Warrants for commitment to institutions** **Warrants for commitment to state-**
24 **operated facilities.**

25 Any warrant or mittimus issued from any superior or district court committing any person
26 to the ~~institute of mental health~~ Eleanor Slater Hospital or Rhode Island State Psychiatric Hospital
27 shall be directed to and executed by duly authorized agents of the department of ~~human services~~
28 behavioral healthcare, developmental disabilities and hospitals, who shall make return thereon, the
29 provisions of any other law to the contrary notwithstanding.

30 SECTION 4. Sections 40.1-3-7 and 40.1-3-9 of the General Laws in Chapter 40.1-3 entitled
31 "Curative Services" are hereby amended to read as follows:

32 **40.1-3-7. Rules and regulations for Eleanor Slater hospital.**

33 The director of the department shall establish, in his or her discretion, rules for the
34 government of the ~~hospital~~ Eleanor Slater Hospital, regulations for the admission of patients, and

1 shall generally be vested with all the powers necessary for the proper carrying on of the work
2 entrusted to him or her.

3 ~~**40.1-3-9. Staff and employees of the state of Rhode Island medical center**~~ **Staff and**
4 **employees of the Eleanor Slater Hospital and of the Rhode Island State Psychiatric Hospital.**

5 The director of behavioral healthcare, developmental disabilities and hospitals shall
6 appoint, or delegate to another employee of the department the authority to appoint, employees, as
7 he or she may deem necessary for the proper management of the ~~institutions~~ facilities of either or
8 both the Eleanor Slater Hospital or the Rhode Island State Psychiatric Hospital.

9 SECTION 5. Chapter 40.1-3 of the General Laws entitled "Curative Services" is hereby
10 amended by adding thereto the following section:

11 **40.1-3-7.1. Rules and regulations for the Rhode Island State Psychiatric Hospital.**

12 The director of the department shall establish, in his or her discretion, rules for the
13 governance of the Rhode Island State Psychiatric Hospital, regulations for the admission of
14 patients, and shall generally be vested with all the powers necessary for the proper carrying on of
15 the work entrusted to him or her.

16 SECTION 6. Section 40.1-3-8 of the General Laws in Chapter 40.1-3 entitled "Curative
17 Services" is hereby repealed:

18 ~~**40.1-3-8. Change of names of hospital for mental diseases and state infirmary.**~~

19 ~~The name of the state institution at Cranston formerly known as the state asylum for the~~
20 ~~insane or the state hospital for the insane or the state hospital for mental diseases, and the name of~~
21 ~~the state institution at Cranston formerly known as the state almshouse or the state infirmary, or~~
22 ~~the general hospital, shall hereafter be known as the "Eleanor Slater Hospital." In any general law,~~
23 ~~other public law, or resolution of the general assembly, and in any document, record, instrument,~~
24 ~~or proceeding authorized by any such law or resolution, unless the context or subject matter~~
25 ~~otherwise requires, the words "state asylum for the insane" and the words "state hospital for the~~
26 ~~insane" or "state hospital for mental disease" shall be construed to mean the "Eleanor Slater~~
27 ~~Hospital."~~

28 SECTION 7. Sections 40.1-5-2, 40.1-5-5, 40.1-5-6, 40.1-5-7, 40.1-5-7.1, 40.1-5-8, 40.1-5-
29 11, 40.1-5-27.1, 40.1-5-31, 40.1-5-32, 40.1-5-33 and 40.1-5-34 of the General Laws in Chapter
30 40.1-5 entitled "Mental Health Law" are hereby amended to read as follows:

31 **40.1-5-2. Definitions.**

32 Whenever used in this chapter, or in any order, rule, or regulation made or promulgated
33 pursuant to this chapter, or in any printed forms prepared by the department or the director, unless
34 otherwise expressly stated, or unless the context or subject matter otherwise requires:

1 (1) "Alternatives to admission or certification" means alternatives to a particular facility or
2 treatment program, and shall include, but not be limited to, voluntary or court-ordered outpatient
3 treatment, day treatment in a hospital, night treatment in a hospital, placement in the custody of a
4 friend or relative, placement in a nursing home, referral to a community mental health clinic and
5 home health aide services, or any other services that may be deemed appropriate.

6 (2) "Care and treatment" means psychiatric care, together with such medical, nursing,
7 psychological, social, rehabilitative, and maintenance services as may be required by a patient in
8 association with the psychiatric care provided pursuant to an individualized treatment plan recorded
9 in the patient's medical record.

10 (3) "Department" means the state department of behavioral healthcare, developmental
11 disabilities and hospitals.

12 (4) "Director" means the director of the state department of behavioral healthcare,
13 developmental disabilities and hospitals.

14 (5)(i) "Facility" means ~~a state hospital or psychiatric inpatient facility in the department~~
15 any public or private hospital licensed by the Rhode Island department of health that maintains staff
16 and facilities, including inpatient units, for the care and treatment of persons with psychiatric
17 illness, psychiatric disorders, and/or psychiatric disabilities; and in order to operate pursuant to
18 Mental Health Act as codified in this chapter, such facility and/or inpatient unit must be approved
19 by the director of the department of behavioral healthcare, developmental disabilities and hospitals
20 upon application of such facility and/or inpatient unit, a psychiatric inpatient facility maintained by
21 ~~a political subdivision of the state for the care and/or treatment of the mentally disabled; a general~~
22 ~~or specialized hospital maintaining staff and facilities for this purpose; and~~ any of the several
23 community mental health services established pursuant to chapter 8.5 of this title; ~~and any other~~
24 ~~facility within the state providing inpatient psychiatric care and/or treatment and approved by the~~
25 ~~director upon application of this facility. Included within this definition shall be all hospitals,~~
26 ~~institutions, facilities, and services under the control and direction of the director and the~~
27 ~~department, as provided in this chapter.~~ Nothing contained herein shall be construed to amend or
28 repeal any of the provisions of chapter 16 of title 23.

29 (ii) The Eleanor Slater Hospital shall be required to apply to the department for approval
30 from the director to operate pursuant to this chapter.

31 (iii) The Rhode Island State Psychiatric Hospital shall be required to apply to the
32 department for approval from the director to operate pursuant to this chapter.

33 (6) "Indigent person" means a person who has not sufficient property or income to support
34 himself or herself, and to support the members of his or her family dependent upon him or her for

1 support, and/or is unable to pay the fees and costs incurred pursuant to any legal proceedings
2 conducted under the provisions of this chapter.

3 (7) "Likelihood of serious harm" means:

4 (i) A substantial risk of physical harm to the person himself or herself as manifested by
5 behavior evidencing serious threats of, or attempts at, suicide;

6 (ii) A substantial risk of physical harm to other persons as manifested by behavior or threats
7 evidencing homicidal or other violent behavior; or

8 (iii) A substantial risk of physical harm to the mentally disabled person as manifested by
9 behavior that has created a grave, clear, and present risk to his or her physical health and safety.

10 (iv) In determining whether there exists a likelihood of serious harm, the physician and the
11 court may consider previous acts, diagnosis, words, or thoughts of the patient. If a patient has been
12 incarcerated, or institutionalized, or in a controlled environment of any kind, the court may give
13 great weight to such prior acts, diagnosis, words, or thoughts.

14 ~~(9)~~(8) "Mental health professional" means a psychiatrist, psychologist, or social worker
15 and such other persons, including psychiatric nurse clinicians, as may be defined by rules and
16 regulations promulgated by the director.

17 ~~(10)~~(9) "NICS database" means the National Instant Criminal Background Check System
18 as created pursuant to section 103(b) of the Brady Handgun Violence Prevention Act (Brady Act),
19 Pub. L. No. 103-159, 107 Stat. 1536 as established by 28 C.F.R. 25.1.

20 ~~(11)~~(10) "Patient" means a person admitted voluntarily, certified or re-certified admitted to
21 a facility according to the provisions of this chapter.

22 ~~(12)~~(11) "Physician" means a person ~~duly~~ licensed by the Rhode Island department of
23 health to practice medicine ~~or osteopathy in this state~~ pursuant to chapter 37 of title 5.

24 ~~(8)~~(12) ~~"Mental disability"~~ "Psychiatric disability" means a mental disorder in which the
25 capacity of a person to exercise self-control or judgment in the conduct of his or her affairs and
26 social relations, or to care for his or her own personal needs, is significantly impaired.

27 (13) "Psychiatric nurse clinician" means a ~~licensed~~, professional registered nurse with a
28 master's degree in psychiatric nursing or related field who is licensed by the Rhode Island
29 department of health pursuant to chapter 34 of title 5 and who is currently working in the mental
30 health field as defined by the American Nurses Association, and/or a licensed advanced practice
31 registered nurse with a population focus of psychiatric/mental health population focus as defined
32 in paragraphs (2) and (12)(vi) of § 5-34-3.

33 (14) "Psychiatrist" means a person ~~duly~~ licensed by the Rhode Island department of health
34 to practice medicine ~~or osteopathy in this state~~ pursuant to chapter 37 of title 5 who has, in addition,

1 completed three (3) years of graduate psychiatric training in a program approved by the American
2 Medical Association or American Osteopathic Association.

3 (15) "Psychologist" means a person ~~certified~~ [licensed by the Rhode Island department of](#)
4 [health](#) pursuant to chapter 44 of title 5.

5 (16) "Social worker" means a person ~~with~~ [who has](#) a masters or further advanced degree
6 from a school of social work, that is accredited by the council of social work education [and who is](#)
7 [licensed by the Rhode Island department of health pursuant to chapter 39.1 of title 5.](#)

8 **40.1-5-5. Admission of patients generally -- Rights of patients -- Patients' records --**
9 **Competence of patients.**

10 (a) Admissions. Any person who is in need of care and treatment in a facility, as herein
11 defined, may be admitted or certified, received, and retained as a patient in a facility by complying
12 with any one of the following admission procedures applicable to the case:

13 (1) Voluntary admission.

14 (2) Emergency certification.

15 (3) Civil court certification.

16 (b) Forms. The director shall prescribe and furnish forms for use in admissions and patient
17 notification procedures under this chapter.

18 (c) Exclusions. No ~~defective delinquent,~~ person with a ~~mental~~ [psychiatric](#) disability, or
19 person under the influence of alcohol or drugs shall be certified to a facility, as herein defined,
20 solely by reason of that condition, unless the person also qualified for admission or certification
21 under the provisions of this chapter.

22 (d) Examining physician. For purposes of certification, no examining physician shall be
23 related by blood or marriage to the person who is applying for the admission of another, or to the
24 person who is the subject of the application; nor shall he or she have any interest, contractually,
25 testamentary, or otherwise (other than reasonable and proper charges for professional services
26 rendered), in or against the estate or assets of the person who is the subject of the application; nor
27 shall he or she be a manager, trustee, visitor, proprietor, officer, stockholder, or have any pecuniary
28 interest, directly or indirectly, or, except as otherwise herein expressly provided, be a director,
29 resident physician, or salaried physician, or employee in any facility to which it is proposed to
30 admit the person.

31 (e) Certificates. Certificates, as required by this chapter, must provide a factual description
32 of the person's behavior that indicates that the person concerned is ~~mentally~~ [psychiatrically](#)
33 disabled, creates a likelihood of serious harm, and is in need of care and treatment in a facility as
34 defined in this chapter. They shall further set forth such other findings as may be required by the

1 particular certification procedure used. Certificates shall also show that an examination of the
2 person concerned was made within five (5) days prior to the date of admission or certification,
3 unless otherwise herein provided. The date of the certificate shall be the date of the commencement
4 of the examination, and in the event examinations are conducted separately or over a period of
5 days, then the five-day (5) period above referred to (unless otherwise expressly provided) shall be
6 measured from the date of the commencement of the first examination. All certificates shall contain
7 the observations upon which judgments are based, and shall contain other information as the
8 director may by rule or regulation require.

9 (f) Rights of patients. No patient admitted or certified to any facility under any provision
10 of this chapter shall be deprived of any constitutional, civil, or legal right, solely by reason of such
11 admission or certification nor shall the certification or admission modify or vary any constitutional
12 or civil right, including, but not limited to, the right or rights:

13 (1) To privacy and dignity;

14 (2) To civil service or merit rating or ranking and appointment;

15 (3) Relating to the granting, forfeiture or denial of a license, permit, privilege, or benefit
16 pursuant to any law;

17 (4) To religious freedom;

18 (5) To be visited privately at all reasonable times by his or her personal physician, attorney,
19 and clergyperson, and by other persons at all reasonable times unless the official in charge of the
20 facility determines either that a visit by any of the other persons or a particular visitation time would
21 not be in the best interests of the patient and he or she incorporates a statement for any denial of
22 visiting rights in the individualized treatment record of the patient;

23 (6) To be provided with stationery, writing materials, and postage in reasonable amounts
24 and to have free unrestricted, unopened, and uncensored use of the mails for letters;

25 (7) To wear one's own clothes, keep and use personal possessions, including toilet articles;
26 to keep and be allowed to spend a reasonable sum of money for canteen expenses and small
27 purchases; to have access to individual storage space for his or her private use; and reasonable
28 access to telephones to make and receive confidential calls; provided, however, that any of these
29 rights may be denied for good cause by the official in charge of a facility or a physician designated
30 by him or her. A statement of the reasons for any denial shall be entered in the individualized
31 treatment record of the patient;

32 (8) To seek independent psychiatric examination and opinion from a psychiatrist or mental
33 health professional of his or her choice;

34 (9) To be employed at a gainful occupation insofar as the patient's condition permits,

1 provided however, that no patient shall be required to perform labor;

2 (10) To vote and participate in political activity;

3 (11) To receive and read literature;

4 (12) To have the least possible restraint imposed upon the person consistent with affording
5 him or her the care and treatment necessary and appropriate to his or her condition;

6 (13) To have access to the mental health advocate upon request;

7 (14) To prevent release of his or her name to the advocate or next of kin by signing a form
8 provided to all patients for that purpose at the time of admission.

9 (g) Records. A facility shall maintain for each patient admitted pursuant to this chapter, a
10 comprehensive medical record. The record shall contain a recorded, individualized treatment plan,
11 which shall at least monthly be reviewed by the physician of the facility who is chiefly responsible
12 for the patient's care, notations of the reviews to be entered in the record. The records shall also
13 contain information indicating at the time of admission or certification what alternatives to
14 admission or certification are available to the patient; what alternatives have been investigated; and
15 why the investigated alternatives were not deemed suitable. The medical record shall further
16 contain other information as the director may by rule or regulation require.

17 (h) Competence. A person shall not, solely by reason of his or her admission or certification
18 to a facility for examination or care and treatment under the provisions of this chapter, thereby be
19 deemed incompetent to manage his or her affairs; to contract; to hold, or seek a professional,
20 occupational, or vehicle operator's license; to make a will; or for any other purpose. Neither shall
21 any requirement be made, by rule, regulation, or otherwise, as a condition to admission and
22 retention, that any person applying for admission shall have the legal capacity to contract, it being
23 sufficient for the purpose, that the person understand the nature and consequence of making the
24 application.

25 **40.1-5-6. Voluntary admission.**

26 (a)(1) General. Any individual of lawful age may apply for voluntary admission to any
27 facility provided for by this law seeking care and treatment for alleged ~~mental~~ psychiatric disability.
28 The application shall be in writing, signed by the applicant in the presence of at least one witness,
29 who shall attest to the application by placing his or her name and address thereon. If the applicant
30 has not yet attained his or her eighteenth (18th) birthday, the application shall be signed by him or
31 her and his or her parent, guardian, or next of kin.

32 (2) Admission of children. Any person who is under the age of eighteen (18) and who
33 receives medical benefits funded in whole or in part by either the department of children, youth and
34 families or by the department of human services may be admitted to any facility provided for by

1 this chapter seeking care and treatment for alleged ~~mental~~ psychiatric disability only after an initial
2 mental health crisis intervention is completed by a provider who is licensed by the department of
3 children, youth and families for emergency services, has proper credentials, and is contracted with
4 the RIte Care health plan or the state and the provider, after considering alternative services to
5 hospitalization with the child, family and other providers, requests prior authorization for the
6 admission from a representative of the child and family's insurance company or utilization review
7 organization representing the insurance company. If the inpatient hospital admits a child without
8 the crisis intervention and prior authorization from the insurance company or utilization review
9 organization, the hospital will be paid a rate equivalent to an Administratively Necessary Day
10 (AND) for each day that the insurance company or utilization review organization representing the
11 insurance company determines that the child did not meet the inpatient level-of-care criteria. The
12 state shall ensure that this provision is included in all publicly financed contracts and agreements
13 for behavioral health services. Activities conducted pursuant to this section shall be exempt from
14 the provisions of § 23-17.12 [repealed], but shall be subject to the provisions of subsection (b) of
15 this section.

16 (3) The department of human services shall develop regulations for emergency admissions
17 that would allow the admitting hospital to maintain its compliance with the provisions of the act
18 while meeting the need of the child.

19 (b) Period of treatment. If it is determined that the applicant is in need of care and treatment
20 for ~~mental~~ psychiatric disability and no suitable alternatives to admission are available, he or she
21 shall be admitted for a period not to exceed thirty (30) days. Successive applications for continued
22 voluntary status may be made for successive periods not to exceed ninety (90) days each, so long
23 as care and treatment is deemed necessary and documented in accordance with the requirements of
24 this chapter and no suitable alternatives to admission are available.

25 (c) Discharge.

26 (1) A voluntary patient shall be discharged no later than the end of the business day
27 following of his or her presenting a written notice of his or her intent to leave the facility to the
28 medical official in charge or the medical official designated by him or her, unless that official or
29 another qualified person from the facility files an application for the patient's civil court
30 certification pursuant to § 40.1-5-8. The notice shall be on a form prescribed by the director and
31 made available to all patients at all times. If a decision to file an application for civil court
32 certification is made, the patient concerned and his or her legal guardian(s), if any, shall receive
33 immediately, but in no event later than twelve (12) hours from the making of the decision, notice
34 of the intention from the official in charge of the facility, or his or her designee, and the patient

1 may, in the discretion of the official, be detained for an additional period not to exceed two (2)
2 business days, pending the filing and setting down for hearing of the application under § 40.1-5-8.

3 (2) A voluntary patient who gives notice of his or her intention or desire to leave the facility
4 may at any time during the period of his or her hospitalization prior to any certification pursuant to
5 § 40.1-5-8, following the giving of the notice, submit a written communication withdrawing the
6 notice, whereby his or her voluntary status shall be considered to continue unchanged until the
7 expiration of thirty (30) or ninety (90) days as provided in subsection (b). In the case of an
8 individual under eighteen (18) years of age, the notice or withdrawal of notice may be given by
9 either of the persons who made the application for his or her admission, or by a person of equal or
10 closer relationship to the patient, who shall, as well, receive notice from the official in charge
11 indicating a decision to present an application for civil court certification. The official may in his
12 or her discretion refuse to discharge the patient upon notice given by any person other than the
13 person who made the application, and in the event of such a refusal, the person giving notice may
14 apply to a justice of the family court for release of the patient.

15 (d) Examination at facility. The medical official in charge of a facility shall ensure that all
16 voluntary patients receive preliminary physical and psychiatric examinations within twenty-four
17 (24) hours of admission. Furthermore, a complete psychiatric examination shall be conducted to
18 determine whether the person qualifies for care and treatment under the provisions of this chapter.
19 The examination shall begin within forty-eight (48) hours of admission and shall be concluded as
20 soon as practicable, but in no case shall extend beyond five (5) days. The examination shall include
21 an investigation with the prospective patient of (1) What alternatives for admission are available
22 and (2) Why those alternatives are not suitable. The alternatives for admission investigated and
23 reasons for unsuitability, if any, shall be recorded on the patient's record. If it is determined that the
24 patient does not belong to the voluntary class in that a suitable alternative to admission is available,
25 or is otherwise ineligible for care and treatment, he or she shall be discharged.

26 (e) Rights of voluntary patients. A voluntary patient shall be informed, in writing, of his or
27 her status and rights as a voluntary patient immediately upon his or her admission, and again at the
28 time of his or her periodic review(s) as provided in § 40.1-5-10, including his or her rights pursuant
29 to § 40.1-5-5(f). Blank forms for purposes of indicating an intention or desire to leave a facility
30 shall be available at all times and on and in all wards and segments of a facility wherein voluntary
31 patients may reside.

32 **40.1-5-7. Emergency certification.**

33 (a) Applicants.

34 (1) Any physician who, after examining a person, has reason to believe that the person is

1 in need of immediate care and treatment, and is one whose continued unsupervised presence in the
2 community would create an imminent likelihood of serious harm by reason of ~~mental~~ psychiatric
3 disability, may apply at a facility for the emergency certification of the person thereto. The medical
4 director, or any other physician employed by the proposed facility for certification, may apply
5 under this subsection if no other physician is available and he or she certifies this fact. If an
6 examination is not possible because of the emergency nature of the case and because of the refusal
7 of the person to consent to the examination, the applicant on the basis of his or her observation may
8 determine, in accordance with the above, that emergency certification is necessary and may apply
9 therefor. In the event that no physician is available, a qualified mental health professional who
10 believes the person to be in need of immediate care and treatment, and one whose continued
11 unsupervised presence in the community would create an imminent likelihood of serious harm by
12 reason of ~~mental~~ psychiatric disability, may make the application for emergency certification to a
13 facility. Application shall in all cases be made to the facility that, in the judgment of the applicant
14 at the time of application, would impose the least restraint on the liberty of the person consistent
15 with affording him or her the care and treatment necessary and appropriate to his or her condition.

16 (2) Whenever an applicant, who is not employed by a community mental health center
17 established pursuant to chapter 8.5 of this title, has reason to believe that either the ~~institute of~~
18 ~~mental health~~ Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital is the
19 appropriate facility for the person, the application shall be directed to the community mental health
20 center that serves the area in which the person resides, if the person is a Rhode Island resident, or
21 the area in which the person is physically present, if a nonresident, and the qualified mental health
22 professional(s) at the center shall make the final decision on the application to either the ~~institute~~
23 ~~of mental health~~ Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital or may
24 determine whether some other disposition should be made.

25 (b) Applications. An application for certification hereunder shall be in writing and filed
26 with the facility to which admission is sought. The application shall be executed within five (5)
27 days prior to the date of filing and shall state that it is based upon a personal observation of the
28 prospective patient by the applicant within the five-day (5) period. It shall include a description of
29 the applicant's credentials and the behavior that constitutes the basis for his or her judgment that
30 the prospective patient is in need of immediate care and treatment and that a likelihood of serious
31 harm by reason of ~~mental~~ psychiatric disability exists, and shall include, as well, any other relevant
32 information that may assist the admitting physician at the facility to which application is made.

33 ~~Whenever practicable, prior to transporting or arranging for the transporting of a prospective patient~~
34 ~~to a facility, the applicant shall telephone or otherwise communicate with the facility to describe~~

1 ~~the circumstances and known clinical history to determine whether it is the proper facility to receive~~
2 ~~the person, and to give notice of any restraint to be used or to determine whether restraint is~~
3 ~~necessary.~~ The application shall state whether the facility, in the judgment of the applicant at the
4 time of application, would impose the least restraint on the liberty of the person consistent with
5 affording him or her the care and treatment necessary and appropriate to his or her condition.
6 Whenever practicable, prior to transporting or arranging for the transporting of a prospective patient
7 to a facility, the applicant shall telephone or otherwise communicate with the facility to describe
8 the circumstances and known clinical history to determine whether it is the proper facility to receive
9 the person, and to give notice of any restraint to be used or to determine whether restraint is
10 necessary.

11 (c) Confirmation; discharge; transfer. Within one hour after reception at a facility, the
12 person regarding whom an application has been filed under this section shall be seen by a physician.
13 As soon as possible, but in no event later than twenty-four (24) hours after reception, a preliminary
14 examination and evaluation of the person by a psychiatrist or a physician under his or her
15 supervision shall begin. The psychiatrist shall not be an applicant hereunder. The preliminary
16 examination and evaluation shall be completed within seventy-two (72) hours from its inception
17 by the psychiatrist. If the psychiatrist determines that the patient is not a candidate for emergency
18 certification, he or she shall be discharged. If the psychiatrist(s) determines that the person who is
19 the subject of the application is in need of immediate care and treatment and is one whose continued
20 unsupervised presence in the community would create an imminent likelihood of serious harm by
21 reason of ~~mental~~ psychiatric disability, he or she shall confirm the admission for care and treatment
22 under this section of the person to the facility, provided the facility is one that would impose the
23 least restraint on the liberty of the person consistent with affording him or her the care and treatment
24 necessary and appropriate to his or her condition and that no suitable alternatives to certification
25 are available. If at any time the official in charge of a facility, or his or her designee, determines
26 that the person is not in need of immediate care and treatment, or is not one whose continued
27 unsupervised presence in the community would create an imminent likelihood of serious harm by
28 reason of ~~mental~~ psychiatric disability, or suitable alternatives to certification are available, he or
29 she shall immediately discharge the person. In addition, the official may arrange to transfer the
30 person to an appropriate facility if the facility to which he or she has been certified is not one that
31 imposes the least restraint on the liberty of the person consistent with affording him or her the care
32 and treatment necessary and appropriate to his or her condition.

33 (d) Custody. Upon the request of an applicant under this section, to be confirmed in writing,
34 it shall be the duty of any peace officer of this state or of any governmental subdivision thereof to

1 whom request has been made, ~~to take into custody and transport the person to the facility~~
2 ~~designated, the person to be expeditiously presented for admission thereto~~ to take into custody and
3 immediately transport the person to the designated facility for admission thereto.

4 (e) Ex parte court order. An applicant under this section may present a petition to any judge
5 of the district court or any justice of the family court, in the case of a person who is the subject of
6 an application who has not yet attained his or her eighteenth birthday, for a warrant directed to any
7 peace officer of the state or any governmental subdivision thereof to take into custody the person
8 who is the subject of the application and immediately transport the person to a designated facility.
9 The application shall set forth that the person who is to be certified is in need of immediate care
10 and treatment and his or her continued unsupervised presence in the community would create an
11 imminent likelihood of serious harm by reason of ~~mental~~ psychiatric disability, and the reasons
12 why an order directing a peace officer to transport the person to a designated facility is necessary.

13 (f) Notification of rights. No person shall be certified to a facility under the provisions of
14 this section unless appropriate opportunity is given to apply for voluntary admission under the
15 provisions of § 40.1-5-6 and unless he or she, or a parent, guardian, or next of kin, has been
16 informed, in writing, on a form provided by the department, by the official in charge of the facility:

17 (1) That he or she has a right to the voluntary admission; (2) That a person cannot be certified until
18 all available alternatives to certification have been investigated and determined to be unsuitable;
19 and (3) That the period of hospitalization or treatment in a facility cannot exceed ten (10) days
20 under this section, except as provided in subsection (g) of this section.

21 (g) Period of treatment. A person shall be discharged no later than ten (10) days measured
22 from the date of his or her admission under this section, unless an application for a civil court
23 certification has been filed and set down for a hearing under the provisions of § 40.1-5-8, or the
24 person remains as a voluntary patient pursuant to § 40.1-5-6.

25 **40.1-5-7.1. Emergency transportation by police.**

26 (a) Any police officer may take an individual into protective custody and take or cause the
27 person to be taken to an emergency room of any hospital, by way of emergency vehicle, if the
28 officer has reason to believe that:

29 (1) The individual is in need of immediate care and treatment, and is one whose continued
30 unsupervised presence in the community would create an imminent likelihood of serious harm by
31 reason of ~~mental~~ psychiatric disability if allowed to be at liberty pending examination by a licensed
32 physician; or

33 (2) The individual is in need of immediate assistance due to ~~mental~~ psychiatric disability
34 and requests the assistance.

1 (b) The officer making the determination to transport will document the reason for the
2 decision in a police report and travel with the individual to the hospital to relay the reason for
3 transport to the attending medical staff.

4 **40.1-5-8. Civil court certification.**

5 (a) Petitions. A verified petition may be filed in the district court, or family court in the
6 case of a person who has not reached his or her eighteenth (18th) birthday, for the certification to a
7 facility of any person who is alleged to be in need of care and treatment in a facility, and whose
8 continued unsupervised presence in the community would create a likelihood of serious harm by
9 reason of ~~mental~~ psychiatric disability. The petition may be filed by any person with whom the
10 subject of the petition may reside; or at whose house he or she may be; or the father or mother,
11 husband or wife, brother or sister, or the adult child of the person; the nearest relative if none of the
12 above are available; or his or her guardian; or the attorney general; or a local director of public
13 welfare; or the director of the department of behavioral healthcare, developmental disabilities and
14 hospitals; the director of the department of human services; or the director of the department of
15 corrections; the director of the department of health; the warden of the adult correctional
16 institutions; the superintendent of the boys training school for youth, or his or her designated agent;
17 or the director of any facility, or his or her designated agent, whether or not the person shall have
18 been admitted and is a patient at the time of the petition. A petition under this section shall be filed
19 only after the petitioner has investigated what alternatives to certification are available and
20 determined why the alternatives are not deemed suitable.

21 (b) Contents of petition. The petition shall state that it is based upon a personal observation
22 of the person concerned by the petitioner within a ten-day (10) period prior to filing. It shall include
23 a description of the behavior that constitutes the basis for the petitioner's judgment that the person
24 concerned is in need of care and treatment and that a likelihood of serious harm by reason of ~~mental~~
25 psychiatric disability exists. In addition, the petitioner shall indicate what alternatives to
26 certification are available; what alternatives have been investigated; and why the investigated
27 alternatives are not deemed suitable.

28 (c) Certificates and contents thereof. A petition hereunder shall be accompanied by the
29 certificates of two (2) physicians unless the petitioner is unable to afford, or is otherwise unable to
30 obtain, the services of a physician or physicians qualified to make the certifications. The certificates
31 shall be rendered pursuant to the provisions of § 40.1-5-5, except when the patient is a resident in
32 a facility, the attending physician and one other physician from the facility may sign the certificates,
33 and shall set forth that the prospective patient is in need of care and treatment in a facility and
34 would likely benefit therefrom, and is one whose continued unsupervised presence in the

1 community would create a likelihood of serious harm by reason of ~~mental~~ psychiatric disability
2 together with the reasons therefor. The petitions and accompanying certificates shall be executed
3 under penalty of perjury, but shall not require the signature of a notary public thereon.

4 (d) Preliminary hearing.

5 (1) Upon a determination that the petition sets forth facts constituting reasonable grounds
6 to support certification, the court shall summon the person to appear before the court at a
7 preliminary hearing, scheduled no later than five (5) business days from the date of filing. This
8 hearing shall be treated as a priority on the court calendar and may be continued only for good
9 cause shown. In default of an appearance, the court may issue a warrant directing a police officer
10 to bring the person before the court.

11 (2) At the preliminary hearing, the court shall serve a copy of the petition upon the person
12 and advise him or her of the nature of the proceedings and of his or her right to counsel. If the
13 person is unable to afford counsel, the court forthwith shall appoint the mental health advocate for
14 him or her. If the court finds that there is no probable cause to support certification, the petition
15 shall be dismissed, and the person shall be discharged unless the person applies for voluntary
16 admission. However, if the court is satisfied by the testimony that there is probable cause to support
17 certification, a final hearing shall be held not less than seven (7) days, nor more than twenty-one
18 (21) days, after the preliminary hearing, unless continued at the request of counsel for the person,
19 and notice of the date set down for the hearing shall be served on the person. Copies of the petition
20 and notice of the date set down for the hearing shall also be served immediately upon the person's
21 nearest relatives or legal guardian, if known, and to any other person designated by the patient, in
22 writing, to receive copies of notices. The preliminary hearing can be waived by a motion of the
23 patient to the court if the patient is a resident of a facility.

24 (e) Petition for examination.

25 (1) Upon motion of either the petitioner or the person, or upon its own motion, the court
26 may order that the person be examined by a psychiatrist appointed by the court. The examination
27 may be conducted on an outpatient basis and the person shall have the right to the presence of
28 counsel while it is being conducted. A report of the examination shall be furnished to the court, the
29 petitioner, and the person and his or her counsel at least forty-eight (48) hours prior to the hearing.

30 (2) If the petition is submitted without two (2) physicians' certificates as required under
31 subsection (c), the petition shall be accompanied by a motion for a psychiatric examination to be
32 ordered by the court. The motion shall be heard on the date of the preliminary hearing set by the
33 court pursuant to subsection (d), or as soon thereafter as counsel for the subject person is engaged,
34 appointed, and ready to proceed. The motion shall be verified or accompanied by affidavits and

1 shall set forth facts demonstrating the efforts made to secure examination and certification by a
2 physician or physicians and shall indicate the reasons why the efforts failed.

3 (3) After considering the motion and testimony as may be offered on the date of hearing
4 the motion, the court may deny the application and dismiss the petition, or upon finding: (i) That
5 there is a good cause for the failure to obtain one or more physician's certificates in accordance
6 with subsection (c); and (ii) That there is probable cause to substantiate the allegations of the
7 petition, the court shall order an immediate examination by two (2) qualified psychiatrists, pursuant
8 to subsection (e)(1).

9 (f) Professional assistance. A person with respect to whom a court hearing has been ordered
10 under this section shall have, and be informed of, a right to employ a mental health professional of
11 his or her choice to assist him or her in connection with the hearing and to testify on his or her
12 behalf. If the person cannot afford to engage such a professional, the court shall, on application,
13 allow a reasonable fee for the purpose.

14 (g) Procedure. Upon receipt of the required certificates and/or psychiatric reports as
15 applicable hereunder, the court shall schedule the petition for final hearing unless, upon review of
16 the reports and certificates, the court concludes that the certificates and reports do not indicate, with
17 supporting reasons, that the person who is the subject of the petition is in need of care and treatment;
18 that his or her unsupervised presence in the community would create a likelihood of serious harm
19 by reason of ~~mental~~ psychiatric disability; and that all alternatives to certification have been
20 investigated and are unsuitable, in which event the court may dismiss the petition.

21 (h) Venue. An application for certification under this section shall be made to, and all
22 proceedings pursuant thereto shall be conducted in, the district court, or family court in the case of
23 a person who has not yet reached his or her eighteenth (18th) birthday, of the division or county in
24 which the subject of an application may reside or may be, or when the person is already a patient
25 in a facility, in the district court or family court of the division or county in which the facility is
26 located, subject, however, to application by any interested party for change of venue because of
27 inconvenience of the parties or witnesses or the condition of the subject of the petition or other
28 valid judicial reason for the change of venue.

29 (i) Hearing. A hearing scheduled under this section shall be conducted pursuant to the
30 following requirements:

31 (1) All evidence shall be presented according to the usual rules of evidence that apply in
32 civil, non-jury cases. The subject of the proceedings shall have the right to present evidence in his
33 or her own behalf and to cross examine all witnesses against him or her, including any physician
34 who has completed a certificate or filed a report as provided hereunder. The subject of the

1 proceedings shall have the further right to subpoena witnesses and documents, the cost of such to
2 be borne by the court where the court finds upon an application of the subject that the person cannot
3 afford to pay for the cost of subpoenaing witnesses and documents.

4 (2) A verbatim transcript or electronic recording shall be made of the hearing that shall be
5 impounded and obtained or examined only with the consent of the subject thereof (or in the case of
6 a person who has not yet attained his or her eighteenth (18th) birthday, his or her parent, guardian,
7 or next of kin) or by order of the court.

8 (3) The hearing may be held at a location other than a court, including any facility where
9 the subject may currently be a patient, where it appears to the court that holding the hearing at
10 another location would be in the best interests of the subject thereof.

11 (4) The burden of proceeding and the burden of proof in a hearing held pursuant to this
12 section shall be upon the petitioner. The petitioner has the burden of demonstrating that the subject
13 of the hearing is in need of care and treatment in a facility; is one whose continued unsupervised
14 presence in the community would create a likelihood of serious harm by reason of ~~mental~~
15 psychiatric disability; and what alternatives to certification are available, what alternatives to
16 certification were investigated, and why these alternatives were not deemed suitable.

17 (5) The court shall render a decision within forty-eight (48) hours after the hearing is
18 concluded.

19 (j) Order. If the court at a final hearing finds by clear and convincing evidence that the
20 subject of the hearing is in need of care and treatment in a facility, and is one whose continued
21 unsupervised presence in the community would, by reason of ~~mental~~ psychiatric disability, create
22 a likelihood of serious harm, and that all alternatives to certification have been investigated and
23 deemed unsuitable, it shall issue an order committing the person to the custody of the director for
24 care and treatment or to an appropriate facility. In either event, and to the extent practicable, the
25 person shall be cared for in a facility that imposes the least restraint upon the liberty of the person
26 consistent with affording him or her the care and treatment necessary and appropriate to his or her
27 condition. No certification shall be made under this section unless and until full consideration has
28 been given by the certifying court to the alternatives to in-patient care, including, but not limited
29 to, a determination of the person's relationship to the community and to his or her family; of his or
30 her employment possibilities; and of all available community resources, alternate available living
31 arrangements, foster care, community residential facilities, nursing homes, and other convalescent
32 facilities. A certificate ordered pursuant to this section shall be valid for a period of six (6) months
33 from the date of the order. At the end of that period the patient shall be discharged, unless he or she
34 is discharged prior to that time, in which case the certification shall expire on the date of the

1 discharge.

2 (k) Appeals.

3 (1) A person certified under this section shall have a right to appeal from a final hearing to
4 the supreme court of the state within thirty (30) days of the entry of an order of certification. The
5 person shall have the right to be represented on appeal by counsel of his or her choice or by the
6 mental health advocate if the supreme court finds that he or she cannot afford to retain counsel.
7 Upon a showing of indigency, the supreme court shall permit an appeal to proceed without payment
8 of costs, and a copy of the transcript of the proceedings below shall be furnished to the subject of
9 the proceedings, or to his or her attorney, at the expense of the state. The certifying court shall
10 advise the person of all his or her rights pursuant to this section immediately upon the entry of an
11 order of certification.

12 (2) Appeals under this section shall be given precedence, insofar as practicable, on the
13 supreme court dockets. The district and family courts shall promulgate rules with the approval of
14 the supreme court to insure the expeditious transmission of the record and transcript in all appeals
15 pursuant to this chapter.

16 (l) Submission to NICS database.

17 (1) The district court shall submit the name, date of birth, gender, race or ethnicity, and
18 date of civil commitment to the National Instant Criminal Background Check System (NICS)
19 database of all persons subject to a civil court certification order pursuant to this section within
20 forty-eight (48) hours of certification.

21 (2) Any person affected by the provisions of this section, after the lapse of a period of three
22 (3) years from the date such civil certification is terminated, shall have the right to appear before
23 the relief from disqualifiers board.

24 (3) Upon notice of a successful appeal pursuant to subsection (k), the district court shall,
25 as soon as practicable, cause the appellant's record to be updated, corrected, modified, or removed
26 from any database maintained and made available to the NICS and reflect that the appellant is no
27 longer subject to a firearms prohibition as it relates to 18 U.S.C. § 922(d)(4) and 18 U.S.C. §
28 922(g)(4).

29 (m) Equitable authority. In addition to the powers heretofore exercised, the district and
30 family courts are hereby empowered, in furtherance of their jurisdiction under this chapter, to grant
31 petitions for instructions for the provision or withholding of treatment as justice and equity may
32 require.

33 **40.1-5-11. Discharge -- Recertification.**

34 (a) The official in charge of any facility, or his or her designated agent, on having his or

1 her reasons noted on the patient's records, shall discharge any patient certified or admitted pursuant
2 to the provisions of this chapter, when:

3 (1) Suitable alternatives to certification or admission are available;

4 (2) The patient is, in the judgment of the official, recovered;

5 (3) The patient is not recovered, but discharge, in the judgment of the official, will not
6 create a likelihood of serious harm by reason of ~~mental~~ psychiatric disability.

7 (b) When a patient discharge is requested and if the discharge is denied, the reasons therefor
8 shall be stated, in writing, and noted in the patient's record and a copy thereof shall be given to the
9 person applying for the release.

10 (c) At the expiration of the six-month (6) period set forth in § 40.1-5-8(j), or any subsequent
11 six-month (6) period following recertification pursuant to this section, the patient shall be
12 unconditionally released unless a recertification petition is filed by the official in charge of a
13 facility, or his or her designated agent, within no less than fifteen (15) days and no more than thirty
14 (30) days prior to the scheduled expiration date of a six-month (6) period. A hearing must be held
15 pursuant to the petition and a decision rendered before the expiration of the six-month (6) period.
16 A recertification hearing shall follow all of the procedures set forth in § 40.1-5-8 and recertification
17 may be ordered only if the petitioner proves by clear and convincing evidence that the conduct and
18 responses of the patient during the course of the previous six-month (6) period indicate that the
19 patient is presently in need of care and treatment in a facility; is one whose continued unsupervised
20 presence in the community would create a likelihood of serious harm by reason of ~~mental~~
21 psychiatric disability; and that all alternatives to recertification have been investigated and deemed
22 unsuitable.

23 **40.1-5-27.1. Disclosure by mental health professional.**

24 (a) Notwithstanding §§ 40.1-5-26 and 40.1-5-27, a mental health professional providing
25 care and treatment to an adult person with a ~~mental~~ psychiatric disability as defined in ~~§ 40.1-5-~~
26 ~~2(8)~~ § 40.1-5-2(12) may provide certain information to a family member or other person if this
27 family member or other person lives with and provides direct care to the ~~mentally~~ psychiatrically
28 disabled person, and without such direct care there would be significant deterioration in the
29 ~~mentally~~ psychiatrically disabled person's daily functioning, and such disclosure would directly
30 assist in the care of the ~~mentally~~ psychiatrically disabled person. Disclosure can be made only at
31 the written request of the family member or person living with the ~~mentally~~ psychiatrically disabled
32 person.

33 (b) Prior to the disclosure, the ~~mentally~~ psychiatrically disabled person shall be informed,
34 in writing, of the request, the name of the person requesting the information, the reason for the

1 request, and the specific information being provided. Prior to disclosure, the **mentally**
2 **psychiatrically** disabled person shall be provided the opportunity to give or withhold consent. If the
3 **mentally psychiatrically** disabled person withholds consent, the information shall not be disclosed
4 and the family member or other person shall be provided the opportunity to appeal. Disclosures
5 shall be limited to information regarding diagnosis, admission to or discharge from a treatment
6 facility, the name of the medication prescribed, and side effects of prescribed medication.

7 (c) On or before April 1, 1993, the department of behavioral healthcare, developmental
8 disabilities and hospitals shall promulgate rules and regulations to further define and interpret the
9 provisions of this section. In the development of these rules and regulations, the department shall
10 work with an advisory committee composed, at a minimum, of proportionate representation from
11 the following: the Coalition of Consumer Self Advocates, the Alliance for the Mentally Ill, the
12 Mental Health Association of Rhode Island, the Council of Community Mental Health Centers, the
13 mental health advocate, and Rhode Island Protection and Advocacy Services. Rules and regulations
14 by the department shall include the provision of an appeals process, that would serve to protect the
15 rights of **mentally psychiatrically** disabled persons under the law.

16 **40.1-5-31. Maintenance of facilities.**

17 Facilities under the jurisdiction, supervision, and control of the department shall be
18 maintained, and services shall be provided, for the care and treatment of the **mentally**
19 **psychiatrically** disabled of the state and for other persons and related purposes as shall be provided
20 and authorized by law.

21 **40.1-5-32. Transfer of patients.**

22 (a) No transfer of a patient already in a facility shall be made to a facility, or section of a
23 facility, maintained for patients certified upon an order of a court or judge having criminal
24 jurisdiction in a proceeding arising out of a criminal offense. The official in charge of a facility, or
25 his or her designated agent, shall have reasonable discretion to order or permit transfers within a
26 facility for reason of finances, adequacy of personnel, and upon conditions set forth in rules or
27 regulations promulgated by the director pursuant hereto.

28 (b) A patient certified to any facility pursuant to the provisions of this chapter may be
29 transferred, with his or her consent or that of his or her guardian, to any facility within or without
30 the state or to an institution operated by the Veterans' Administration or to any agency of the United
31 States government for the treatment of **mental psychiatric** disability at a facility under its
32 jurisdiction, within or without the state, when deemed in the interest of the patient and approved
33 by the transferring and receiving facilities. A transfer as above described may be accomplished
34 without the consent of a patient, or his or her guardian, only upon prior application to, and a hearing

1 in, the district court (or family court in the case of a patient under eighteen (18) years of age) and a
2 specific finding by the court that the proposed transfer is in the best interests of the patient and is
3 to a facility that will afford the patient the care and treatment necessary and appropriate to his or
4 her condition.

5 (c) A patient received on voluntary admission may be transferred as provided in subsection
6 (b) with his or her consent; and if the patient shall not yet have attained his or her eighteenth
7 birthday, with the consent of his or her parent, guardian, next of kin, or person who signed for his
8 or her admission. A voluntary patient may be transferred to another facility without his or her
9 consent only upon the filing of a petition for certification to the facility, and a finding of probable
10 cause at a preliminary hearing in accordance with § 40.1-5-8.

11 (d) Patients transferred to facilities without the state, or to the Veterans' Administration or
12 the United States Public Health Service, or another agency operated by the United States
13 government, shall be subject to the rules and regulations of the facility or institution to which they
14 are transferred, and the person or official in charge thereof, in connection with the care and
15 treatment of the patient, being vested with the same powers as persons in charge of similar facilities
16 within the state, provided that no such transfer shall be made to a facility maintained for the purpose
17 of patients committed upon an order of a court or judge having criminal jurisdiction in a proceeding
18 arising out of a criminal offense. Transfers of patients between states that have entered into the
19 interstate compact on mental health shall be pursuant to and in accordance with said compact
20 whenever applicable.

21 **40.1-5-33. Payment for care and treatment.**

22 For the purposes of this chapter, facilities shall be maintained by the state for the care,
23 treatment, and maintenance of the ~~mentally~~ psychiatrically disabled, and the patients may be
24 maintained and treated in the facilities or in foster family care, and may receive the services
25 conditioned upon prompt and regular payments for the care, maintenance, and treatment or for the
26 services in amounts as fixed by the director. In the discretion of the director, the rates so fixed may
27 be the reimbursement rates or in excess thereof. A preference shall be given to persons whose
28 estate, or the person or persons legally liable for their support, cannot sufficiently pay for the care
29 and treatment, or for the services in licensed private facilities or from sources outside the
30 department. The director, in his or her discretion, may accept payments for services at less than the
31 reimbursement rates, but the acceptance of the lesser payments shall not release the patient, his or
32 her estate, or relatives, if they have sufficient financial ability, from the obligation to make up the
33 difference between the amount fixed, accepted, or paid and the full reimbursement rates.

34 **40.1-5-34. Exclusiveness of this chapter.**

1 Where under any provision of any existing law, except in the case of a person held under
2 criminal process, or under process of the family court for an act that would be considered a crime
3 if committed by an adult, any person with ~~mental~~ psychiatric disability, as defined in this chapter,
4 shall have recourse to or be dealt with as provided in this chapter, exclusively. This section shall
5 prevail notwithstanding the provisions of § 14-1-5(1)(v).

6 SECTION 8. Sections 40.1-5.3-1, 40.1-5.3-2 and 40.1-5.3-3 of the General Laws in
7 Chapter 40.1-5.3 entitled "Incompetency to Stand Trial and Persons Adjudged Not Guilty by
8 Reason of Insanity" are hereby amended to read as follows:

9 **40.1-5.3-1. Facility for incompetent persons and others.**

10 (a) The state director of behavioral healthcare, developmental disabilities and hospitals
11 shall maintain, ~~at the state institution of Cranston, an appropriate facility~~ appropriate facilities,
12 including the Rhode Island State Psychiatric Hospital and the Eleanor Slater Hospital, for the
13 confinement of persons committed to his or her custody pursuant to this chapter and shall provide
14 for the proper care, treatment, and restraint of all such persons. All persons now or hereafter
15 committed, pursuant to the provisions of §§ 40.1-5.3-3, 40.1-5.3-4, 40.1-5.3-7, or the provisions of
16 prior law, shall be removed or committed, as the case may be, ~~to the facility~~ to the facility into the
17 custody of the director, or his or her designee, who in turn shall ensure the admission of the person
18 to either the Rhode Island State Psychiatric Hospital or the Eleanor Slater Hospital in the discretion
19 of the director or his or her designee.

20 (b) The cost of care, maintenance, and treatment of persons committed to the custody of
21 the director of behavioral healthcare, developmental disabilities and hospitals, as provided in §§
22 40.1-5.3-3 and 40.1-5.3-4, unless otherwise provided for, shall be paid by the person, if he or she
23 has any estate, or by the person liable for his or her support, if such there be; otherwise, the director
24 may maintain without charge or defray the expense of care and treatment of the poor or indigent
25 persons incompetent to stand trial or acquitted on the grounds of insanity.

26 **40.1-5.3-2. ~~Transfers to and from general wards~~ Transfers between state-operated**
27 **hospitals.**

28 Whenever any person committed, transferred, or removed to either the Rhode Island State
29 Psychiatric Hospital or the Eleanor Slater Hospital to the facility provided for in § 40.1-5.3-1 shall
30 have recovered his or her mental health sufficiently, ~~or if any such person requires more intensive~~
31 ~~treatment or supervision to be cared for in the general wards of the institute of mental health,~~ the
32 director may, upon request of the ~~superintendent~~ chief executive officer or the chief medical officer
33 of ~~the state~~ either state-operated hospital, ~~transfer~~ discharge the person ~~to the general wards of the~~
34 ~~state hospital, and retransfer him or her to the facility provided for in § 40.1-5.3-1 upon a like~~

1 ~~request~~ from the first hospital and then admit the person to the general units of either the Rhode
2 Island State Psychiatric Hospital or Eleanor Slater Hospital, as the case may be.

3 **40.1-5.3-3. Competency to stand trial.**

4 (a) Definitions. As used in this section:

5 (1) "Attorney for the state" means the attorney general, an authorized assistant attorney
6 general, or other person as may be authorized by law to act as a representative of the state in a
7 criminal proceeding;

8 (2) "Competent" or "competency" means mental ability to stand trial. A person is mentally
9 competent to stand trial if he or she is able to understand the character and consequences of the
10 proceedings against him or her and is able properly to assist in his or her defense;

11 (3) "Department" means the state department of behavioral healthcare, developmental
12 disabilities and hospitals.

13 (4) "Director" means the director of the state department of behavioral healthcare,
14 developmental disabilities and hospitals;

15 (5) "Incompetent" or "incompetency" means mentally incompetent to stand trial. A person
16 is mentally incompetent to stand trial if he or she is unable to understand the character and
17 consequences of the proceedings against him or her or is unable properly to assist in his or her
18 defense.

19 (b) Presumption of competency. A defendant is presumed competent. The burden of
20 proving that the defendant is not competent shall be by a preponderance of the evidence, and the
21 burden of going forward with the evidence shall be on the party raising the issue. The burden of
22 going forward shall be on the state if the court raises the issue.

23 (c) Request for examination. If at any time during a criminal proceeding, prior to the
24 imposition of sentence, it appears that the defendant is not competent, counsel for the defendant or
25 the state, or the court, on its own motion, may request an examination to determine the defendant's
26 competency.

27 (d) Examination of defendant.

28 (1) If the court finds that the request for examination is justified, the court shall order an
29 examination of the defendant. The scope of the examination shall be limited to the question of
30 whether the defendant is competent.

31 (2) The examination shall take place on an outpatient basis if the defendant is to be released
32 on bail or recognizance. If the defendant is ordered confined at the adult correctional institutions,
33 the examination shall take place at that facility. The department shall appoint or designate the
34 physician(s) who will conduct the examinations.

1 (3) If the defendant is ordered confined to the adult correctional institutions, the physician
2 shall complete the examination within five (5) days. If the physician determines that the defendant
3 is incompetent to stand trial, the defendant shall be immediately transferred ~~for admission to the~~
4 ~~institute of mental health's forensic unit~~ Rhode Island State Psychiatric Hospital or the Eleanor
5 Slater Hospital, pending the hearing provided for in subsection (g). At the discretion of the director,
6 pending the hearing provided for in subsection (g), the defendant may be discharged from one state-
7 operated hospital for the purpose of contemporaneously admitting the defendant to the other state-
8 operated hospital pursuant to the procedures enumerated in § 40.1-5.3-2.

9 (e) Bail or recognizance during examination.

10 (1) A defendant for whom a competency examination has been ordered shall be entitled to
11 release on bail or recognizance to the same extent and on the same terms and conditions as if the
12 issue of competency had not been raised.

13 (2) The court may order the defendant to appear at a designated time and place for
14 outpatient examination, and such an appearance may be made a condition of pretrial release.

15 (f) Reports of examining physicians. Each examining physician shall prepare a report, in
16 writing, in which he or she shall state his or her findings concerning the defendant's competency,
17 together with the medical and other data upon which his or her findings are based. The report shall
18 be filed with the court within ten (10) business days if the defendant was ordered confined at the
19 adult correctional institutions, and as soon as practicable if the defendant was released on bail or
20 recognizance, and copies given to the attorney for the state and to the defendant or his or her
21 counsel.

22 (g) Hearing. Upon receipt of the report and appropriate notice to the parties, the court shall
23 hold a hearing unless the report concludes that the defendant is competent and the defendant and
24 the attorney for the state in open court state their assent to the findings on the record. At the hearing,
25 the report shall be introduced, other evidence bearing on the defendant's competence may be
26 introduced by the parties, and the defendant may testify, confront witnesses, and present evidence
27 on the issue of his or her competency. On the basis of the evidence introduced at the hearing, the
28 court shall decide if the defendant is competent.

29 (h) Commitment of the defendant.

30 (1) If the court finds, after the hearing, that a defendant is competent, it shall proceed with
31 the criminal case.

32 (2) If the court finds that a defendant is incompetent, it shall commit him or her to the
33 custody of the director for the purpose of determining whether or not the defendant is likely to
34 imperil the peace and safety of the people of the state or the safety of himself or herself and whether

1 the defendant will regain competency within the maximum period of any placement under this
2 chapter.

3 (3) Not later than fifteen (15) days from the date of the order of commitment, the director
4 shall prepare and file with the court a written report in which he or she shall state his or her opinion
5 regarding the defendant's dangerousness; the likelihood of the defendant becoming competent to
6 stand trial within the maximum period of any placement order; and the recommendations of the
7 department regarding appropriate care and treatment of the defendant.

8 (4) In the event the director is unable to complete the examination of the person in time to
9 render his or her report within the fifteen-day (15) period, he or she shall report that fact, in writing,
10 to the court with a statement of the reasons why the examination and report could not be completed
11 within the prescribed period. A copy of the director's statement shall be given to the attorney general
12 and to the defendant, or his or her counsel, any of whom may respond in writing, or if the court
13 deems it appropriate, orally, to the director's statement. The court may thereupon enter an order
14 extending for an additional twenty (20) days the time in which the director is to file his or her report.

15 (i) Hearing.

16 (1) Upon receipt of the report and appropriate notice to the director, the attorney general,
17 and the defendant, or his or her counsel, the court shall hold a hearing at which the report shall be
18 introduced, other evidence bearing on the question of the mental condition of the person may be
19 introduced by the parties, and the person may testify, confront witnesses, and present evidence.

20 (2) If the court finds that a defendant who is incompetent may be placed on outpatient status
21 without imperiling the peace or safety of the public or the safety of himself or herself, it may
22 commit the defendant to an appropriate outpatient facility that agrees to provide treatment to the
23 defendant and to adhere to the requirements of this section, in order that the defendant may receive
24 treatment to restore or establish his or her competency.

25 (3) If the court finds that a defendant who is incompetent is likely to imperil the peace or
26 safety of the people of the state or the peace and safety of himself or herself, it may order the
27 defendant to the ~~facility established~~ [Rhode Island State Psychiatric Hospital or the Eleanor Slater](#)
28 [Hospital](#), pursuant to § 40.1-5.3-1 ~~or to the general wards of the institute of mental health, if the~~
29 ~~director agrees that the defendant should be placed on the general wards~~. A person who is ordered
30 to be treated on inpatient status shall not be paroled, furloughed, placed on outpatient status or
31 removed from a locked facility, or otherwise released from the institution where he or she is being
32 treated except upon petition to the court by the director, on notice to the attorney general and the
33 defendant, or his or her counsel, and after hearing thereon and entry of an order by a judge of the
34 court authorizing release. The commitment ordered pursuant to this section shall terminate upon

1 the occurrence of any of the following:

2 (i) The defendant is determined by the court to be competent; or

3 (ii) The charges against the defendant are dismissed pursuant to subsection (j); or

4 (iii) The charges against the defendant are dismissed or a nolle prosequi is entered; or

5 (iv) The defendant is civilly committed pursuant to § 40.1-5-8; or

6 (v) The court finds there is no reasonable likelihood that in the foreseeable future the
7 defendant will become competent and his or her condition is such that he or she cannot properly be
8 committed under § 40.1-5-8.

9 (j) Period of commitment. When a court commits a defendant pursuant to subsection (i)(2)
10 or (i)(3), it shall compute, counting from the date of entry to the order of commitment, the date of
11 the expiration of the period of time equal to two thirds ($\frac{2}{3}$) of the maximum term of imprisonment
12 for the most serious offense with which the defendant is charged. If the maximum term for the most
13 serious offense charged is life imprisonment or death, the court shall, for the purpose of
14 computation, deem the offense to be punishable by a maximum term of thirty (30) years. In the
15 order of commitment, the court shall provide that if, on the date so computed, the defendant is still
16 committed under the order, the charges against him or her shall be dismissed.

17 (k) Periodic review. The director shall petition the court to review the state of competency
18 of a defendant committed pursuant to subsection (i)(2) or (i)(3) not later than six (6) months from
19 the date of the order of commitment and every six (6) months thereafter, or when the director
20 believes the defendant is no longer incompetent, whichever occurs first. Outpatient facilities that
21 are providing treatment to defendants in accordance with subsection (i)(2) shall prepare reports to
22 be submitted to the director in accordance with the requirements of this section. The director shall
23 attach to the petition a report on the condition of the defendant. If the report indicates that the
24 defendant remains incompetent, it shall include a prognosis regarding the likelihood that he or she
25 will become competent prior to the dismissal of the charges pursuant to subsection (j). Copies of
26 the report shall be given to the attorney for the state and to the defendant or his or her counsel.

27 (l) Defendant's right to petition. A defendant committed pursuant to subsection (i)(2) or
28 (i)(3) may at any time petition the court to review the state of his or her competency.

29 (m) Hearing on petition. Upon receipt of a petition pursuant to subsection (k) or (l) and
30 appropriate notice to the defendant, the state, and the director, the court shall hold a hearing at
31 which the parties may introduce evidence as to the defendant's competency, including any reports
32 of the director, and the defendant may testify, confront witnesses, and present evidence as to his or
33 her competency and prognosis. On the basis of the evidence, the court shall make a finding as to
34 the defendant's competency and, if he or she is found to be incompetent, whether a reasonable

1 likelihood exists that he or she will become competent prior to the dismissal of the charges pursuant
2 to subsection (j). If the court finds that the defendant is competent, it shall enter an order to that
3 effect. If the court finds that the defendant is incompetent and that a reasonable likelihood exists
4 that he or she will become competent prior to the dismissal of the charges pursuant to subsection
5 (j), it shall order continuation of the commitment of the defendant. If the court finds that the
6 defendant is incompetent and that a reasonable likelihood does not exist that he or she will become
7 competent prior to the dismissal of the charges pursuant to subsection (j), it shall order that thirty
8 (30) days thereafter the defendant be discharged from detention under the order of commitment.
9 Upon entry of the order, the state may commence proceedings seeking to commit the defendant
10 pursuant to § 40.1-5-8.

11 (n) Statements inadmissible. No statements made by a defendant in the course of an
12 examination conducted pursuant to subsection (d) or during a hearing conducted pursuant to
13 subsection (i) or (m) shall be admissible in evidence against the defendant in any criminal action
14 on any issue other than his or her mental condition. The statements shall be admissible on the issue
15 of his or her mental condition even though they might otherwise be deemed to be privileged
16 communications.

17 (o) Disposition of charges. The court may, at any time, proceed to a disposition of the
18 charges pending against a defendant who has been committed pursuant to subsection (i)(2) or (i)(3)
19 if the factual and legal issues involved can be resolved without regard to the competency of the
20 defendant.

21 SECTION 9. Sections 42-12.1-4 and 42-12.1-9 of the General Laws in Chapter 42-12.1
22 entitled "Department of Behavioral Healthcare, Developmental Disabilities and Hospitals" are
23 hereby amended to read as follows:

24 **42-12.1-4. Management of institutions.**

25 The department of behavioral healthcare, developmental disabilities and hospitals shall
26 have the management, supervision, and control of both the Eleanor Slater Hospital and the Rhode
27 Island State Psychiatric Hospital, and such other functions as have been or may be assigned. The
28 director of the department may delegate to another employee of the department any functions
29 related to the separate management, supervision and control of the state-operated hospitals. The
30 department also shall operate, maintain, and repair the buildings, grounds, and other physical
31 property at those institutions, other than the roads and driveways, which shall be under the care and
32 supervision of the department of transportation.

33 **42-12.1-9. The Eleanor Slater Hospital.**

34 ~~The facilities known as the general hospital, the institution of mental health and the Dr. U.~~

1 ~~E. Zambarano within the state of Rhode Island shall hereafter be named the "Eleanor Slater~~
2 ~~Hospital."~~ The hospital known as the Eleanor Slater Hospital shall consist of facilities in Cranston
3 and/or Burrillville, or any units of such facilities, as licensed by the department of health.

4 SECTION 10. Chapter 42-12.1 of the General Laws entitled "Department of Behavioral
5 Healthcare, Developmental Disabilities and Hospitals" is hereby amended by adding thereto the
6 following section:

7 **42-12.1-10. The Rhode Island State Psychiatric Hospital.**

8 (a) A new hospital is hereby established to furnish care to any adult patient in Rhode Island
9 requiring inpatient psychiatric care, and who meets at least one of the following criteria:

10 (1) The individual has been determined to require specialized mental health care and
11 psychiatric inpatient services that cannot be provided in a correctional facility as defined in § 40.1-
12 5.3-7:

13 (2) The individual has been ordered to inpatient care by a court of competent jurisdiction
14 for the purpose of competency evaluation, competency restoration, if indicated, and treatment;

15 (3) The individual has been ordered to the forensic unit after a finding of not guilty by
16 reason of insanity until such time, subject to a determination of the director or his/her designee, the
17 individual may be safely managed in a civil unit of Eleanor Slater Hospital;

18 (4) The individual has been transferred to the Rhode Island State Psychiatric Hospital from
19 the department of corrections when specialized services are required that are better provided in a
20 hospital setting and are provided until such time, in the discretion of the director, the patient's
21 condition has improved to the point at which the patient may be returned to the adult correctional
22 institutions and to receive sufficient treatment, as approved by a judge of the district court or a
23 justice of the superior court pursuant the applicable procedures and requirements of sections 6, 7,
24 8, 9 and/or 9.1 of chapter 5.3 of title 40.1.

25 (b) The new hospital shall be named the Rhode Island State Psychiatric Hospital and shall
26 consist of facilities, or any units of such facilities, on the grounds of the John O. Pastore Center in
27 Cranston, Rhode Island, as licensed by the department of health.

28 (c) The Rhode Island State Psychiatric Hospital shall be operated by the department of
29 behavioral healthcare, developmental disabilities and hospitals and shall be licensed by the
30 department of health pursuant to chapter 17 of title 23; however, the Rhode Island State Psychiatric
31 Hospital shall be a separate licensed entity from the Eleanor Slater Hospital; and

32 (d) The director of the department of behavioral healthcare, developmental disabilities and
33 hospitals is authorized to take such actions as may be necessary or prudent to establish the Rhode
34 Island State Psychiatric Hospital consistent with this chapter.

1

SECTION 11. This article shall take effect upon passage.