

ASSEMBLY, No. 3300

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 12, 2018

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Authorizes a civil action to obtain temporary legal authority to direct treatment services for person with substance use impairment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT authorizing a civil action to obtain temporary legal
2 authority to direct treatment services for person with substance
3 use impairment and supplementing Title 2A of the New Jersey
4 Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. For purposes of this act:

10 “Licensed service provider” means an independent clinic,
11 whether freestanding or a distinct part of a facility, that is licensed
12 or approved by the Department of Health or the Department of
13 Human Services to provide treatment for substance use disorders.

14 “Person” means a person who is over the age of 18.

15 “Petitioner” means a person who is a family member within the
16 third degree of consanguinity of the respondent or a legal guardian
17 of the respondent.

18 “Qualified health professional” means a physician, physician’s
19 assistant, advanced practice nurse, psychiatrist, psychologist, or
20 other health care professional who is properly credentialed or
21 licensed in this State to provide an assessment or diagnosis for a
22 substance use disorder.

23 “Respondent” means a person with an alleged substance use
24 impairment who is the subject of a petition filed under this act.

25 “Substance use disorder” means a maladaptive pattern of
26 substance use manifested by recurrent and significant adverse
27 consequences related to the repeated use of substances. For the
28 purpose of this chapter, substance use disorder is defined in the
29 current version of the Diagnostic and Statistical Manual of Mental
30 Disorders published by and available from the American Psychiatric
31 Association.

32 “Substance use impairment” means: (1) a condition in which a
33 substance use disorder likely will cause a person to neglect or
34 refuse to care for himself, including providing for essential needs
35 such as food, clothing, shelter, health care, or safety, to the extent
36 that such neglect or refusal poses an imminent threat of substantial
37 harm to the person’s well-being, or that there is a substantial
38 likelihood that the person, without the provision of treatment
39 services, is likely to cause physical harm to himself in the near
40 future; and (2) the person’s judgment is impaired by the substance
41 use disorder to the extent that the person is incapable of
42 understanding the need for treatment services and to make rational
43 decisions regarding the provision of such services. The mere
44 refusal of the respondent to request or receive treatment services
45 shall not constitute evidence of lack of judgment with respect to his
46 need for services.

47 “Treatment services” means outpatient or residential treatment
48 services provided by a facility licensed by the Department of Health

1 or the Department of Human Services to provide substance use
2 disorder treatment services.

3

4 2. A petitioner may initiate a civil action in the Superior Court
5 in the county of residence of the respondent seeking to obtain
6 temporary legal authority to direct treatment services for a
7 respondent who is alleged to have a substance use impairment by
8 filing of a petition with the Superior Court pursuant to the Rules of
9 Court.

10

11 3. a. In addition to any information that may be required by the
12 Rules of Court, the petition shall contain:

13 (1) the name and address of the petitioner, and the relationship
14 of the petitioner to the respondent;

15 (2) the name, address, and current location of the respondent;

16 (3) the name and address of the respondent's attorney, if known;

17 (4) factual statements explaining why the petitioner believes that
18 the respondent has a substance use impairment;

19 (5) a statement as to whether the respondent has refused to
20 participate in an assessment to determine if the respondent has a
21 substance use disorder;

22 (6) a statement as to whether a qualified health professional has
23 determined that the respondent is in need of and would benefit from
24 substance use disorder treatment services;

25 (7) a statement as to whether the respondent has refused to
26 participate in substance use disorder treatment services;

27 (8) a statement that the petitioner has made arrangements for a
28 substance use disorder assessment for the respondent;

29 (9) a statement that the petitioner has made arrangements for
30 substance use disorder treatment services for the respondent,
31 including a statement of verification from the treatment provider
32 where the respondent will receive treatment; and

33 (10) a statement of the petitioner's knowledge of whether the
34 respondent has an attorney and the respondent's ability to afford an
35 attorney.

36 b. (1) In addition, the petition shall contain a certification from
37 a qualified health professional who has examined the respondent
38 within five days of the filing of the petition setting forth the
39 findings of the examination. The certification shall verify that the
40 respondent has a substance use disorder as alleged in the petition
41 and shall state that the respondent presently needs and would
42 benefit from treatment services to mitigate the respondent's
43 substance use impairment. A health care professional employed by
44 a treatment provider from which the respondent will receive
45 treatment services shall not be eligible to be the certifying qualified
46 health care professional.

47 (2) If the certification required by paragraph (1) of this
48 subsection is not available at the time that the petition is filed

1 because the respondent has refused to participate in an assessment,
2 the petition shall state the circumstances of the refusal and shall
3 include a statement from the petitioner regarding the respondent's
4 medical history which reasonably substantiates the respondent's
5 substance use disorder as alleged in the petition. If the petitioner
6 does not have authority to access the respondent's medical history
7 at the time the petition is filed, the court may, at the request of the
8 petitioner, issue an ex parte order for the disclosure of the medical
9 information related to the respondent's alleged substance use
10 disorder to the petitioner. Prior to any hearing, the petitioner shall
11 provide the court and all parties with medical history information
12 which reasonably substantiates the respondent's substance use
13 disorder. Alternatively, the court may, based solely on the
14 allegations and factual statements in the petition, issue an ex parte
15 order requiring the respondent to participate in a substance use
16 disorder assessment prior to the date of the hearing.

17
18 4. Upon the filing of the petition, the court shall, to the extent
19 feasible, schedule an expedited hearing to determine whether to
20 grant the petitioner temporary legal authority to direct treatment
21 services for the respondent. The petition shall be served on all
22 parties and the hearing shall proceed pursuant to the Rules of Court.
23 The notice shall inform the respondent of his legal rights related to
24 the proceedings as specified in section 5 of this act.

25
26 5. A respondent under this act has the following rights at any
27 court proceeding under this act:

- 28 a. The right to be represented by counsel or, if indigent, by
29 appointed counsel;
30 b. The right to be present at the court hearing unless the court
31 determines that, because of the person's conduct at the court
32 hearing, the proceeding cannot reasonably continue while the
33 respondent is present;
34 c. The right to present evidence;
35 d. The right to cross examine witnesses; and
36 e. The right to a hearing in camera.

37
38 6. The respondent shall be present at the hearing unless the
39 court finds that the respondent's presence would be detrimental to
40 the respondent or others, or that the respondent willfully refuses to
41 appear before the court, in which case, the court may appoint a
42 guardian ad litem to represent the respondent in court proceedings
43 under this act. In addition to the appointment of a guardian ad
44 litem, the court shall appoint counsel to represent the respondent
45 during court proceedings under this act if the respondent is not
46 represented by counsel and it appears to the court that the
47 respondent is not capable of understanding the need for counsel or
48 is not capable of retaining counsel, or if the respondent is

1 determined to be indigent. Counsel appointed by the court during
2 proceedings to determine whether to grant the petitioner temporary
3 legal authority to direct treatment services shall continue to be
4 available to consult with the respondent during the initial 90 days of
5 treatment services, except that such consultation shall be limited to
6 the issues specified in section 14 of this act. However, assistance of
7 counsel to initiate or represent a respondent at court proceedings
8 after legal authority to direct shall be at the counsel's discretion
9 based on the basis of the relief sought and the probability of
10 prevailing on the action.

11

12 7. To be granted temporary legal authority to direct treatment
13 services for a respondent under this act, the petitioner has the
14 burden to prove to the court, by clear and convincing evidence, that:

- 15 a. the respondent has a substance use disorder;
- 16 b. the respondent has a substance use impairment;
- 17 c. the respondent needs and can reasonably benefit from
18 treatment; and
- 19 d. arrangements have been made to provide treatment services
20 to the respondent.

21

22 8. If, after considering all relevant evidence and testimony, the
23 court finds, by clear and convincing evidence, that the petitioner has
24 established sufficient proof of the existence of qualifying factors
25 enumerated in section 7 of this act, the court shall enter an order
26 granting temporary legal authority to direct treatment services for
27 the respondent. The granting of temporary legal authority to direct
28 treatment services shall authorize the petitioner to admit the
29 respondent to treatment services and to make all decisions related to
30 substance use disorder treatment. The temporary legal authority
31 granted under this act shall expire 90 days from the date of entry of
32 the order or until the respondent is discharged by the treatment
33 provider, whichever is earlier, except that the petitioner may apply
34 to the court to extend the temporary legal authority if necessary to
35 complete treatment services for the respondent. The court's order
36 shall specify that the petitioner shall seek, and the treatment
37 provider shall employ, the least restrictive form of treatment
38 services for the respondent.

39

40 9. If, during the course of proceedings under this act, the court
41 believes that the respondent is in need of involuntary commitment,
42 as defined in section 2 of P.L.1987, c.116 (C.30:4-27.2), due to
43 mental illness, the court may initiate procedures for involuntary
44 civil commitment under P.L.1987, c.116 (C.30:4-27.1 et seq.).

45

46 10. If a respondent fails to participate in an assessment or
47 treatment services pursuant to the directives of a person who is
48 granted temporary legal authority to direct treatment services, the

1 person granted temporary legal authority may apply to the court
2 seeking the enforcement of any directive of the person granted
3 temporary legal authority related to the respondent's participation in
4 an assessment or treatment services. The court may issue any order
5 necessary to compel compliance by the respondent to the extent that
6 such directive is reasonable and directly related to treatment
7 services for the respondent. The court may also initiate civil
8 contempt proceedings against a respondent for failure to comply
9 with the directives of a person who is granted temporary legal
10 authority to direct treatment services, as authorized by order of the
11 court. Under no circumstances shall a respondent be incarcerated
12 for failure to comply with the directives of the person who is
13 granted temporary legal authority to direct treatment services.
14

15 11. a. If a respondent fails to participate in an assessment or
16 treatment services pursuant to a directive of a person who is granted
17 temporary legal authority to direct treatment services or an order to
18 the court, the court may direct the sheriff to take the respondent into
19 custody and deliver the person directly to a qualified health
20 professional or treatment provider selected by the person who is
21 granted temporary legal authority to direct treatment services and
22 designated by the court. A sheriff acting in good faith who takes
23 reasonable steps to take custody and transport a respondent as
24 directed by the court is immune from civil and criminal liability.
25

26 b. A respondent taken into custody pursuant to this section
27 shall not be considered to be arrested for any purpose, and no entry
28 or record shall be made by the officer to indicate that the person
29 was detained or charged with any crime or offense.
30

31 12. A person who is granted temporary legal authority to direct
32 treatment services shall be responsible for selecting an appropriate
33 assessment and treatment provider, arranging for admission and
34 discharge of the respondent, monitoring treatment plan progress,
35 and for payment of the costs of assessment and treatment services
36 provided to the respondent.
37

38 13. No filing fee shall be assessed for the filing of a petition
39 under this act; however, a petitioner shall be responsible for other
40 costs associated with an application filed under this act, including
41 the cost for a sheriff to transport a respondent to an assessment or
42 treatment provider and the reasonable cost of court-appointed
43 counsel for the respondent. The court may waive costs if the
44 petitioner is determined to be indigent.
45

46 14. A respondent may, at any time, petition the court: for the
47 dismissal of proceedings under this act; to vacate an order
48 designating a person who is granted temporary legal authority to
direct treatment services; or for relief from any directive of such

1 person due to the fact that the respondent does not have a substance
2 use impairment, that the treatment provider is not employing the
3 least restrictive form of substance use disorder treatment, that the
4 directive of the person who is granted temporary legal authority to
5 direct treatment services is not reasonable or directly related to an
6 assessment or treatment services for the respondent, or that the
7 respondent is voluntarily admitting himself to treatment services
8 with a provider of his choosing.

9
10 15. A person who knowingly provides false information for the
11 purpose of obtaining temporary legal authority to direct treatment
12 services under this act is guilty of a crime of the fourth degree.

13
14 16. All petitions and related documents filed with the Superior
15 Court in accordance with this act shall be deemed confidential and
16 shall not be not subject to public inspection, unless otherwise
17 ordered by the court with the consent of the person who is granted
18 temporary legal authority to direct treatment services or the
19 respondent.

20
21 17. This act shall take effect on the first day of the sixth month
22 following enactment.

23
24
25 STATEMENT

26
27 This bill would permit a petitioner to initiate a civil action
28 seeking to obtain temporary legal authority to direct treatment
29 services for a respondent who is alleged to have a substance use
30 impairment.

31 A petition under the bill may only be made by a person over the
32 age of 18 who is a family member or a legal guardian of the
33 respondent. The petition must include certain identifying
34 information, as well as factual statements explaining why the
35 petitioner believes that the respondent has a substance use
36 impairment; a statement as to whether the respondent has refused to
37 participate in an assessment to determine if the respondent has a
38 substance use disorder; a statement as to whether a qualified health
39 professional has determined that the respondent is in need of and
40 would benefit from substance use disorder treatment services;
41 statement as to whether the respondent has refused to participate in
42 substance use disorder treatment services; a statement that the
43 petitioner has made arrangements for a substance use disorder
44 assessment for the respondent; and a statement that the petitioner
45 has made arrangements for substance use disorder treatment
46 services for the respondent, including a statement of verification
47 from the treatment provider where the respondent will receive
48 treatment.

1 In addition, the petition must contain a certification from a
2 qualified health professional who has examined the respondent
3 within five days of the filing of the petition verifying that the
4 respondent has a substance use disorder and stating that the
5 respondent presently needs and would benefit from treatment
6 services to mitigate the respondent's substance use impairment. If
7 the respondent has refused to participate in an assessment, the
8 petition must state the circumstances of the refusal and include a
9 statement from the petitioner regarding the respondent's medical
10 history which reasonably substantiates the respondent's substance
11 use disorder as alleged in the petition. If the petitioner does not
12 have authority to access the respondent's medical history at the time
13 petition is filed, the court may issue an ex parte order for the
14 disclosure of the medical information. Alternatively, the court may,
15 based solely on the allegations and factual statements in the
16 petition, issue an ex parte order requiring the respondent to
17 participate in a substance use disorder assessment prior to the date
18 of the hearing.

19 A respondent under this bill has the right to: be represented by
20 counsel or, if indigent, by appointed counsel; be present at the court
21 hearing unless the court determines that, because of the
22 respondent's conduct at the court hearing, the proceeding cannot
23 reasonably continue while the respondent is present; present
24 evidence; cross examine witnesses; and a hearing in camera.

25 If the court finds, by clear and convincing evidence, that the
26 petitioner has established sufficient proof of the existence of
27 qualifying factors, the court will enter an order granting temporary
28 legal authority to direct treatment services for the respondent. The
29 granting of temporary legal authority to direct treatment services
30 will authorize the petitioner to admit the respondent to treatment
31 services and to make all decisions related to substance use disorder
32 treatment. The temporary legal authority granted under this act will
33 expire 90 days from the date of entry of the order or until the
34 respondent is discharged by the treatment provider, whichever is
35 earlier, except that the petitioner may apply to the court to extend
36 the temporary legal authority if necessary to complete treatment
37 services for the respondent.

38 If a respondent fails to participate in an assessment or treatment
39 services pursuant to the directives of a person who is granted
40 temporary legal authority to direct treatment services, the court may
41 issue any order necessary to compel compliance by the respondent
42 to the extent that such directive is reasonable and directly related to
43 treatment services for the respondent. The court may also initiate
44 civil contempt proceedings against a respondent for failure to
45 comply with the directives of a person who is granted temporary
46 legal authority to direct treatment services, but may not order the
47 respondent to be incarcerated for failure to comply.