

2019 -- H 5751

LC001618

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO HEALTH AND SAFETY - EMERGENCY COMMITMENT FOR DRUG
INTOXICATION

Introduced By: Representatives Casey, Canario, Jacquard, Hull, and Morin

Date Introduced: February 27, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 23-10.1 of the General Laws entitled "Emergency Commitment for
2 Drug Intoxication" is hereby amended by adding thereto the following sections:

3 **23-10.1-7. Definitions.**

4 As used in §§ 23-10.1-7 through 23-10.1-15:

5 (1) "Petition" means a petition for a seventy-two (72) hour hold filed pursuant to § 23-
6 10.1-8.

7 (2) "Respondent" means a person who is the subject of a petition for a seventy-two (72)
8 hour hold filed pursuant to § 23-10.1-8.

9 (3) "Substance use disorder" means the chronic or habitual consumption or ingestion of
10 drugs and intoxicating substance by a person to the extent that:

11 (i) Such consumption or ingestion substantially injures the person's health or substantially
12 interferes with the person's social or economic functioning; or

13 (ii) The person has lost the power of self-control over the use of such drugs and
14 intoxicating substance.

15 **23-10.1-8. Seventy-two (72) hour hold for substance use disorder.**

16 (a) A physician who concentrates in diagnosing and treating persons with substance use
17 disorders and who while treating a person (hereinafter, the "respondent") for substance use, has
18 reason to believe that the respondent is suffering from a substance use disorder and presents a

1 danger or threat of danger to self, family, or others, if not treated for the substance use disorder,
2 may request the district court or family court, as appropriate, to issue a seventy-two (72) hour
3 hold on the respondent for in-patient treatment at a facility designed to provide in-patient
4 treatment to persons with substance use disorders. A petition filed pursuant to this section shall be
5 in writing and shall include the factual basis for the finding that the respondent requires a
6 seventy-two (72) hour hold pursuant to this section. A petition for a seventy-two (72) hour hold
7 must allege that, upon information and belief, the respondent:

8 (1) Suffers from a substance use disorder;

9 (2) Presents an imminent threat of danger or threat of danger to self, family, or others as a
10 result of substance use, or there exists a substantial likelihood of such a threat in the near future;

11 (3) Has been treated in a hospital or emergency health care facility for a substance use
12 disorder at least three (3) prior times; and

13 (4) Can reasonably benefit from treatment that can be administered in an inpatient facility
14 during a seventy-two (72) hour period.

15 (b) A family member of the respondent, or a first responder to the respondent, including
16 a member of the police, fire, or rescue unit (hereinafter a "first responder") who assisted in
17 bringing the respondent to the physician or the facility where the physician is treating the
18 respondent, may request the physician to issue such a petition, but only a physician may submit a
19 petition as set forth in subsection (a) of this section.

20 (c) The petition may be filed and transmitted to the court physically or electronically,
21 provided that the respondent shall, prior to such transmission, be provided the notices required
22 pursuant to § 23-10.1-9.

23 (d) A parent or legal guardian may provide consent for the hold for their minor child or
24 ward notwithstanding the objection of their minor child or ward.

25 **23-10.1-9. Notice and legal counsel.**

26 (a) Prior to the filing of the petition, a respondent subject to a seventy-two (72) hour hold
27 petition pursuant to § 23-10.1-8 shall be informed both verbally and in writing that the respondent
28 is entitled to object to the hold and may request an immediate hearing before a judge of either the
29 district court or family court, depending upon the age of the patient. The respondent shall also be
30 informed both verbally and in writing that the respondent is entitled to be represented by legal
31 counsel. If the respondent is unable to procure legal counsel, a volunteer mental health advocate
32 shall be provided to the respondent as provided for in this chapter.

33 (b) If the respondent indicates he or she objects to the hold and requests a hearing, the
34 petitioning physician shall note this on the petition prior to its transmission to court. A copy of

1 the petition shall also be given to the office of the mental health advocate.

2 **23-10.1-10. Hearing.**

3 (a) A respondent shall be entitled to be represented by legal counsel and receive services
4 from the mental health advocate, who shall be notified of the petition. If reasonably possible and
5 medically feasible, the respondent shall be transported to the appropriate court for a hearing
6 before the duty judge. In the event the court is not open at the time the hold is requested, or if the
7 respondent cannot otherwise be transported to the court, the hearing may be held by a video
8 electronic teleconference with the duty judge of the appropriate court.

9 (b) Any facility conducting a hearing through an electronic teleconference shall ensure
10 that the teleconferencing technology:

11 (1) Includes an audio and video feed which will allow dialogue, argument, and the
12 presentation of evidence in real time, and allows for the exchange of digital documents; and

13 (2) Provides encryption or other forms of protection to ensure that the transmission of
14 information between the court and the medical facility is secure and meets the confidentiality
15 requirements imposed by the Health Insurance Portability and Accountability Act, Pub. L. 104-
16 91, as amended (42 U.S.C. § 300gg et al.), as well as with any rules and regulations promulgated
17 by the department of health pursuant to § 23-10.1-14.

18 (c) The burden of proof on whether to impose a seventy-two (72) hour hold shall be on
19 the party requesting the hold. The standard of determining whether or not to impose the seventy-
20 two (72) hour hold shall be clear and convincing evidence.

21 (d) The court may order the hold and treatment of the respondent to continue for a period
22 of up to seventy-two (72) hours upon a finding, upon clear and convincing evidence, that the
23 allegations in the petition are correct. In making this determination, the court may take into
24 account any exigent circumstances presented to the court. The court may also consider the
25 difficulty in determining with absolute certainty as to whether a patient will benefit from a
26 specific course of treatment. The court may order such further relief as it deems appropriate,
27 including, but not limited to, the use of peer recovery support specialists, to meet and work with
28 the respondent.

29 (e) The state shall provide for the cost of transporting a respondent to and from the
30 appropriate court for any hearing held pursuant to this section.

31 (f) The provisions of § 23-10.1-5 shall not apply to a seventy-two (72) hour hold issued
32 pursuant to this section.

33 **23-10.1-11. Advocates designated to assist the mental health advocate.**

34 (a) The mental health advocate is authorized to maintain a list of attorney volunteers to

1 serve as volunteer mental health advocates at hearings held for a seventy-two (72) hour hold. The
2 mental health advocate may also designate law school students who have completed a full year's
3 course in the study of evidence as volunteer mental health advocates, who may represent the
4 respondent as volunteer mental health advocate at these hearings. All volunteer mental health
5 advocates shall successfully complete any trainings required by the mental health advocate.

6 (b) Attorneys on the staff of the mental health advocate may also appear on behalf of
7 respondents in the seventy-two (72) hour hold hearings.

8 **23-10.1-12. Seventy-two (72) hour holds to be in addition to other remedies.**

9 The authorization of and proceedings for a seventy-two (72) hour hold pursuant to §§ 23-
10 10.1-8 through 23-10.1-10 shall not preclude the concurrent or subsequent filing of other actions
11 for involuntary commitment of substance users, including, but not limited to, actions brought
12 pursuant to §§ 23-10.1-4 and 40.1-5-7.

13 **23-10.1-13. Exemption from liability.**

14 A physician acting on the physician's good faith belief that the criteria for a seventy-two
15 (72) hour hold pursuant to § 23-10.1-8 has been met, as well as the medical facility wherein the
16 physician is working while filing the petition, shall be immune from any civil or criminal liability
17 in regard to filing of a petition for the hold. The inpatient facility which accepts a respondent
18 pursuant to an order issued under this chapter shall be immune from any actions for false
19 imprisonment or of a similar nature for holding and treating the respondent during the seventy-
20 two (72) hour period of the hold.

21 **23-10.1-14. Rules and regulations.**

22 (a) The department of health shall promulgate rules and regulations to implement the
23 provisions of §§ 23-10.1-7 through 23-10.1-15. Such rules and regulations shall include, but not
24 be limited to:

25 (1) The qualifications for the type of facilities where a respondent may be held and
26 treated during a seventy-two (72) hour hold;

27 (2) The type of treatments which may be offered;

28 (3) Forms that may be used to file the petition and which shall include provisions that
29 shall encompass the required information; and

30 (4) Provisions to ensure the technology utilized to conduct electronic hearings is accurate,
31 secure and confidential.

32 (b) The department of health shall consult with the office of the mental health advocate in
33 promulgating the rules and regulations authorized by this section.

34 **23-10.1-15. Training to be offered.**

1 (a) The department of health shall conduct training sessions on the procedures and
2 criteria for filing a petition for a seventy-two (72) hour hold pursuant to the provisions of this
3 chapter.

4 (b) The office of the mental health advocate shall conduct training sessions on the
5 procedures and criteria for representing a respondent at a hearing for a seventy-two (72) hour
6 hold pursuant to the provisions of this chapter.

7 SECTION 2. Chapter 27-18 of the General Laws entitled "Accident and Sickness
8 Policies" is hereby amended to by adding thereto the following section:

9 **27-18-85. Coverage for seventy-two (72) hour holds.**

10 Every individual or group health insurance contract, plan, or policy that provides
11 prescription coverage that is delivered, issued for delivery, amended or renewed in this state on or
12 after January 1, 2020, shall provide coverage for inpatient hospitalization for at least one seventy-
13 two (72) hour period per calendar year, when such hospitalization is ordered by a court of
14 competent jurisdiction pursuant to the provisions of chapter 10.1 of title 23.

15 SECTION 3. Chapter 27-19 of the General Laws entitled "Nonprofit Hospital Service
16 Corporations" is hereby amended to by adding thereto the following section:

17 **27-19-77. Coverage for seventy-two (72) hour holds.**

18 Every individual or group health insurance contract, plan, or policy that provides
19 prescription coverage that is delivered, issued for delivery, amended or renewed in this state on or
20 after January 1, 2020, shall provide coverage for inpatient hospitalization for at least one seventy-
21 two (72) hour period per calendar year, when such hospitalization is ordered by a court of
22 competent jurisdiction pursuant to the provisions of chapter 10.1 of title 23.

23 SECTION 4. Chapter 27-20 of the General Laws entitled "Nonprofit Medical Service
24 Corporations" is hereby amended to by adding thereto the following section:

25 **27-20-73. Coverage for seventy-two (72) hour holds.**

26 Every individual or group health insurance contract, plan, or policy that provides
27 prescription coverage that is delivered, issued for delivery, amended or renewed in this state on or
28 after January 1, 2020, shall provide coverage for inpatient hospitalization for at least one seventy-
29 two (72) hour period per calendar year, when such hospitalization is ordered by a court of
30 competent jurisdiction pursuant to the provisions of chapter 10.1 of title 23.

31 SECTION 5. Chapter 27-41 of the General Laws entitled "Health Maintenance
32 Organizations" is hereby amended to by adding thereto the following section:

33 **27-41-90. Coverage for seventy-two (72) hour holds.**

34 Every individual or group health insurance contract, plan, or policy that provides

1 prescription coverage that is delivered, issued for delivery, amended or renewed in this state on or
2 after January 1, 2020, shall provide coverage for inpatient hospitalization for at least one seventy-
3 two (72) hour period per calendar year, when such hospitalization is ordered by a court of
4 competent jurisdiction pursuant to the provisions of chapter 10.1 of title 23.

5 SECTION 6. This act shall take effect on January 1, 2020.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY - EMERGENCY COMMITMENT FOR DRUG
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1 This act would authorize a seventy-two (72) hour hold to be ordered by a physician in
2 certain instances of substance use disorders. The hold could be continued beyond the seventy-two
3 (72) hour period if ordered by a judge of the district or family court.

4 This act would take effect on January 1, 2020.

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