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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 439  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 439's Fiscal Note](#)

**Version:** As Reported by House Civil Justice

**Primary Sponsors:** Reps. Galonski and Hillyer

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### SUMMARY

- Establishes a new category under which an individual may be considered a “mentally ill person subject to a court order” and subject to emergency hospitalization: psychiatric deterioration.
- Modifies a requirement for emergency hospitalization (“pink slipping”) that an individual must represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending an examination by removing the requirement that the substantial risk of harm be a risk of *physical* harm.
- Specifies that a written statement required to be made by an individual transporting a “mentally ill person subject to a court order” is not invalid if the statement identifies a general hospital as the receiving hospital of person.
- Requires an individual making a written statement regarding a person considered a “mentally ill person subject to a court order” under the psychiatric deterioration standard established by the bill to include additional available relevant information about a person’s mental illness.
- Establishes conditions under which a general hospital that receives a “mentally ill person subject to a court order” is not required to transfer the person to a hospital licensed by the Ohio Department of Mental Health and Addiction Services.

### DETAILED ANALYSIS

Existing Ohio law establishes a process under which certain health professionals or law enforcement officers may initiate an individual’s involuntary treatment for mental illness when an emergency exists. This process is referred to as emergency hospitalization or “pink slipping.” Currently, before the emergency hospitalization process may be initiated, an individual must (1) meet one or more statutory categories to be considered a “mentally ill person subject to a court order” and (2) represent a substantial risk of physical harm to self or others if allowed to

remain at liberty pending examination. The bill creates an additional statutory category under which an individual may be considered a “mentally ill person subject to a court order” and modifies the requirement that an individual also represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination to remove the requirement that the substantial risk of harm be a risk of *physical* harm.

## **Mentally ill person subject to a court order**

Under Ohio law, an individual is a “mentally ill person subject to a court order” if, because of the individual’s mental illness, the individual falls into one of five specified categories. Those categories are:<sup>1</sup>

- The individual represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
- The individual represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
- The individual represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the individual is unable to provide for and is not providing for the individual’s basic physical needs because of the individual’s mental illness and that appropriate provision for those needs cannot be made immediately available in the community;
- The individual would benefit from treatment for the individual’s mental illness and is in need of treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or the individual;
- The individual would benefit from treatment as manifested by evidence of behavior that indicates all of the following:
  - The individual is unlikely to survive safely in the community without supervision, based on a clinical determination;
  - The individual has a history of lack of compliance with treatment for mental illness and either (1) at least twice within the preceding 36 months, the lack of compliance has been a factor in necessitating hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility or (2) within the preceding 48 months, the lack of compliance resulted in one or more acts of serious violent behavior toward self or others, or threats of, or attempts at, serious physical harm to self or others;

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<sup>1</sup> R.C. 5122.01(B).

- The individual, as a result of the individual’s mental illness, is unlikely to voluntarily participate in necessary treatment;
- In view of the individual’s treatment history and current behavior, the individual is in need of treatment to prevent a relapse or deterioration that would likely result in substantial risk of serious harm to the individual or others.

An individual who only meets this final category without also meeting at least one other category is not subject to emergency hospitalization.<sup>2</sup>

The bill establishes a new category under which an individual may be considered a “mentally ill person subject to a court order.” Under this category, an individual is considered a “mentally ill person subject to a court order” if the individual represents a substantial risk of harm to self or others as manifested by evidence that indicates all of the following:

- The person’s judgment is impaired by a lack of understanding of having an illness or a need for treatment, or both;
- The person refuses treatment or is not adhering to prescribed treatment;
- The person has been diagnosed with one or more of the following conditions as defined in the most recent addition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association:
  - Schizophrenia;
  - Schizoaffective disorder;
  - Bipolar disorder;
  - Delusional disorder;
  - Major depressive disorder.
- If not treated and based on the individual’s prior history, the individual is reasonably expected to suffer mental deterioration and, as a result of that deterioration, will meet one of the first four categories described above.<sup>3</sup>

### **Substantial risk of physical harm to self or others**

In addition to being considered a “mentally ill person subject to a court order,” to be eligible for emergency involuntary hospitalization, an individual also must represent a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination. The bill modifies this requirement to remove the restriction that the substantial risk of harm be a risk of *physical* harm. Therefore, under the bill, an individual must be considered a “mentally ill person subject to a court order” and represent a substantial risk of

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<sup>2</sup> R.C. 5122.01(B)(6)(b).

<sup>3</sup> R.C. 5122.01(B)(5).

harm to self or others if allowed to remain at liberty pending examination to be eligible for emergency involuntary hospitalization.

## **Required written statement**

Under current law, specified individuals who believe that a person is a “mentally ill person subject to a court order” and represents a substantial risk of harm to self or others if allowed to remain at liberty pending examination are authorized to detain a person and initiate emergency involuntary hospitalization by transporting the person to a general hospital or hospital licensed by the Ohio Department of Mental Health and Addiction Services (OhioMHAS).<sup>4</sup> Existing law further specifies that when an authorized individual does so, the transporting individual must give the receiving hospital a written statement detailing the circumstances under which the person was taken into custody and the reasons for believing emergency involuntary hospitalization is necessary.<sup>5</sup>

The bill makes two changes regarding this required written statement. First, the bill specifies that a written statement is not invalid if it is given to a general hospital rather than a hospital licensed by OhioMHAS. The bill requires a general hospital that receives a written statement to transmit that statement to a hospital licensed by OhioMHAS when the general hospital transfers a person to an OhioMHAS hospital.<sup>6</sup>

Second, the bill requires that an individual transporting a person they believe to be a “mentally ill person subject to a court order” under the psychiatric deterioration category established by the bill specify, in addition to the required written statement described above, any available relevant information about the history of the person’s mental illness, if the transporting individual determines that the additional information has a reasonable bearing on the decision to transport the person. This additional information may include (1) information from anyone who has provided mental health or related support services to the person being transported, (2) information from one or more family members of the person being transported, or (3) information from the person being transported or anyone designated to speak on the person’s behalf.<sup>7</sup>

## **Authority of a general hospital**

Under current law, a general hospital may admit and provide care to a “mentally ill person subject to a court order” who is taken into custody and transported to the general hospital. However, the general hospital must transport the person to a hospital that is licensed by OhioMHAS not later than 24 hours after the person arrives at the general hospital.<sup>8</sup> The bill

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<sup>4</sup> R.C. 5122.10(A).

<sup>5</sup> R.C. 5122.10(B)(1).

<sup>6</sup> R.C. 5122.10(B)(1).

<sup>7</sup> R.C. 5122.10(B)(2).

<sup>8</sup> R.C. 5122.10(D).

permits a general hospital to continue to provide care to a person for longer than 24 hours if either of the following is the case:

- At the end of the 24-hour period, the general hospital determines that the person is not medically stable to be transferred<sup>9</sup>;
- Within the 24-hour period, the general hospital is unable to identify an OhioMHAS-licensed hospital that is willing to accept the person.<sup>10</sup>

Additionally, the bill provides that if a licensed physician responsible for diagnosing or treating mental illness, a licensed clinical psychologist, a psychiatrist, or other health officer examines a “mentally ill person subject to a court order” who is transported to a general hospital, and determines that the person is not a “mentally ill person subject to a court order,” the general hospital may release the person, unless a court has issued a temporary order of detention for the person. The bill specifies that this provision is not to be construed as requiring a general hospital to have the resources for or provide licensed professionals to make a determination as to whether someone is a “mentally ill person subject to a court order.”<sup>11</sup>

## Background

For a more detailed explanation of current Ohio law regarding the emergency hospitalization process, please see LSC’s Members Brief, [Involuntary Treatment for Mental Illness](#).

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## HISTORY

Action	Date
Introduced	09-29-21
Reported, H. Civil Justice	06-01-22

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ANHB0439RH-134/ar

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<sup>9</sup> R.C. 5122.10(E).

<sup>10</sup> R.C. 5122.10(F).

<sup>11</sup> R.C. 5122.10(G).