

2018 Regular Session

SENATE BILL NO. 306

BY SENATOR BARROW

MENTAL HEALTH. Provides relative to Assistive Outpatient Treatment. (8/1/18)

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AN ACT

To amend and reenact R.S. 28:66(A)(6) and (B), 67(1) and (2), 68, 69(A)(1) and (2), (C) and (D), 70(A), (C), (D), and (E), 71(B), (C), (D), (E), and (F), 72 , 73, and 75, to enact R.S. 28:69(A)(3), 70(F), and 76, relative to assistive outpatient mental health treatment; to provide for the pertinence of advance directives; to provide for who may initiate a petition for involuntary outpatient treatment; to provide for matters relating to a hearing on such a petition; to provide for assessments of the patient and who is to perform assessments; to provide relative to physician affidavits; to provide relative to a treatment plan; to provide for notice to particular persons of any hearing to determine if involuntary outpatient treatment is necessary; to provide relative to additional periods of treatment; to provide for who is to receive notice of any petition to vacate an order for involuntary commitment; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 28:66(A)(6) and (B), 67(1) and (2), 68, 69(A)(1) and (2), (C) and (D), 70(A), (C), (D), and (E), 71(B), (C), (D), (E), and (F), 72, 73, and 75 are hereby amended and reenacted and R.S. 28:69(A)(3), 70(F), and 76 are hereby enacted to read as follows:

1 §66. Criteria for civil involuntary outpatient treatment

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

4 * * *

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

9 B. **Advance directives.** (1) If the patient has executed an advance directive
10 as defined in R.S. 28:221, any directions included in the directive shall be taken into
11 account by the court in determining the written treatment plan.

12 (2) Nothing herein shall preclude a person with an advance directive from
13 being subject to a petition pursuant to this Part.

14 §67. Petition to the court

15 A petition for an order authorizing involuntary outpatient treatment may be
16 filed in the judicial district in the parish in which the patient is present or reasonably
17 believed to be present. A petition to obtain an order authorizing involuntary
18 outpatient treatment may be initiated by one of the following persons:

19 (1) The director, ~~or~~ administrator, **or treating physician** of a hospital in
20 which the patient is hospitalized.

21 (2) The director, **administrator, or treating physician** of an emergency
22 receiving center in which the patient is receiving services.

23 * * *

24 §68. Petition

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

1 B. The petition shall be accompanied by **a Physician's Report to Court or**
2 an affidavit of a physician, psychiatric mental health nurse practitioner or
3 psychologist, ~~who shall not be the petitioner~~, and shall state either of the following:

4 (1) Such physician, psychiatric mental health nurse practitioner or
5 psychologist has examined the patient no more than ten days prior to the ~~submission~~
6 **filing** of the petition, he recommended involuntary outpatient treatment for the
7 patient, and he is willing and able to testify at the hearing on the petition.

8 (2) No more than ten days prior to the filing of the petition, such physician,
9 psychiatric mental health nurse practitioner or psychologist or his designee has made
10 appropriate attempts to elicit the cooperation of the patient but has not been
11 successful in persuading him to submit to an examination, that such physician,
12 psychiatric mental health nurse practitioner or psychologist has reason to suspect that
13 the patient meets the criteria for involuntary outpatient treatment, and he is willing
14 and able to examine the patient and testify at the hearing on the petition.

15 §69. Procedure

16 A. **Hearing notice.** (1) Upon the filing of the petition authorized by R.S.
17 28:67, the court shall assign a time and place for a hearing **as promptly as is**
18 **practical, but in no case later than eighteen days after the filing of the petition,**
19 which may be conducted before any judge in the judicial district, ~~within five days,~~
20 and shall cause reasonable notice thereof and a copy of the petition to be served upon
21 the respondent, respondent's attorney, the petitioner and the director of the local
22 governing entity in the parish where the petition has been filed. The notice shall
23 inform the respondent that he has a right to be present, a right to **retain** counsel,
24 ~~which may be appointed, if he is indigent or otherwise qualified,~~ has the right to
25 counsel appointed to represent him by the Mental Health Advocacy Service, and a
26 right to cross examine witnesses. Continuances shall be granted only for good cause
27 shown.

28 (2) In addition to those persons entitled to notice pursuant to Paragraph (1)
29 of this Subsection, if the respondent is interdicted, notice of the hearing and a copy

1 of the petition shall **also** be served upon the curator for the interdict and the attorney
 2 who represented the interdict in the interdict proceedings.

3 **(3) The court may order the service of all pleadings, notices, and written**
 4 **treatment plans required in this Part pursuant to Code of Civil Procedure**
 5 **Article 1212(A), without regard to Article 1313(B).**

6 * * *

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

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

1 receiving center. If such examination is performed by another physician, psychiatric
 2 mental health nurse practitioner or psychologist, he shall be authorized to consult
 3 with the physician, psychiatric mental health nurse practitioner or psychologist
 4 whose affidavit **or Physician's Report to Court** accompanied the petition regarding
 5 the issues of whether the allegations in the petition are true and whether the patient
 6 meets the criteria for involuntary outpatient treatment.

7 * * *

8 §70. Written treatment plan for involuntary outpatient treatment

9 A. The court shall not order involuntary outpatient treatment unless an
 10 examining physician, psychiatric mental health nurse practitioner, or psychologist
 11 ~~appointed by the appropriate director of the local governing entity~~ develops and
 12 provides to the court a proposed written treatment plan. The written treatment plan
 13 shall be ~~developed by a treatment team which shall include a case manager, clinical~~
 14 ~~social worker, and licensed physician, psychiatrist, psychiatric mental health nurse~~
 15 ~~practitioner, or psychologist and other specialized service providers as deemed~~
 16 appropriate by the director as well as the patient and upon his request, an individual
 17 significant to him and concerned with his welfare. The written treatment plan shall
 18 include appropriate services to provide care coordination. ~~Such services shall include~~
 19 ~~case management services or assertive community treatment teams.~~ The written
 20 treatment plan shall also include appropriate categories of services, as set forth in
 21 Subsection E of this Section, which ~~such team recommends~~ the patient **should is**
 22 **recommended to** receive **and are available to the patient.** **The written treatment**
 23 **plan shall specify a provider that has agreed to provide each of the specified**
 24 **services.** If the written treatment plan includes medication, it shall state whether the
 25 medication should be self-administered or administered by authorized personnel, and
 26 shall specify type and dosage range of medication most likely to provide maximum
 27 benefit for the patient.

28 * * *

29 C. The plan shall be provided to the court **and all persons required to**

1 receive notice within R.S. 28:69(A) at least three days before no later than the
 2 date of the hearing on the petition.

3 * * *

4 D. ~~The court shall not order involuntary outpatient treatment unless a~~
 5 ~~physician, psychiatric mental health nurse practitioner or psychologist testifies~~
 6 ~~regarding the categories of involuntary outpatient treatment recommended, the~~
 7 ~~rationale for each category, facts which establish that such treatment is the least~~
 8 ~~restrictive alternative, and, if recommended, the beneficial and detrimental physical~~
 9 ~~and mental effects of medication, and whether such medication should be self-~~
 10 ~~administered or administered by an authorized professional.~~

11 E: Services. (1) Services shall include but are not limited to ~~the following:~~

12 ~~(a) Assertive community treatment.~~

13 ~~(b) Case~~ case management, provided by the local governing entity which
 14 is defined as the assignment of the ~~administration~~ coordination of care for an
 15 outpatient individual with a serious mental illness to a single person or team,
 16 including all necessary medical and mental health care and associated supportive
 17 services.

18 (2) Services may include, but are not limited to, the following categories

19 and will depend upon the availability in the patient's area:

20 (a) Assertive community treatment.

21 (b) Medication.

22 ~~(b)(c)~~ (c) Laboratory testing to include periodic blood testing for therapeutic
 23 metabolic effects, toxicology testing and breath analysis.

24 ~~(e)(d)~~ (d) Individual or group therapy.

25 ~~(d)(e)~~ (e) Day or partial day programming activities.

26 ~~(e)(f)~~ (f) Education and vocational rehabilitation training.

27 ~~(f)(g)~~ (g) Substance-related or addictive disorder treatment.

28 ~~(g)(h)~~ (h) Supervised living.

29 ~~(h)(i)~~ (i) Transportation.

1 C. If the court finds by clear and convincing evidence that the patient meets
2 the criteria for involuntary outpatient treatment, and a written proposed treatment
3 plan has not been ~~submitted~~ **approved**, the court shall order the director of the local
4 governing entity to provide a plan and testimony within five days of the date of the
5 order.

6 D. The court may order the patient to self-administer psychotropic drugs or
7 ~~accept~~ **order** the administration of such drugs by authorized personnel as part of an
8 involuntary outpatient treatment program. The order shall specify the type ~~and~~
9 ~~dosage range~~ of psychotropic drugs and it shall be effective for the duration of such
10 involuntary outpatient treatment.

11 E. If the petitioner is ~~the director or administrator of~~ **affiliated with** a
12 hospital that operates an involuntary outpatient treatment program **that is willing to**
13 **treat the patient**, the court order shall direct the hospital to provide all **available**
14 categories of involuntary outpatient treatment services. If the hospital does not have
15 such a program or if the patient is discharged to a different local governing entity,
16 or if the director of the local governing entity has filed the petition and certified
17 services are available, the court order shall require the appropriate director to provide
18 for all **available** categories of involuntary outpatient treatment services.

19 F. The ~~director~~ **treatment provider** shall apply for court approval prior to
20 instituting a proposed material change in the involuntary outpatient treatment order
21 unless such change is contemplated in the order. For purposes of this Subsection, a
22 material change shall mean an addition or deletion of a category of involuntary
23 outpatient treatment service, or any deviation without the consent of the patient from
24 the terms of an existing order relating to the administration of psychotropic drugs,
25 or a change of residence from one local governing entity to another. **A material**
26 **change shall not mean a change in the dosage or the specific psychotropic drug**
27 **within the type ordered by the court.** Any application for court approval shall be
28 served upon all persons required to be served with notice of a petition for an order
29 authorizing involuntary outpatient treatment. Either party may move for a hearing

1 on the application. If a motion is not filed within five days from the date the
2 application is filed, the court shall grant the application.

3 * * *

4 §72. Application for additional periods of treatment

5 A. The court order for outpatient treatment shall expire at the end of the
6 specified period unless a petition ~~or motion~~ for an extension has been filed. If **any**
7 **person or entity authorized within R.S. 28:67** ~~the director~~ determines that a patient
8 requires further involuntary outpatient treatment, he shall file a petition ~~or motion~~ for
9 continued treatment prior to the expiration of the ~~initial~~ involuntary outpatient
10 treatment ordered by the court. If a patient has been ordered to receive outpatient
11 treatment for four consecutive six-month to one-year periods, the period of any
12 subsequent order may exceed one year but shall not exceed two years.

13 B. The procedure for obtaining an extension shall be the same as for
14 obtaining the original order. However, the time periods provided in R.S. 28:66(A)(4)
15 shall not be applicable in determining the appropriateness of the extension. ~~The court~~
16 ~~order requiring blood or laboratory testing shall be subject to review after six months~~
17 ~~by the physician, psychiatric mental health nurse practitioner or psychologist who~~
18 ~~developed the written treatment plan or who is designated by the director, and the~~
19 ~~blood or laboratory testing may be terminated without further action of the court.~~

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

21 In addition to any right or remedy available by law, the patient may apply to
22 the court to stay, vacate, or modify the order and he shall notify the director **of the**
23 **local governing entity or designee** of his application.

24 * * *

25 §75. Failure to comply with involuntary outpatient treatment

26 A. **If either party alleges noncompliance under the written treatment**
27 **plan, a judicial review can be scheduled and all persons listed in R.S. 28:69(A)**
28 **are to receive notice.**

29 **B.** When a physician, psychiatric mental health nurse practitioner or

1 psychologist determines the patient has failed to comply with the ordered treatment,
 2 efforts were made to solicit compliance by the ~~district, the region~~ **local governing**
 3 **entity**, case manager or assertive community treatment provider, and the patient may
 4 be in need of involuntary admission to a treatment facility, he may execute an
 5 emergency certificate in accordance with R.S. 28:53, request an order for custody in
 6 accordance with R.S. 28:53.2, or seek a judicial commitment in accordance with R.S.
 7 28:54.

8 **B-C.** If the patient refuses to take medication or refuses to take or fails blood
 9 or other laboratory tests as required by court order, the physician, psychiatric mental
 10 health nurse practitioner or psychologist may consider his refusal in determining
 11 whether the patient is in need of inpatient treatment services.

12 **§76. Definitions**

13 **As used in this Part, "Physician's Report to Court" means the reports**
 14 **provided for in R.S. 28:56(A)(2)(b).**

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Christine Arbo Peck.

DIGEST

SB 306 Engrossed

2018 Regular Session

Barrow

Present law provides for a person to be found in need of involuntary outpatient treatment necessitates a finding of being a danger to self or others.

Proposed law adds "gravely disabled" as a category for determining if a person is in need of involuntary outpatient treatment.

Present law provides that only the director or administrator of a hospital in which a patient is hospitalized may petition the court to authorize involuntary outpatient treatment for that patient. Proposed law adds the treating physician as being authorized to file the petition.

Present law provides that only the director of an emergency receiving center may file a petition for involuntary outpatient treatment. Proposed law expands that to include the administrator of the facility and the treating physician.

Present law requires that in the case of a petition for involuntary outpatient treatment shall be heard within five days of filing. Proposed law allows a hearing no later than 18 days after filing.

Proposed law expands the court's authority to order service of pleadings and to allow testimony of the patient by way of electronic means, if all parties agree.

Present law provides requirements for the written treatment plan to be utilized in the case

of involuntary outpatient treatment.

Proposed law specifies that the plan shall include a provider who has agreed to provide services.

Present law requires assertive community services to be included in such a plan. Proposed law allows for discretion depending upon whether such services are readily available.

Proposed law requires that a director or designee of a facility certify that the services ordered are available and can be readily accessed by the patient.

Proposed law sets out criteria relative to treatment plans and the modification thereof.

Proposed law defines the reports issued pursuant to present law (R.S. 28:56(A)(2)(b)) by the director or administrator of the treatment facility to which the person has been judicially committed to the court and to counsel of record setting forth the patient's response to treatment, his current condition, and the reasons why continued involuntary treatment is necessary to improve the patient's condition or to prevent it from deteriorating as the "Physician's Report to Court".

Effective August 1, 2018.

(Amends R.S. 28:66(A)(6) and (B), 67(1) and (2), 68, 69(A)(1) and (2), (C) and (D), 70(A), (C), (D), and (E), 71(B), (C), (D), (E) and (F), 72, 73, and 75; adds R.S. 28:69(A)(3), 70(F), and 76)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Health and Welfare to the original bill

1. Removes vocational and employment from the list of services that may be offered through involuntary outpatient treatment.
2. Allows the local governing entity to certify that services ordered are available and to assist with soliciting compliance of treatment by the patient.