

2021 Regular Session

HOUSE BILL NO. 589

BY REPRESENTATIVE DUPLESSIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

MENTAL HEALTH: Provides relative to civil involuntary outpatient treatment for persons suffering from mental illness

1 AN ACT

2 To amend and reenact R.S. 28:66, 67(introductory paragraph) and (1) through (4), 68,
3 69(A)(2) and (B) through (F), 70(A), (B)(1), (E), and (F), 71, 72(A), 73, and 75 and
4 to enact R.S. 28:69(G) and (H) and 77, relative to behavioral health; to provide for
5 persons who may petition to the court to authorize involuntary outpatient treatment;
6 to provide criteria and procedures for civil involuntary outpatient treatment; to
7 provide for written treatment plans; to exempt certain proceedings from fees and
8 court costs; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 28:66, 67(introductory paragraph) and (1) through (4), 68, 69(A)(2)
11 and (B) through (F), 70(A), (B)(1), (E), and (F), 71, 72(A), 73, and 75 are hereby amended
12 and reenacted and R.S. 28:69(G) and (H) and 77 are hereby enacted to read as follows:

13 §66. Criteria for civil involuntary outpatient treatment

14 A. A patient respondent may be ordered to obtain civil involuntary outpatient
15 treatment if the court finds that all of the following conditions apply:

- 16 (1) The patient respondent is eighteen years of age or older.
- 17 (2) The patient respondent is suffering from a mental illness.
- 18 (3) The patient respondent is unlikely to survive safely in the community
19 without supervision, ~~based on a clinical determination.~~

1 (4) The patient respondent has a history of lack of compliance with treatment
2 for mental illness, ~~that has resulted in either of the following:~~

3 ~~(a) At least twice within the last thirty-six months, the lack of compliance~~
4 ~~with treatment for mental illness has been a significant factor resulting in an~~
5 ~~emergency certificate for hospitalization, or receipt of services in a forensic or other~~
6 ~~mental health unit of a correctional facility or a local correctional facility, not~~
7 ~~including any period during which the person was hospitalized or incarcerated~~
8 ~~immediately preceding the filing of the petition.~~

9 ~~(b) One or more acts of serious violent behavior toward self or others or~~
10 ~~threats of, or attempts of, serious physical harm to self or others within the last~~
11 ~~thirty-six months as a result of mental illness, not including any period in which the~~
12 ~~person was hospitalized or incarcerated immediately preceding the filing of the~~
13 ~~petition.~~

14 (5) The patient respondent is, as a result of his mental illness, unlikely to
15 voluntarily participate in the recommended treatment pursuant to the treatment plan.

16 (6) In view of the treatment history and current behavior of the patient
17 respondent, the patient respondent is in need of involuntary outpatient treatment to
18 prevent a relapse or deterioration which would be likely to result in the patient
19 respondent becoming dangerous to self or others or gravely disabled as defined in
20 R.S. 28:2.

21 (7) It is likely that the patient respondent will benefit from involuntary
22 outpatient treatment.

23 B.(1) If the patient respondent has executed an advance directive as defined
24 in R.S. 28:221, any directions included in the directive shall be taken into account
25 by the court in determining the written treatment plan.

26 (2) Nothing ~~herein~~ in this Section shall preclude a person with an advance
27 directive from being subject to a petition pursuant to this Part.

1 §67. Petition to the court

2 A petition for an order authorizing involuntary outpatient treatment may be
3 filed in the judicial district in the parish in which the ~~patient~~ respondent is present or
4 reasonably believed to be present. A petition to obtain an order authorizing
5 involuntary outpatient treatment may be initiated by one of the following persons:

6 (1) The director, administrator, or treating physician of a hospital in which
7 the ~~patient~~ respondent is hospitalized.

8 (2) The director, administrator, or treating physician of an emergency
9 receiving center in which the ~~patient~~ respondent is receiving services.

10 (3) The director of the local governing entity, or his designee, in the parish
11 in which the ~~patient~~ respondent is present or reasonably believed to be present.

12 (4) Any interested person through counsel ~~with written concurrence of the~~
13 ~~coroner in the jurisdiction in which the person is found.~~

14 * * *

15 §68. Petition

16 A. The petition shall contain the facts which are the basis of the assertion that
17 the ~~patient~~ respondent meets each of the criteria in R.S. 28:66 that he is present or
18 reasonably believed to be present in the parish where filed, and provide the
19 respondent with adequate notice and knowledge relative to the nature of the
20 proceeding.

21 B.(1) In addition to the content specified in Subsection A of this Section, the
22 petition shall contain the following information regarding the respondent:

23 (a) Name.

24 (b) Date of birth.

25 (c) Alias names, if any.

26 (d) Social security number.

27 (e) Sex.

28 (f) Race.

1 renders him unlikely to voluntarily participate in the recommended treatment and,
2 in view of the treatment history and current behavior of the respondent, he is in need
3 of involuntary outpatient treatment to prevent a relapse or deterioration which would
4 be likely to result in him becoming dangerous to self or others or gravely disabled
5 as defined in R.S. 28:2.

6 (2) If the court determines that probable cause exists, the court shall appoint
7 a physician, psychiatric mental health nurse practitioner, or psychologist to examine
8 the respondent and to provide a written Physician's Report to Court and testify at the
9 hearing. The Physician's Report to Court shall be completed on the form provided
10 by the office of behavioral health of the Louisiana Department of Health and
11 provided to the court, the respondent's counsel, and the petitioner's counsel at least
12 three days before the hearing.

13 (3) The Physician's Report to Court shall set forth specifically the objective
14 factors leading to the conclusion that the respondent has a mental illness that renders
15 him unlikely to voluntarily participate in the recommended treatment and, in view
16 of the treatment history and current behavior of the respondent, he is in need of
17 involuntary outpatient treatment to prevent a relapse or deterioration which would
18 be likely to result in him becoming dangerous to self or others or gravely disabled
19 as defined in R.S. 28:2. The report shall also include recommendations for a
20 treatment plan.

21 (4) The court-appointed physician, psychiatric mental health nurse
22 practitioner, or medical psychologist may be the respondent's treating physician,
23 treating psychiatric nurse practitioner, or treating medical psychologist.

24 B: C. The court shall conduct a hearing on the petition which shall take
25 precedence over all other matters, except pending cases of the same type. The court
26 shall admit evidence according to the Louisiana Code of Evidence. Witnesses and
27 evidence tending to show that the ~~patient~~ respondent is a proper subject for
28 outpatient placement shall be presented first. If the ~~patient~~ respondent does not
29 appear at the hearing, and service of process was proper and appropriate attempts to

1 elicit attendance failed, the court may conduct the hearing in the absence of the
2 ~~patient respondent~~, but the court shall state the factual basis for conducting the
3 hearing without the ~~patient respondent~~.

4 ~~C. D.~~ D. The court shall not order involuntary outpatient treatment unless an
5 examining physician, psychiatric mental health nurse practitioner, or psychologist,
6 who has personally examined the ~~patient within the time period commencing ten~~
7 ~~days before the filing of the petition~~ respondent, testifies at the hearing, in person or
8 via electronic means, with consent of all the parties, regarding the categories of
9 involuntary outpatient treatment recommended, the rationale for each category, facts
10 which establish that such treatment is the least restrictive alternative, and, if
11 recommended, the beneficial and detrimental physical and mental effects of
12 medication; and whether such medication should be self-administered or
13 administered by an authorized professional.

14 ~~D. E.~~ E. If the ~~patient respondent~~ has refused to be examined by a the court-
15 ordered physician, psychiatric mental health nurse practitioner, or psychologist, ~~the~~
16 ~~court may order the subject to undergo an examination by a physician, psychiatric~~
17 ~~mental health nurse practitioner, or psychologist appointed by the court. If the patient~~
18 ~~refuses to undergo the court-ordered examination and the court finds reasonable~~
19 ~~cause to believe that the allegations in the petition are true, the court may shall~~ order
20 the sheriff's department to take the ~~patient respondent~~ into custody and transport him
21 to a psychiatrist's office, behavioral health center, hospital, or emergency receiving
22 center ~~for examination~~. Retention of the ~~patient respondent~~ in accordance with the
23 court order shall not exceed twenty-four hours. ~~The examination of the patient may~~
24 ~~be performed by the physician, psychiatric mental health nurse practitioner, or~~
25 ~~psychologist whose affidavit or Physician's Report to Court accompanied the petition~~
26 ~~pursuant to R.S. 28:68(B), if he is privileged or otherwise authorized by the hospital~~
27 ~~or emergency receiving center. If such examination is performed by another~~ The
28 examining physician, psychiatric mental health nurse practitioner, or psychologist;
29 ~~he~~ shall be authorized to consult with the respondent's treating physician, psychiatric

1 mental health nurse practitioner, or psychologist ~~whose affidavit or Physician's~~
2 ~~Report to Court accompanied the petition regarding the issues of whether the~~
3 ~~allegations in the petition are true and whether the patient meets the criteria for~~
4 ~~involuntary outpatient treatment.~~

5 E. F. A physician, psychiatric mental health nurse practitioner, or
6 psychologist who testifies pursuant to Subsection ~~E~~ D of this Section shall state the
7 facts which support the allegation that the ~~patient~~ respondent meets each of the
8 criteria for involuntary outpatient treatment, the treatment is the least restrictive
9 alternative, the recommended involuntary outpatient treatment, and the rationale. If
10 the recommended involuntary outpatient treatment includes medication, the
11 testimony of the physician, psychiatric mental health nurse practitioner, or medical
12 psychologist shall describe the types or classes of medication which should be
13 authorized, the beneficial and detrimental physical and mental effects of such
14 medication, and whether the medication should be self-administered or administered
15 by authorized personnel.

16 ~~F. The patient~~ G. The respondent shall be afforded an opportunity to present
17 evidence, to call witnesses on his behalf, and to cross-examine adverse witnesses.

18 H. Each court shall keep a record of cases relating to persons who have a
19 mental illness coming before the court pursuant to the provisions of this Title and the
20 disposition of those cases. Each court shall also keep on file the original petition and
21 certificates of physicians required by this Section, or a microfilm duplicate of such
22 records. All records maintained in courts pursuant to the provisions of this Section
23 shall be sealed and available only to the parties to the case, unless a court, after a
24 hearing held with notice to the respondent, determines such records should be
25 disclosed to a petitioner for cause shown. Any hearing conducted in accordance with
26 this Subsection shall be closed to the public.

27 §70. Written treatment plan for involuntary outpatient treatment

28 A. The court shall not order involuntary outpatient treatment unless an
29 examining physician, psychiatric mental health nurse practitioner, or psychologist

1 develops and provides to the court a proposed written treatment plan. The written
 2 treatment plan shall be developed in consultation with the respondent and, upon his
 3 request, an individual significant to him and concerned with his welfare and deemed
 4 appropriate by the director ~~as well as the patient and upon his request, an individual~~
 5 ~~significant to him and concerned with his welfare.~~ The written treatment plan shall
 6 include appropriate services to provide care coordination. The written treatment plan
 7 shall also include appropriate categories of services, as set forth in Subsection D of
 8 this Section, which the ~~patient~~ respondent is recommended to receive and are
 9 available to the ~~patient~~ respondent. The written treatment plan shall specify a
 10 provider that has agreed to provide each of the specified services. If the written
 11 treatment plan includes medication, it shall state whether the medication should be
 12 self-administered or administered by authorized personnel, and shall specify type and
 13 dosage range of medication most likely to provide maximum benefit for the ~~patient~~
 14 respondent.

15 B. If the written treatment plan includes substance-related or addictive
 16 disorder counseling and treatment, it may include a provision requiring testing for
 17 either alcohol or illegal substances provided the clinical basis for recommending
 18 such plan provides sufficient facts for the court to find all of the following:

19 (1) The ~~patient~~ respondent has a history of a substance-related or addictive
 20 disorder that is clinically related to the mental illness.

21 * * *

22 E. ~~The director or his designee of the local governing entity shall certify It~~
 23 shall be certified to the court that the services ordered in the plan are available and
 24 can be reasonably accessed by the ~~patient~~ respondent.

25 F.(1) The written treatment plan is subject to reviews before the court with
 26 the ~~patient~~ respondent and at least one representative of the treatment team. The
 27 initial frequency shall be stipulated in the treatment plan and modified with the
 28 court's approval.

1 (2) The ~~court order required~~ court-ordered blood or laboratory testing shall
2 may be subject to review after six months by the physician, psychiatric mental health
3 nurse practitioner, or psychologist who developed the written treatment plan or who
4 is designated by the director, and the blood or laboratory testing may be terminated
5 without further action of the court.

6 §71. Disposition

7 A. If the court determines that the ~~patient~~ respondent does not meet the
8 criteria for involuntary outpatient treatment, the court shall dismiss the petition.

9 B. If the court finds by clear and convincing evidence that the ~~patient~~
10 respondent meets the criteria for involuntary outpatient treatment, and no ~~less~~
11 ~~restrictive~~ less-restrictive alternative is feasible, the court shall order that the ~~patient~~
12 respondent receive involuntary outpatient treatment for an initial period not to
13 exceed one year. The court shall state reasons why the proposed treatment plan is the
14 least restrictive treatment appropriate and feasible for the ~~patient~~ respondent. The
15 order shall state the categories of involuntary outpatient treatment as set forth in R.S.
16 28:70, which the ~~patient~~ respondent is to receive, and the court may not order
17 treatment that has not been recommended by the physician, psychiatric mental health
18 nurse practitioner, or psychologist in consultation with the treatment team and
19 included in the written treatment plan. The court shall not order an outpatient
20 commitment unless ~~the director or his designee certifies~~ it is certified to the court
21 that the services are available.

22 C. If the court finds by clear and convincing evidence that the ~~patient~~
23 respondent meets the criteria for involuntary outpatient treatment, and a written
24 proposed treatment plan has not been approved, the court shall order the director of
25 the local governing entity to provide a plan and testimony within five days of the
26 date of the order.

27 D. The court may order the ~~patient~~ respondent to self-administer psychotropic
28 drugs or order the administration of such drugs by authorized personnel as part of an
29 involuntary outpatient treatment program. The order shall specify the type of

1 psychotropic drugs and it shall be effective for the duration of such involuntary
2 outpatient treatment.

3 E. ~~If the petitioner is affiliated with a hospital that operates an involuntary~~
4 ~~outpatient treatment program that is willing to treat the patient, the court order shall~~
5 ~~direct the hospital to provide all available categories of involuntary outpatient~~
6 ~~treatment services. If the hospital does not have such a program or if the patient is~~
7 ~~discharged to a different local governing entity, or if the director of the local~~
8 ~~governing entity has filed the petition and certified services are available, the court~~
9 ~~order shall require the appropriate director to provide all available categories of~~
10 ~~involuntary outpatient treatment services.~~

11 F. The treatment provider shall apply for court approval prior to instituting
12 a proposed material change in the involuntary outpatient treatment order unless such
13 change is contemplated in the order. For purposes of this Subsection, a material
14 change shall mean an addition or deletion of a category of involuntary outpatient
15 treatment service, or any deviation without the consent of the patient respondent
16 from the terms of an existing order relating to the administration of psychotropic
17 drugs, or a change of residence from one local governing entity to another. A
18 material change shall not mean a change in the dosage or the specific psychotropic
19 drug within the type ordered by the court. Any application for court approval shall
20 be served upon all persons required to be served with notice of a petition for an order
21 authorizing involuntary outpatient treatment. Either party may move for a hearing
22 on the application. If a motion is not filed within five days from the date the
23 application is filed, the court shall grant the application.

24 G. ~~F.~~ Failure to comply with an order of ~~assisted~~ assistive outpatient
25 treatment shall not be grounds, in and of itself, for involuntary civil commitment or
26 a finding of contempt of court.

27 §72. Application for additional periods of treatment

28 A. The court order for outpatient treatment shall expire at the end of the
29 specified period unless a petition for an extension has been filed. If any person or

1 entity authorized within R.S. 28:67 determines that a ~~patient~~ respondent requires
2 further involuntary outpatient treatment, he shall file a petition for continued
3 treatment prior to the expiration of the involuntary outpatient treatment ordered by
4 the court. If a ~~patient~~ respondent has been ordered to receive outpatient treatment for
5 four consecutive six-month to one-year periods, the period of any subsequent order
6 may exceed one year but shall not exceed two years.

7 * * *

8 §73. Application to stay, vacate, or modify

9 In addition to any right or remedy available by law, the ~~patient~~ respondent
10 may apply to the court to stay, vacate, or modify the order based on a change in
11 circumstances and he shall notify the director of the local governing entity or
12 designee of his application.

13 * * *

14 §75. Failure to comply with involuntary outpatient treatment

15 ~~A. If either party alleges noncompliance under the written treatment plan, a~~
16 ~~judicial review can be scheduled and all persons listed in R.S. 28:69(A) are to~~
17 ~~receive notice. When a physician, psychiatric mental health nurse practitioner, or~~
18 ~~psychologist determines the respondent has failed to comply with the ordered~~
19 ~~treatment, the local governing entity, case manager, or assertive community~~
20 ~~treatment provider shall make reasonable efforts to solicit the compliance of the~~
21 ~~respondent.~~

22 ~~B. When a physician, psychiatric mental health nurse practitioner, or~~
23 ~~psychologist determines the patient has failed to comply with the ordered treatment,~~
24 ~~efforts were made to solicit compliance by the local governing entity, case manager,~~
25 ~~or assertive community treatment provider, and the patient may be in need of~~
26 ~~involuntary admission to a treatment facility, If either party alleges noncompliance~~
27 ~~despite the efforts referred to in Subsection A of this Section, a judicial hearing shall~~
28 ~~be scheduled and all persons listed in R.S. 28:69(A) are to receive notice.~~

person is found. Proposed law deletes from present law the requirement for written concurrence of the coroner.

Proposed law adds to present law items of information to be included in petitions to the court for orders authorizing involuntary outpatient treatment.

Proposed law requires that as soon as is practical after the filing of the petition for an order authorizing involuntary outpatient treatment, the court shall review the petition and supporting documents and determine whether there exists probable cause to believe that the respondent is suffering from mental illness which renders him unlikely to voluntarily participate in the recommended treatment and, in view of the treatment history and current behavior of the respondent, he is in need of involuntary outpatient treatment to prevent a relapse or deterioration which would be likely to result in him becoming dangerous to self or others or gravely disabled as defined in present law.

Proposed law requires that if the court determines that probable cause exists, it shall appoint a physician, psychiatric mental health nurse practitioner, or psychologist to examine the respondent and to provide a report provided for in present law (Physician's Report to Court) and testify at the hearing. Requires that the report set forth specifically the objective factors leading to the conclusion that the person has a mental illness that renders him unlikely to voluntarily participate in the recommended treatment and, in view of the treatment history and current behavior of the respondent, he is in need of involuntary outpatient treatment to prevent a relapse or deterioration which would be likely to result in him becoming dangerous to self or others or gravely disabled defined in present law. Stipulates that the report shall also include recommendations for a treatment plan.

Proposed law revises present law concerning procedures of courts with respect to petitions for orders authorizing involuntary outpatient treatment. Adds to present law a requirement that each court keep a record of the cases relating to persons who have a mental illness coming before it pursuant to present law and the disposition of those cases.

Proposed law provides that all records maintained in courts pursuant to present law and proposed law shall be sealed and available only to the parties to the case, unless a court, after a hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown. Requires that any such hearing shall be closed to the public.

Proposed law revises present law concerning written treatment plans for involuntary outpatient treatment.

Proposed law deletes present law providing all of the following:

- (1) If the petitioner is affiliated with a hospital that operates an involuntary outpatient treatment program that is willing to treat the patient, the court order shall direct the hospital to provide all available categories of involuntary outpatient treatment services.
- (2) If the hospital does not have such a program or if the patient is discharged to a different local governing entity, or if the director of the local governing entity has filed the petition and certified services are available, the court order shall require the appropriate director to provide all available categories of involuntary outpatient treatment services.

Proposed law deletes present law providing that if either party alleges noncompliance under a written treatment plan, a judicial review can be scheduled and all persons listed in present law, R.S. 28:69(A), are to receive notice. Adds in lieu thereof a requirement that when a physician, psychiatric mental health nurse practitioner, or psychologist determines the respondent has failed to comply with the ordered treatment, the local governing entity, case

manager, or treatment provider shall make reasonable efforts to solicit the compliance of the respondent.

Proposed law revises present law concerning noncompliance with written treatment plans and hearings on such noncompliance.

Proposed law stipulates that assistive outpatient treatment proceedings conducted pursuant to present law and proposed law shall be exempt from charges for filing fees or taxing of court costs.

(Amends R.S. 28:66, 67(intro. para.) and (1)-(4), 68, 69(A)(2) and (B)-(F), 70(A), (B)(1), (E), and (F), 71, 72(A), 73, and 75; Adds R.S. 28:69(G) and (H) and 77)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Change the term "patient" to "respondent" in present law relative to civil involuntary outpatient treatment for persons suffering from mental illness (Part III-A of Chapter 1 of Title 28 of the La. R.S.).
2. Delete present law requiring that a person's history of lack of compliance with mental health treatment must result in certain outcomes in order to qualify him for court-ordered involuntary outpatient treatment, thereby providing that the person's history of lack of compliance with mental health treatment, ipso facto, qualifies him for court-ordered involuntary outpatient treatment pursuant to present law and proposed law.
3. Add to present law items of information to be included in petitions to the court for orders authorizing involuntary outpatient treatment.
4. Require that as soon as is practical after the filing of the petition for an order authorizing involuntary outpatient treatment, the court shall review the petition and supporting documents and determine whether there exists probable cause to believe that the respondent is suffering from mental illness which renders him unlikely to voluntarily participate in the recommended treatment and, in view of the treatment history and current behavior of the respondent, he is in need of involuntary outpatient treatment to prevent a relapse or deterioration which would be likely to result in him becoming dangerous to self or others or gravely disabled as defined in present law.
5. Require that if the court determines that probable cause exists, it shall appoint a physician, psychiatric mental health nurse practitioner, or psychologist to examine the respondent and to provide a report provided for in present law (Physician's Report to Court) and testify at the hearing. Require that the report set forth specifically the objective factors leading to the conclusion that the person has a mental illness that renders him unlikely to voluntarily participate in the recommended treatment and, in view of the treatment history and current behavior of the respondent, he is in need of involuntary outpatient treatment to prevent a relapse or deterioration which would be likely to result in him becoming dangerous to self or others or gravely disabled defined in present law. Stipulate that the report shall also include recommendations for a treatment plan.
6. Revise present law concerning procedures of courts with respect to petitions for orders authorizing involuntary outpatient treatment. Add to such law a requirement that each court keep a record of the cases relating to persons who

have a mental illness coming before it pursuant to present law and the disposition of those cases.

7. Provide that all records maintained in courts pursuant to present law and proposed law shall be sealed and available only to the parties to the case, unless a court, after a hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown. Require that any such hearing shall be closed to the public.
8. Revise present law concerning written treatment plans for involuntary outpatient treatment.
9. Delete present law providing all of the following:
 - a. If the petitioner is affiliated with a hospital that operates an involuntary outpatient treatment program that is willing to treat the patient, the court order shall direct the hospital to provide all available categories of involuntary outpatient treatment services.
 - b. If the hospital does not have such a program or if the patient is discharged to a different local governing entity, or if the director of the local governing entity has filed the petition and certified services are available, the court order shall require the appropriate director to provide all available categories of involuntary outpatient treatment services.
10. Delete present law providing that if either party alleges noncompliance under a written treatment plan, a judicial review can be scheduled and all persons listed in present law, R.S. 28:69(A), are to receive notice. Add in lieu thereof a requirement that when a physician, psychiatric mental health nurse practitioner, or psychologist determines the respondent has failed to comply with the ordered treatment, the local governing entity, case manager, or treatment provider shall make reasonable efforts to solicit the compliance of the respondent.
11. Revise present law concerning noncompliance with written treatment plans and hearings on such noncompliance.
12. Stipulate that assistive outpatient treatment proceedings conducted pursuant to present law and proposed law shall be exempt from charges for filing fees or taxing of court costs.