HLS 17RS-732 ORIGINAL

2017 Regular Session

HOUSE BILL NO. 395

BY REPRESENTATIVE DUSTIN MILLER

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

MENTAL HEALTH: Amends the procedures for involuntary mental health treatment

1	AN ACT
2	To amend and reenact R.S. 28:2(1), 54(A) and (C), 55(A) through (D) and (E)(1) and (5),
3	56(C) and (G)(1) and (4), 59(A) through (C), 454.6(A)(introductory paragraph), (5),
4	and (6) and (B) and to enact R.S. 28:52.2(C) and 454.6(A)(7), relative to involuntary
5	mental health treatment; to extend the maximum length of time of treatment for a
6	patient granted a conditional discharge; to make technical corrections; to require
7	formal voluntary admission upon request of qualifying individuals; to provide for
8	judicial commitment hearings; to provide for commitment of prisoners; to establish
9	an effective date; and to provide for related matters.
10	Be it enacted by the Legislature of Louisiana:
11	Section 1. R.S. 28:2(1), 54(A) and (C), 55(A) through (D) and (E)(1) and (5), 56(C)
12	and (G)(1) and (4), 59(A) through (C), 454.6(A)(introductory paragraph), (5), and (6) and
13	(B) are hereby amended and reenacted and R.S. 28:52.2(C) and 454.6(A)(7) are hereby
14	enacted to read as follows:
15	§2. Definitions
16	Whenever used in this Title, the masculine shall include the feminine, the
17	singular shall include the plural, and the following definitions shall apply:
18	(1) "Conditional discharge" means the physical release of a judicially
19	committed person from a treatment facility by the director or by the court. The
20	patient may be required to report for outpatient treatment as a condition of his

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	release. The judicial commitment of such persons shall remain in effect for a period
2	of up to one hundred twenty eighty days and during this time the person may be
3	hospitalized involuntarily for appropriate medical reasons upon court order.
4	* * *
5	§52.2. Formal voluntary admission
6	* * *
7	C. A person civilly committed pursuant to Code of Criminal Procedure
8	Article 648(B)(3) shall not be denied a request for formal voluntary admission if the
9	patient meets the requirements of R.S. 28:52(G).
10	* * *
11	§54. Judicial commitment; procedure
12	A. Any The department or any person of legal age may file with the court
13	a petition which asserts his belief that a person is suffering from mental illness which
14	contributes or causes that person to be a danger to himself or others or to be gravely
15	disabled, or is suffering from substance abuse which contributes or causes that
16	person to be a danger to himself or others or to be gravely disabled and may thereby
17	request a hearing. The petition may be filed in the judicial district in which the
18	respondent is confined, or if not confined, in the judicial district where he resides or
19	may be found. The hearing shall not be transferred to another district except for
20	good cause shown. A petitioner who is unable to afford an attorney may seek the
21	assistance of any legal aid society or similar agency if available.
22	* * *
23	C.(1) Upon the filing of the petition, the court shall assign a time, not later
24	than eighteen calendar days thereafter, shall assign and a place for a hearing upon the
25	petition, and shall cause reasonable notice thereof to be given delivered at least ten
26	days prior to the hearing to the respondent, respondent's attorney, and the petitioner,
27	and the Louisiana Department of Health, bureau of legal services.
28	(2) The notice shall inform such the respondent of all of the following:
29	(a) that That he has a right to be present at the hearing.

(b)	that	That he	has a	right to	counsel;.
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(c) that That he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the Mental Health Advocacy Service, and.

(d) that That he has the right to cross examine witnesses testifying at any hearing on such the application.

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#### §55. Judicial hearings

A. At the appointed time, the court shall conduct a hearing on the petition for judicial commitment. Before the hearing, the respondent may move for a change of venue to the parish of his domicile, which motion shall be granted only for compelling reasons. If the respondent is confined to a hospital, the judge of the court where the petition was filed may hold the hearing on such commitment at the treatment facility where the person is confined, if in the opinion of at least one of the physicians appointed by the court to examine him, it will be detrimental to his health, welfare, or dignity to travel to the court where the petition was filed.

B. The court shall provide <u>the</u> respondent a reasonable opportunity to select his own counsel. In the event the respondent does not select counsel and is unable to pay for counsel, or in the event counsel selected by <u>the</u> respondent refuses to represent <u>said</u> <u>the</u> respondent or is not available for such representation, then the court shall appoint counsel for <u>the</u> respondent provided by the mental health advocacy service. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by <u>the</u> respondent or <u>the</u> petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.

C.(1) The respondent shall have the right to privately retained retain and paid pay counsel at any time. However, all respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the mental health advocacy service, the court shall contact the office of the mental health

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advocacy service and request the assignment of an attorney who will be appointed. In cases where the <u>mental health advocacy</u> service is unable to provide representation, the court shall select and appoint an attorney to represent the respondent, whose fee shall be set by the court.

(2) An attorney appointed to represent a person by a court pursuant to this Title has a continuing duty toward that person even after admission. That duty shall include, but not be limited to, follow-up investigation of the circumstances of the person and representation in subsequent proceedings relating to admission, status, and discharge. The duty shall continue until it is terminated by the court making the appointment.

D. On the day appointed, the hearing shall take precedence over all other matters, except pending cases of the same type, and shall be a closed hearing. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall admit evidence according to the usual rules of evidence. Witnesses and evidence tending to show that the person who is the subject of the petition is a proper subject for judicial commitment shall be presented first. The respondent has a right to be present unless the court finds that he knowingly, voluntarily, and intelligently waives his presence. The respondent or his counsel shall have the right to present evidence and cross examine witnesses who may testify at the hearing. If the department is not the petitioner, the department or its counsel may present evidence, call witnesses, and cross-examine any witness testifying at the hearing. If the respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects. If the respondent or his attorney notifies the court not less than three days before the hearing that he wishes to cross examine the examining physicians, the court shall order such physicians to appear in person or by deposition. The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment. A copy of such transcript shall be furnished without charge, to

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any appellant whom the court finds unable to pay for the same. The cost of such the transcript shall be paid from funds appropriated to the judicial department.

E.(1) If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment. After considering all relevant circumstances, including clinical recommendations and any preference of the respondent or his family, the court shall determine whether the respondent should be committed to a treatment facility which is medically suitable and least restrictive of the respondent's liberty. However, if the placement determined by the court is unavailable, the court shall may commit the respondent to the Louisiana Department of Health for appropriate placement in a state treatment facility subject to availability of department resources until such time as an opening is available for transfer to the treatment center determined by the court, unless the respondent waives the requirement for such transfer. Within fifteen days following an alternative placement, the department shall submit a report to the court stating the reasons for such placement and seeking court approval of the placement. If the department is not the petitioner, the parties shall first consult with the department or its counsel before entering into a judgment stipulating to a commitment of the respondent to the department.

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respondent to the treatment facility and deliver respondent, together with a copy of the judgment and certificates, with the respondent, to the director. In appointing a person to execute the order, the court should give preference to a near relative or friend of the respondent.

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§56. Judicial commitment; review; appeals

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C. Notwithstanding an order of judicial commitment, the director of the treatment facility to which the individual is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive. The director may at any time convert an involuntary commitment may be converted to a voluntary one should he deem that action medically appropriate. He in accordance with R.S. 28:52 or 52.2. The director or administrator of the treatment facility shall inform the court of any action in that regard. The director may discharge any patient if in his opinion, or upon recommendation of the treating physician, discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged in good faith.

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G.(1) A person who is judicially committed may be conditionally discharged for a period of up to one hundred twenty eighty days by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The terms and conditions of the conditional discharge shall be specifically set forth in writing and signed by the patient. A copy of the conditional discharge shall be given to the patient and explained to him before he is discharged.

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(4) An extension of a conditional discharge may be granted upon application by the department or by the director of the treatment facility to the court and notification to respondent's counsel of record. The court may grant the extension of the conditional discharge for a period of up to one hundred twenty eighty days, with annual renewals thereafter. No further extension may be made without a contradictory hearing. The burden of proof is on the department or the director of the treatment facility to show why continued treatment continuation of the conditional discharge is necessary.

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859	Commitment	of	prisoners
855.	Communicit	O1	prisoners

A. Any person acquitted of a crime or misdemeanor found not guilty by
reason of insanity or mental defect by a criminal court may be committed ordered
to the proper institution in accordance with Code of Criminal Procedure Arts. 654
et seq.

B. Any person who is determined to lack the capacity to proceed, who will not attain the capacity to proceed with his trial in the foreseeable future, and who is not a danger to himself or others, shall be discharged in accordance with Code of Criminal Procedure Arts. 648 et seq. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted within seventy-two hours pursuant to Code of Criminal Procedure Article 648 et seq. after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving  $\underline{a}$  sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court.

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### §454.6. Judicial hearings; commitments

A. The hearing shall take precedence over all other matters, except pending cases of the same type, and shall be a closed hearing. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall adhere to the following:

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it may render a judgment for his commitment. Courts committing persons to the custody of the department shall not make such commitments to specific private or public facilities but shall only commit such individuals to the department. If the department is not the petitioner, the parties shall first consult with the department or its counsel before entering into a judgment stipulating to a commitment of the respondent to the department.  * * *  Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.	1	(5) If the department is not the petitioner, the department or its counsel may
shall be informed of the medication and its common effects.  (6) (7) The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment.  B. If the court finds by clear and convincing evidence that the respondent has a developmental disability and is either dangerous to himself or dangerous to others, it may render a judgment for his commitment. Courts committing persons to the custody of the department shall not make such commitments to specific private or public facilities but shall only commit such individuals to the department. If the department is not the petitioner, the parties shall first consult with the department or its counsel before entering into a judgment stipulating to a commitment of the respondent to the department.  * * *  Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.	2	present evidence, call witnesses, and cross-examine any witness testifying at the
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### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 395 Original

2017 Regular Session

**Dustin Miller** 

**Abstract:** Updates provisions relative to judicial commitment and mental health treatment.

Present law provides that a judicial commitment shall remain in effect for a period of up to 120 days.

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CODING: Words in struck through type are deletions from existing law; words underscored are additions.

Proposed law extends the period of time to 180 days.

<u>Proposed law</u> authorizes a person who is civilly committed by a criminal court to request a formal voluntary admission if the person meets the requirements for such admission.

<u>Proposed law</u> makes technical corrections to the provisions of law regarding judicial commitment and updates terminology.

Present law sets forth the procedure for a hearing on a petition for judicial commitment.

<u>Proposed law</u> retains <u>present law</u> and specifies that the hearing shall take precedence over all other matters, except pending cases of the same type, and shall be a closed hearing. Further authorizes the La. Dept. of Health, if not the petitioner, to present evidence, call witnesses, and cross-examine any witness testifying at the hearing.

<u>Proposed law</u> requires the parties to the hearing, if the La. Dept. of Health is not the petitioner, to consult with the department before entering into a stipulated judgment committing the patient to the department.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 28:2(1), 54(A) and (C), 55(A)-(D) and (E)(1) and (5), 56(C) and (G)(1) and (4), 59(A)-(C), 454.6(A)(intro. para.), (5), and (6) and (B); Adds R.S. 28:52.2(C) and 454.6(A)(7))