

**2017 -- S 0492 SUBSTITUTE A**

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LC001103/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2017**

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- MENTAL HEALTH LAW

Introduced By: Senators DiPalma, Miller, Crowley, and Goldin

Date Introduced: March 02, 2017

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

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

3           **40.1-5-2. Definitions.**

4           Whenever used in this chapter, or in any order, rule, or regulation made or promulgated  
5 pursuant to this chapter, or in any printed forms prepared by the department or the director, unless  
6 otherwise expressly stated, or unless the context or subject matter otherwise requires:

7           (1) "Alternatives to admission or certification" means alternatives to a particular facility  
8 or treatment program, and shall include, but not be limited to, voluntary or court-ordered  
9 outpatient treatment, day treatment in a hospital, night treatment in a hospital, placement in the  
10 custody of a friend or relative, placement in a nursing home, referral to a community mental  
11 health clinic and home health aide services, or any other services that may be deemed  
12 appropriate.

13           (2) "Care and treatment" means psychiatric care, together with such medical, nursing,  
14 psychological, social, rehabilitative, and maintenance services as may be required by a patient in  
15 association with the psychiatric care provided pursuant to an individualized treatment plan  
16 recorded in the patient's medical record.

17           (3) "Department" means the state department of behavioral healthcare, developmental  
18 disabilities and hospitals.

1 (4) "Director" means the director of the state department of behavioral healthcare,  
2 developmental disabilities and hospitals.

3 (5) "Facility" means a state hospital or psychiatric inpatient facility in the department, a  
4 psychiatric inpatient facility maintained by a political subdivision of the state for the care and/or  
5 treatment of the mentally disabled; a general or specialized hospital maintaining staff and  
6 facilities for such purpose; any of the several community mental health services established  
7 pursuant to chapter 8.5 of this title; and any other facility within the state providing inpatient  
8 psychiatric care and/or treatment and approved by the director upon application of this facility.  
9 Included within this definition shall be all hospitals, institutions, facilities, and services under the  
10 control and direction of the director and the department, as provided in this chapter. Nothing  
11 contained herein shall be construed to amend or repeal any of the provisions of chapter 16 of title  
12 23.

13 (6) "Indigent person" means a person who has not sufficient property or income to  
14 support himself or herself, and to support the members of his or her family dependent upon him  
15 or her for support, and/or is unable to pay the fees and costs incurred pursuant to any legal  
16 proceedings conducted under the provisions of this chapter.

17 (7) "Likelihood of serious harm" means:

18 (i) A substantial risk of physical harm to the person himself or herself as manifested by  
19 behavior evidencing serious threats of, or attempts at, suicide;

20 (ii) A substantial risk of physical harm to other persons as manifested by behavior or  
21 threats evidencing homicidal or other violent behavior; or

22 (iii) A substantial risk of physical harm to the mentally disabled person as manifested by  
23 behavior that has created a grave, clear, and present risk to his or her physical health and safety.

24 (iv) In determining whether there exists a likelihood of serious harm, the physician, [the](#)  
25 [psychiatric and mental health nurse clinical specialist allowed pursuant to §40.1-5-8\(c\)](#), and the  
26 court may consider previous acts, diagnosis, words, or thoughts of the patient. If a patient has  
27 been incarcerated, or institutionalized, or in a controlled environment of any kind, the court may  
28 give great weight to such prior acts, diagnosis, words, or thoughts.

29 (8) "Mental disability" means a mental disorder in which the capacity of a person to  
30 exercise self-control or judgment in the conduct of his or her affairs and social relations, or to  
31 care for his or her own personal needs, is significantly impaired.

32 (9) "Mental health professional" means a psychiatrist, psychologist, or social worker and  
33 such other persons, including psychiatric nurse clinicians, as may be defined by rules and  
34 regulations promulgated by the director.

1 (10) "NICS database" means the National Instant Criminal Background Check System as  
2 created pursuant to section 103(h) of the Brady Handgun Violence Prevention Act (Brady Act),  
3 Pub. L. 103-159, 107 Stat. 1536 as established by 28 CFR 25.1.

4 (11) "Patient" means a person certified or admitted to a facility according to the  
5 provisions of this chapter.

6 (12) "Physician" means a person duly licensed to practice medicine or osteopathy in this  
7 state.

8 (13) "Psychiatric and mental health nurse clinical specialist" means a person defined in  
9 §5-34-3(15).

10 ~~(13)~~(14) "Psychiatric nurse clinician" means a licensed, professional registered nurse with  
11 a master's degree in psychiatric nursing or related field who is currently working in the mental  
12 health field as defined by the American Nurses Association.

13 ~~(14)~~(15) "Psychiatrist" means a person duly licensed to practice medicine or osteopathy  
14 in this state who has, in addition, completed three (3) years of graduate psychiatric training in a  
15 program approved by the American Medical Association or American Osteopathic Association.

16 ~~(15)~~(16) "Psychologist" means a person certified pursuant to chapter 44 of title 5.

17 ~~(16)~~(17) "Social worker" means a person with a masters or further advanced degree from  
18 a school of social work, that is accredited by the council of social work education.

19 **40.1-5-8. Civil court certification.**

20 (a) Petitions. A verified petition may be filed in the district court, or family court in the  
21 case of a person who has not reached his or her eighteenth (18th) birthday, for the certification to  
22 a facility of any person who is alleged to be in need of care and treatment in a facility, and whose  
23 continued unsupervised presence in the community would create a likelihood of serious harm by  
24 reason of mental disability. The petition may be filed by any person with whom the subject of the  
25 petition may reside; or at whose house he or she may be; or the father or mother, husband or wife,  
26 brother or sister, or the adult child of any such person; the nearest relative if none of the above are  
27 available; or his or her guardian; or the attorney general; or a local director of public welfare; or  
28 the director of the department of behavioral healthcare, developmental disabilities and hospitals;  
29 the director of the department of human services; or the director of the department of corrections;  
30 the director of the department of health; the warden of the adult correctional institutions; the  
31 superintendent of the boys training school for youth, or his or her designated agent; or the director  
32 of any facility, or his or her designated agent, whether or not the person shall have been admitted  
33 and is a patient at the time of the petition. A petition under this section shall be filed only after the  
34 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~~ person is a patient in a facility, the attending physician and one other physician ~~from or if~~  
14 the facility is a community mental health center, a psychiatric and mental health nurse clinical  
15 specialist employed by the facility, may sign the certificates, and shall set forth that the  
16 prospective patient is in need of care and treatment in a facility and would likely benefit  
17 therefrom, and is one whose continued unsupervised presence in the community would create a  
18 likelihood of serious harm by reason of mental disability together with the reasons therefor. The  
19 petitions and accompanying certificates shall be executed under penalty of perjury, but shall not  
20 require the signature of a notary public thereon.

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

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

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

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

12 (2) If the petition is submitted without the two (2) ~~physicians'~~ certificates as required  
13 under subsection (c), the petition shall be accompanied by a motion for a psychiatric examination  
14 to be ordered by the court. The motion shall be heard on the date of the preliminary hearing set by  
15 the 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 as required under subsection (c) by a physician or physicians and shall indicate the  
19 reasons why the efforts failed.

20 (3) After considering the motion and such testimony as may be offered on the date of  
21 hearing the motion, the court may deny the application and dismiss the petition, or upon finding:  
22 (i) That there is a good cause for the failure to obtain one or more ~~physician's~~ certificates in  
23 accordance with subsection (c); and (ii) That there is probable cause to substantiate the  
24 allegations of the petition, the court shall order an immediate examination by two (2) qualified  
25 psychiatrists, or if the relevant facility is a community mental health center, either two (2)  
26 psychiatrists, or one psychiatrist and a psychiatric and mental health certified nurse specialist  
27 employed by the facility, pursuant to subsection (e)(1).

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

33 (g) Procedure. Upon receipt of the required certificates and/or psychiatric reports as  
34 applicable hereunder, the court shall schedule the petition for final hearing unless, upon review of

1 the reports and certificates, the court concludes that the certificates and reports do not indicate,  
2 with supporting reasons, that the person who is the subject of the petition is in need of care and  
3 treatment; that his or her unsupervised presence in the community would create a likelihood of  
4 serious harm by reason of mental disability; and that all alternatives to certification have been  
5 investigated and are unsuitable, in which event the court may dismiss the petition.

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

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

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

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

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

31 (4) The burden of proceeding and the burden of proof in a hearing held pursuant to this  
32 section shall be upon the petitioner. The petitioner has the burden of demonstrating that the  
33 subject of the hearing is in need of care and treatment in a facility, is one whose continued  
34 unsupervised presence in the community would create a likelihood of serious harm by reason of

1 mental disability, and what alternatives to certification are available, what alternatives to  
2 certification were investigated, and why these alternatives were not deemed suitable.

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

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

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

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

1 (1) Submission to NICS database.

2 (1) The district court shall submit the name, date of birth, gender, race or ethnicity, and  
3 date of civil commitment to the NICS database of all persons subject to a civil court certification  
4 order pursuant to this section within forty-eight (48) hours of certification.

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

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

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

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LC001103/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND  
HOSPITALS -- MENTAL HEALTH LAW

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1           This act would authorize a licensed psychiatric and mental health nurse clinical specialist  
2   to attest to a patient's condition and need for treatment, submit documents to court, and testify  
3   in court when the patient is receiving treatment at a licensed community mental health center.

4           This act would take effect upon passage.

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