

HOUSE BILL 1092

By Richardson

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 63; Title 68 and Title 71, relative to assisted
outpatient treatment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, Part 6, is amended by
adding the following as a new section:

33-6-624.

(a) For purposes of this section, unless the context otherwise requires:

(1) "Assisted outpatient" means the person under a court order to receive
assisted outpatient treatment;

(2) "Assisted outpatient treatment" means categories of outpatient
services that have been ordered by the court pursuant to this section. Such
treatment shall include case management services or community treatment team
services to provide care coordination, and may also include any of the following
categories of services: medication; periodic blood tests or urinalysis to determine
compliance with prescribed medications; individual or group therapy; day or
partial day programming activities; educational and vocational training or
activities; alcohol or substance abuse treatment and counseling and periodic
tests for the presence of alcohol or illegal drugs for persons with a history of
alcohol or substance abuse; supervision of living arrangements; and any other
services within a local or unified services plan developed pursuant to this section,
prescribed to treat the person's mental illness and to assist the person in living
and functioning in the community, or to attempt to prevent a relapse or

deterioration that may reasonably be predicted to result in suicide or the need for hospitalization;

(3) "Assisted outpatient treatment program" means a system to arrange for and coordinate the provision of assisted outpatient treatment, to monitor treatment compliance by assisted outpatients, to evaluate the condition or needs of assisted outpatients, to take appropriate steps to address the needs of such individuals, and to ensure compliance with court orders;

(4) "Department" means the department of mental health;

(5) "Director" means the director of a hospital or facility licensed or operated by the department of mental health which operates, directs and supervises an assisted outpatient treatment program;

(6) "Program coordinator" means an individual appointed by the commissioner of mental health, who is responsible for the oversight and monitoring of assisted outpatient treatment programs; and

(7) "Subject of the petition" or "subject" means the person who is alleged in a petition, filed pursuant to the provisions of this section, to meet the criteria for assisted outpatient treatment.

(b) The director of a hospital or facility licensed or operated by the department may operate, direct and supervise an assisted outpatient treatment program, upon approval by the commissioner of mental health. Nothing in this subsection (b) shall be interpreted to preclude the combination or coordination of efforts between and among local governmental units and hospitals in providing and coordinating assisted outpatient treatment.

(c) In addition to other treatment authorized by this part, a person may be ordered to receive assisted outpatient treatment if a court of competent jurisdiction finds that such person:

(1) Is eighteen (18) years of age or older;

(2) Is suffering from a mental illness;

(3) Is unlikely to survive safely in the community without supervision, based on a clinical determination;

(4) Has a history of lack of compliance with treatment for mental illness that has:

(A) Prior to the filing of the petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization in a hospital, or receipt of services in a forensic or other mental health unit of a correctional facility or a local correctional facility, not including any current period, or period ending within the last six (6) months, during which the person was or is hospitalized or incarcerated; or

(B) Prior to the filing of the petition, resulted in one (1) or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight (48) months, not including any current period, or period ending within the last six (6) months, in which the person was or is hospitalized or incarcerated;

(5) Is, as a result of such person's mental illness, unlikely to voluntarily participate in outpatient treatment that would enable such person to live safely in the community;

(6) In view of such person's treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others; and

(7) Is likely to benefit from assisted outpatient treatment.

(d) Nothing in this section authorizes a person to act as an agent or proxy under title 68, chapter 11, part 18.

(e)

(1) A petition for an order authorizing assisted outpatient treatment may be filed in a court of competent jurisdiction in the county in which the subject of the petition is present or reasonably believed to be present. Such petition may be initiated only by the following persons:

(A) Any person eighteen (18) years of age or older with whom the subject of the petition resides;

(B) The parent, spouse or sibling eighteen (18) years of age or older, or child eighteen (18) years of age or older of the subject of the petition;

(C) The director of a hospital in which the subject of the petition is hospitalized;

(D) The director of any public or charitable organization, agency or home providing mental health services to the subject of the petition or in whose institution the subject of the petition resides;

(E) A qualified psychiatrist who is either supervising the treatment of or treating the subject of the petition for a mental illness;

(F) A psychologist, licensed pursuant to title 63, or a social worker, licensed pursuant to title 63, who is treating the subject of the petition for a mental illness; or

(G) A parole officer or probation officer assigned to supervise the subject of the petition.

(2) The petition shall state:

(A) Each of the criteria for assisted outpatient treatment as set forth in subsection (c);

(B) Facts that support the petitioner's belief that the subject of the petition meets each criterion, provided that the hearing on the petition need not be limited to the stated facts; and

(C) That the subject of the petition is present, or is reasonably believed to be present, within the county where such petition is filed.

(3) The petition shall be accompanied by an affirmation or affidavit of a physician, who shall not be the petitioner, stating either that:

(A) Such physician has personally examined the subject of the petition no more than ten (10) days prior to the submission of the petition, recommends assisted outpatient treatment for the subject of the petition, and is willing and able to testify at the hearing on the petition; or

(B) No more than ten (10) days prior to the filing of the petition, the physician or the physicians' designee has made appropriate attempts but has not been successful in eliciting the cooperation of the subject of the petition to submit to an examination, the physician has reason to suspect that the subject of the petition meets the criteria for assisted outpatient

treatment, and the physician is willing and able to examine the subject of the petition and testify at the hearing on the petition.

(f) The petitioner shall cause written notice of the petition to be given to the subject of the petition and a copy thereof to be given personally or by mail to the nearest known family member, the legal counsel of the department, the health care agent pursuant to title 68, chapter 11, part 18, or with a person with a durable health care power of attorney under title 34 if any such agent is known to the petitioner, and the appropriate program coordinator.

(g) The subject of the petition shall have the right to be represented by the counsel, at all stages of a proceeding commenced under this section.

(h)

(1) Upon receipt of the petition, the court shall fix the date for a hearing. Such date shall be no later than three (3) days from the date such petition is received by the court, excluding Saturdays, Sundays and holidays.

Continuances shall be permitted only for good cause shown. In granting continuances, the court shall consider the need for further examination by a physician or the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the subject of the petition, any other person receiving notice pursuant to subsection (f), the petitioner, the physician whose affirmation or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be continued, the court shall hear testimony and, if it be deemed advisable and the subject of the petition is available, examine the subject of the petition in or out of court. If the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the

attendance of the subject have failed, the court may conduct the hearing in the subject's absence. In such case, the court shall set forth the factual basis for conducting the hearing without the presence of the subject of the petition.

(2) The court shall not order assisted outpatient treatment unless an examining physician, who recommends assisted outpatient treatment and has personally examined the subject of the petition no more than ten (10) days before the filing of the petition, testifies in person at the hearing. Such physician shall state the facts and clinical determinations which support the allegation that the subject of the petition meets each of the criteria for assisted outpatient treatment.

(3) If the subject of the petition has refused to be examined by a physician, the court may request the subject to consent to an examination by a physician appointed by the court. If the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement officers, or a sheriff's department, to take the subject of the petition into custody and transport the subject to a hospital for examination by a physician in accord with other provisions of this title. Retention of the subject of the petition under such order shall not exceed twenty-four (24) hours. The examination of the subject of the petition may be performed by the physician whose affirmation or affidavit accompanied the petition pursuant to subdivision (e)(3), if such physician is privileged by such hospital or otherwise authorized by such hospital to do so. If the examination is performed by another physician, the examining physician may consult with the physician whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment.

(4) A physician who testifies pursuant to subdivision (h)(2) shall state:

(A) The facts which support the allegation that the subject meets each of the criteria for assisted outpatient treatment;

(B) That the treatment is the least restrictive alternative;

(C) The recommended assisted outpatient treatment; and

(D) The rationale for the recommended assisted outpatient treatment. If the recommended assisted outpatient treatment includes medication, such physician's testimony shall describe the types or classes of medication that should be authorized, shall describe the beneficial and detrimental physical and mental effects of such medication, and shall recommend whether such medication should be self-administered or administered by authorized personnel.

(5) The subject of the petition shall be afforded an opportunity to present evidence, to call witnesses on such subject's behalf, and to cross-examine adverse witnesses.

(i)

(1) The court shall not order assisted outpatient treatment unless a physician appointed by the appropriate director, in consultation with such director, develops and provides to the court a proposed written treatment plan. The written treatment plan shall include case management services or assertive community treatment team services to provide care coordination. The written treatment plan also shall include all categories of services, as set forth in subdivision (a)(2), which such physician recommends that the subject of the petition receive. All service providers shall be notified regarding their inclusion in the written treatment plan. If the written treatment plan includes medication, it shall state whether such medication should be self-administered or administered

by authorized personnel, and shall specify type and dosage range of medication most likely to provide maximum benefit for the subject. If the written treatment plan includes alcohol or substance abuse counseling and treatment, the plan may include a provision requiring relevant testing for either alcohol or illegal substances provided the physician's clinical basis for recommending such plan provides sufficient facts for the court to find:

(A) That such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and

(B) That such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others. Such plan shall be provided to the court no later than the date set by the court pursuant to subdivision (j)(3).

(2) The physician appointed to develop the written treatment plan shall provide the following persons with an opportunity to actively participate in the development of such plan: the subject of the petition; the treating physician, if any; and, upon the request of the subject of the petition, an individual significant to the subject including any relative, close friend or individual otherwise concerned with the welfare of the subject.

(3) The court shall not order assisted outpatient treatment unless a physician appearing on behalf of a director testifies to explain the written proposed treatment plan. Such physician shall state the categories of assisted outpatient treatment recommended, the rationale for each such category, facts that establish that such treatment is the least restrictive alternative, and, if the recommended assisted outpatient treatment plan includes medication, such physician shall state the types or classes of medication recommended, the

beneficial and detrimental physical and mental effects of such medication, and whether such medication should be self-administered or administered by an authorized professional. If the subject of the petition has executed a health care advance directive, the physician shall state the consideration given to any directions included in the advance directive in developing the written treatment plan. If a director is the petitioner, testimony pursuant to this subsection (i) shall be given at the hearing on the petition. If a person other than a director is the petitioner, such testimony shall be given on the date set by the court pursuant to subdivision (j)(3).

(j)

(1) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(2) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the subject to receive assisted outpatient treatment for an initial period not to exceed six (6) months. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the proposed treatment is the least restrictive treatment appropriate and feasible for the subject. The order shall state an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment, as set forth in subdivision (a)(2), which the assisted outpatient is to receive, but shall not include any such category that has not been recommended in both the proposed

written treatment plan and the testimony provided to the court pursuant to subsection (i).

(3) If after hearing all relevant evidence presented by a petitioner who is not a director, the court finds by clear and convincing evidence that the subject of the petition meets the criteria for assisted outpatient treatment, and the court has yet to be provided with a written proposed treatment plan and testimony pursuant to subsection (i), the court shall order the appropriate director to provide the court with such plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of the order. Upon receiving the plan and testimony, the court may order assisted outpatient treatment as provided in subdivision (j)(2).

(4) A court may order the patient to self-administer psychotropic drugs or accept the administration of such drugs by authorized personnel as part of an assisted outpatient treatment program. Such order may specify the type and dosage range of such psychotropic drugs and such order shall be effective for the duration of such assisted outpatient treatment.

(5) If the petitioner is the director of a hospital that operates an assisted outpatient treatment program, the court order shall direct the hospital director to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order. For all other persons, the order shall require the appropriate director to provide or arrange for all categories of assisted outpatient treatment for the assisted outpatient throughout the period of the order.

(6) The director shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile or electronic means,

upon the assisted outpatient, department or anyone acting on the assisted outpatient's behalf, the original petitioner, identified service providers, and all others entitled to notice under subsection (f).

(k) Within thirty (30) days prior to the expiration of an order of assisted outpatient treatment, the appropriate director or the current petitioner, if the current petition was filed pursuant to subdivision (e)(1)(A) or (e)(1)(B), and the current petitioner retains such petitioner's original status pursuant to the applicable subdivision, may petition the court to order continued assisted outpatient treatment for a period not to exceed one (1) year from the expiration date of the current order. If the court's disposition of the petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until the disposition. The procedures for obtaining any order pursuant to this subsection (k) shall be in accordance with the provisions of this section; provided that the time restrictions included in subdivision (c)(4) shall not be applicable. The notice provisions set forth in subdivision (j)(6) shall be applicable. Any court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs shall be subject to review after six (6) months by the physician who developed the written treatment plan or another physician designated by the director, and such physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

(l)

(1) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the assisted outpatient, the department, or anyone acting on the assisted outpatient's behalf may petition the court on notice to the director, the original petitioner, and all others entitled to notice under subsection (f) to stay, vacate or modify the order.

(2) The appropriate director shall petition the court for approval before instituting a proposed material change in the assisted outpatient treatment plan, unless such change is authorized by the order of the court. The petition shall be filed on notice to all parties entitled to notice under subsection (f). Not later than five (5) days after receiving the petition, excluding Saturdays, Sundays and holidays, the court shall hold a hearing on the petition; provided that if the assisted outpatient informs the court that such outpatient agrees to the proposed material change, the court may approve the change without a hearing. Non-material changes may be instituted by the director without court approval. For the purposes of this subdivision (l)(2), a material change is an addition or deletion of a category of services to or from a current assisted outpatient treatment plan, or any deviation without the assisted outpatient's consent from the terms of a current order relating to the administration of psychotropic drugs.

(m) Review of an order issued pursuant to this section shall be had in like manner for review of other court orders as specified in this chapter and other applicable law with the court of appeals.

(n)

(1) Where in the clinical judgment of a physician:

(A) The assisted outpatient, has failed or refused to comply with the assisted outpatient treatment;

(B) Efforts were made to solicit compliance; and

(C) Such assisted outpatient may be in need of involuntary admission to a hospital pursuant to part 4 or part 5 of this chapter or immediate observation, care and treatment pursuant to this chapter,

then such physician may request the department's director or program coordinator, the director's designee, or any physician designated by the department's director or program coordinator to direct the removal of such assisted outpatient to an appropriate hospital for an examination to determine if such person has a mental illness for which hospitalization is necessary pursuant to this chapter.

(2) If such assisted outpatient refuses to take medications as required by the court order, or refuses to take, or fails a blood test, urinalysis, or alcohol or drug test as required by the court order, the physician may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether the outpatient has a mental illness for which hospitalization is necessary.

(3) Upon the request of such physician, the director or coordinator, the director's designee, or any physician designated pursuant to this chapter, may direct law enforcement officers or a sheriff's department to take the assisted outpatient into custody and transport such outpatient to the hospital operating the assisted outpatient treatment program or to any hospital authorized by the director of community services to receive such persons. The law enforcement officials shall carry out this directive in accord with other provisions of this title.

(4) Upon the request of such physician, the director or coordinator, the director's designee, or any physician designated pursuant to this chapter, an ambulance service, or an approved mobile crisis outreach team shall be authorized to take into custody and transport any such person to the hospital operating the assisted outpatient treatment program, or to any other hospital authorized by the department's director to receive such persons.

(5) Any director or coordinator, or designee, shall be authorized to direct the removal of an assisted outpatient who is present in such person's county to an appropriate hospital, in accordance with the provisions of this subsection (n), based upon a determination of the appropriate director of community services directing the removal of such assisted outpatient pursuant to this subdivision (n)(5).

(6) Such person may be retained for observation, care and treatment and further examination in the hospital for up to seventy-two (72) hours to permit a physician to determine whether such person has a mental illness and is in need of involuntary care and treatment in a hospital pursuant to the provisions of this chapter. Any continued involuntary retention in such hospital beyond the initial seventy-two-hour period shall be in accordance with the provisions of this chapter relating to the involuntary admission and retention of a person. If at any time during the seventy-two-hour period the person is determined not to meet the involuntary admission and retention provisions of this chapter, and does not agree to stay in the hospital as a voluntary or informal patient, the person must be released.

(7) Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

(o) The determination by a court that a person is in need of assisted outpatient treatment shall not be construed as or deemed to be a determination that such person is incapacitated.

(p) Nothing in this section shall be construed to affect the ability of the director of a hospital to receive, admit, or retain patients who otherwise meet the provisions of this chapter regarding receipt, retention or admission.

(q)

(1) The department, in consultation with the administrative office of the courts, shall prepare educational and training materials on the use of this section, which shall be made available to local governmental units, providers of services, judges, court personnel, law enforcement officials and the general public.

(2) The department, in consultation with the administrative office of the courts, shall establish a mental health training program for supreme and county court judges and court personnel. Such training shall focus on the use of this section and generally address issues relating to mental illness and mental health treatment.

(r) In a proceeding under this section, all other provisions of this part do not apply unless this section so specifies that a provision applies.

SECTION 2. This act shall take effect January 1, 2012, the public welfare requiring it.