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LC004877

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS

Introduced By: Senator Erin Lynch Prata

Date Introduced: March 20, 2018

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40.1-5-8 of the General Laws in Chapter 40.1-5 entitled "Mental  
2 Health Law" is hereby amended to read as follows:

3 **40.1-5-8. Civil court certification.**

4 (a) Petitions. A verified petition may be filed in the district court, or family court in the  
5 case of a person who has not reached his or her eighteenth (18th) birthday, for the certification to  
6 a facility of any person who is alleged to be in need of care and treatment in a facility, and whose  
7 continued unsupervised presence in the community would create a likelihood of serious harm by  
8 reason of mental disability. The petition may be filed by any person with whom the subject of the  
9 petition may reside; or at whose house he or she may be; or the father or mother, husband or wife,  
10 brother or sister, or the adult child of any such person; the nearest relative if none of the above are  
11 available; or his or her guardian; or the attorney general; or a local director of public welfare; or  
12 the director of the department of behavioral healthcare, developmental disabilities and hospitals;  
13 the director of the department of human services; or the director of the department of corrections;  
14 the director of the department of health; the warden of the adult correctional institutions; the  
15 superintendent of the boys training school for youth, or his or her designated agent; or the director  
16 of any facility, or his or her designated agent, whether or not the person shall have been admitted  
17 and is a patient at the time of the petition. A petition under this section shall be filed only after the  
18 petitioner has investigated what alternatives to certification are available and determined why the

1 alternatives are not deemed suitable.

2 (b) Contents of petition. The petition shall state that it is based upon a personal  
3 observation of the person concerned by the petitioner within a ten-day (10) period prior to filing.  
4 It shall include a description of the behavior that constitutes the basis for the petitioner's judgment  
5 that the person concerned is in need of care and treatment and that a likelihood of serious harm by  
6 reason of mental disability exists. In addition, the petitioner shall indicate what alternatives to  
7 certification are available; what alternatives have been investigated; and why the investigated  
8 alternatives are not deemed suitable.

9 (c) Certificates and contents thereof. A petition hereunder shall be accompanied by the  
10 certificates of two (2) physicians unless the petitioner is unable to afford, or is otherwise unable  
11 to obtain, the services of a physician or physicians qualified to make the certifications. The  
12 certificates shall be rendered pursuant to the provisions of § 40.1-5-5, except when the patient is a  
13 resident in a facility, the attending physician and one other physician from the facility may sign  
14 the certificates, and shall set forth that the prospective patient is in need of care and treatment in a  
15 facility and would likely benefit therefrom, and is one whose continued unsupervised presence in  
16 the community would create a likelihood of serious harm by reason of mental disability together  
17 with the reasons therefor. The petitions and accompanying certificates shall be executed under  
18 penalty of perjury, but shall not require the signature of a notary public thereon.

19 (d) Preliminary hearing.

20 (1) Upon a determination that the petition sets forth facts constituting reasonable grounds  
21 to support certification, the court shall summon the person to appear before the court at a  
22 preliminary hearing, scheduled no later than five (5) business days from the date of filing. This  
23 hearing shall be treated as a priority on the court calendar and may be continued only for good  
24 cause shown. In default of an appearance, the court may issue a warrant directing a police officer  
25 to bring the person before the court.

26 (2) At the preliminary hearing, the court shall serve a copy of the petition upon the person  
27 and advise him or her of the nature of the proceedings and of his or her right to counsel. If the  
28 person is unable to afford counsel, the court forthwith shall appoint the mental health advocate for  
29 him or her. If the court finds that there is no probable cause to support certification, the petition  
30 shall be dismissed, and the person shall be discharged unless the person applies for voluntary  
31 admission. However, if the court is satisfied by the testimony that there is probable cause to  
32 support certification, a final hearing shall be held not less than seven (7) days, nor more than  
33 twenty-one (21) days, after the preliminary hearing, unless continued at the request of counsel for  
34 the person, and notice of the date set down for the hearing shall be served on the person. Copies

1 of the petition and notice of the date set down for the hearing shall also be served immediately  
2 upon the person's nearest relatives or legal guardian, if known, and to any other person designated  
3 by the patient, in writing, to receive copies of notices. The preliminary hearing can be waived by  
4 a motion of the patient to the court if the patient is a resident of a facility.

5 (e) Petition for examination.

6 (1) Upon motion of either the petitioner or the person, or upon its own motion, the court  
7 may order that the person be examined by a psychiatrist appointed by the court. The examination  
8 may be conducted on an outpatient basis and the person shall have the right to the presence of  
9 counsel while it is being conducted. A report of the examination shall be furnished to the court,  
10 the petitioner, and the person and his or her counsel at least forty-eight (48) hours prior to the  
11 hearing.

12 (2) If the petition is submitted without two (2) physicians' certificates as required under  
13 subsection (c), the petition shall be accompanied by a motion for a psychiatric examination to be  
14 ordered by the court. The motion shall be heard on the date of the preliminary hearing set by the  
15 court pursuant to subsection (d), or as soon thereafter as counsel for the subject person is  
16 engaged, appointed, and ready to proceed. The motion shall be verified or accompanied by  
17 affidavits and shall set forth facts demonstrating the efforts made to secure examination and  
18 certification by a physician or physicians and shall indicate the reasons why the efforts failed.

19 (3) After considering the motion and such testimony as may be offered on the date of  
20 hearing the motion, the court may deny the application and dismiss the petition, or upon finding:

21 (i) That there is a good cause for the failure to obtain one or more physician's certificates in  
22 accordance with subsection (c); and (ii) That there is probable cause to substantiate the  
23 allegations of the petition, the court shall order an immediate examination by two (2) qualified  
24 psychiatrists, pursuant to subsection (e)(1).

25 (f) Professional assistance. A person with respect to whom a court hearing has been  
26 ordered under this section shall have, and be informed of, a right to employ a mental health  
27 professional of his or her choice to assist him or her in connection with the hearing and to testify  
28 on his or her behalf. If the person cannot afford to engage such a professional, the court shall, on  
29 application, allow a reasonable fee for the purpose.

30 (g) Procedure. Upon receipt of the required certificates and/or psychiatric reports as  
31 applicable hereunder, the court shall schedule the petition for final hearing unless, upon review of  
32 the reports and certificates, the court concludes that the certificates and reports do not indicate,  
33 with supporting reasons, that the person who is the subject of the petition is in need of care and  
34 treatment; that his or her unsupervised presence in the community would create a likelihood of

1 serious harm by reason of mental disability; and that all alternatives to certification have been  
2 investigated and are unsuitable, in which event the court may dismiss the petition.

3 (h) Venue. An application for certification under this section shall be made to, and all  
4 proceedings pursuant thereto shall be conducted in, the district court, or family court in the case  
5 of a person who has not yet reached his or her eighteenth (18th) birthday, of the division or  
6 county in which the subject of an application may reside or may be, or when the person is already  
7 a patient in a facility, in the district court or family court of the division or county in which the  
8 facility is located, subject, however, to application by any interested party for change of venue  
9 because of inconvenience of the parties or witnesses or the condition of the subject of the petition  
10 or other valid judicial reason for the change of venue.

11 (i) Hearing. A hearing scheduled under this section shall be conducted pursuant to the  
12 following requirements:

13 (1) All evidence shall be presented according to the usual rules of evidence that apply in  
14 civil, non-jury cases. The subject of the proceedings shall have the right to present evidence in his  
15 or her own behalf and to cross examine all witnesses against him or her, including any physician  
16 who has completed a certificate or filed a report as provided hereunder. The subject of the  
17 proceedings shall have the further right to subpoena witnesses and documents, the cost of such to  
18 be borne by the court where the court finds, upon an application of the subject that the person  
19 cannot afford to pay for the cost of subpoenaing witnesses and documents.

20 (2) A verbatim transcript or electronic recording shall be made of the hearing that shall be  
21 impounded and obtained or examined only with the consent of the subject thereof (or in the case  
22 of a person who has not yet attained his or her eighteenth (18th) birthday, his or her parent,  
23 guardian, or next of kin) or by order of the court.

24 (3) The hearing may be held at a location other than a court, including any facility where  
25 the subject may currently be a patient, where it appears to the court that holding the hearing at  
26 another location would be in the best interests of the subject thereof.

27 (4) The burden of proceeding and the burden of proof in a hearing held pursuant to this  
28 section shall be upon the petitioner. The petitioner has the burden of demonstrating that the  
29 subject of the hearing is in need of care and treatment in a facility, is one whose continued  
30 unsupervised presence in the community would create a likelihood of serious harm by reason of  
31 mental disability, and what alternatives to certification are available, what alternatives to  
32 certification were investigated, and why these alternatives were not deemed suitable.

33 (5) The court shall render a decision within forty-eight (48) hours after the hearing is  
34 concluded.

1 (j) Order. If the court at a final hearing finds by clear and convincing evidence that the  
2 subject of the hearing is in need of care and treatment in a facility, and is one whose continued  
3 unsupervised presence in the community would, by reason of mental disability, create a  
4 likelihood of serious harm, and that all alternatives to certification have been investigated and  
5 deemed unsuitable, it shall issue an order committing the person to the custody of the director for  
6 care and treatment or to an appropriate facility. In either event, and to the extent practicable, the  
7 person shall be cared for in a facility that imposes the least restraint upon the liberty of the person  
8 consistent with affording him or her the care and treatment necessary and appropriate to his or her  
9 condition. No certification shall be made under this section unless and until full consideration has  
10 been given by the certifying court to the alternatives to in-patient care, including, but not limited  
11 to, a determination of the person's relationship to the community and to his or her family, of his  
12 or her employment possibilities, and of all available community resources, alternate available  
13 living arrangements, foster care, community residential facilities, nursing homes, and other  
14 convalescent facilities. A certificate ordered pursuant to this section shall be valid for a period of  
15 six (6) months from the date of the order. At the end of that period the patient shall be discharged,  
16 unless he or she is discharged prior to that time, in which case the certification shall expire on the  
17 date of the discharge.

18 (k) Appeals.

19 (1) A person certified under this section shall have a right to appeal from a final hearing  
20 to the supreme court of the state within thirty (30) days of the entry of an order of certification.  
21 The person shall have the right to be represented on appeal by counsel of his or her choice or by  
22 the mental health advocate if the supreme court finds that he or she cannot afford to retain  
23 counsel. Upon a showing of indigency, the supreme court shall permit an appeal to proceed  
24 without payment of costs, and a copy of the transcript of the proceedings below shall be furnished  
25 to the subject of the proceedings, or to his or her attorney, at the expense of the state. The  
26 certifying court shall advise the person of all his or her rights pursuant to this section immediately  
27 upon the entry of an order of certification.

28 (2) Appeals under this section shall be given precedence, insofar as practicable, on the  
29 supreme court dockets. The district and family courts shall promulgate rules with the approval of  
30 the supreme court to insure the expeditious transmission of the record and transcript in all appeals  
31 pursuant to this chapter.

32 (l) Submission to NICS database.

33 (1) The district court shall submit the name, date of birth, gender, race or ethnicity, and  
34 date of civil commitment to the NICS database of all persons subject to a civil court certification

1 order pursuant to this section within forty-eight (48) hours of certification.

2 (2) Any person affected by the provisions of this section, after the lapse of a period of  
3 three (3) years from the date such civil certification is terminated, shall have the right to appear  
4 before the relief from disqualifiers board.

5 (3) Upon notice of a successful appeal pursuant to § 40.1-5-8(k), the district court shall,  
6 as soon as practicable, cause the appellant's record to be updated, corrected, modified, or removed  
7 from any database maintained and made available to the National Instant Criminal Background  
8 Check System (NICS) and reflect that the appellant is no longer subject to a firearms prohibition  
9 as it relates to 18 U.S.C. § 922(d)(4) and 18 U.S.C. § 922(g)(4).

10 (m) Equitable authority. In addition to the powers heretofore exercised, the district and  
11 family courts are hereby empowered, in furtherance of their jurisdiction under this chapter, to  
12 grant such orders, including temporary restraining orders, petitions for instructions, and  
13 preliminary and permanent injunctions as justice and equity may require.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS

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- 1           This act would grant the district and family courts the explicit statutory authority to issue  
2 equitable orders incidental to their adjudication of matters falling within their jurisdiction under  
3 this chapter.  
4           This act would take effect upon passage.

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