

## **A Selection of Louisiana Mental Health Laws from Title 28**

[See Juvenile & DV notes at the end]

### **EXAMINATION, ADMISSION, COMMITMENT, & TREATMENT of PERSONS SUFFERING from MENTAL ILLNESS AND SUBSTANCE-RELATED OR ADDICTIVE DISORDERS**

#### **R.S. 28:50. Declaration of policy**

The underlying policy of this Chapter is as follows:

(1) That persons who have a mental illness and persons suffering from a substance-related or addictive disorder be encouraged to seek voluntary treatment.

(2) That any involuntary treatment or evaluation be accomplished in a setting which is medically appropriate, most likely to facilitate proper care and treatment that will return the patient to the community as soon as possible, and is the least restrictive of the patient's liberty.

(3) That continuity of care for persons who have a mental illness and persons suffering from a substance-related or addictive disorder be provided.

(4) That mental health and substance-related and addictive disorder treatment services be delivered as near to the place of residence of the person receiving such services as is reasonably possible and medically appropriate.

(5) That individual rights of patients be safeguarded.

(6) That no person solely as a result of mental illness, substance-related or addictive disorder, or incapacitation by alcohol shall be confined in any jail, prison, correctional facility, or criminal detention center. This shall not apply to persons arrested, charged, or convicted under Title 14 of the Louisiana Revised Statutes of 1950.

(7) That no person shall be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after an earlier treatment.

#### **R.S. 28:51. Procedures for admission**

A. The director of a treatment facility, subject to the availability of suitable accommodations, shall receive for observation, diagnosis, care, and treatment, any person whose admission is authorized under any of the procedures provided for in R.S. 28:52 through R.S. 28:54 and R.S. 28:64.

B. The failure by any director to obey an order or judgment committing a patient to a treatment facility shall not be construed as contempt of any court, if it appears that the failure to obey is due to the inability to comply with the order or judgment because medically suitable accommodations for the patient are unavailable.

C. The Louisiana Department of Health, through its hospitals, behavioral health clinics, and similar facilities, may direct petitioners and other persons to appropriate resources regarding petitions for commitment, requests for protective custody orders, and requests for emergency certificates upon request of such persons.

**R.S. 28:51.1. Treatment facility; staff membership & institutional privileges; certain healthcare providers**

A.(1) Notwithstanding any provision of the law to the contrary, the governing body of a treatment facility, as defined in R.S. 28:2, may grant staff membership, specifically delineated institutional privileges, or both, to any duly licensed, certified, or registered healthcare provider in accordance with the needs and bylaws of the treatment facility, including but not limited to a physician, psychiatrist, psychologist, medical psychologist, or psychiatric mental health nurse practitioner, as defined in R.S. 28:2.

(2) Staff membership, specifically delineated institutional privileges, or both, granted to a medical psychologist shall be conditioned upon all of the following requirements:

(a) The applicant medical psychologist shall have a valid, current, unrestricted license issued to him by the Louisiana State Board of Medical Examiners.

(b) The applicant medical psychologist shall prescribe medications in the treatment facility only in consultation, collaboration and concurrence with the patient's primary or attending physician or psychiatrist and only in accordance with the treatment facility's staff membership or privilege granting process and restrictions, if any.

(c) The patient's primary or attending physician or psychiatrist shall have staff membership, institutional privileges, or both, at the treatment facility.

(3) Staff membership, specifically delineated institutional privileges, or both, granted to a psychiatric mental health nurse practitioner shall be conditioned upon all of the following requirements:

(a) The applicant psychiatric mental health nurse practitioner shall have a valid, current, collaborative practice agreement, as defined in R.S. 37:913(9), with a psychiatrist.

(b) The applicant psychiatric mental health nurse practitioner shall have a valid, current and unrestricted advanced practice registered nurse license, as a nurse practitioner or clinical

nurse specialist, issued by the Louisiana State Board of Nursing, and have been granted limited prescriptive authority pursuant to LAC 46:XLV.4513.

(c) The applicant psychiatric mental health nurse practitioner's collaborating physician shall have staff membership, institutional privileges, or both, at the treatment facility.

(d) The applicant psychiatric mental health nurse practitioner shall prescribe medications or the use of seclusion or restraint on patients in the treatment facility only in accordance with the collaborative practice agreement and in accordance with the treatment facility's staff membership or privilege granting process and restrictions, if any.

B. Nothing in this Section shall be construed to require the governing body of a treatment facility to grant staff membership, specifically delineated institutional privileges, or both, to any applicant health care provider, provided that each such applicant is considered on an individual basis regarding his qualifications.

C. Nothing in this Section shall be construed to prohibit the governing body of a treatment facility from granting or denying staff membership, specifically delineated institutional privileges, or both, on the basis of individual character, competence, experience and judgment of the applicant health care provider seeking staff membership, or specifically delineated institutional privileges, or both, from requiring the character recommendation of not more than three members of the staff for which membership is sought as a prerequisite to consideration for staff membership or specifically delineated clinical privileges.

D. "Governing body" for purposes of this Section, means the group or the individual ultimately responsible for a treatment facility's general policies with respect to staff membership and professional clinical privileges and shall include but not be limited to a board of trustees, a board of directors, a board of governors, a board of managers, a medical board, a medical director or any other official of the treatment facility with comparable responsibilities.

## **§52. Voluntary admissions; general provisions**

A. Any person who has a mental illness or person who is suffering from a substance-related or addictive disorder may apply for voluntary admission to a treatment facility.

B. Admitting physicians are encouraged to admit persons who have a mental illness or persons suffering from a substance-related or addictive disorder to treatment facilities on voluntary admission status whenever medically feasible.

C. No director or administrator of a treatment facility shall prohibit any person who has a mental illness or person who is suffering from a substance-related or addictive disorder from applying for conversion of involuntary or emergency admission status to voluntary admission

status. Any patient on an involuntary admission status shall have the right to apply for a writ of habeas corpus in order to have his admission status changed to voluntary status.

D. No employee of a mental health care program or treatment facility, peace officer, physician, or psychiatric mental health nurse practitioner shall state to any person that involuntary admission may result if such person does not voluntarily admit himself to a mental health care program or treatment facility unless the employee, peace officer, physician, or psychiatric mental health nurse practitioner is prepared to execute a certificate pursuant to R.S. 28:53 or a petition pursuant to R.S. 28:54.

E. Each person admitted on a voluntary basis shall be informed of any other medically appropriate alternative treatment programs and treatment facilities known to the admitting physician and be given an opportunity to seek admission to alternative treatment programs or facilities.

F. Every patient admitted on a voluntary admission status shall be informed in writing at the time of admission of the procedures for requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions shall be made to supply him this information. In addition, a copy of the information listed in this Subsection shall be posted in any area where patients are confined and treated.

G.(1) No admission may be deemed voluntary unless the admitting physician determines that the person to be admitted has the capacity to make a knowing and voluntary consent to the admission.

(2) Knowing and voluntary consent shall be determined by the ability of the individual to understand all of the following:

(a) That the treatment facility to which the patient is requesting admission is one for persons who have a mental illness or persons suffering from a substance-related or addictive disorder.

(b) That he is making an application for admission.

(c) The nature of his status and the provisions governing discharge or conversion to an involuntary status.

H.(1) Voluntary patients may receive medications or treatment, but no major surgical procedure or electroshock therapy may be performed upon such patient, without the patient's written and informed consent. If it is determined by the director of the treatment facility that a voluntary patient has become incapable of making an informed consent for such procedure, he

shall apply to a court of competent jurisdiction for a determination of the patient's specific incompetence to give informed consent for the procedure. If the director, in consultation with two physicians, determines that the condition of a voluntary patient who is incapable of informed consent is of such critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment is administered, the emergency measures may be taken without the consent otherwise provided for in this Section.

(2)(a) Notwithstanding the provisions of Paragraph (1) of this Subsection, any licensed physician may administer medication to a patient without his consent and against his wishes in a situation which, in the reasonable judgment of the physician who is observing the patient during the emergency, constitutes a psychiatric or behavioral emergency. For purposes of this Paragraph a "psychiatric or behavioral emergency" occurs when a patient, as a result of mental illness, a substance-related or addictive disorder, or intoxication, engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb. The emergency administration of medication may be continued until the emergency subsides, but in no event shall it exceed forty-eight hours, except on weekends or holidays when it may be extended for an additional twenty-four hours.

(b) The physician shall make a reasonable effort to consult with the primary physician or primary care provider outside the facility that has previously treated the patient for his behavioral health condition at the earliest possible time, but in no event more than forty-eight hours after the emergency administration of medication has begun, except on weekends or holidays, when the time period may be extended an additional twenty-four hours. The physician shall record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

### **R.S. 28:52.2. Formal voluntary admission**

A. Any person who has a mental illness or person who is suffering from a substance-related or addictive disorder desiring admission to a treatment facility for diagnosis or treatment of a psychiatric disorder or a substance-related or addictive disorder and who is deemed suitable for formal voluntary admission by the admitting physician may be so admitted upon his written request.

B. A patient admitted under the provisions of this Section shall not be detained in the treatment facility for longer than seventy-two hours after making a valid written request for discharge to the director or administrator of the treatment facility unless an emergency certificate is executed pursuant to R.S. 28:53, or unless judicial commitment is instituted pursuant to R.S. 28:54

### **§52.3. Noncontested admission**

A. A person who has a mental illness or person who is suffering from a substance-related or addictive disorder who does not have the capacity to make a knowing and voluntary consent to a voluntary admission status and who does not object to his admission to a treatment facility may be admitted to a treatment facility as a noncontested admission. Such person shall be subject to the same rules and regulations as a person admitted on a voluntary admission status and his treatment shall be governed by the provisions of R.S. 28:52(H).

B. A noncontested admission may be made by a physician to a treatment facility in order to initiate a complete diagnostic and evaluative study. The diagnosis and evaluation shall include complete medical, social, and psychological studies and, when medically indicated, any other scientific study which may be necessary in order to make decisions relative to the treatment needs of the patient. In the absence of specified medical reasons, the diagnostic studies shall be completed in fourteen days. Alternative community-based services shall be thoroughly considered.

C. Following a review of the diagnostic evaluation study, the director or administrator of the treatment facility shall determine if the person is to remain on noncontested status, is to be discharged, is to be converted to formal voluntary status, or is to be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54. Nothing in this Section shall be interpreted to prohibit the director of a treatment facility from transferring the patient to another treatment facility when it is medically indicated.

D. A person admitted pursuant to this Section may object to his admission at any time. If the person informs a staff member of his desire to object to his admission, a staff member shall assist him in preparing and submitting a valid written objection to the director or administrator of the treatment facility. Upon receipt of a valid objection, the director or administrator shall release the person within seventy-two hours unless proceedings are instituted pursuant to R.S. 28:53 or R.S. 28:54.

E. In no case shall a patient remain on noncontested status longer than three months. Within that time, the patient must be converted to a formal voluntary status, be involuntarily hospitalized pursuant to R.S. 28:53 or R.S. 28:54, or be discharged.

#### **§52.4. Admission by relative or legal guardian for substance-related or addictive disorder treatment**

A. A person suffering from a substance-related or addictive disorder may be admitted and detained at a hospital or other treatment facility for observation, diagnosis, and treatment for a medically necessary period when a parent, spouse, legal guardian, or the major child of the person if that child has attained the age of eighteen years has admitted the person or caused him to be admitted pursuant to the provisions of R.S. 28:53.2.

B. At the time of admission of the person, the parent, spouse, legal guardian, or the major child of the person if that child has attained the age of eighteen years shall execute or provide a written statement of facts, including personal observations, leading to the conclusion that the person is suffering from a substance-related or addictive disorder and is dangerous to himself or others or is gravely disabled, specifically describing any dangerous acts or threats, and stating that the person has been encouraged to seek treatment but is unwilling to be evaluated on a voluntary basis.

C. As soon as practicable, but in no event more than twelve hours after admission to the hospital or other treatment facility, a physician shall examine the person and either execute an emergency certificate in accordance with R.S. 28:53(B) or order the person discharged. If an emergency certificate is executed, the physician or the director or administrator of the hospital or other treatment facility shall immediately notify the coroner, and the coroner or his deputy shall conduct an independent examination, in accordance with R.S. 28:53(G). If the coroner or his deputy executes a second emergency certificate, the person may be detained for treatment for a medically necessary period. Otherwise, he shall be discharged.

D. Except as inconsistent with the provisions of this Section, all other provisions of this Part applicable to persons admitted by emergency certificate shall be applicable to persons admitted pursuant to this Section.

**R.S. 28:53. Admission by emergency certificate; extension; payment for services rendered**

A.(1) A person who has a mental illness or a person who is suffering from a substance-related or addictive disorder may be admitted and detained at a treatment facility for observation, diagnosis, and treatment for a period not to exceed fifteen days under an emergency certificate.

(2) A person suffering from a substance-related or addictive disorder may be detained at a treatment facility for one additional period, not to exceed fifteen days, provided that a second emergency certificate is executed. A second certificate may be executed only if and when a physician at the treatment facility and any other physician have examined the detained person within seventy-two hours prior to the termination of the initial fifteen-day period and certified in writing on the second certificate that the person remains dangerous to himself or others or gravely disabled, and that his condition is likely to improve during the extended period. The director shall inform the patient of the execution of the second certificate, the length of the extended period, and the specific reasons therefor, and shall also give notice of the same to the patient's nearest relative or other designated responsible party initially notified pursuant to Subsection F of this Section.

B.(1) Any physician licensed or permitted by the Louisiana State Board of Medical Examiners, physician assistant when acting in accordance with their respective clinical practice guidelines, psychiatric mental health nurse practitioner, other nurse practitioner who acts in

accordance with a collaborative practice agreement and receives verbal approval for executing the certificate from his collaborating physician, or psychologist may execute an emergency certificate only after an actual examination of a person alleged to have a mental illness or be suffering from a substance-related or addictive disorder who is determined to be in need of immediate care and treatment in a treatment facility because the examining physician, physician assistant when acting in accordance with their respective clinical practice guidelines, psychiatric mental health nurse practitioner, other nurse practitioner who acts in accordance with a collaborative practice agreement and receives verbal approval for executing the certificate from his collaborating physician, or psychologist determines the person to be dangerous to self or others or to be gravely disabled. The actual examination of the person by a psychiatrist or psychiatric mental health nurse practitioner may be conducted by telemedicine utilizing video conferencing technology provided that a licensed healthcare professional who can adequately and accurately assist with obtaining any necessary information including but not limited to the information listed in Paragraph (4) of this Subsection shall be in the examination room with the patient at the time of the video conference. A patient examined in such a manner shall be medically cleared prior to admission to a mental health treatment facility. Failure to conduct an examination prior to the execution of the certificate will be evidence of gross negligence.

**▲ Underlined six words (above) added by 2020 Regular Session Act #191, eff. 8.1.20.**

(2) The certificate shall state:

(a) The date of the physician's, physician assistant's, psychiatric mental health nurse practitioner's, other nurse practitioner's or psychologist's examination of the person, which shall not be more than seventy-two hours prior to the date of the signature of the certificate.

(b) The objective findings of the physician, physician assistant when acting in accordance with their respective clinical practice guidelines, psychiatric mental health nurse practitioner, other nurse practitioner who acts in accordance with a collaborative practice agreement and receives verbal approval for executing the certificate from his collaborating physician, or psychologist relative to the physical or mental condition of the person, leading to the conclusion that the person is dangerous to self or others or is gravely disabled as a result of a substance-related or addictive disorder or mental illness.

(c) The history of the case, if known.

(d) The determination of whether the person examined is in need of immediate care and treatment in a treatment facility because the patient is any of the following:

(i) Dangerous to himself.

(ii) Dangerous to others.

(iii) Gravely disabled.

(e) That the person is unwilling or unable to seek voluntary admission.

(3) The certificate shall be dated and executed under the penalty of perjury, but need not be notarized. The certificate shall be valid for seventy-two hours and shall be delivered to the director of the treatment facility where the person is to be further evaluated and treated.

(4) In the case of an emergency certificate issued pursuant to an examination conducted by telemedicine pursuant to Paragraph (1) of this Subsection and Paragraph (J)(1) of this Section, the licensed healthcare professional present during the actual examination shall be responsible for obtaining, recording, and attaching to the emergency certificate the following information regarding the video conference:

(a) The date.

(b) The starting and ending times.

(c) The names of all persons who were in the room and the type of license issued to the health care professional.

(d) The physical address of both the examining psychiatrist and the patient when the video conference was conducted.

C. A patient may request the director of the treatment facility to advise the executive director of the mental health advocacy service of his admission and may request representation.

D. Prior to or during confinement, under the provisions of this Title, any person or his attorney shall have the right to demand a judicial hearing to determine if probable cause exists for his continued confinement under an emergency certificate. The hearing shall be held within five days of the filing of the petition. The petition shall be filed in the court of the jurisdiction in which the patient is confined. The hearing shall be held in that court and no other except for good cause shown. If the person is confined, the judge of the court where the petition was filed may hold the hearing at the treatment facility where the person is confined if, in the opinion of the director of the treatment facility, it will be detrimental to the patient's health, welfare, or dignity to travel to the court where the petition was filed. Pending the decision of the court, the patient shall remain confined unless the court orders release or a less restrictive status.

E. The attorney of any patient in a treatment facility may review his client's medical record. If deemed essential by the attorney, portions of the record specifically required for proper representation pursuant to this Title, may be copied and given to the patient's attorney. The attorney shall return all copies of his client's medical record to the treatment facility upon completion of their use.

F. An emergency certificate shall constitute legal authority to transport a patient to a treatment facility and shall permit the director of such treatment facility to detain the patient for

diagnosis and treatment for a period not to exceed fifteen days, and to return the patient to the facility if he is absent with or without permission during authorized periods of detention. If necessary, peace officers shall apprehend and transport, or ambulance services, under appropriate circumstances, may locate and transport, a patient on whom an emergency certificate has been completed to a treatment facility at the request of either the director of the facility, the certifying physician, physician assistant when acting in accordance with their respective clinical practice guidelines, psychiatric mental health nurse practitioner, other nurse practitioner who acts in accordance with a collaborative practice agreement and receives verbal approval for executing the certificate from his collaborating physician, or psychologist, the patient's next of kin, the patient's curator, or the agency legally responsible for his welfare. In the case of an emergency certificate issued pursuant to an examination conducted by telemedicine pursuant to Paragraph (B)(1) of this Section, or where the valid original is not provided to the transporter, a copy transmitted by facsimile or other electronic device shall be sufficient authority for the peace officer or ambulance worker to transport the patient to a treatment facility and for the director to accept such patient. The psychiatrist shall cause the original certificate to be deposited in the United States mail properly addressed to the director of the treatment facility by the next business day following the date of examination. The director of the treatment facility shall notify the patient's nearest relative, if known, or designated responsible party, if any, in writing, of the patient's admission by emergency certificate as soon as reasonably possible.

G.(1) Upon admission of any person by emergency certificate to a treatment facility, the director of the treatment facility shall immediately notify the coroner of the parish in which the treatment facility is located of the admission, giving the following information if known:

- (a) The person's name.
- (b) Address.
- (c) Date of birth.
- (d) Name of certifying physician, psychiatric mental health nurse practitioner, or psychologist.
- (e) Date and time of admission.
- (f) The name and address of the treatment facility.

(2) Within seventy-two hours of admission, the person shall be independently examined by the coroner or his deputy who shall execute an emergency certificate, pursuant to Subsection B of this Section, which shall be a necessary precondition to the person's continued confinement. Except as provided in Paragraph (7) of this Subsection, if the actual examination by the psychiatrist referred to in Paragraph (B)(1) of this Section is conducted by telemedicine, the seventy-two-hour independent examination by the coroner shall be conducted in person.

(3) However, in the event that the coroner has made the initial examination and executed the first emergency commitment certificate then a second examination shall be made within the seventy-two hour period set forth in this Part by any physician at the treatment facility where the person is confined.

(4) In making either the initial examination or the second examination, when the coroner or his deputy examines the person and executes an emergency certificate and a reexamination of the person and reexecution of a certificate is necessary for any reason to ensure the validity of the certificate, both the first examiner and the reexaminer shall be entitled to the fee for the service, unless they are one and the same.

(5) If, from his examination, the coroner concludes that the person is not a proper subject for emergency admission, then the person shall not be further detained in the treatment facility and shall be discharged by the director forthwith.

(6) When a person is confined in a treatment facility other than a state psychiatric hospital, the examining coroner in the parish where the patient is confined shall be entitled to the usual fee paid for this service to the coroner of the parish in which the patient is domiciled or residing. When a person is confined in a state psychiatric hospital in a parish other than his parish of domicile or residence, the examining coroner shall be entitled to the fee authorized by law in his parish for the service. In either case, the fee shall be paid and accurate records of such payments kept by the governing authority of the parish in which the patient is domiciled or residing from parish funds designated for the purpose of payment to the coroner. Each coroner shall keep accurate records showing the number of patients confined in his parish pursuant to this Section.

(7) As it relates to the parish of St. Tammany, all of the following shall apply:

\*\*\* Subsection (a) – (c) (iii) omitted. See [www.legis.la.gov](http://www.legis.la.gov). \*\*\*

(8) As it relates to all other parishes the following shall apply:

(a) When a patient is transferred from another parish pursuant to an emergency certificate, a second physician's emergency certificate, when appropriate, shall be executed by a physician at the admitting facility.

(b) The coroner shall be notified immediately following the execution of the second emergency certificate and shall conduct an independent examination within seventy-two hours as provided in Paragraph (2) of this Subsection, in the manner provided in accordance with Subparagraph (G)(7)(a) of this Section.

(c) Nothing herein shall be construed to authorize a period of commitment to exceed fifteen days from the date and time the initial emergency certificate was executed in the parish of origin.

H. If the patient admitted to a treatment facility pursuant to this Section is a proper candidate for judicial commitment pursuant to R.S. 28:54, the director of the treatment facility, or any interested party, may apply for such commitment under provisions of that Section. Such a patient, hospitalized on an emergency certificate, for whom a petition for judicial commitment has been filed in court may continue to be detained for a further period on order of the court.

I. Every patient admitted by emergency certificate shall be informed in writing at the time of his admission of the procedures of requesting release from the treatment facility, the availability of counsel, information about the mental health advocacy service, the rights enumerated in R.S. 28:171, and the rules and regulations applicable to or concerning his conduct while a patient in the treatment facility. If the person is illiterate or does not read or understand English, appropriate provisions shall be made to supply this information to him. In addition, a copy of the information mentioned in this Subsection shall be posted in any area where patients are confined and treated.

J.(1) Upon the request of a credible person of legal age who is financially unable to afford a private physician or who cannot immediately obtain an examination by a physician, the parish coroner may render, or the coroner or a judge of a court of competent jurisdiction may cause to be rendered by a physician, an actual examination of a person alleged to have a mental illness or be suffering from a substance-related or addictive disorder and in need of immediate medical treatment because he is dangerous to himself or others or is gravely disabled. The actual examination of the person by a psychiatrist may be conducted by telemedicine utilizing video conferencing technology provided that a licensed healthcare professional who can adequately and accurately assist with obtaining any necessary information including but not limited to the information listed in Paragraph (B)(4) of this Section shall be in the examination room with the patient at the time of the video conference. If the coroner is not a physician he may deputize a physician to perform this examination. To accomplish the examination authorized by this Subsection, if the coroner or the judge is apprehensive that his own safety or that of the deputy or other physician may be endangered thereby, he shall issue a protective custody order pursuant to R.S. 28:53.2.

(2) If the examining physician determines that the standard provided in Paragraph (1) of this Subsection is met, he shall execute an emergency certificate and shall transport or cause to be transported the person named in the emergency certificate to a treatment facility. Failure to render an actual examination prior to execution of the emergency certificate shall be evidence of gross negligence.

(3) In any instance where the coroner or his deputy executes the first emergency certificate, the second emergency certificate shall not be executed by the coroner or his deputy, but the second emergency certificate may be executed by any other physician including a physician at the treatment facility. However, if the first examination by the coroner is conducted by a psychiatrist utilizing video conferencing technology, the second examination shall be conducted in person.

K.(1)(a) Patients admitted by emergency certificate may receive medication and treatment without their consent, but no major surgical procedure or electroshock therapy may be performed without the written consent of a court of competent jurisdiction after a hearing. With regard to the administration of medicine, if the patient objects to being medicated, prior to making a final decision, the treating physician shall make a reasonable effort to consult with the primary physician or primary care provider outside of the facility that has previously treated the patient for his behavioral health condition. The treating physician shall, prior to the administration of such medication, record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the treating physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

(b) Notwithstanding the provisions of Subparagraph (a) of this Paragraph, any licensed physician may administer medication to a patient without his consent and against his wishes in a situation which, in the reasonable judgment of the physician who is observing the patient during the emergency, constitutes a psychiatric or behavioral health emergency. For purposes of this Paragraph a "psychiatric or behavioral health emergency" occurs when a patient, as a result of mental illness, a substance-related or addictive disorder, or intoxication engages in behavior which, in the clinical judgment of the physician, places the patient or others at significant and imminent risk of damage to life or limb. The emergency administration of medication may be continued until the emergency subsides, but in no event shall it exceed forty-eight hours, except on weekends or holidays when it may be extended for an additional twenty-four hours.

(c) The physician shall make a reasonable effort to consult with the primary physician or primary care provider outside the facility who has previously treated the patient for his behavioral health condition at the earliest possible time, but in no event more than forty-eight hours after the emergency administration of medication has begun, except on weekends or holidays, when the time period may be extended an additional twenty-four hours. The physician shall record in the patient's file either the date and time of the consultation and a summary of the comments of the primary physician or primary care provider or, if the physician is unable to consult with the primary physician or primary care provider, the date and time that a consultation with the primary physician or primary care provider was attempted.

(2) If the director of the treatment facility, in consultation with two physicians, determines that the condition of such a patient is of such a critical nature that it may be life-threatening unless major surgical procedures or electroshock treatment is administered, such emergency measures may be performed without the consent otherwise provided for in this Section.

L.(1) A peace officer or a peace officer accompanied by an emergency medical service trained technician may take a person into protective custody and transport him to a treatment facility for a medical evaluation when, as a result of his personal observation, the peace officer or emergency medical service technician has reasonable grounds to believe the person is a proper subject for involuntary admission to a treatment facility because the person is acting in a

manner dangerous to himself or dangerous to others, is gravely disabled, and is in need of immediate hospitalization to protect such a person or others from physical harm. The person may be transported only to a treatment facility as defined in R.S. 28:2.

(2) Upon arrival at the treatment facility, the escorting peace officer shall then be relieved of any further responsibility and the person shall be immediately examined by a physician, preferably a psychiatrist, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, or discharged.

(3) In the case of a person suffering from a substance-related or addictive disorder and where no treatment facility is available, the peace officer and emergency medical service technician may use whatever means or facilities available to protect the health and safety of the person suffering from a substance-related or addictive disorder until such time as a treatment facility becomes available. In taking a person into protective custody the peace officer and emergency medical service technician may take reasonable steps to protect themselves. A peace officer or emergency medical service technician who acts in compliance with this Section is acting in the course of his official duty and shall not be subject to criminal or civil liability as a result thereof.

M. Under the provisions of this Part no person shall be placed in protective custody for a period in excess of seventy-two hours. Any person placed in protective custody under the provisions of this Part shall be considered as an inmate for maintenance purposes only.

N.(1) Public and private general hospitals and their personnel who provide services in good faith for commitments defined in this Part shall not be liable for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd.

O.(1) For the purposes of this Chapter, "public and private general hospital personnel" shall mean all persons who provide services or furnish assistance to a public or private general hospital in connection with the operations or delivery of patient care, including employees, independent contractors, and volunteers.

(2) Notwithstanding the provisions of this Section or R.S. 28:63, "public and private general hospital personnel" does not include a physician, psychiatric mental health nurse practitioner,

medical psychologist, or psychologist as defined in R.S. 28:2, for the purpose of nonviolent crisis intervention training.

P.(1) Notwithstanding any provision of law to the contrary, no claim for payment for inpatient behavioral health services provided to a person while admitted and detained in a facility that provides mental health services under an emergency certificate, issued in accordance with the provisions of this Section, shall be denied by Medicaid, an entity contracted with the state for the provision of Medicaid services, or any hospital, health, or medical expense insurance policy, hospital or medical service contract, employee welfare benefit plan, contract or other agreement with a health maintenance organization or a preferred provider organization, health and accident insurance policy, or any other insurance contract of this type in this state, including a group insurance plan, a self-insurance plan, and the Office of Group Benefits programs, on the basis of medical necessity if all of the following conditions are met:

(a) Claims for payment for services issued in accordance with this Subsection shall be limited to behavioral health expenditures and shall exclude payment for non-behavioral health services or other medical expenses not directly related to the provision of behavioral health care, treatment, or services with the exception of usual and customary laboratory services necessary to monitor patient progress.

(b) The admitting physician and the evaluating psychiatrist or medical psychologist shall offer the subject of the emergency certificate the opportunity for voluntary admission pursuant to R.S. 28:53.

(c) Any patient committed under an emergency certificate to inpatient treatment by a facility that provides mental health services shall be evaluated by a psychiatrist or medical psychologist in the admitting facility within twenty-four hours of arrival at the admitting facility. After the psychiatric evaluation, payment of claims shall be determined by medical necessity. For purposes of this Subsection, "admitting facility" means a crisis receiving center, acute treatment hospital or facility, distinct part psychiatric unit, or free-standing psychiatric hospital or facility.

(2) Nothing in this Subsection shall be construed or interpreted to require payment of claims in a manner other than in accordance with the terms and conditions of the health insurance contract.

(3) In the event that funding is necessary pursuant to the provisions of this Subsection, the utilization of available Community Development Block Grant (CDBG) funds shall be authorized only upon the approval of the Centers for Medicare and Medicaid Services (CMS).

#### **R.S. 28:53.2. Order for custody; grounds; civil liability; criminal penalty for false statement**

A. Any parish coroner or judge of a court of competent jurisdiction may order a person to be taken into protective custody and transported to a treatment facility or the office of the

coroner for immediate examination when a peace officer or other credible person executes a statement under private signature specifying that, to the best of his knowledge and belief, the person has a mental illness or is suffering from a substance-related or addictive disorder and is in need of immediate treatment to protect the person or others from physical harm. The statement may include the following information:

(1) A statement of facts, including the affiant's observations, leading to the conclusion that the person has a mental illness or is suffering from a substance-related or addictive disorder and is dangerous to himself or others or gravely disabled.

(2) The date and place of any dangerous acts or threats.

(3) The name and surname, if known, of any other person who is in danger.

(4) Facts showing that the person sought has been encouraged to seek treatment and is unwilling to be evaluated on a voluntary basis, and

(5) Facts showing that the affiant has attempted to contact a specific treatment facility or a specific physician in order to obtain an examination of the person sought to be treated.

B. Any parish coroner or judge of a court of competent jurisdiction may order that a person be taken into protective custody and transported to a treatment facility or the office of the coroner for immediate examination when a physician, psychiatric mental health nurse practitioner, psychologist, or assigned case manager pursuant to Part III-A of Chapter 1 of this Title presents to the coroner or judge an order of involuntary outpatient treatment, and executes a statement specifying that there is substantial evidence that the patient is not in compliance with the order and there are reasonable grounds to believe that he poses a significant risk of being a danger to self or others.

C. The order for custody shall be in writing, in the name of the state of Louisiana, signed by the district judge or parish coroner, and shall state the following:

(1) The date and hour of issuance and the municipality or parish where issued.

(2) The name of the person to be taken into custody or, if his name is not known, a designation of the person by any name or description by which he can be identified with reasonable certainty.

(3) A description of the acts or threats which have led to the belief that the person has a mental illness or is suffering from a substance-related or addictive disorder and is in need of immediate hospitalization to protect the person or others from physical harm.

(4) That the person shall be taken to a community mental health center, public or private general hospital, public or private mental hospital, coroner's office, or detoxification center.

(5) That law enforcement officers are to use reasonable and necessary precautions when appropriate, in the execution of an order for custody pursuant to Subsection A and Paragraph (G)(1) of this Section, to avoid a violent encounter with the person being taken into custody. For the purposes of this Paragraph, "reasonable and necessary precautions" include crisis management strategies.

D. The order for custody shall be effective for seventy-two hours from its issuance by the coroner or judge and shall be delivered to the appropriate law enforcement agency for execution by hand, facsimile, or other electronic means, including but not limited to e-mail. The law enforcement officer or transporting person shall deliver a copy of the order for custody to the coroner, patient, and director of the treatment facility upon execution with the date and hour that the person is taken into protective custody clearly written on the order. Without delay, and in no event more than twelve hours after being taken into protective custody, the person shall be delivered to a treatment facility or the office of the coroner or he shall be released. Upon arrival, the person in custody shall be examined immediately by the coroner or, if at a treatment facility, by a physician, preferably a psychiatrist, medical psychologist, or psychiatric mental health nurse practitioner, who shall determine if the person shall be voluntarily admitted, admitted by emergency certificate, admitted as a noncontested admission, or discharged. The person in custody shall be examined within twelve hours of his arrival at the treatment facility or coroner's office or he shall be released.

E. Coroners and assistant coroners who act in good faith to order persons to be taken into protective custody and transported for examination in accordance with this Section shall not be civilly liable for damages to such persons resulting from those actions.

F. Any person who is found guilty of executing a statement that another person has a mental illness or is suffering from a substance-related or addictive disorder and is in need of immediate treatment to protect the person or others that the affiant knows or should know is false may be imprisoned, with or without hard labor, for not more than one year, or fined not more than one thousand dollars.

G.(1) If a law enforcement officer who has announced his authority and purpose of executing an order for protective custody and examination is refused or obstructed from admittance, and a mental health professional has intervened and attempted to counsel the person regarding his voluntary surrender to no avail, any elected coroner or his support staff may apply to a court of competent jurisdiction for an order allowing a law enforcement officer to break open an outer or inner door or window of any vehicle, watercraft, aircraft, structure, or dwelling in order to restrain and transport the person subject to a request and order for protective custody examination.

(2) The application for a court order pursuant to this Subsection shall be accompanied by a copy of the order for protective custody and an affidavit of the coroner or his support staff reciting facts establishing probable cause for forcible entry. In exceptional circumstances, such

facts may be relayed to the judge by telephone or other electronic communication and the order of the judge may be issued orally. In such cases, a copy of the order for protective custody and an affidavit containing the information relayed to the judge shall be provided to the judge within 24 hours of taking the person into protective custody. Upon the timely presentation of the copy of the order for protective custody and the affidavit, the judge shall issue a written order acknowledging receipt of the information & the issuance of an oral order allowing forcible entry.

(3) Except as per Paragraph (4) of this Subsection & in instances of gross negligence or willful & wanton misconduct, an elected coroner & his support staff, & the executing law enforcement agency & its officers, shall not be civilly liable for any damage or injury resulting from any act, decision, omission, communication, or any act or failure to act, made in good faith while engaged in the performance of their duty to obtain or execute the order allowing forcible entry, restraining, or transportation of the subject for protective custody & examination.

(4) The limitation of civil liability provided for in this Subsection shall not extend to any action for the serious bodily injury or wrongful death occasioned as a result of the restraint or transportation of the person subject to the request and order for protective custody. Neither shall such limitation of civil liability extend to injuries or damages sustained by a third party who is physically injured during the execution of a request and order for protective custody. The limitation of liability provided for in this Subsection is not intended to limit or prohibit civil liability otherwise provided by law.

H.(1) Public and private general hospitals and their personnel who provide services in good faith for defined commitments in this Part shall not be liable for damages suffered by the patient as a result of the commitment or damages caused by the patient during the term of the commitment, unless the damage or injury was caused by willful or wanton negligence or gross misconduct. This limitation of liability shall only apply to public and private general hospital personnel who within the preceding twelve-month period have received appropriate training in nonviolent crisis intervention and such training has been documented in their personnel files. The training shall be provided by an instructor who has attended a course in crisis intervention taught by a certified instructor.

(2) The provisions of this Subsection shall not affect the provisions of R.S. 40:2113.6 or the Federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. 1395dd.

**For unique provisions relative to Jefferson and LaFourche Parishes, + laws relative to Judicial Commitments, see [www.legis.la.gov](http://www.legis.la.gov) , starting with R.S. 28:53.3, and following.**

**Note: Effective 01 July 2020, all 17-year-old arrestees shall be initially housed in a juvenile detention center, as per La. Ch.C. Articles 116 (3) and 815 (B).**

**Note: Always question DV witnesses, victims, perpetrators separately, one at a time.**