SENATE, No. 882

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:
Senator JOSEPH P. CRYAN
District 20 (Union)

SYNOPSIS

Authorizes psychiatric advanced practice nurses to complete certain certificates required for involuntary commitment to treatment.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning involuntary commitment to treatment and amending P.L.1987, c.116.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 1 of P.L.1987, c.116 (C.30:4-27.1) is amended to read as follows:

1. The Legislature finds and declares that:

a. The State is responsible for providing care, treatment, and rehabilitation services to mentally ill persons who are disabled and cannot provide basic care for themselves or who are dangerous to themselves, others, or property; and because some of these mentally ill persons do not seek treatment or are not able to benefit from voluntary treatment provided on an outpatient basis, it is necessary that State law provide for the voluntary admission and the involuntary commitment to treatment of these persons as well as for the public services and facilities necessary to fulfill these responsibilities.

b. Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment.

c. It is the policy of this State that persons in the public mental health system receive inpatient treatment and rehabilitation services in the least restrictive environment in accordance with the highest professional standards and which will enable those persons committed to treatment to return to full autonomy in their community as soon as it is clinically appropriate. In addition, it is the policy of this State to ensure that appropriate outpatient treatment services are readily available to all persons with mental illness, such that involuntary commitment to treatment is rarely required; but that persons with mental illness who are determined to be dangerous to themselves, others, or property should be subject to involuntary treatment in the least restrictive environment possible, in an inpatient or outpatient setting clinically appropriate to their condition.

Further, it is the policy of this State that the public mental health system shall be developed in a manner which protects individual liberty and provides advocacy and due process for persons receiving

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

treatment and insures that treatment is provided in a manner consistent with a person's clinical condition.

d. It is the policy of this State to encourage each county or designated mental health service area to develop a screening service, outpatient treatment provider, and short-term care facility which will meet the needs for evaluation and treatment of mentally ill persons in the county or service area. The State encourages the development of screening services as the public mental health system's entry point in order to provide accessible crisis intervention, evaluation, and referral services to mentally ill persons in the community; to offer mentally ill persons clinically appropriate alternatives to inpatient care, if any; and, when necessary, to provide a means for involuntary commitment to treatment. Similarly, the State encourages the development of community-based outpatient treatment providers and short-term care facilities to enable a mentally ill person to receive outpatient or acute, inpatient care near the person's community. Development and use of screening services, outpatient treatment providers, and short-term care facilities throughout the State are necessary to strengthen the Statewide community mental health system, lessen inappropriate hospitalization and reliance on psychiatric institutions, and enable State and county facilities to provide the rehabilitative care needed by some mentally ill persons following their receipt of acute care. Additionally, it is necessary that the mental health delivery system be designed to promote the prompt receipt of mental health services in the most appropriate setting for the recovery of the patient. Accordingly, reforms are needed to permit additional health care professionals to complete certificates for commitment and, thereby, decrease the amount of time a patient spends in an emergency department of a general hospital awaiting more appropriate care.

(cf: P.L.2009, c.112, s.1)

2. Section 2 of P.L.1987, 116 (C.30:4-27.2) is amended to read as follows:

2. As used in P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112 (C.30:4-27.8a et al.):

a. "Chief executive officer" means the person who is the chief administrative officer of an institution or psychiatric facility.

b. "Clinical certificate" means a form prepared by the division and approved by the Administrative Office of the Courts, that is completed by the psychiatrist **[**or other**]** **[**physician,**]** who has examined the person who is subject to commitment within three days of presenting the person for involuntary commitment to treatment, and which states that the person is in need of involuntary commitment to treatment. The form shall also state the specific facts upon which the examining **[**physician**]** psychiatrist has based his conclusion and shall be certified in accordance with the Rules of

the Court. A clinical certificate may not be executed by a person who is a relative by blood or marriage to the person who is being screened.

c. "Clinical director" means the person who is designated by the director or chief executive officer to organize and supervise the clinical services provided in a screening service, short-term care facility, or psychiatric facility. The clinical director shall be a psychiatrist[,]; however, those persons currently serving in the capacity will not be affected by this provision. This provision shall not alter any current civil service laws designating the qualifications of such position.

d. "Commissioner" means the Commissioner of Human Services.

e. "County counsel" means the chief legal officer or advisor of the governing body of a county.

f. "Court" means the Superior Court or a municipal court.

g. "Custody" means the right and responsibility to ensure the provision of care and supervision.

h. "Dangerous to self" means that, by reason of mental illness, the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy [his] the person's need for nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm, or death will result within the reasonably foreseeable future; however, no person shall be deemed to be unable to satisfy [his] the person's need for nourishment, essential medical care, or shelter if [he] the person is able to satisfy such needs with the supervision and assistance of others who are willing and available. This determination shall take into account a person's history, recent behavior and any recent act, threat, or serious psychiatric deterioration.

i. "Dangerous to others or property" means that, by reason of mental illness, there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior and any recent act, threat, or serious psychiatric deterioration.

j. "Department" means the Department of Human Services.

k. "Director" means the chief administrative officer of a screening service, short-term care facility, or special psychiatric hospital.

l. "Division" means the Division of Mental Health and Addiction Services in the Department of Human Services.

m. "In need of involuntary commitment" or "in need of involuntary commitment to treatment" means that an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is

unwilling to accept appropriate treatment voluntarily after it has been offered, needs outpatient treatment or inpatient care at a short-term care or psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.

n. "Institution" means any State or county facility providing inpatient care, supervision, and treatment for persons with developmental disabilities; except that with respect to the maintenance provisions of Title 30 of the Revised Statutes, institution also means any psychiatric facility for the treatment of persons with mental illness.

o. "Mental health agency or facility" means a legal entity which receives funds from the State, county, or federal government to provide mental health services.

p. "Mental health screener" means a psychiatrist, psychologist, social worker, registered professional nurse, or other individual trained to do outreach only for the purposes of psychological assessment who is employed by a screening service and possesses the license[,] and academic training or experience[, as] required by the commissioner pursuant to regulation; except that a psychiatrist [and a] or State licensed clinical psychologist who [meet] meets the requirements for mental health screener shall not have to comply with any additional requirements adopted by the commissioner.

q. "Mental hospital" means, for the purposes of the payment and maintenance provisions of Title 30 of the Revised Statutes, a psychiatric facility.

r. "Mental illness" means a current, substantial disturbance of thought, mood, perception, or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality, but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome, or developmental disability unless it results in the severity of impairment described herein. The term mental illness is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

s. "Patient" means a person [over the age of] 18 years of age or older who has been admitted to, but not discharged from, a short-term care facility or psychiatric facility, or who has been assigned to, but not discharged from, an outpatient treatment provider.

t. "Physician" means a person who is licensed to practice medicine in any one of the United States or its territories, or the District of Columbia.

u. "Psychiatric facility" means a State psychiatric hospital listed in R.S.30:1-7, a county psychiatric hospital, or a psychiatric unit of a county hospital.

v. "Psychiatrist" means a physician who has completed the psychiatry training requirements of the American Osteopathic

Association (AOA) or the Accreditation Council for Graduate Medical Education (ACGME), and is certified by the American Osteopathic Board of Neurology and Psychiatry (AOBNP) or the American Board of Psychiatry and Neurology (ABPN).

w. "Psychiatric unit of a general hospital" means an inpatient unit of a general hospital that restricts its services to the care and treatment of persons with mental illness who are admitted on a voluntary basis.

x. "Psychologist" means a person who is licensed as a psychologist by the New Jersey Board of Psychological Examiners.

y. "Screening certificate" means a clinical certificate executed by a psychiatrist **[**or other**]**, physician **[**affiliated**]**, or psychiatric advanced practice nurse who has a formal written affiliation with a screening service.

z. "Screening service" means a public or private ambulatory care service designated by the commissioner, which provides mental health services including assessment, emergency, and referral services to persons with mental illness in a specified geographic area.

aa. "Screening outreach visit" means an evaluation provided by a mental health screener wherever the person may be when clinically relevant information indicates the person may need involuntary commitment to treatment and is unable or unwilling to come to a screening service.

bb. "Short-term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a person with mental illness whose mental illness causes the person to be dangerous to self or dangerous to others or property. A short-term care facility is so designated by the commissioner and is authorized by the commissioner to serve persons from a specified geographic area. A short-term care facility may be a part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health **[**and Senior Services**]** pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.) and in accordance with standards developed jointly with the Commissioner of Human Services.

cc. "Special psychiatric hospital" means a public or private hospital licensed by the Department of Health **[**and Senior Services**]** to provide voluntary and involuntary mental health services, including assessment, care, supervision, treatment, and rehabilitation services to persons with mental illness.

dd. "Treatment team" means a team, which is composed of one or more persons, including at least one psychiatrist or other physician, and which provides mental health services to a patient of: a screening service, an outpatient treatment provider, or a short-term care or psychiatric facility. A treatment team may include a psychologist, social worker, psychiatric advanced practice nurse or

other nurse, and other appropriate services providers. [A treatment team provides mental health services to a patient of a screening service, outpatient treatment provider, or short-term care or psychiatric facility.]

ee. "Voluntary admission" means that an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and is willing to be admitted to a facility voluntarily for care, needs care at a short-term care or psychiatric facility because other facilities or services are not appropriate or available to meet the person's mental health needs. A person may also be voluntarily admitted to a psychiatric facility if [his] the person's mental illness presents a substantial likelihood of rapid deterioration in functioning in the near future, there are no appropriate community alternatives available, and the psychiatric facility can admit the person and remain within its rated capacity.

ff. "County adjuster" means the person appointed pursuant to R.S.30:4-34.

gg. "Least restrictive environment" means the available setting and form of treatment that appropriately addresses a person's need for care and the need to respond to dangers to the person, others, or property and respects, to the greatest extent practicable, the person's interests in freedom of movement and self-direction.

hh. "Outpatient treatment" means clinically appropriate care based on proven or promising treatments directed to wellness and recovery, provided by a member of the patient's treatment team to a person not in need of inpatient treatment. Outpatient treatment may include, but shall not be limited to, day treatment services, case management, residential services, outpatient counseling and psychotherapy, and medication treatment.

ii. "Outpatient treatment provider" means a community-based provider, designated as an outpatient treatment provider pursuant to section 8 of P.L.1987, c.116 (C.30:4-27.8), that provides or coordinates the provision of outpatient treatment to persons in need of involuntary commitment to treatment.

jj. "Plan of outpatient treatment" means a plan for recovery from mental illness approved by a court pursuant to section 17 of P.L.2009, c.112 (C.30:4-27.15a) that is to be carried out in an outpatient setting and is prepared by an outpatient treatment provider for a patient who has a history of responding to treatment. The plan may include medication as a component of the plan; however, medication shall not be involuntarily administered in an outpatient setting.

kk. "Reasonably foreseeable future" means a time frame that may be beyond the immediate or imminent, but not longer than a time frame as to which reasonably certain judgments about a person's likely behavior can be reached.

ll. “Psychiatric advanced practice nurse" means a person who holds a certification in accordance with section 8 or 9 of P.L.1991,

c.377 (C.45:11-47 or 45:11-48), is certified in mental health, and has a formal written affiliation with a screening service.

(cf: P.L.2009, c.112, s.2)

3. Section 5 of P.L.1987, c.116 (C.30:4-27.5) is amended to read as follows:

5. The commissioner shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) regarding a screening service and its staff that effectuate the following purposes and procedures:

a. A screening service shall serve as the facility in the public mental health care treatment system wherein a person believed to be in need of involuntary commitment to outpatient treatment, a short-term care facility, psychiatric facility, or special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person and where those services may be most appropriately provided in the least restrictive environment.

The screening service may provide emergency and consensual treatment to the person receiving the assessment and may transport the person or detain the person up to 24 hours for the purposes of providing the treatment and conducting the assessment.

b. (1) When a person is assessed by a mental health screener and involuntary commitment to treatment seems necessary, the screener shall provide, on a screening document prescribed by the division, information regarding the person's history and available alternative facilities and services that are deemed inappropriate for the person. When appropriate and available, and as permitted by law, the screener shall make reasonable efforts to gather information from the person's family or significant others for the purposes of preparing the screening document. If a psychiatrist, physician, or psychiatric advanced practice nurse, in consideration of this document, and in conjunction with the **[**psychiatrist's**]** practitioner's own separate and complete assessment, concludes that the person is in need of commitment to treatment, the psychiatrist, physician, or psychiatric advanced practice nurse shall complete the screening certificate. **[**The screening certificate shall be completed by a psychiatrist except in those circumstances where the division's contract with the screening service provides that another physician may complete the certificate.**]** Except in circumstances where the division's contract with a screening service expressly provides that a physician, other than a psychiatrist, may complete a screening certificate, the screening certificate required under this paragraph shall be completed by a psychiatrist or a psychiatric advanced practice nurse.

(2) Upon completion of the screening certificate, screening service staff shall determine, in consultation with the psychiatrist **[**or another**]**, physician, or psychiatric advanced practice nurse, as appropriate, the least restrictive environment for the appropriate

treatment to which the person shall be assigned or admitted, taking into account the person's prior history of hospitalization and treatment and the person's current mental health condition. Screening service staff shall designate:

[(1)**]** (a) inpatient treatment for the person if **[**he**]** the person is immediately or imminently dangerous or if outpatient treatment is deemed inadequate to render the person unlikely to be dangerous to self, others, or property within the reasonably foreseeable future; and

[(2)**]** (b) outpatient treatment for the person when outpatient treatment is deemed sufficient to render the person unlikely to be dangerous to self, others, or property within the reasonably foreseeable future.

(3) If the screening service staff determines that the person is in need of involuntary commitment to outpatient treatment, the screening service staff shall consult with an outpatient treatment provider to arrange, if possible, for an appropriate interim plan of outpatient treatment in accordance with section 9 of P.L.2009, c.112 (C.30:4-27.8a).

(4) If a person has been admitted three times or has been an inpatient for 60 days at a short-term care facility during the preceding 12 months, consideration shall be given to not placing the person in a short-term care facility.

(5) The person shall be admitted to the appropriate facility or assigned to the appropriate outpatient treatment provider, as appropriate for treatment, as soon as possible. Screening service staff are authorized to coordinate initiation of outpatient treatment or transport the person or arrange for transportation of the person to the appropriate facility.

c. If the mental health screener determines that the person is not in need of assignment or commitment to an outpatient treatment provider, or admission or commitment to a short-term care facility, psychiatric facility , or special psychiatric hospital, the screener shall refer the person to an appropriate community mental health or social services agency or appropriate professional or inpatient care in a psychiatric unit of a general hospital.

d. A mental health screener shall make a screening outreach visit if the screener determines, based on clinically relevant information provided by an individual with personal knowledge of the person subject to screening, that the person may need involuntary commitment to treatment and the person is unwilling or unable to come to the screening service for an assessment.

e. If the mental health screener pursuant to this assessment determines that there is reasonable cause to believe that a person is in need of involuntary commitment to treatment, the screener shall so certify the need on a form prepared by the division.

(cf: P.L.2009, c.112, s.5)

4. Section 10 of P.L.1987, c.116 (C.30:4-27.10) is amended to read as follows:

10. a. (1) A short-term care or psychiatric facility or a special psychiatric hospital shall initiate court proceedings for involuntary commitment to inpatient or outpatient treatment by submitting to the court a clinical certificate completed by a psychiatrist on the patient's treatment team, or an electronically scanned clinical certificate in lieu of the original certificate, and the screening certificate, or an electronically scanned screening certificate in lieu of the original certificate, which authorized admission of the patient to the facility; provided, however, that both certificates shall not be signed by the same psychiatrist, unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

(2) A screening service or outpatient treatment provider shall initiate court proceedings for commitment to outpatient treatment by submitting to the court a clinical certificate completed by a psychiatrist on the patient's treatment team, or an electronically scanned clinical certificate in lieu of the original certificate, and the screening certificate, or an electronically scanned screening certificate in lieu of the original certificate, which authorized assignment of the patient to outpatient treatment with the outpatient treatment provider; provided, however, that both certificates shall not be signed by the same psychiatrist, unless the psychiatrist has made a reasonable but unsuccessful attempt to have another psychiatrist conduct the evaluation and execute the certificate.

b. Court proceedings for the involuntary commitment to treatment of any person not referred by a screening service may be initiated by the submission to the court of two clinical certificates, at least one of which is prepared by a psychiatrist. The person shall not be involuntarily committed before the court issues a temporary court order.

c. A court proceeding for involuntary commitment to treatment of an inmate who is scheduled for release upon expiration of a maximum term of incarceration shall be initiated by the Attorney General or county prosecutor by submission to the court of two clinical certificates, **[**at least one of which is**]** each of which shall be prepared by a psychiatrist.

d. The Attorney General, in exercise of the State's authority as parens patriae, may initiate a court proceeding for the involuntary commitment to treatment of any person in accordance with the procedures set forth in subsection a. or b. of this section. When the Attorney General determines that the public safety requires initiation of a proceeding pursuant to subsection b. of this section, the Attorney General may apply to the court for an order compelling the psychiatric evaluation of the person. The court shall grant the Attorney General's application if the court finds that there is reasonable cause to believe that the person may be in need of

involuntary commitment to treatment. The Attorney General may delegate the authority granted pursuant to this subsection, on a case by case basis, to the county prosecutor.

e. Any person who is a relative by blood or marriage of the person being screened who executes a clinical certificate, or any person who signs a clinical certificate for any purpose or motive other than for purposes of care, treatment, and confinement of a person in need of involuntary commitment to treatment, shall be guilty of a crime of the fourth degree.

f. Upon receiving these documents the court shall immediately review them in order to determine whether there is probable cause to believe that the person is in need of involuntary commitment to treatment.

g. If the court finds that there is probable cause to believe that the person, other than a person whose commitment is sought pursuant to subsection c. of this section, is in need of involuntary commitment to treatment, it shall issue a temporary order authorizing the assignment of the person to an outpatient treatment provider or the admission to or retention of the person in the custody of the facility, that is both appropriate to the person's condition and is the least restrictive environment, pending a final hearing.

h. If the court finds that there is probable cause to believe that a person whose commitment is sought pursuant to subsection c. of this section is in need of involuntary commitment to treatment, it shall issue an order setting a date for a final hearing and authorizing the Commissioner of **[**the Department of**]** Corrections to arrange for temporary commitment pursuant to section 2 of P.L.1986, c.71 (C.30:4-82.2) to the Ann Klein Forensic Center in Trenton or other facility designated for the criminally insane pending the final hearing and prior to the expiration of the person's term. The order shall specifically provide for transfer of custody to the Ann Klein Forensic Center in Trenton or other facility designated for the criminally insane if the person's maximum term will expire prior to the final hearing.

i. In the case of a person committed to treatment at a short-term care facility or special psychiatric hospital, after the facility's treatment team conducts a mental and physical examination, administers appropriate treatment and prepares a discharge assessment, the facility may transfer the patient to a psychiatric facility prior to the final hearing; provided that: (1) the patient, **[**his**]** the patient's family and **[**his**]** the patient's attorney are given 24 hours' advance notice of the pending transfer; and (2) the transfer is accomplished in a manner which will give the receiving facility adequate time to examine the patient, become familiar with **[**his**]** the patient's behavior and condition, and prepare for the hearing. In no event shall the transfer be made less than five days

prior to the date of the hearing unless an unexpected transfer is dictated by a change in the person's clinical condition.

j. A clinical certificate or screening certificate that is electronically scanned pursuant to subsection a. or b. of this section shall be transmitted in accordance with the Rules of Court.

(cf: P.L.2014, c.43, s.1)

5. This act shall take effect on the first day of the fourth month next following the date of enactment.

STATEMENT

This bill would amend the law governing involuntary commitment to mental health treatment, in order to make certain changes to the processes that are used under the State's public mental health screening and involuntary commitment system.

Specifically, the bill would expand the types of practitioners who are authorized to execute the screening and clinical certificates that are to be completed as a part of the involuntary commitment process, in cases where a patient is referred for treatment through a screening service. A screening service provides mental health assessments and other mental health services to persons in specified geographic areas of the State, and is recognized as the entry point for the public mental health system. The bill would not alter the current law as it relates to private commitments initiated through means other than a public screening service.

The State's involuntary commitment law currently requires a psychiatrist or other physician at a screening service to complete a mental health screening certificate, which is used to determine the most appropriate, and least restrictive, setting for the involuntary commitment of a patient who is referred through a screening service. Before completing the screening certificate, the psychiatrist or other physician is required to: 1) consider screening documents, which contain information about the patient's history, and which have been prepared by the mental health screeners at the screening service; and 2) conduct a separate assessment of the patient. Before a mental health facility or mental health screening service may initiate court proceedings to involuntarily commit a person who has been referred through a screening service, the court must receive a copy of the screening certificate, and must also receive a copy of a separate clinical certificate. Under current law, the separate clinical certificate is to be completed by a psychiatrist on the patient's treatment team.

The bill would authorize either a psychiatrist or a psychiatric advanced practice nurse – i.e., an advanced practice nurse who is certified in mental health, and who has a formal written affiliation with a screening service – to complete the screening certificates

necessary for the involuntary commitment of patients who are referred to treatment through a screening service, and to consider appropriate screening documents and conduct independent assessments as necessary to complete those screening certificates. A physician, other than a psychiatrist, would also be authorized to complete a screening certificate under the bill, but only if the screening service's contract with the Division of Mental Health and Addiction Services in the Department of Human Services specifies that such authority will be delegated to a non-psychiatrist physician.

Although psychiatric advanced practice nurses would be authorized, under the bill, to complete screening certificates at a screening service, only a psychiatrist would be authorized to complete the clinical certificate that is needed for involuntary commitment. The bill would also update the existing statutory definition of "psychiatrist," in order to correct inaccuracies and clarify that the term includes both allopathic (MD) and osteopathic (DO) psychiatrists.