

ACT No. 329

2021 Regular Session

HOUSE BILL NO. 589

BY REPRESENTATIVE DUPLESSIS AND SENATORS BARROW, BOUDREAUX,
AND HENSGENS

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), (D)(2)(introductory paragraph), (E), and
4 (F), 71, 72(A), 73, and 75 and to enact R.S. 28:69(G) and (H) and 77, relative to
5 behavioral health; to provide for persons who may petition to the court to authorize
6 involuntary outpatient treatment; to provide criteria and procedures for civil
7 involuntary outpatient treatment; to provide for written treatment plans; to exempt
8 certain proceedings from fees and 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), (D)(2)(introductory paragraph), (E), and (F), 71, 72(A),
12 73, and 75 are hereby amended and reenacted and R.S. 28:69(G) and (H) and 77 are hereby
13 enacted to read as follows:

14 §66. Criteria for civil involuntary outpatient treatment

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

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

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

- 23 ~~(a) At least twice within the last thirty-six months, the lack of compliance~~
24 ~~with treatment for mental illness has been a significant factor resulting in an~~

1 ~~emergency certificate for hospitalization, or receipt of services in a forensic or other~~
 2 ~~mental health unit of a correctional facility or a local correctional facility, not~~
 3 ~~including any period during which the person was hospitalized or incarcerated~~
 4 ~~immediately preceding the filing of the petition.~~

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

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

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

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

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

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

24 §67. Petition to the court

25 A petition for an order authorizing involuntary outpatient treatment may be
 26 filed in the judicial district in the parish in which the patient respondent is present or
 27 reasonably believed to be present. A petition to obtain an order authorizing
 28 involuntary outpatient treatment may be initiated by one of the following persons:

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

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

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

5 (4)(a) Any interested person through counsel ~~with written concurrence of the~~
6 ~~coroner in the jurisdiction in which the person is found.~~ The court may order the
7 coroner in the jurisdiction in which the respondent is found to provide written
8 concurrence to the allegations found in the petition to authorize involuntary
9 outpatient treatment.

10 (b) For the purposes of this Section, "interested person" means anyone of
11 legal age who has an interest in the outcome of a particular case, which may include
12 but shall not be limited to any adult relative or friend of the respondent, any official
13 or representative of a public or private agency, corporation, or association that is
14 concerned with the respondent's welfare, or any other person found suitable by the
15 court.

16 * * *

17 §68. Petition

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

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

25 (a) Name.

26 (b) Date of birth.

27 (c) Alias names, if any.

28 (d) Social security number.

29 (e) Sex.

30 (f) Race.

1 (2) If the petitioner is unable to provide any of the information listed in this
2 Subsection, the petitioner shall include in the petition the reasons why that
3 information cannot be provided.

4 B. C. The petition shall be accompanied by a Physician's Report to Court or
5 an affidavit of a physician, psychiatric mental health nurse practitioner, or
6 psychologist and shall state either of the following:

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

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

19 §69. Procedure

20 A.

21 * * *

22 (2) In addition to those persons entitled to notice pursuant to Paragraph (1)
23 of this Subsection, if the respondent is interdicted, notice of the hearing and a copy
24 of the petition shall also be served upon the curator for the interdict ~~and the attorney~~
25 ~~who represented the interdict in the interdict proceedings.~~

26 * * *

27 B.(1) As soon as is practical after the filing of the petition, the court shall
28 review the petition and supporting documents and determine whether there exists
29 probable cause to believe that the respondent is suffering from mental illness which
30 renders him unlikely to voluntarily participate in the recommended treatment and,

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

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

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

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

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

1 patient respondent, but the court shall state the factual basis for conducting the
2 hearing without the patient respondent.

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

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

1 ~~allegations in the petition are true and whether the patient meets the criteria for~~
2 ~~involuntary outpatient treatment.~~

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

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

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

25 §70. Written treatment plan for involuntary outpatient treatment

26 A. The court shall not order involuntary outpatient treatment unless an
27 examining physician, psychiatric mental health nurse practitioner, or psychologist
28 develops and provides to the court a proposed written treatment plan. The
29 respondent, and any other individual whom the respondent may designate, shall be
30 afforded a reasonable opportunity to participate in the development of the written

1 treatment plan. The treatment plan shall reflect the expressed preferences of the
 2 respondent to the extent the preferences are reasonable and consistent with the
 3 respondent's best interests. The written treatment plan shall be deemed appropriate
 4 by the director ~~as well as the patient and upon his request, an individual significant~~
 5 ~~to him and concerned with his welfare.~~ The written treatment plan shall include
 6 appropriate services to provide care coordination. The written treatment plan shall
 7 also include appropriate categories of services, as set forth in Subsection D of this
 8 Section, which the ~~patient~~ respondent is recommended to receive and are available
 9 to the ~~patient~~ respondent. The written treatment plan shall specify a provider that has
 10 agreed to provide each of the specified services. If the written treatment plan
 11 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 D.

23 * * *

24 (2) Services may include but are not limited to the following categories and
 25 will depend upon the availability in the ~~patient's~~ respondent's area:

26 * * *

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

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

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

10 §71. Disposition

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

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

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

1 D. The court may order the patient respondent to self-administer psychotropic
2 drugs or order the administration of such drugs by authorized personnel as part of an
3 involuntary outpatient treatment program. The order shall specify the type of
4 psychotropic drugs and it shall be effective for the duration of such involuntary
5 outpatient treatment.

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

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

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

1 §72. Application for additional periods of treatment

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

10 * * *

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

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

16 * * *

17 §75. Failure to comply with involuntary outpatient treatment

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

25 B. ~~When a physician, psychiatric mental health nurse practitioner, or~~
26 ~~psychologist determines the patient has failed to comply with the ordered treatment,~~
27 ~~efforts were made to solicit compliance by the local governing entity, case manager,~~
28 ~~or assertive community treatment provider, and the patient may be in need of~~
29 ~~involuntary admission to a treatment facility; If either party alleges noncompliance~~

1 despite the efforts referred to in Subsection A of this Section, a judicial hearing shall
2 be scheduled and all persons listed in R.S. 28:69(A) are to receive notice.

3 C. When a physician, psychiatric mental health nurse practitioner, or
4 psychologist determines that the respondent meets the relevant criteria, he may
5 execute an emergency certificate in accordance with R.S. 28:53, request an order for
6 custody in accordance with R.S. 28:53.2, or seek a judicial commitment in
7 accordance with R.S. 28:54. Any period of hospitalization shall not invalidate the
8 order for assistive outpatient treatment.

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

14 * * *

15 §77. Fees and court costs

16 Assistive outpatient treatment proceedings shall be exempt from charges for
17 filing fees or taxing of court costs.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____