

2023 -- S 0723

LC002292

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS -- MENTAL HEALTH LAW

Introduced By: Senators DiMario, Miller, Lawson, and Lauria

Date Introduced: March 22, 2023

Referred To: Senate Health & Human Services

(Dept. of BHDDH)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 40.1-5-2, 40.1-5-5, 40.1-5-7, 40.1-5-8, 40.1-5-9, 40.1-5-10 and
2 40.1-5-11 of the General Laws in Chapter 40.1-5 entitled "Mental Health Law" are hereby amended
3 to read as follows:

4 **40.1-5-2. Definitions.**

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

8 (1) "Advanced practice registered nurse" (APRN). For the purposes of this chapter,
9 advanced practice registered nurse (APRN) is the title given to an individual licensed to practice
10 advanced practice registered nursing within one of the following roles: certified nurse practitioner
11 (CNP) as defined under § 5-34-3 or certified clinical nurse specialist as defined under § 5-34-3 who
12 functions in the population focus as defined under § 5-34-3 and whose scope of practice is defined
13 under §§ 5-34-3(1), 5-34-3(2) and 5-34-3(15).

14 ~~(1)~~(2) "Alternatives to admission or certification" means alternatives to a particular facility
15 or treatment program, and shall include, but not be limited to, voluntary or court-ordered outpatient
16 treatment, day treatment in a hospital, night treatment in a hospital, placement in the custody of a
17 friend or relative, placement in a nursing home, referral to a community mental health clinic and
18 home health aide services, or any other services that may be deemed appropriate.

1 ~~(2)~~(3) “Care and treatment” means psychiatric care, together with such medical, nursing,
2 psychological, social, rehabilitative, and maintenance services as may be required by a patient in
3 association with the psychiatric care provided pursuant to an individualized treatment plan recorded
4 in the patient’s medical record.

5 ~~(3)~~(4) “Department” means the state department of behavioral healthcare, developmental
6 disabilities and hospitals.

7 ~~(4)~~(5) “Director” means the director of the state department of behavioral healthcare,
8 developmental disabilities and hospitals.

9 ~~(5)~~~~(6)~~(6) “Facility” means but is not limited to, any public or private hospital licensed by
10 the Rhode Island department of health that maintains staff and facilities, including inpatient units,
11 for the care and treatment of persons with psychiatric illness, psychiatric disorders, and/or
12 psychiatric disabilities; ~~and in~~ and/or a community mental health center as defined in § 40.1-8.5-2.
13 In order to operate pursuant to the Mental Health ~~Act~~ Law as codified in this chapter, such facility
14 ~~and/or inpatient unit~~ must be approved by the director of the department of behavioral healthcare,
15 developmental disabilities and hospitals upon application ~~of such facility and/or inpatient unit, and~~
16 ~~any of the several community mental health services established pursuant to chapter 8.5 of this title.~~
17 The process and criteria for approval to operate pursuant to the Mental Health Law as codified in
18 this chapter shall be determined by the director. Nothing contained herein shall be construed to
19 amend or repeal any of the provisions of chapter 16 of title 23.

20 ~~(ii) The Eleanor Slater hospital shall be required to apply to the department for approval~~
21 ~~from the director to operate pursuant to this chapter.~~

22 ~~(iii) The Rhode Island state psychiatric hospital shall be required to apply to the department~~
23 ~~for approval from the director to operate pursuant to this chapter.~~

24 ~~(6)~~(7) “Indigent person” means a person who has not sufficient property or income to
25 support himself or herself, and to support the members of his or her family dependent upon him or
26 her for support, and/or is unable to pay the fees and costs incurred pursuant to any legal proceedings
27 conducted under the provisions of this chapter.

28 ~~(7)~~(8) “Likelihood of serious harm” means:

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

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

33 (iii) A substantial risk of physical harm to the mentally disabled person as manifested by
34 behavior that has created a grave, clear, and present risk to the person’s physical health and safety.

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

5 ~~(8)~~(9) “Mental health professional” means a psychiatrist, psychologist, or social worker
6 and such other persons, including psychiatric nurse ~~clinicians~~ clinician and licensed advanced
7 practice registered nurse (APRN) as defined in § 40.1-5-2, as may be defined by rules and
8 regulations promulgated by the director.

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

12 ~~(10)~~(11) “Patient” means a person admitted voluntarily, certified or re-certified admitted
13 to a facility according to the provisions of this chapter.

14 ~~(11)~~(12) “Physician” means a person licensed by the Rhode Island department of health to
15 practice medicine pursuant to chapter 37 of title 5.

16 ~~(12)~~(13) “Psychiatric disability” means a mental disorder in which the capacity of a person
17 to exercise self-control or judgment in the conduct of the person’s affairs and social relations, or to
18 care for the person’s own personal needs, is significantly impaired.

19 ~~(13)~~(14) “Psychiatric nurse clinician” means a professional registered nurse with a master’s
20 degree in psychiatric nursing or related field who is licensed by the Rhode Island department of
21 health pursuant to chapter 34 of title 5 and who is currently working in the mental health field as
22 defined by the American Nurses Association, and/or a licensed advanced practice registered nurse
23 ~~with a population focus of psychiatric/mental health population focus as defined in paragraphs (2)~~
24 ~~and (12)(vi) of § 5-34-3~~ (APRN) as defined in § 40.1-5-2.

25 ~~(14)~~(15) “Psychiatrist” means a person licensed by the Rhode Island department of health
26 to practice medicine pursuant to chapter 37 of title 5 who has, in addition, completed three (3) years
27 of graduate psychiatric training in a program approved by the American Medical Association or
28 American Osteopathic Association.

29 ~~(15)~~(16) “Psychologist” means a person licensed by the Rhode Island department of health
30 pursuant to chapter 44 of title 5.

31 (17) “Qualified mental health professional” (QMHP) means a mental health professional
32 as approved by the licensing unit within the department, who has a minimum of a master’s degree
33 in a clinical practice, a license as a registered nurse, or a license as an advanced practice registered
34 nurse (APRN) as defined in § 40.1-5-2 and who has a minimum of thirty (30) hours of supervised

1 [face-to-face emergency services experience as a psychiatric emergency service worker in Rhode](#)
2 [Island. Such experience may be gained through employment with a community mental health](#)
3 [center \(CMHC\) or licensed hospital conducting emergency psychiatric assessment for individuals](#)
4 [under consideration for admission to an inpatient mental health facility.](#)

5 ~~(16)~~(18) “Social worker” means a person 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 person with ~~a psychiatric~~ [an intellectual and/or developmental](#)
19 disability, or person under the influence of alcohol or drugs shall be certified to a facility, as herein
20 defined, solely by reason of that condition, unless the person also qualified for admission, ~~or~~
21 certification, [or recertification](#) under the provisions of this chapter.

22 (d) **Examining physician [or licensed advanced practice registered nurse \(APRN\)](#).** For
23 purposes of certification, no examining physician [or licensed advanced practice registered nurse](#)
24 [\(APRN\) as defined in § 40.1-5-2](#) shall be related by blood or marriage to the person who is applying
25 for the admission of another, or to the person who is the subject of the application; nor shall he or
26 she have any interest, contractually, testamentary, or otherwise (other than reasonable and proper
27 charges for professional services rendered), in or against the estate or assets of the person who is
28 the subject of the application; nor shall he or she be a manager, trustee, visitor, proprietor, officer,
29 stockholder, or have any pecuniary interest, directly or indirectly, or, except as otherwise herein
30 expressly provided, be a director, resident physician, or salaried physician, [or licensed advanced](#)
31 [practice registered nurse \(APRN\) as defined in § 40.1-5-2](#) or employee in any facility to which it
32 is proposed to admit the person.

33 (e) **Certificates.** Certificates, as required by this chapter, must provide a factual
34 description of the person’s behavior that indicates that the person concerned is psychiatrically

1 disabled, creates a likelihood of serious harm, and is in need of care and treatment in a facility as
2 defined in this chapter. They shall further set forth such other findings as may be required by the
3 particular certification procedure used. Certificates shall also show that an examination of the
4 person concerned was made within five (5) days prior to the date of admission or certification,
5 unless otherwise herein provided. The date of the certificate shall be the date of the commencement
6 of the examination, and in the event examinations are conducted separately or over a period of
7 days, then the five-day (5) period above referred to (unless otherwise expressly provided) shall be
8 measured from the date of the commencement of the first examination. All certificates shall contain
9 the observations upon which judgments are based, and shall contain other information as the
10 director may by rule or regulation require.

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

15 (1) To privacy and dignity;

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

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

19 (4) To religious freedom;

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

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

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

34 (8) To seek independent psychiatric examination and opinion from a psychiatrist or mental

1 health professional of the patient's choice;

2 (9) To be employed at a gainful occupation insofar as the patient's condition permits,
3 provided however, that no patient shall be required to perform labor;

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

5 (11) To receive and read literature;

6 (12) To have the least possible restraint imposed upon the person consistent with affording
7 him or her the care and treatment necessary and appropriate to the patient's condition;

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

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

11 (15) To reasonable access to outdoor space with appropriate supervision as clinically
12 warranted, for individuals who have been hospitalized for thirty (30) consecutive calendar days. If
13 such access has been denied, a statement of the reasons for denial shall be entered in the
14 individualized treatment record of the patient after the first denial, which shall be reviewed and
15 documented at least weekly by the treatment team.

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

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

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

33 (a) **Applicants.**

34 (⊕) Any physician or licensed advanced practice registered nurse (APRN) as defined in §

1 [40.1-5-2](#) who, after examining a person, has reason to believe that the person is in need of
2 immediate care and treatment, and is one whose continued unsupervised presence in the community
3 would create an imminent likelihood of serious harm by reason of psychiatric disability, may apply
4 ~~at~~ to a facility for the emergency certification of the person ~~thereto~~. The medical director, or any
5 other physician, or a licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2
6 employed by the proposed facility for certification, may apply under this subsection if no other
7 physician or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2 is
8 available and the medical director or physician certifies this fact. If an examination is not possible
9 because of the emergency nature of the case and because of the refusal of the person to consent to
10 the examination, the applicant on the basis of his or her observation may determine, in accordance
11 with the above, that emergency certification is necessary and may apply therefor. In the event that
12 no physician or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2 is
13 available, a qualified mental health professional as defined herein who believes the person to be in
14 need of immediate care and treatment, and one whose continued unsupervised presence in the
15 community would create an imminent likelihood of serious harm by reason of psychiatric disability,
16 may make the application for emergency certification to a facility. Application shall in all cases be
17 made to the facility that, in the judgment of the applicant at the time of application, would impose
18 the least restraint on the liberty of the person consistent with affording the person the care and
19 treatment necessary and appropriate to the person's condition.

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

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

1 information that may assist the admitting physician and/or licensed advanced practice registered
2 nurse (APRN) as defined in § 40.1-5-2 at the facility to which application is made. The application
3 shall state whether the facility, in the judgment of the applicant at the time of application, would
4 impose the least restraint on the liberty of the person consistent with affording him or her the care
5 and treatment necessary and appropriate to his or her condition. Whenever practicable, prior to
6 transporting or arranging for the transporting of a prospective patient to a facility, the applicant
7 shall telephone or otherwise communicate with the facility to describe the circumstances and
8 known clinical history to determine whether it is the proper facility to receive the person, and to
9 give notice of any restraint to be used or to determine whether restraint is necessary.

10 (c) **Confirmation; discharge; transfer.** Within one hour after reception at a facility, the
11 person regarding whom an application has been filed under this section shall be seen by a physician
12 or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2. As soon as
13 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 the psychiatrist's
15 supervision, and/or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2
16 shall begin. The psychiatrist, physician under the supervision of the psychiatrist, and/or licensed
17 advanced practice registered nurse (APRN) as defined in § 40.1-5-2 conducting the preliminary
18 examination and evaluation shall not be an applicant hereunder. The preliminary examination and
19 evaluation shall be completed within seventy-two (72) hours from its inception by the psychiatrist,
20 physician under the supervision of the psychiatrist, and/or licensed advanced practice registered
21 nurse (APRN) as defined in § 40.1-5-2. If the psychiatrist, physician under the supervision of the
22 psychiatrist, and/or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2
23 determines that the patient is not a candidate for emergency certification, the patient shall be
24 discharged. If the ~~psychiatrist(s)~~ psychiatrist, physician under the supervision of the psychiatrist,
25 and/or licensed advanced practice registered nurse (APRN) as defined in § 40.1-5-2 determines that
26 the person who is the subject of the application is in need of immediate care and treatment and is
27 one whose continued unsupervised presence in the community would create an imminent likelihood
28 of serious harm by reason of psychiatric disability, the psychiatrist, physician under the supervision
29 of the psychiatrist, and/or licensed advanced practice registered nurse (APRN) as defined in § 40.1-
30 5-2 determines shall confirm the admission for care and treatment under this section of the person
31 to the facility, provided the facility is one that would impose the least restraint on the liberty of the
32 person consistent with affording the person the care and treatment necessary and appropriate to the
33 person's condition and that no suitable alternatives to certification are available. If at any time the
34 official in charge of a facility, or the official's designee, determines that the person is not in need

1 of immediate care and treatment, or is not one whose continued unsupervised presence in the
2 community would create an imminent likelihood of serious harm by reason of psychiatric disability,
3 or suitable alternatives to certification are available, the official shall immediately discharge the
4 person. In addition, the official may arrange to transfer the person to an appropriate facility if the
5 facility to which he or she has been certified is not one that imposes the least restraint on the liberty
6 of the person consistent with affording him or her the care and treatment necessary and appropriate
7 to his or her condition.

8 (d) **Custody.** Upon the request of an applicant under this section, to be confirmed in
9 writing, it shall be the duty of any peace officer of this state or of any governmental subdivision
10 thereof to whom request has been made, to take into custody and immediately transport the person
11 to the designated facility for admission thereto.

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

21 (f) **Notification of rights.** No person shall be certified to a facility under the provisions of
22 this section unless appropriate opportunity is given to apply for voluntary admission under the
23 provisions of § 40.1-5-6 and unless the person, or a parent, guardian, or next of kin, has been
24 informed, in writing, on a form provided by the department, by the official in charge of the facility:
25 (1) That he or she has a right to the voluntary admission; (2) That a person cannot be certified until
26 all available alternatives to certification have been investigated and determined to be unsuitable;
27 and (3) That the period of hospitalization or treatment in a facility cannot exceed ten (10) days
28 under this section, except as provided in subsection (g) of this section.

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

33 **40.1-5-8. Civil court certification.**

34 (a) **Petitions.** A verified petition may be filed in the district court, or family court in the

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

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

24 (c) **Certificates and contents thereof.** A petition hereunder shall be accompanied by the
25 certificates of two (2) physicians, [at least one of whom shall be a psychiatrist, or one physician and](#)
26 [one licensed advanced practice registered nurse \(APRN\) as defined in § 40.1-5-2](#), unless the
27 petitioner is unable to afford, or is otherwise unable to obtain, the services of a physician or
28 physicians [or licensed advanced practice registered nurse \(APRN\) as defined in § 40.1-5-2](#) qualified
29 to make the certifications. The certificates shall be rendered pursuant to the provisions of § 40.1-5-
30 5, except when the patient is a resident in a facility, the attending physician and one other physician
31 [at least one of whom shall be a psychiatrist, or the attending physician and a licensed advanced](#)
32 [practice registered nurse \(APRN\) as defined in § 40.1-5-2](#) 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 psychiatric disability together
2 with the reasons therefor. The petitions and accompanying certificates shall be executed under
3 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 the person of the nature of the proceedings and of the person's 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~~ pursuant to § 40.1-5-8(c) and shall indicate the reasons why the efforts
3 failed.

4 (3) After considering the motion and testimony as may be offered on the date of hearing
5 the motion, the court may deny the application and dismiss the petition, or upon finding: (i) That
6 there is a good cause for the failure to obtain one or more ~~physician's~~ certificates in accordance
7 with subsection (c); and (ii) That there is probable cause to substantiate the allegations of the
8 petition, the court shall order an immediate examination by two (2) ~~qualified~~ psychiatrists, or by
9 one psychiatrist and one physician, or by one physician and one licensed advanced practice
10 registered nurse (APRN) as defined in § 40.1-5-2 pursuant to subsection (e)(1).

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

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

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

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

33 (1) All evidence shall be presented according to the usual rules of evidence that apply in
34 civil, non-jury cases. The subject of the proceedings shall have the right to present evidence in his

1 or her own behalf and to cross examine all witnesses against him or her, including any physician
2 [or licensed advanced practice registered nurse \(APRN\) as defined in § 40.1-5-2](#) who has completed
3 a certificate or filed a report as provided hereunder. The subject of the proceedings shall have the
4 further right to subpoena witnesses and documents, the cost of such to be borne by the court where
5 the court finds upon an application of the subject that the person cannot afford to pay for the cost
6 of subpoenaing witnesses and documents.

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

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

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

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

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

1 other convalescent facilities. A certificate ordered pursuant to this section shall be valid for a period
2 of ~~six (6)~~ nine (9) months from the date of the order. At the end of that period the patient shall be
3 discharged, unless the patient is discharged prior to that time, in which case the certification shall
4 expire on the date of the discharge.

5 (k) **Appeals.**

6 (1) A person certified under this section and/or a person with regard to whom a petition for
7 instructions is granted pursuant to § 40.1-5-8(l) shall have a right to appeal from a final hearing to
8 the supreme court of the state within thirty (30) days of the entry of an order of certification and/or
9 instructions. The person shall have the right to be represented on appeal by counsel of his or her
10 choice or by the mental health advocate if the supreme court finds that the person cannot afford to
11 retain counsel. Upon a showing of indigency, the supreme court shall permit an appeal to proceed
12 without payment of costs, and a copy of the transcript of the proceedings below shall be furnished
13 to the subject of the proceedings, or to the person's attorney, at the expense of the state. The
14 ~~certifying court~~ hearing judge shall advise the person of all the person's rights pursuant to this
15 section immediately upon the entry of an order of certification.

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

20 (l) **Submission to NICS database.**

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

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

28 (3) Upon notice of a successful appeal pursuant to subsection (k), the district court shall,
29 as soon as practicable, cause the appellant's record to be updated, corrected, modified, or removed
30 from any database maintained and made available to the NICS and reflect that the appellant is no
31 longer subject to a firearms prohibition as it relates to 18 U.S.C. § 922(d)(4) and 18 U.S.C. §
32 922(g)(4).

33 (m) **Equitable authority.** (1) In addition to the powers heretofore ~~exercised~~ enumerated
34 in this section, the district and family courts are hereby empowered, in furtherance of their

1 jurisdiction under this ~~chapter~~ title including, but not limited to, chapters 5, 5.3 and/or 22 of title
2 40.1, to grant petitions for instructions for the provision or withholding of medical and/or
3 psychiatric treatment as justice and equity may require.

4 (2) In addition to the authority described in subsection (m)(1) of this section, the district
5 and family courts shall have authority to grant petitions for instructions for the provision or
6 withholding of medical and/or psychiatric treatment as justice and equity may require with regard
7 to:

8 (i) Persons who are detainees or inmates at the adult correctional institutions who have a
9 psychiatric disability; or

10 (ii) Who are residents of the Rhode Island training school for youth who have a psychiatric
11 disability.

12 (3) In order to grant relief under subsection (m)(1) or (m)(2) of this section, the hearing
13 judge shall find by clear and convincing evidence that:

14 (i) The person who is subject to the petition has a psychiatric or developmental and/or
15 intellectual disability;

16 (ii) The person who is subject to the petition is unable to provide or withhold informed
17 consent as to the treatment(s) prayed for in the petition;

18 (iii) The person who is subject to the petition does not have a known representative who
19 has the legal authority to provide or withhold informed consent on the person's behalf; and

20 (iv) To a reasonable degree of medical certainty, the benefits of the proposed treatment(s)
21 outweigh the risks.

22 **40.1-5-9. Right to treatment — Treatment plan.**

23 (a) Any person who is a patient in a facility pursuant to this chapter shall have a right to
24 receive the care and treatment that is necessary for and appropriate to the condition for which he or
25 she was admitted or certified and from which he or she can reasonably be expected to benefit. Each
26 patient shall have an individualized treatment plan. This plan shall be developed by appropriate
27 mental health professionals, including a psychiatrist and/or licensed advanced practice registered
28 nurse (APRN) as defined in § 40.1-5-2, and implemented as soon as possible — in any event no
29 later than five (5) days after a patient's voluntary admission or involuntary court certification. Each
30 individual treatment plan shall be made in accordance with the professional regulations of each
31 facility, and by way of illustration and, not limited to the following, shall contain:

32 (1) A statement of the nature of the specific problems and specific needs of the patient;

33 (2) A statement of the least restrictive treatment conditions necessary to achieve the
34 purposes of certification or admission;

- 1 (3) A description of intermediate and long-range treatment goals; and
2 (4) A statement and rationale for the plan of treatment for achieving these intermediate and
3 long-range goals.

4 (b) The individualized treatment plan shall become part of the patient's record in
5 accordance with § 40.1-5-5(g), and the subject of periodic review in accordance with § 40.1-5-10.
6 In implementing a treatment plan on behalf of any patient, the official in charge of any facility, or
7 his or her designee(s), may, when it is warranted, authorize the release of the patient for such
8 periods of time and under such terms and conditions that he or she deems appropriate.

9 **40.1-5-10. Periodic institutional review proceedings.**

10 (a) In general. Each patient admitted or certified to a facility pursuant to the provisions of
11 this chapter shall be the subject of a periodic review of his or her condition and status to be
12 conducted by a review committee composed of at least one psychiatrist, or licensed advanced
13 practice registered nurse (APRN) as defined in § 40.1-5-2, and other mental health professionals
14 involved in treating the patient. The committee shall be composed of no fewer than three (3) persons
15 and shall be appointed by the director of the facility or his or her designated agent. The reviews
16 shall minimally involve an evaluation of the quality of care the patient is receiving, including an
17 evaluation of the patient's treatment plan, and the making of any recommendations for the
18 improvement of the care or for the revision of the treatment plan, including alternative available
19 living arrangements, foster care, community residential facilities, nursing homes, and other
20 convalescent facilities. At every fourth review, one member of the committee shall be a member of
21 the ~~hospital's~~ facility's utilization review committee appointed by that committee's chairperson.

22 (b) Frequency. The review proceedings shall take place at least once within each ninety-
23 day (90) period during which a person is a patient in the facility.

24 (c) Results of review. The results of each review shall be entered in the patient's medical
25 record, presented orally to the patient within twenty-four (24) hours, and confirmed by written
26 notice to the patient and his or her guardian, or with the patient's consent, to his or her next of kin,
27 within seventy-two (72) hours. In the event the director of the facility is not a member of the
28 committee, the notice shall be transmitted to him or her as well. Where the committee determines
29 that further care in the facility is required, the notice to the patient shall include an explanation of
30 the patient's rights to pursue discharge as elsewhere provided in this chapter.

31 **40.1-5-11. Discharge — Recertification.**

32 (a) The official in charge of any facility, or his or her designated agent, on having his or
33 her reasons noted on the patient's records, shall discharge any patient certified or admitted pursuant
34 to the provisions of this chapter, when:

- 1 (1) Suitable alternatives to certification or admission are available;
- 2 (2) The patient is, in the judgment of the official, recovered;
- 3 (3) The patient is not recovered, but discharge, in the judgment of the official, will not
4 create a likelihood of serious harm by reason of psychiatric disability.
- 5 (b) When a patient discharge is requested and if the discharge is denied, the reasons therefor
6 shall be stated, in writing, and noted in the patient's record and a copy thereof shall be given to the
7 person applying for the release.
- 8 (c) At the expiration of the ~~six-month (6)~~ nine (9) month period set forth in § 40.1-5-8(j),
9 or any subsequent ~~six-month (6)~~ nine (9) month period following recertification pursuant to this
10 section, the patient shall be unconditionally released unless a recertification petition is filed ~~by the~~
11 ~~official in charge of a facility, or his or her designated agent,~~ within no less than ~~fifteen (15) days~~
12 seven (7) and no more than thirty (30) days prior to the scheduled expiration date of a ~~six-month~~
13 ~~(6)~~ nine (9) month period. A hearing must be held pursuant to the petition and a decision rendered
14 before the expiration of the ~~six-month (6)~~ nine (9) month period. A recertification hearing shall
15 follow all of the procedures set forth in § 40.1-5-8 and recertification may be ordered only if the
16 petitioner proves by clear and convincing evidence that the conduct and responses of the patient
17 during the course of the previous ~~six-month (6)~~ nine (9) month period indicate that the patient is
18 presently in need of care and treatment in a facility; is one whose continued unsupervised presence
19 in the community would create a likelihood of serious harm by reason of psychiatric disability; and
20 that all alternatives to recertification have been investigated and deemed unsuitable.

21 SECTION 2. This act shall take effect upon passage.

=====
LC002292
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- MENTAL HEALTH LAW

1 This act would include licensed advanced practice registered nurses (APRN), certified in
2 psychiatric/mental health, as qualified to certify the need for mental health treatment in certain
3 patients.

4 This act would take effect upon passage.

=====
LC002292
=====