LOUISIANA STATUTES

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TITLE 28 MENTAL HEALTH
CHAPTER 1. MENTAL HEALTH LAW
PART I. SHORT TITLE, INTERPRETATIONS, AND DEFINITIONS

§1. Short title

This Chapter may be cited as the Mental Health Law.

§2. Definitions

Whenever used in this Title, the masculine shall include the feminine, the singular shall include the plural, and the following definitions shall apply:

(1) "Conditional discharge" means the physical release of a judicially committed person from a treatment facility by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The judicial commitment of such persons shall remain in effect for a period of up to one hundred twenty days and during this time the person may be hospitalized involuntarily for appropriate medical reasons upon court order.

(2) "Court" means any duly constituted district court or court having family or juvenile jurisdiction. "Court" does not include a city court, which shall have no jurisdiction to commit persons to mental health treatment facilities in civil or criminal proceedings, except when exercising juvenile jurisdiction.

(3) "Dangerous to others" means the condition of a person whose behavior or significant threats support a reasonable expectation that there is a substantial risk that he will inflict physical harm upon another person in the near future.

(4) "Dangerous to self" means the condition of a person whose behavior, significant threats or inaction supports a reasonable expectation that there is a substantial risk that he will inflict physical or severe emotional harm upon his own person.

(5) "Diagnosis" means the art and science of determining the presence of disease in an individual and distinguishing one disease from another.

(6) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(7) "Discharge" means the full or conditional release from a treatment facility of any person admitted or otherwise detained under this Chapter.

(8) "Department" means the Department of Health and Hospitals.

(9) "Formal voluntary admission" means the admission of a person suffering from mental illness or substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be formally admitted upon his written request. Such persons may be detained following a request for discharge pursuant to R.S. 28:52.2.

(10) "Gravely disabled" means the condition of a person who is unable to provide for his own basic physical needs, such as essential food, clothing, medical care, and shelter, as a result of serious mental illness or substance abuse and is unable to survive safely in freedom or protect himself from serious harm; the term also includes incapacitation by alcohol, which means the condition of a person who, as a result of the use of alcohol, is unconscious or whose judgment is otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(11) "Informal voluntary admission" means the admission of a person suffering from mental illness or substance abuse, desiring admission to a treatment facility for diagnosis and/or treatment of such condition who may be admitted upon his request without making formal application.

(12) "Major surgical procedure" means an invasive procedure of a serious nature with incision upon the body or parts thereof under general, local or spinal anesthesia, utilizing surgical instruments, for the purpose of diagnosis or treatment of a medical condition. Diagnostic procedures, including, but not limited to, the following, shall not be considered as major surgical procedures:

(a) Endoscopy through natural body openings, such as the mouth, anus, or urethra, to view the trachea, bronchi, esophagus, stomach, pancreas, small or large intestine, urethra, urinary bladder, or ureters, and to obtain from such organs specimens of fluids or tissues for chemical or microscopic analysis.

(b) Sub-cutaneous percutaneous liver biopsy.

(c) Punch biopsy of skeletal muscles.

(d) Bone marrow biopsy.

(e) Lumbar puncture.

(f) Myelogram.

(g) Thoracocentesis.

(h) Abdominocentesis.

(i) Conization of the uterine cervix.

(j) Renal angiography.

(k) Femoral angiography.

(l) Carotid angiography.

(m) Vertebral angiography.

(13) "Mental health advocacy service" means a service established by the state of Louisiana for the purpose of providing legal counsel and representation for mentally disabled persons and to insure that their legal rights are protected.

(14) "Mentally ill person" means any person with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment. It does not refer to a person suffering solely from mental retardation, epilepsy, alcoholism, or drug abuse.

(15) "Minor" means a person under eighteen years of age.

(16) "Parent" means a person who is the biological mother or father of an individual or the legally adoptive mother or father of an individual.

(17) "Patient" means any person detained and taken care of as a mentally ill person or person suffering from substance abuse.

(18) "Peace officer" means any sheriff, police officer, or other person deputized by proper authority to serve as a peace officer.

(19) "Person of legal age" means any person eighteen years of age or older.

(20) "Petition" means a written civil complaint filed by a person of legal age alleging that a person is mentally ill or suffering from substance abuse and requires judicial commitment to a treatment facility.

(21) "Physician" means a person permitted to practice and in active practice as a physician under the laws of Louisiana or a person in a post-graduate medical training program of an accredited medical school in Louisiana or a medical officer similarly qualified by the government of the United States while in the state in the performance of his official duties.

(22)(a) "Psychiatrist" means a physician who has at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

(b) "Psychologist" means a person licensed to practice psychology in Louisiana in accordance with R.S. 37:2351 et seq., and who has been engaged in the practice of clinical or counseling psychology for not less than three years.

(23) "Respondent" means a person alleged to be mentally ill or suffering from substance abuse and for whom an application for commitment to a treatment facility has been filed.

(24) "Restraint" means the partial or total immobilization of any or all of the extremities or the torso by mechanical means for psychiatric indications. Restraint does not include the use of mechanisms usually and customarily used during medical or surgical procedures, including but not limited to body immobilization during surgery and arm immobilization during intravenous administration. Restraint does not include orthopedic appliances used to posturally support the patient, such as posies.

(25) "Seclusion" means the involuntary confinement of a patient alone in a room where the patient is physically prevented from leaving for any period of time, except that seclusion does not include the placement of a patient alone in a room or other area for no more than thirty minutes at a time and no more than three hours in any twenty-four-hour period pursuant to behavior-shaping techniques, such as "time-out".

(26) "Substance abuse" means the condition of a person who uses narcotic, stimulant, depressant, soporific, tranquilizing, or hallucinogenic drugs or alcohol to the extent that it renders the person dangerous to himself or others or renders the person gravely disabled.

(27) "Transfer" means the removal of a patient from one mental institution to another without any procedure for admission other than is prescribed by the department.

(28) "Treatment" means an active effort to accomplish an improvement in the mental condition or behavior of a patient or to prevent deterioration in his condition or behavior. Treatment includes but is not

limited to hospitalization, partial hospitalization, outpatient services, examination, diagnosis, training, the use of pharmaceuticals, and other services provided for patients by a treatment facility.

(29)(a) "Treatment facility" means any public or private hospital, retreat, institution, mental health center, or facility licensed by the state in which any mentally ill person or person suffering from substance abuse is received or detained as a patient. The term includes Veterans Administration and public health hospitals and forensic facilities. "Treatment facility" includes but is not limited to the following, and shall be selected with consideration of first, medical suitability; second, least restriction of the person's liberty; third, nearness to the patient's usual residence; and fourth, financial or other status of the patient, except that such considerations shall not apply to forensic facilities:

(i) Community mental health centers.

(ii) Private clinics.

(iii) Public or private halfway houses.

(iv) Public or private nursing homes.

(v) Public or private general hospitals.

(vi) Public or private mental hospitals.

(vii) Detoxification centers.

(viii) Substance abuse clinics.

(ix) Substance abuse in-patient facility.

(x) Forensic facilities.

(b) Patients involuntarily hospitalized by emergency certificate or mental health treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), (viii), or (x) of Subparagraph (a), except that patients in custody of the Department of Public Safety and Corrections may be admitted to forensic facilities by emergency certificate provided that judicial commitment proceedings are initiated during the period of treatment at the forensic facility authorized by emergency certificate. Patients involuntarily hospitalized by emergency certificate for substance abuse treatment shall not be admitted to the facilities listed in Items (ii), (iii), (iv), or (x) of Subparagraph (a). Judicial commitments, however, may be made to any of the above facilities except forensic facilities. However, in the case of any involuntary hospitalization as a result of such emergency certificate for substance abuse or in the case of any judicial commitment as the result of substance abuse, such commitment or hospitalization may be made to any of the above facilities, except forensic facilities, provided that such facility has a substance abuse in-patient operation maintained separate and apart from any mental health in-patient operation at such facility.

(c) "Treatment facility" shall not include a jail or prison of any kind, or any facility under the control or supervision of the Department of Public Safety and Corrections unless the facility has been designated by the Department of Health and Hospitals and the Department of Public Safety and Corrections as a treatment facility pursuant to R.S. 15:830.1(B); however, a jail or prison shall not be construed as a forensic facility. Only adult inmates sentenced to the Department of Public Safety and Corrections may be admitted to a treatment facility designated pursuant to R.S. 15:830.1(B).

§3. Application of Chapter; costs

The provisions of this Chapter apply to persons who are suffering from mental illness or substance abuse. Nothing in this Chapter referring to costs shall be construed to defer or prevent the care of a person in a state mental institution, nor their release therefrom.

PART II. INSTITUTIONS AND PLACES FOR MENTAL PATIENTS

§21. State hospitals for the mentally ill and inebriate

A. The hospital at Jackson, known as the East Louisiana State Hospital, the hospital at Pineville, known as the Central Louisiana State Hospital, and the hospital at Mandeville, known as the Southeast Louisiana Hospital, are designated as the institutions for the mentally ill and inebriate until such time as separate or other institutions are established. If the facilities permit, the superintendent of each shall maintain within the framework of the hospital separate wards for the treatment of the inebriate. The assistant secretary of the office of mental health of the department may reorganize and consolidate the administration of the institutions or facilities, including the Feliciana Forensic Facility, the Greenwell Springs Hospital, and the New Orleans Adolescent Hospital as necessary to comply with the provisions of the State Mental Health Plan.

B. The assistant secretary of the office of mental health of the department may establish community cottages as satellite facilities to these institutions from funds presently allocated or to be allocated to these institutions by the legislature.

C. Any site designated under this Section shall comply with any applicable local and state building or zoning ordinances and laws.

D. Any site selected by the assistant secretary must be approved by the local governing authority.

E. The assistant secretary for the office of mental health is authorized to reorganize the office of mental health into an area management structure to consist of areas A, B, and C, which are meant to include both hospital and community resources which previously existed in these areas, excluding Jefferson Parish Human Services Authority and Capital Area Human Services District.

(1) Area A shall consist of the following:

(a) The parishes of Assumption, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Washington, and Jefferson, except the Jefferson Parish Human Services Authority.

(b) Southeast Louisiana State Hospital.

(c) New Orleans Adolescent Hospital.

(d) The acute psychiatric units operated by the office of mental health in the parishes listed in Subparagraph (a) of this Paragraph.

(2) Area B shall include the following:

(a) Except the services provided by the Capital Area Human Services District, the parishes of Acadia, Allen, Ascension, Beauregard, Calcasieu, Cameron, East Baton

Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Pointe Coupee, St. Landry, St. Martin, Vermilion, West Baton Rouge, and West Feliciana.

(b) The Eastern Louisiana Mental Health System, comprised of the facilities previously known as:

(i) East Louisiana State Hospital.

(ii) Feliciana Forensic Facility.

(iii) Greenwell Springs Hospital.

(c) The acute psychiatric units operated by the office of mental health in the parishes listed in Subparagraph (a) of this Paragraph.

(3) Area C shall include the following:

(a) The parishes of Avoyelles, Bienville, Bossier, Caddo, Catahoula, Caldwell, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Vernon, and Winn.

(b) Central Louisiana State Hospital.

(c) The acute psychiatric units operated by the office of mental health in the parishes listed in Subparagraph (a) of this Paragraph.

§22.4. Guidance centers

The guidance centers heretofore established by the department are recognized, created, and continued as units of the department under its supervision; provided the department may enter into contracts with any voluntary association, nonprofit corporation, police jury, school board, municipality, or other public agency in the area served by a guidance center or mental health center, providing for the administration of such center out of funds contributed in whole or in part by local groups, corporations, or public agencies or out of joint state and local funds, or joint state, federal, and local funds.

§22.5. Community mental health centers

The community mental health centers located in Lafayette, Pineville, Lake Charles, Baton Rouge, New Orleans, Crowley, Shreveport, and Monroe for the care, treatment, and rehabilitation at the community level of the mentally ill and the mentally defective as defined in R.S. 28:2(3) and R.S. 28:2(4) are created and continued as units of the department under its supervision and administration. Guidance centers heretofore established may be converted to mental health centers by the department or two or more of them may be merged and consolidated into a mental health center by the department.

§22.6. Payment for maintenance or treatment

Persons or their responsible relatives who are able to pay all or a part of the cost of their maintenance or treatment or both at the units named in R.S. 28:22 through R.S. 28:22.5 shall reimburse the department to the extent of their ability to pay at rates to be fixed by the department.

§22.7. Geriatric hospitals and units

A. The department may establish and administer geriatric hospitals or units to receive and care for elderly and infirm persons who have been discharged by a hospital for the mentally ill and for other elderly and infirm persons who are in need of nursing and medical care. Such hospitals or units may be established on sites designated by the department, provided that no such geriatric hospital or unit may be established on any site located more than five air miles from the administrative office of East Louisiana State Hospital or more than one air mile from the administrative office of Central Louisiana State Hospital. Persons admitted to such geriatric hospitals or units or their responsible relatives shall pay the cost of their maintenance and care.

B. The geriatric hospital at Jackson, Louisiana, known as Villa Feliciana, is created and established, which hospital shall be under the administration of the office of management and finance of the Department of Health and Hospitals. The hospital shall hereafter be designated as Villa Feliciana Medical Complex.

§23. Psychiatric inpatient units in state general hospitals

The department shall establish psychiatric inpatient units in state-owned general hospitals for the emergency and temporary care of cases of acute mental illness.

§25. Provisions for close confinement of certain mental patients

At institutions that it may designate, the department may provide facilities for the care and confinement of mental patients who require close confinement in the interest of themselves and of the public.

The department shall designate places of confinement for patients of dangerous tendencies and for those charged with or convicted of a crime or misdemeanor who require special protection and restraint.

§25.1. Establishment of Feliciana Forensic Facility; authorization to establish forensic facilities in New Orleans, Baton Rouge, Shreveport, and Alexandria

A. The forensic unit at East Louisiana State Hospital is hereby declared to be a separate and distinct facility from East Louisiana State Hospital and hereafter shall be known as the Feliciana Forensic Facility.

B. The department may establish additional forensic facilities for the treatment of forensic patients in New Orleans, Baton Rouge, Shreveport, and Alexandria as funds are appropriated by the legislature.

C.(1)(a) The superintendent of any such facility shall admit only those persons:

(i) Determined to be incompetent prior to trial and committed on recommendation of a sanity commission.

(ii) Found not guilty by reason of insanity.

(iii) Transferred from state correctional institutions.

(iv) Who were judicially committed after being charged with a criminal offense and found incompetent to stand trial.

(v) Judicially committed to and transferred from any state hospital for the mentally ill and inebriant.

(b) A transfer from any other state hospital shall be had only after the director of the transferring facility, in concurrence with two psychiatrists, has determined and certified in writing to such forensic facility that the person to be transferred is dangerous to others and that the transferring facility cannot adequately protect its staff and patients from such person.

(c) The decision to transfer shall not be made until after the person who is proposed to be transferred has had an opportunity to be heard regarding his actions upon which the proposed transfer is based by the director and two concurring psychiatrists.

(d) For purposes of this Section, a person shall be determined "dangerous to others" when said person has attempted to cause serious injury or harm to a patient or staff person on at least one occasion and the likelihood is that said person will cause such injury again if he is allowed to remain in the facility requesting the transfer.

(2)(a) The administrator of the Feliciana Forensic Facility shall refuse admission to any person if:

(i) Admission of the person would cause overcrowding of the facility.

(ii) The facility is unable to provide appropriate care or treatment for the person.

(iii) The person is not accompanied by a file containing a history of the person's mental and physical health and documents required pursuant to Articles 648.1 and 654.1 of the Code of Criminal Procedure.

(iv) The person from a state hospital or correctional institution is not accompanied by a summary of the facts presented at the hearing at which the person objected to his transfer to the forensic facility and a summary of the person's objections.

(b) If the person refused admission is being held in a parish jail, the Department of Health and Hospitals shall pay to the parish sheriff, or to the parish governing authority of any parish in which the governing authority operates the parish jail, an amount equal to the sum paid to the parishes by the Department of Public Safety and Corrections for keeping and feeding state inmates under the provisions of R.S. 15:824(B)(1). This sum shall be paid from the day the inmate is committed to the facility until the person is accepted by the facility or the order of commitment is rescinded by the court. The department shall, in addition, reimburse the sheriff or parish governing authority for the cost of any medical treatment occasioned by the reasons for the commitment, provided the treatment is not provided by a state operated facility. The payments required by this Subparagraph shall be made monthly based upon reports filed by the sheriff.

(3) The Feliciana Forensic Facility shall be free to return a patient to the original institution when, in the opinion of the Feliciana Forensic Facility administrator, the patient has received the maximum benefit of treatment at the Feliciana Forensic Facility.

(4) When the administrator of Feliciana Forensic Facility fails to obey an order or judgment of a court committing a person to said facility, the court shall consider the following before it holds him in contempt: whether the failure is (a) due to the inability to comply with the order or judgment because of inability to offer adequate or appropriate care or treatment, (b) because of overcrowding at the facility, or (c) because obeying the order or judgment would cause the administrator to violate an outstanding court order or judgment.

D. The department may contract with local law enforcement agencies and the Department of Corrections to provide security personnel for mental health patients placed in such forensic units, or other facilities to which such patients may be temporarily referred for medical treatment.

§25.2. Granting of passes to patients

A. Notwithstanding any other provision of law to the contrary, including any provision of the Code of Criminal Procedure, the administrator of the Feliciana Forensic Facility, in his discretion, may grant any patient committed to his custody a pass or furlough from the facility, except those patients who are under commitment to the Department of Public Safety and Corrections.

B. The administrator shall not grant any patient a pass or furlough for release from the facility except upon the recommendation of the patient's treating psychiatrist and with prior approval of the committing court. The administrator may impose conditions on a pass or furlough. Any pass or furlough granted shall be for a fixed period of time.

PART III. EXAMINATION, ADMISSION, COMMITMENT, AND TREATMENT OF PERSONS SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE ABUSE

§50. Declaration of policy

The underlying policy of this Chapter is as follows:

(1) That mentally ill persons and persons suffering from substance abuse 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 the mentally ill and persons suffering from substance abuse be provided.

(4) That mental health and substance abuse 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 or alcoholism 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.

§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 Department of Health and Hospitals, through its hospitals, mental health clinics and similar institutions, shall have the duty to assist petitioners and other persons in the preparation of petitions for commitment, requests for protective custody orders and requests for emergency certificates, upon request of such persons.

§52. Voluntary admissions; general provisions

A. Any mentally ill person or person suffering from substance abuse may apply for voluntary admission to a treatment facility. The admitting physician may admit the person on either a formal or informal basis, as hereinafter provided.

B. Admitting physicians are encouraged to admit mentally ill persons or persons suffering from substance abuse to treatment facilities on voluntary admission status whenever medically feasible.

C. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse 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, or physician 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, or physician 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 should be made to supply him this information. In addition, a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

G. 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.

Knowing and voluntary consent shall be determined by the ability of the individual to understand:

(1) That the treatment facility to which the patient is requesting admission is one for mentally ill persons or persons suffering from substance abuse;

(2) That he is making an application for admission, and

(3) 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 provision 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, substance abuse, 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 outside the facility that has previously treated the patient for his mental 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, if the physician is unable to consult with the primary physician, the date and time that a consultation with the primary physician was attempted.

§52.1. Informal voluntary admission

A. In the discretion of the director, any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis or treatment of a psychiatric disorder or substance abuse may be admitted upon the patient's request without a formal application.

B. Any patient admitted pursuant to this Section shall have the right to leave the treatment facility at any time during the normal day-shift hours of operation, which shall include but not be limited to nine a.m. to five p.m.

§52.2. Formal voluntary admission

A. Any mentally ill person or person suffering from substance abuse desiring admission to a treatment facility for diagnosis and/or treatment of a psychiatric disorder or substance abuse 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 unless an emergency certificate is executed pursuant to R.S. 28:53, or unless judicial commitment is instituted pursuant to R.S. 28:54, after making a valid written request for discharge to the director of the treatment facility.

§52.3. Noncontested admission

A. A mentally ill person or person suffering from substance abuse 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. 28:52H.

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.

Following a review of the diagnostic evaluation study, the director 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 or informal 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.

C. 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. Upon receipt of a valid objection, the director shall release the person within seventy-two hours unless proceedings are instituted pursuant to R.S. 28:53 or R.S. 28:54.

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

§52.4. Admission by relative

A. A person suffering from substance abuse may be admitted and detained at a public or private general hospital or a substance abuse in-patient facility for observation, diagnosis, and treatment for a period not to exceed twenty-eight days, when a parent, spouse, or the major child of the person if that child has attained the age of 18 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, or the major child of the person if that child has attained the age of 18 years shall execute or provide a written statement of facts, including personal observations, leading to the conclusion that the person is suffering from substance abuse 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 in-patient 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 of the hospital or in-patient 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 period not to exceed twenty-eight days from the date of his admission. 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.

§53. Admission by emergency certificate; extension

A.(1) A mentally ill person or a person suffering from substance abuse 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 substance abuse 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.

B.(1) Any physician or psychologist may execute an emergency certificate only after an actual examination of a person alleged to be mentally ill or suffering from substance abuse who is determined to be in need of immediate care and treatment in a treatment facility because the examining physician or psychologist determines the person to be dangerous to self or others or to be gravely disabled. Failure to conduct an examination prior to the execution of the certificate will be evidence of gross negligence.

(2) The certificate shall state:

(a) The date of the physician'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 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 substance abuse 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 either:

(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.

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 or psychologist, the patient's next of kin, the patient's curator, or the agency legally responsible for his welfare. 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 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, which shall be a necessary precondition to the person's continued confinement.

(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 insure 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 mental institution, 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 mental institution 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. All coroners shall keep accurate records showing the number of patients confined in their parishes pursuant to this Section.

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 should be made to supply him this information. In addition, a copy of the information mentioned in this Subsection must 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 be mentally ill or suffering from substance abuse and in need of immediate medical treatment because he is dangerous to himself or others or is gravely disabled. 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 above standard 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 center.

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 outside of the facility that has previously treated the patient for his mental 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, if the treating physician is unable to consult with the primary physician, the date and time that a consultation with the primary physician 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 emergency. For purposes of this Paragraph a "psychiatric or behavioral emergency" occurs when a patient, as a result of mental illness, substance abuse, 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 outside the facility that has previously treated the patient for his mental 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, if the physician is unable to consult with the primary physician, the date and time that a consultation with the primary physician 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 only be transported to one of the following:

(a) A community mental health center.

(b) A public or private general hospital.

(c) A public or private mental hospital.

(d) A detoxification center.

(e) A substance abuse clinic.

(f) A substance abuse in-patient facility.

(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 substance abuse and where any of the above facilities are unavailable, 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 substance abuse until such time as any of the above facilities become 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 cannot be subjected 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.

§53.2. Order for custody; grounds; civil liability; criminal penalty for making a 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 is mentally ill or suffering from substance abuse 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 is mentally ill or suffering from substance abuse and 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. 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 is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm, and

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

C. The order for custody shall be effective for seventy-two hours from its issuance and shall be delivered to the coroner or director of the treatment facility by the individual who has transported the person. The date and hour that the person is taken into protective custody shall be 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, 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.

D. 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.

E. Any person who is found guilty of executing a statement that another person is mentally ill or suffering from substance abuse 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.

§54. Judicial commitment; procedure

A. Any person of legal age may file with the court a petition which asserts his belief that a person is suffering from mental illness which contributes or causes that person to be a danger to himself or others or to be gravely disabled, or is suffering from substance abuse which contributes or causes that person to be a danger to himself or others or to be gravely disabled and may thereby request a hearing. The petition may be filed in the judicial district in which the respondent is confined, or if not confined, in the judicial district where he resides or may be found. The hearing shall not be transferred to another district except for good cause shown. A petitioner who is unable to afford an attorney may seek the assistance of any legal aid society or similar agency if available.

B. The petition shall contain the facts which are the basis of the assertion and provide the respondent with adequate notice and knowledge relative to the nature of the proceedings.

C. Upon the filing of the petition, the court shall assign a time, not later than eighteen calendar days thereafter, shall assign a place for a hearing upon the petition, and shall cause reasonable notice thereof to be given to the respondent, respondent's attorney and the petitioner. The notice shall inform such respondent that he has a right to be present at the hearing; that he has a right to counsel; that he, if indigent or otherwise qualified, has the right to have counsel appointed to represent him by the Mental Health Advocacy Service, and that he has the right to cross examine witnesses testifying at any hearing on such application.

D.(1) As soon as practical after the filing of the petition, the court shall review the petition and supporting documents, and determine whether there exists probable cause to believe that the respondent is suffering from mental illness which contributes to his being or causes him to be a danger to himself or others or gravely disabled, or is suffering from substance abuse which contributes to his being or causes him to be a danger to himself or others or gravely disabled. If the court determines that probable cause exists, the

court shall appoint a physician, preferably a psychiatrist, to examine the respondent and make a written report to the court and the respondent's attorney on the form provided by the office of human services of the Department of Health and Hospitals. The court-appointed physician may be the respondent's treating physician. The written report shall be made available to counsel for the respondent at least three days before the hearing. This report shall set forth specifically the objective factors leading to the conclusion that the person has a mental illness or suffers from substance abuse, the actions or statements by the person leading to the conclusion that the mental illness or substance abuse causes the person to be dangerous to himself or others or to be gravely disabled and in need of immediate treatment as a result of such illness or abuse, and why involuntary confinement and treatment are indicated. The following criteria should be considered by the physician:

(a) The respondent is suffering from serious mental illness which contributes or causes him to be dangerous to himself or others or to be gravely disabled or from substance abuse which contributes or causes him to be dangerous to himself or others or to be gravely disabled.

(b) The respondent's condition is likely to deteriorate needlessly unless he is provided appropriate medical treatment.

(c) The respondent's condition is likely to improve if he is provided appropriate medical treatment.

(2) The respondent or his attorney shall have the right to seek an additional independent medical opinion, when necessary, in their discretion. If the respondent is indigent, this opinion may be paid for by the Mental Health Advocacy Service, upon the approval of its executive director. Reasonable compensation of the appointed examining physicians and all court costs shall be established by the court and ordered paid by respondent or petitioner in the discretion of the court. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the physicians and all court costs shall be paid from funds appropriated to the judiciary, but such court costs shall not exceed the sum of seventy-five dollars.

(3) If the respondent refuses to be examined by the court appointed physician as herein provided, or if the judge, after reviewing the petition and an affidavit filed pursuant to R.S. 28:53.2 or the report of the treating physician or the court appointed physician, finds that the respondent is mentally ill or suffering from substance abuse and is in need of immediate hospitalization to protect the person or others from physical harm, or that the respondent's condition may be markedly worsened by delay, then the court may issue a court order for custody of the respondent, and a peace officer shall deliver the respondent to a treatment facility designated by the court. The court shall also issue an order to the treatment facility authorizing detention of the respondent until the commitment hearing is completed, unless he is discharged by the director.

(4) Unless the individual is currently hospitalized or under an emergency certificate, he shall be allowed to remain in his home or other place of residence pending an ordered examination and to return to his home or other place of residence upon completion of the examination. An examining physician may execute an emergency certificate pursuant to R.S. 28:53 if he deems that action appropriate. In such a case, the respondent shall be admitted pursuant to R.S. 28:53 pending the hearing on the petition.

§55. Judicial hearings

A. At the appointed time, the court shall conduct a hearing on the petition. Before the hearing, the respondent may move for a change of venue to the parish of his domicile, which motion shall be granted only for compelling reasons. If the respondent is confined to a hospital, the judge of the court where the

petition was filed may hold the hearing on such commitment at the treatment facility where the person is confined, if in the opinion of at least one of the physicians appointed by the court to examine him, it will be detrimental to his health, welfare, or dignity to travel to the court where the petition was filed.

B. The court shall provide respondent a reasonable opportunity to select his own counsel. In the event the respondent does not select counsel and is unable to pay for counsel, or in the event counsel selected by respondent refuses to represent said respondent or is not available for such representation, then the court shall appoint counsel for respondent provided by the mental health advocacy service. Reasonable compensation of appointed counsel shall be established by the court and may be ordered paid by respondent or petitioner in the discretion of the court if either is found financially capable. If it is determined by the court that the costs shall not be borne by the respondent or the petitioner, then compensation to the attorney shall be paid from funds appropriated to the judiciary.

C. The respondent shall have the right to privately retained and paid counsel at any time. However, all respondents must be represented by counsel as early as possible in every proceeding. If attorneys are available through the mental health advocacy service, the court shall contact the office of the service and request the assignment of an attorney who will be appointed. In cases where the service is unable to provide representation, the court shall select and appoint an attorney to represent the respondent, whose fee shall be set by the court. An attorney appointed to represent a person by a court pursuant to this Title has a continuing duty toward that person even after admission. That duty shall include, but not be limited to, follow-up investigation of the circumstances of the person and representation in subsequent proceedings relating to admission, status, and discharge. The duty shall continue until it is terminated by the court making the appointment.

D. On the day appointed, the hearing shall take precedence over all other matters, except pending cases of the same type. The court shall conduct the hearing in as formal a manner as is possible under the circumstances and shall admit evidence according to the usual rules of evidence. Witnesses and evidence tending to show that the person who is the subject of the petition is a proper subject for judicial commitment shall be presented first. The respondent has a right to be present unless the court finds that he knowingly, voluntarily, and intelligently waives his presence. The respondent or his counsel shall have the right to present evidence and cross examine witnesses who may testify at the hearing. If the respondent is present at the hearing and is medicated, the court shall be informed of the medication and its common effects. If the respondent or his attorney notifies the court not less than three days before the hearing that he wishes to cross examine the examining physicians, the court shall order such physicians to appear in person or by deposition. The court shall cause a recording of the testimony of the hearing to be made, which shall be transcribed only in the event of an appeal from the judgment. A copy of such transcript shall be furnished without charge, to any appellant whom the court finds unable to pay for the same. The cost of such transcript shall be paid from funds appropriated to the judicial department.

E.(1) If the court finds by clear and convincing evidence that the respondent is dangerous to self or others or is gravely disabled, as a result of substance abuse or mental illness, it shall render a judgment for his commitment. After considering all relevant circumstances, including any preference of the respondent or his family, the court shall determine whether the respondent should be committed to a treatment facility which is medically suitable and least restrictive of the respondent's liberty. However, if the placement determined by the court is unavailable, the court shall commit the respondent to the Department of Health and Hospitals for placement in a state treatment facility until such time as an opening is available for transfer to the treatment center determined by the court, unless the respondent waives the requirement for such transfer. Within fifteen days following an alternative placement, the department shall submit a report to the court stating the reasons for such placement and seeking court approval of the placement.

(2) Following commitment of the respondent to the department, the department shall consider all of the following in determining the appropriate state treatment facility in which to place the respondent:

(a) The medical needs of the respondent.

(b) The treatment programs available at each treatment facility.

(c) The facility which would be least restrictive of the respondent's liberty.

(d) The availability of space at the respective treatment facilities.

(e) The preference of the respondent and the proximity of the respondent's family to the location of the facility.

(3) Unless prohibited by the respondent, the department shall notify the respondent's family of his placement at and/or transfer to a state treatment facility.

(4) The director shall notify the court in writing when a patient has been discharged or conditionally discharged.

(5) The court order shall order a suitable person to convey such person to the treatment facility and deliver respondent, together with a copy of the judgment and certificates, to the director. In appointing a person to execute the order, the court should give preference to a near relative or friend of the respondent.

(6) The court may, if it finds it to be in the best interest of the respondent, revoke the certificate or judgment of commitment.

F. Notice of any action taken by the court shall be given to the respondent and his attorney as well as to the director of the designated treatment facility in such manner as the court concludes would be appropriate under the circumstances.

G. Each court shall keep a record of the cases relating to mentally ill persons coming before it under this Title and the disposition of them. It shall also keep on file the original petition and certificates of physicians required by this Section, or a microfilm duplicate of such records. All records maintained in the courts under the provisions of this Section shall be sealed and available only to the respondent or his attorney, unless the court, after hearing held with notice to the respondent, determines such records should be disclosed to a petitioner for cause shown.

H. Every patient admitted by judicial commitment 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 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 should be made to supply him this information. In addition a copy of the information listed in this Subsection must be posted in any area where patients are confined and treated.

I.(1)(a) A patient confined to a treatment facility by judicial commitment may receive medication and treatment without his consent, but no major surgical procedures or electroshock therapy may be performed without the written authority 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 outside of the facility that has previously treated the patient for his mental 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, if the treating physician is unable to consult with the primary physician, the date and time that a consultation with the primary physician 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 situations 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, substance abuse, 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 outside the facility that has previously treated the patient for his mental 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, if the physician is unable to consult with the primary physician, the date and time that a consultation with the primary physician was attempted.

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

J. No director of a treatment facility shall prohibit any mentally ill person or person suffering from substance abuse 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 to have his admission status changed to voluntary status.

§56. Judicial commitment; review; appeals

A.(1)(a) Except as provided in Subparagraph (b) of this Paragraph, all judicial commitments except those for alcoholism shall be for a period not to exceed one hundred eighty days. The period of commitment shall expire at the end of the judicial commitment period, and the patient, if not converted to a voluntary status, shall be discharged unless a petition for judicial commitment has been filed prior to the expiration of the commitment period. If the court finds by clear and convincing evidence that the patient is dangerous to self or others or is gravely disabled as a result of mental illness, it shall render a judgment for his commitment for an additional period. Except as provided in Subparagraph (b) of this Paragraph, each additional judicial commitment shall expire at the end of one hundred eighty days.

(b) If a person has been judicially committed for four consecutive one- hundred-eighty-day periods pursuant to the provisions of Subparagraph (a) of this Paragraph and during this time has not been conditionally discharged, the period of a subsequent judicial commitment may exceed one hundred eighty days but shall not exceed one year.

(2)(a) The hearing on the petition shall be conducted according to the procedures and standards set forth in R.S. 28:54 and 55, and this Section. The hearing may be held by the district court for the judicial district in which the patient is being confined, or if not confined, by the district court for the judicial district where he resides or may be found. The hearing shall not be transferred to another district except for good cause shown.

(b) All judicial commitments shall be reviewed by the court issuing the order for commitment every ninety days, except those for alcoholism and except those individuals committed pursuant to Code of Criminal Procedure Article 648(B) whose cases shall continue to be reviewed annually. The director of the treatment facility to which the person has been judicially committed shall issue reports to the court and to counsel of record at these intervals setting forth the patient's response to treatment, his current condition, and the reasons why continued involuntary treatment is necessary to improve the patient's condition or to prevent it from deteriorating. These reports shall be treated by the court as confidential and shall not be available for public examination, nor shall they be subject to discovery in any proceedings other than those initiated pursuant to this Title.

(3) The court may at any time, upon application or upon its own motion, order a new hearing to be held in order to determine whether the involuntary status should be continued.

B. A commitment for alcoholism shall expire after forty-five days and the patient, if not converted to a voluntary status, shall be discharged, unless the court, upon application by the director of the treatment facility, finds that continued involuntary treatment is necessary and orders the patient recommitted for a period not to exceed sixty days; however, not more than two such sixty-day recommitments may be ordered in connection with the same continuous confinement.

C. Notwithstanding an order of judicial commitment, the director of the treatment facility to which the individual is committed is encouraged to explore treatment measures that are medically appropriate and less restrictive. The director may at any time convert an involuntary commitment to a voluntary one should he deem that action medically appropriate. He shall inform the court of any action in that regard. The director may discharge any patient if in his opinion discharge is appropriate. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged in good faith.

D. A person who is judicially committed shall be allowed to appeal devolutively from the order to the court of appeal. If the lower court finds the individual indigent, it shall allow the appeal to be taken in forma pauperis. Upon perfection of an appeal, it shall be heard in a summary manner, taking preference over all other cases except similar matters.

E. Upon affirmation of the order of commitment, the individual may apply for appropriate writs from the supreme court which shall be heard in a summary manner.

F. Nothing in this Title shall deny the right of habeas corpus, including an application based upon a change of circumstances.

G.(1) A person who is judicially committed may be conditionally discharged for a period of up to one hundred twenty days by the director or by the court. The patient may be required to report for outpatient treatment as a condition of his release. The terms and conditions of the conditional discharge shall be specifically set forth in writing and signed by the patient. A copy of the conditional discharge shall be given to the patient and explained to him before he is discharged.

(2) If the patient is conditionally discharged by the director, a copy of the conditional discharge shall be sent to the court which judicially committed him. If the patient is conditionally discharged by the court, a copy of the conditional discharge shall be sent to the facility to which the patient has been committed.

(3) If a patient does not comply with the terms and conditions of his conditional discharge, he is subject to any of the procedures for involuntary treatment, including but not limited to the issuance of an order for custody and the execution of an emergency certificate. A conditionally

discharged patient who is confined pursuant to any of these involuntary procedures shall have all rights of an involuntary patient, including the right to demand a probable cause hearing, the right to periodic reports and review, and a hearing pursuant to Subsections A and B.

(4) An extension of a conditional discharge may be granted upon application by the director of the treatment facility to the court and notification to respondent's counsel of record. The court may grant the extension of the conditional discharge for a period of up to one hundred twenty days. No further extension may be made without a contradictory hearing. The burden of proof is on the director of the treatment facility to show why continued treatment is necessary.

H. All patients presently unrepresented by privately retained counsel and who are the subject of involuntary commitment under any prior statute shall have their cases reviewed by attorneys provided by the mental health advocacy service within one year from the effective date of this Section, or be discharged or be committed again according to the provisions of this Chapter.

I. All judicial commitments involving a patient who has been found not guilty by reason of insanity or who has been found to lack the capacity to proceed, shall be reviewed in the manner as set forth in R.S. 15:211.

§58. R.S. 15:267 not affected

Whenever it appears that a person against whom an indictment has been found or information filed in any court in this state is insane or mentally defective to the extent that he is unable to understand the proceedings against him or to assist in his defense, or whenever the existence of insanity or mental defect on the part of the defendant at the time of the alleged commission of the offense charged becomes an issue in the cause, all proceedings to determine the fact of the insanity or mental defect shall be in accordance with the provisions of R.S. 15:267 (Article 267 of the Code of Criminal Procedure).

§59. Commitment of prisoners

A. Any person acquitted of a crime or misdemeanor by reason of insanity or mental defect may be committed to the proper institution in accordance with Code of Criminal Procedure Arts. 654 et seq.

B. Any person who is determined to lack the capacity to proceed, who will not attain the capacity to proceed with his trial in the foreseeable future, and who is not a danger to himself or others, shall be discharged in accordance with Code of Criminal Procedure Arts. 648 et seq. However, this release is without prejudice to any right the state may have to institute civil commitment proceedings pursuant to R.S. 28:53 or R.S. 28:54. Furthermore, this person may be held in a treatment facility for a reasonable time period pending the judicial commitment hearing. If judicial commitment proceedings are necessary, they shall be instituted within seventy-two hours after a determination that the person will not attain the capacity to proceed with his trial.

C. Any person serving sentence who becomes mentally ill may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration and contradictorily with the superintendent of the place of incarceration or with the sheriff of that parish. The period of commitment shall be credited against the sentence imposed by the court.

D. The department shall designate institutions for the care of mental patients committed in accordance with this Section.

§62. Commitment to United States veterans and public health service hospitals

The judge of the civil district court may commit to a United States veterans hospital or United States public health service hospital any eligible incompetent veteran or other person who is in need of institutional care.

Prior to commitment, the superintendent of the hospital shall have indicated his willingness to accept the patient and the ability to care for him. Upon admission, the patient is subject to the rules and regulations of the hospital and its officials are vested with the same powers exercised by superintendents of state mental hospitals with reference to the retention of custody of the committed patient.

In the commitment of patients under this Section, the court shall notify the patient of the proceedings and shall give him an opportunity to appear and defend himself.

§63. Physician's or psychologist's standard of care; law enforcement limitation of

A. Any licensed physician or psychologist exercising that degree of skill and care ordinarily employed, under similar circumstances by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill, shall not be held civilly liable or subject to criminal prosecution for acts arising from his professional opinions, judgments, actions, or duties pursuant to any of the provisions of this Part.

B. Any licensed physician or psychologist who executes an emergency certificate shall be held to that degree of skill and care ordinarily employed, under similar circumstances, by members of his profession in good standing in the same community or locality, and using reasonable care and diligence with his best judgment in the application of his skill.

C. Any person who acts in good faith to assist in the apprehension or taking into protective custody and examination of a patient will not be subject to civil or criminal penalties. However, a person who willfully advises or participates in the making of a false application or certificate shall be imprisoned with or without hard labor for not more than two years or fined not more than ten thousand dollars, or both.

D.(1) Any apprehension or taking into protective custody and confinement made by law enforcement officers, pursuant to any authorized procedure provided in this Title, is hereby declared to be an administrative act relative to the functions of their office, as required by law, and for which act they are specifically granted personal immunity.

(2) Upon arrival at any treatment or examination facility, a law enforcement officer escorting a person apprehended or taken into protective custody and confinement under any provision of this Title shall be relieved of any further responsibility.

§64. Mental Health Advocacy Service; creation; board of trustees; organization; powers; duties

A.(1) A Mental Health Advocacy Service is hereby created and shall be governed by a board of trustees. The Mental Health Advocacy Service shall be in the executive branch of state government, in the office of the governor pursuant to R.S. 36:4(B)(1)(v).

(2) The service shall provide legal counsel to all patients requesting such service and who are admitted for treatment pursuant to this Chapter, including, but not limited to, voluntary or involuntary admission, commitment, legal competency, change of status, transfer, and discharge.

(3) The service shall be governed by a board of trustees consisting of nine members to be made up of the deans of the law schools or their designated faculty members from Loyola University of the South, Southern University and Agricultural and Mechanical College Law Schools and from the medical and law schools of Louisiana State University and Agricultural and Mechanical

College and Tulane University of Louisiana, the president of the Mental Health Association of Louisiana or his representative, and a selected member from the Louisiana Medical Society and the Louisiana State Bar Association.

B. Members of the board shall be reimbursed actual expenses incurred in the performance of their duties.

The board of trustees shall:

(1) Appoint a director of the service.

(2) Establish general policy guidelines for the operation of the service to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their legal rights are protected. However, the board shall not have supervisory power over the conduct of particular cases.

(3) Review and evaluate the operations of the service and emphasize special training for attorneys hired by the service.

(4) Review and approve an annual budget for the service.

(5) Review and approve an annual report on the operation of the service and submit such report to the legislature, the governor and the chief justice of the supreme court, and

(6) Approve and authorize contractual arrangements sought by the director.

C. The director shall be an attorney at law licensed to practice in the state. The director shall be qualified by experience to perform the duties of his office. The director shall devote full time to the duties of his office and shall not engage in the private practice of law.

The director shall:

(1) Organize and administer programs to provide legal counsel and representation for the mentally disabled of this state in order to ensure that their rights are protected, subject to the approval of the board of trustees.

(2) Identify the needs of mentally disabled persons for legal counsel and representation within the state and the resources necessary to meet those needs, subject to the approval of the board of trustees.

(3) Institute or cause to be instituted such legal proceedings as may be necessary to enforce and give effect to any of the duties or powers of the service.

(4) Hire and train attorneys and other professional and nonprofessional staff that may be necessary to carry out the functions of the service. All attorneys employed shall be licensed to practice law in Louisiana.

(5) Establish official rules and regulations for the conduct of work of the service, subject to the approval of the board of trustees.

(6) Take such actions as he deems necessary and appropriate to secure private, federal, and other public funds to help support the service, subject to the approval of the board of trustees, and

(7) The director may contract with organizations or individuals for the provision of legal services for the mentally disabled, subject to the approval of the board of trustees.

D. Any attorney representing a mentally ill person or a respondent as defined herein shall have ready access to view and copy all mental health and developmental disability records pertaining to his client, unless the client objects. If the patient or respondent later retains a private attorney to represent him, the mental health advocacy service shall destroy all copies of records pertaining to his case.

Any attorney representing a mentally ill person or a respondent as defined herein shall have the opportunity to consult with his client whenever necessary in the performance of his duties. A treatment facility shall provide adequate space and privacy for the purpose of attorney-client consultation.

E. Nothing in this Title shall be construed to prohibit a mentally disabled person or respondent to be represented by privately retained counsel. If a service attorney has been appointed by the court and the mentally disabled person or respondent secures his own counsel, the court shall discharge the service attorney.

F. Any respondent or mentally disabled person shall have the right to demand that the records in the possession of his attorney regarding his mental condition be destroyed or returned to the treatment facility, and he shall have the right to assurance by the director that such records have been so destroyed by the mental health advocacy service attorney.

G. The mental health advocacy service shall establish official rules and regulations for evaluating a client's financial resources, for the purpose of determining whether a client has the ability to pay for services received.

A client found to have sufficient financial resources shall be required to pay the service in accordance with standards established by the director. An indigent client shall be provided legal counsel and representation without charge.

PART IV. TRANSFER, DISCHARGE, LEAVE OF ABSENCE, RETURN OF ESCAPED PATIENTS, BOARDING OUT OF PATIENTS INTERSTATE RENDITION AND DEPORTATION

§91. Transfer to mental institution

The judge shall designate or shall request the superintendent to provide an attendant to conduct the patient to the institution and may authorize the employment of assistants if necessary.

Wherever practicable, the mental patient to be hospitalized shall be permitted to be accompanied by one or more of his friends or relatives.

Upon delivering the patient, the attendant shall indorse that fact upon a warrant and the superintendent receiving the patient shall sign the warrant in acknowledgment.

§92. Transfer of patients from military establishments

Any resident and rightful charge upon the state who becomes mentally ill while in military service and is returned to the state because of need of institutional care, shall be directly transferred from the military establishment to a state hospital, provided arrangements to receive him are made in advance with the superintendent.

Unless sooner discharged from military service, the patient shall be detained for a period of observation not to exceed thirty days. If it is found that he should remain at the hospital, he shall, after discharge from military service, be committed in accordance with the provisions of this Chapter.

§93. Transfer of veterans to United States veterans hospitals

Any veteran eligible for treatment in a United States veterans hospital who has been committed to a mental hospital within the state may be transferred to a United States veterans hospital.

The transfer shall be by order of the committing court or by order of the superintendent of the mental hospital in which the veteran is confined or by order of the division if the veteran is on leave.

§94. Transfer of patients between institutions

A. Except as otherwise provided in this Subsection, the department may transfer any patient from one mental institution to another. Moreover, the superintendent of an institution may request the department to transfer a patient when he believes that a transfer is necessary.

(1) A patient may be transferred to or from a private mental institution only upon the joint application of the superintendent of that institution and of the legal or natural guardian or the person liable for the support of the patient. However, no private mental institution shall be obligated to retain a patient because of the refusal to sign the application by the guardian or the person liable for support.

(2) A person under sentence or acquitted of a crime or misdemeanor on the ground of mental illness or defect shall be transferred only upon authority of the committing court.

(3) A voluntary patient shall be transferred only with his written consent.

B. The following documents, as applicable, shall accompany a patient upon his transfer:

(1) The transfer order of the department.

(2) Certified copies of the application for admission, the physician's certificate, the report of the commission, and the order of the committing court.

(3) All of the patient's clinical records or a full abstract thereof, including the results of medical, physical, and laboratory examinations.

§95. Removal of female patients

A reputable woman attendant shall accompany a female patient while traveling. If an adult member of the patient's family is not available to accompany her, the court or the officials or other persons liable for her care shall provide an attendant.

§96. Discharge by the superintendent

A. Except as otherwise provided in this Section, the superintendent may discharge any patient committed to his institution if he believes that the patient has sufficiently recovered and that no harm will result from his discharge.

B. The superintendent shall as frequently as practicable, but not less often than every six months, examine or cause to be examined every patient and may discharge the patient and immediately make a report thereof to the division.

C. A patient committed in accordance with the provisions of Article 267 of the Code of Criminal Procedure shall be discharged only in the manner provided in that Article.

D. A patient committed in accordance with R.S. 28:59 shall be discharged only upon order of the committing court.

E. A patient who has shown dangerous tendencies shall be discharged upon the written consent of the division after an examination and after sufficient guarantee of proper supervision of the patient by a reputable person.

F. A patient whose discharge is opposed by a relative or other interested person shall be discharged only after the person opposing has been notified and given an opportunity to state his reasons why the patient should be detained for further care and treatment.

G. A mental defective who no longer requires treatment may be discharged with the approval of the division and with the approval of the committing court if commitment was by court order.

H. A mental defective convicted of a crime or misdemeanor prior to his transfer to an institution for mental defectives shall not be discharged prior to the time he might have been discharged from his original place of detention.

§96.1. Discharge by the superintendent of a private mental hospital

A. Except as otherwise provided in this Section the superintendent or head of a private mental hospital may discharge any patient committed to his institution only on the certificate of two physicians stating that the patient has sufficiently recovered and that no harm will result from his discharge.

B. A patient committed in accordance with the provisions of Article 267 of the Code of Criminal Procedure shall be discharged only in the manner provided in that Article.

C. A patient committed to a private hospital in accordance with R.S. 28:59 shall be discharged only upon order of the committing court.

D. A patient whose discharge from a private mental hospital is opposed by a relative or other interested person shall be discharged only after the person opposing has been notified and given an opportunity to state the reasons why the patient should be detained for further care and treatment.

E. A patient committed to a private mental hospital who has shown dangerous tendencies shall be discharged only upon the certificate of two physicians after an examination, and after sufficient guarantee has been provided of proper supervision of the patient by a reputable person.

F. A mental defective who no longer requires treatment may be discharged on the certificate of two physicians and with the approval of the committing court if the commitment was by court order.

§97. Discharge by the department

The department may order the examination and the discharge of any patient, except those committed in accordance with R.S. 28:59 and under Title XXI relating to insanity proceedings of the Code of Criminal Procedure, if as a result of the examination it believes that the patient should no longer be detained.

When a discharge in accordance with this Section is contemplated, the department shall give notice to the superintendent and to the person who caused the patient to be committed, in order that they may state their reasons why the patient should be detained for further treatment.

§98.2. Immunity of superintendent and mental hospital

Any detentions, confinements, commitments or discharges made of a mental patient in accordance with this Chapter to any state or private mental hospital or institution by the superintendent thereof, acting in good faith, reasonably and without negligence, are hereby declared to be administrative acts of the superintendent and/or the hospital, and the superintendent and the hospital are hereby granted immunity from liability for damages to any patient so detained, confined or committed for false imprisonment or otherwise, provided, however that the superintendent and/or the hospital shall not thereby be exempt from liability for negligence in the care or treatment of such patient.

§99. Discharge by lapse of time

Any patient continuously absent from an institution without leave for twelve months is automatically discharged and may be readmitted only according to law. This Section does not apply to mental defectives or epileptics, whose leaves are indefinite and who can be returned at any time until formal discharge, nor to patients committed in accordance with R.S. 28:59.

§100. Leaves of absence for patients

The superintendent may grant to patients leaves of absence for such time and upon such conditions as he prescribes. In granting leave, the superintendent is subject to the restrictions provided in R.S. 28:96.

A patient on leave may be returned at any time by the superintendent or the person to whom he has been released. The cost of return shall be paid by the latter.

Mental defectives and epileptics, whose leaves are indefinite, can be returned at any time until formal discharge, but other patients shall renew their leaves yearly or are liable to become automatically discharged in accordance with R.S. 28:99.

§100.1. Convalescent status; rehospitalization

The superintendent may release an improved patient on convalescent status when he believes that such release is in the best interests of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by the hospital, including a plan of treatment on an outpatient or nonhospital patient basis. Prior to the end of a year on convalescent status, and not less frequently than annually thereafter, the superintendent shall re-examine the facts relating to the hospitalization of the patient on convalescent status and, if he determines that in view of the condition of the patient hospitalization is no longer necessary, he may discharge the patient and make a report thereof to the department.

Prior to such discharge, the superintendent of the hospital from which the patient is given convalescent status may at any time readmit the patient. If there is reason to believe that it is in the best interest of the patient to be rehospitalized, the department or the superintendent may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the direction of a judge of a court of record of the parish in which the patient is resident or present, authorize any health or police officer to take the patient into custody and transport him to the hospital, or if the order is issued by the department, to a hospital designated by it.

§101. Boarding out patients

Under conditions indicating rehabilitation possibilities, the superintendent, with the consent of the department, may permit patients to board out with responsible persons who may be paid for their care of the patients. This Section does not apply to patients committed in accordance with R.S. 28:59.

A. In determining the amount to be paid, the value of any services to be rendered by the patient while boarding shall be considered and should the services of the patient justify, he shall be paid a sum in excess of his board to compensate him for these services.

B. The superintendent may require the person applying to board a patient to give bond with security for the proper care of the patient.

C. Agents of the institution shall visit frequently every boarding patient. If it is determined that the patient is not being cared for properly, the superintendent shall recall him to the institution with the consent of the department.

§102. Return of escaped patients

Any escaped patient shall be returned at the expense of the institution from which he escaped unless his discharge is granted before his return.

PART V. FEES AND COSTS

§141. Costs of commitment and examination

If financially able, the patient or his legally responsible relative shall pay the costs of commitment, including examination fees, expenses incurred in calling witnesses, fees of counsel for the patient, and fees of the commission, otherwise the parish of domicile in the case of a resident or the division in the case of a non-resident shall pay these costs.

Fees for services rendered by coroners or other experts in the commitment of patients shall be in accordance with the provisions contained in Article 267 of the Code of Criminal Procedure and the special laws relating to the fees of coroners and assisting physicians in interdiction proceedings. Except for emergency commitments which do not result in court commitment and voluntary admissions, the coroner of the parish of domicile shall receive the usual fee allowed in a formal commitment, for all types of commitment under this Chapter, even though he does not act personally in the commitment proceeding

142. Costs of transportation

If financially able, the patient or his legally responsible relative shall pay all the costs incident to transporting the patient to the mental hospital; otherwise the department, in the case of a nonresident, or the parish in which the hearing was held, in the case of a resident, shall pay these costs. If a patient's domicile is in a parish other than that in which the hearing was held, the former parish shall reimburse the latter for these costs.

Fees for transporting patients shall be in accordance with the special laws establishing fees for transporting prisoners.

§143. Costs of maintenance and boarding out

The superintendent of each mental institution shall include the costs of maintenance and boarding out of patients as an expense of the institution and shall prepare budgets in accordance with the provisions of Chapter 1 of Title 39.

If financially able, the patient or his legally responsible relative shall reimburse the institution for all or a part of the cost of his maintenance or boarding out.

§144. Investigation and assessment of charges

The department shall develop procedures to determine the ability of a patient or his legally responsible relative to pay all or a part of the costs of the patient's care and shall adopt rules and regulations for the assessment of charges in accordance with the ability to pay.

§145. Costs of transfer

The person requesting the transfer shall pay the costs of transferring a patient between institutions. The department shall pay the costs of transfers made at its request.

§146. Expenses incident to discharge, removal, or funeral

If financially able, the patient or his legally responsible relative shall pay the costs of the patient's funeral or his discharge and removal, including traveling expenses to his home; otherwise the institution shall pay these costs. If discharge is ordered by the department and the institution has to pay the patient's traveling expenses to his home, the department shall reimburse the institution out of appropriations for the indigent mentally ill.

If a patient committed in accordance with R.S. 28:59 is ordered returned by the court, the parish in which the court is located shall pay these costs.

PART VI. RIGHTS OF PERSONS SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE ABUSE

§171. Enumerations of rights guaranteed

A. No patient in a treatment facility pursuant to this Chapter shall be deprived of any rights, benefits, or privileges guaranteed by law, the Constitution of the state of Louisiana, or the Constitution of the United States solely because of his status as a patient in a treatment facility. These rights, benefits, and privileges include, but are not limited to, civil service status; the right to vote; the right to privacy; rights relating to the granting, renewal, forfeiture, or denial of a license or permit for which the patient is otherwise eligible; and the right to enter contractual relationships and to manage property.

B. No patient in a treatment facility shall be presumed incompetent, nor shall such person be held incompetent except as determined by a court of competent jurisdiction. The determination of incompetence shall be separate from the judicial determination of whether the person is a proper subject for involuntary commitment.

C.(1) The patient in a treatment facility shall be permitted unimpeded, private, and uncensored communication with persons of his choice by mail, telephone, and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated. A patient shall have the right to communicate in any manner in private with his attorney at all times.

(2) The director of a treatment facility shall ensure that correspondence can be conveniently received and mailed, that telephones are reasonably accessible, and that space for visits is available. Writing materials, postage, and telephone usage funds shall be provided in reasonable amounts to recipients who are unable to procure such items.

(3) Reasonable times and places for the use of telephones and for visits may be established in writing by the director of any treatment facility. However, the times and places established by the director must allow patients, at a minimum, reasonable daily communication by telephone and visitation. These rights may be restricted by the director of the treatment facility if sufficient cause exists and is so documented in the patient's medical records. The patient's legal counsel, as well as his next of kin or responsible party, must be notified in writing of any such restrictions and the reasons therefor. When the cause for any restriction ceases to exist, the patient's full rights shall be reinstated.

(4)(a) The director of any substance abuse treatment facility may restrict the visitation rights of a patient who is voluntarily admitted to such treatment facility under the provisions of R.S. 28:52, 52.1, 52.2, 52.3, and 52.4 for the initial phase of treatment but no longer than seven days unless good cause exists to extend the restriction and is so documented in the patient's record. This restriction shall not apply to visitation by the patient's attorney, or if he is not represented by counsel, the mental health advocate, or the patient's minister. This restriction shall also not apply to a parent or legal guardian of a patient who is a minor unless the director determines that good cause exists that such restriction shall be in the best interest of the patient and is so documented in the patient's record. When the facility director determines the need to restrict visitation of new patients he shall post notice of such restriction in places prominent to all new admissions, and shall inform each new patient of the restriction prior to the admission of the patient, and the length and duration thereof, and further, that such restriction may be extended on an individual basis as determined to be in the patient's interest by the treatment staff with the concurrence of the medical director.

(b) Nothing herein shall be construed to further restrict other forms of patient communication as permitted in this Section, nor shall this restriction apply to mental health treatment facilities.

D. Seclusion or restraint shall only be used to prevent a patient from physically injuring himself or others. Seclusion or restraint may not be used to punish or discipline a patient or used as a convenience to the staff of the treatment facility. Seclusion or restraint shall be used only in accordance with the following standards:

(1) Seclusion or restraint shall only be used when verbal intervention or less restrictive measures fail. Use of seclusion or restraint shall require documentation in the patient's record of the clinical justification for such use as well as the inadequacy of less restrictive intervention techniques.

(2) Seclusion or restraint shall only be used in an emergency. An emergency occurs when there is either substantial risk of self-destructive behavior, as evidenced by clinically significant threats or attempts to commit suicide or to inflict serious harm to self, or a substantial risk or serious physical assault on another person, as evidenced by dangerous actions or clinically significant threats that the patient has the apparent ability to carry out.

(3) A written order from a physician or a psychologist acting within the scope of his institutional privileges shall be required for any use of seclusion or restraint. If, however, no physician or psychologist is immediately available, a registered nurse who has been trained in management of disturbed behavior may utilize seclusion or restraint. The nurse or the nursing supervisor shall then immediately notify a physician or a psychologist with institutional authority to order seclusion or restraint and provide him with sufficient information to determine whether seclusion is necessary and whether less restrictive interventions have been tried or considered. The physician or psychologist may then issue a telephone order for seclusion or restraint, if such order is indicated.

(4) Written orders for the use of seclusion or restraint shall be time limited and not more than twelve hours in duration. The written order shall include the date and time of the actual examination of the patient, the date and time that the patient was placed in seclusion or restraint, and the date and time that the order was signed.

(5) A renewal order for up to twelve hours of seclusion or restraint may be issued by a physician or a psychologist with institutional authority to order seclusion or restraint after determining that there is no less restrictive means of preventing injury to the patient or others. If any patient is held in seclusion or restraint for twenty-four hours, the physician or psychologist with institutional authority shall conduct an actual examination of the patient and document the reason why the use of seclusion or restraint beyond twenty-four hours is necessary, and the next of kin or responsible party shall be notified by the twenty-sixth hour.

(6) Staff who implement written orders for seclusion or restraint shall have documented training in the proper use of the procedure for which the order was written.

(7) Periodic monitoring and care of the patient shall be provided by responsible staff. A patient in seclusion or restraint shall be evaluated every fifteen minutes, especially in regard to regular meals, water, and snacks, bathing, the need for motion and exercise, and use of the bathroom, and documentation of these evaluations shall be entered in the patient's record.

(8) Patients shall be released from seclusion or restraint as soon as the reasons justifying the use of seclusion or restraint subside. If at any time during the period of seclusion or restraint a registered nurse determines that the emergency which justified the seclusion or restraint has subsided and a physician or psychologist with institutional authority to order seclusion or restraint is not immediately available, the patient shall be released. At the end of the period of seclusion or restraint ordered by the physician or psychologist the patient shall be released unless a renewal order is issued.

(9) Mechanical restraints shall be designed and used so as not to cause physical injury to the patient and so as to cause the least possible discomfort.

(10) Facilities using seclusion or restraint shall have written policies concerning their use in place before they can be used. These policies shall include standards and procedures for placing a patient in seclusion or restraint, and for informing him of the reason he was put in seclusion or restraint and the means of terminating such seclusion or restraint.

(11) Nothing in this Section shall be construed to expand the scope of practice of psychology as defined in R.S. 37:2351 et seq. to authorize the ordering, administering, or dispensing of medications, or to authorize any practice not permitted under the privileges granted by the institution.

(12) The department shall adopt rules and regulations in accordance with the Administrative Procedure Act to govern the use of seclusion and restraint. Such rules and regulations shall respect the patient's individual rights, protect the patient's health, safety, and welfare, and be the least restrictive of the patient's liberty. The department shall adopt rules and regulations to provide for enforcement procedures and penalties applicable to a person who violates the requirements of this Section.

E. A patient may be placed alone in a room or other area pursuant to behavior shaping techniques such as "time-out". Such confinement may only be used as part of a written treatment plan, shall not be used for the convenience of staff, and may be used only according to the following standards and procedures:

(1) Placement alone in a room or other area shall be imposed only when less restrictive measures are inadequate.

(2) Placement alone in a room or other area shall only be ordered by a qualified professional trained in behavior-shaping techniques and authorized in accordance with the written policies and procedures of the facility to order the use of behavioral-shaping techniques.

(3) The period of placement alone in a room or other area shall not exceed thirty minutes.

(4) The patient shall be observed and supervised by a staff member.

(5) The period of placement alone in a room or other area shall not exceed a total of three hours in any twenty-four-hour time period. If the placement alone in a room or other area exceeds a total of three hours in any twenty-four-hour time period, it shall then be considered seclusion and shall be governed by the procedures and standards set forth in Subsection D of this Section.

(6) The date, time, and duration of the placement shall be documented.

(7) In treatment facilities where patients are placed alone in a room or other area as a behavior-shaping technique, there shall be written policies and procedures governing use of such behavior-shaping technique.

F. No patient confined by emergency certificate, judicial commitment, or non contested status shall receive major surgical procedures or electroshock therapy without the written consent of a court of competent jurisdiction after a hearing.

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 therapy are administered, such emergency measures may be performed without the consent otherwise provided for in this Section. No physician shall be liable for a good faith determination that a medical emergency exists.

G. Every patient shall have the right to wear his own clothes; to keep and use his personal possessions, including toilet articles, unless determined by a physician that these are medically inappropriate and the reasons therefor are documented in his medical record. The patient shall also be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases, and to have access to individual storage spaces for his private use. If the patient is financially unable to provide these articles for himself, the treatment facility shall provide a reasonable supply of clothing and toiletries.

H. Every patient shall have the right to be employed at a useful occupation depending upon his condition and available facilities.

I. Every patient shall have the right to sell the products of his personal skill and labor at the discretion of the director of the treatment facility and to keep or spend the proceeds thereof or to send them to his family.

J. Every patient shall have the right to be discharged from a treatment facility when his condition has changed or improved to the extent that confinement and treatment at the treatment facility are no longer required. The director of the treatment facility shall have the authority to discharge a patient admitted by judicial commitment without the approval of the court which committed him to the treatment facility. The court shall be advised of any such discharge. The director shall not be legally responsible to any person for the subsequent acts or behavior of a patient discharged by him in good faith.

K. Every patient shall have the right to engage a private attorney. If a patient is indigent, he shall be provided an attorney by the mental health advocacy service, if he so requests. The attorneys provided by the mental health advocacy service or appointed by a court shall be interested in and qualified by training and/or experience in the field of mental health statutes and jurisprudence.

L. Every patient shall have the right to request an informal court hearing to be held at the discretion of the court within five days of the receipt of the request by the court. If the court determines that a hearing is appropriate and if the patient is not represented by an attorney of his own or from the mental health advocacy service, the court shall appoint an attorney to represent the patient. The purpose of the hearing shall be to determine whether or not the patient should be discharged from the treatment facility or transferred to a less restrictive and medically suitable treatment facility.

M. No provision hereof shall abridge or diminish the right of any patient to avail himself of the right of habeas corpus at any time.

N. Every patient shall have the right to be visited and examined at his own expense by a physician designated by him or a member of his family or an interested party. The physician may consult and confer with the medical staff of the treatment facility and have the benefit of all information contained in the patient's medical record.

O. Prefrontal lobotomy shall be prohibited as a treatment solely for mental or emotional illness.

P. No medication may be administered to a patient except upon the order of a physician. The physician is responsible for all medications which he has ordered and which are administered to a patient. A record of medications administered to each patient shall be kept in his medical record including all instances when a patient is administered medication without his consent. Medication shall not be used for nonmedical reasons such as punishment or for convenience of the staff.

Q. A person admitted to a treatment facility has the right to an individualized treatment plan and periodic review to determine his progress. The appropriate staff of the facility shall review the person's progress at least at intervals of thirty days. The staff shall enter into the person's medical record his response to medical treatment, his current mental status, and specific reasons why continued treatment is necessary in the current setting or whether a treatment facility is available which is medically suitable and less restrictive of the patient's liberty.

R. A person admitted to a treatment facility has the right to have available such treatment as is medically appropriate to his condition. Should the treatment facility be unable to provide an active and appropriate medical treatment program, the patient shall be discharged.

S. Any patient known by a director of a treatment facility to be practicing a well-recognized religious method of healing under the care of a duly accredited practitioner thereof shall not be ordered medically treated, unless he is, as a result of a mental disorder, a danger to himself or to others.

PART VII. PENALTIES

§181. Improper commitment

Any person who, alone or in conspiracy with others, unlawfully, wilfully, maliciously, and without reasonable cause, commits or attempts to commit to any mental institution any person not sufficiently ill to require care shall be fined not more than one thousand dollars, or imprisoned for not more than one year, or both.

§182. Maltreating patient

Any person who maltreats a patient of any institution shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

§183. Furnishing weapons

Any person who knowingly makes available any dangerous instrument or weapon to any patient of any mental institution shall be fined not more than five hundred dollars, or imprisoned for not more than two years, or both.

§184. Furnishing intoxicants

Any person who knowingly makes available any intoxicant to any patient of any mental institution, except with the permission of the superintendent, shall be fined not more than five hundred dollars, or imprisoned for not more than one year, or both.

PART VIII. COMMUNITY MENTAL HEALTH AND MENTAL RETARDATION CENTERS, FACILITIES AND SERVICES

§200. Promotion of a community-based system of care

It is hereby declared to be a function of the Department of Health and Hospitals to promote the establishment and administration of a community-based system of care, including but not limited to community mental health centers for the mentally ill or mentally retarded or both as contemplated by the provisions of R.S. 40:2013. Mental health centers as used herein shall include guidance centers.

PART IX. SUPERVISION AND MONITORING OF MENTALLY ILL PERSONS IN OUTPATIENT TREATMENT PROGRAMS

§211. Purpose

The purposes of this Part are:

(1) To support law enforcement personnel in protecting the public by providing a mechanism to assist in identifying those persons who present a danger to themselves and others and who either refuse or who are incapable of following court ordered mental health treatment programs.

(2) To train state personnel, especially mental health professionals and probation and parole officers, to identify, isolate, treat, and when necessary confine such persons.

(3) To develop interagency cooperation between two state agencies which are often both accountable and responsible for such persons even though involved with them for different reasons.

(4) To assist persons whose court-ordered mental health treatment programs include scheduled visits to mental health treatment facilities in being responsible and accountable for their behavior.

PART X. ADVANCE DIRECTIVES FOR MENTAL HEALTH TREATMENT

§221. Definitions

As used in this Part:

(1) "Advance directive for mental health treatment" or "advance directive" means a written document voluntarily executed by a principal in accordance with the requirements of this Part and includes a declaration or the appointment of a representative or both.

(2) "Declaration for mental health treatment" or "declaration" means a written document executed by a principal, in accordance with the requirements of this Part, setting forth preferences or instructions regarding mental health treatment in the event the principal is determined to be incapable and mental health treatment is necessary.

(3) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(4) "Incapable" means that, due to any infirmity, the principal is currently unable to make or to communicate reasoned decisions regarding the principal's mental health treatment.

(5) "Mental health treatment" shall have the same meaning as provided in R.S. 28:2(28) and includes but is not limited to electroshock therapy, treatment of mental illness with psychoactive medication, admission to and retention in a treatment facility, and outpatient services. However, "mental health treatment" shall not include admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

(6) "Outpatient services" means treatment for a mental or emotional disorder that is obtained on an outpatient basis.

(7) "Physician" means an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners.

(8) "Principal" means an individual who has executed an advance directive for mental health treatment.

(9) "Provider" means a mental health treatment provider.

(10) "Psychologist" means a clinical psychologist who is licensed to practice psychology in Louisiana.

(11) "Representative" means a competent adult validly appointed under R.S. 28:223 to make mental health treatment decisions for a principal and also means an alternative representative.

(12) "Treating physician" means the physician who has primary responsibility for the mental health treatment of the principal.

(13) "Treatment facility" shall have the same meaning as provided in R.S. 28:2(29)(a).

§222. Individuals who may make an advance directive for mental health treatment; period of validity

A. An adult who is not incapable may make an advance directive for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

B. An advance directive for mental health treatment shall continue in effect for a period of five years or until revoked, whichever occurs first. The authority of a named representative and any alternative representative named in the advance directive for mental health treatment shall continue in effect as long as the advance directive appointing the representative is in effect or until the representative has withdrawn.

C. If an advance directive for mental health treatment has been delivered to the principal's treating physician or other provider and the principal has been determined to be incapable pursuant to R.S. 28:226, at the expiration of five years after its execution, it shall remain effective until the principal is no longer incapable.

§223. Designation of representative for decisions about mental health treatment

An advance directive for mental health treatment may designate a competent adult to act as a representative to make decisions about mental health treatment. An alternative representative may also be designated to act as representative if the original designee is unable or unwilling to act at any time. A representative who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is determined to be incapable pursuant to R.S. 28:226. The decisions shall be consistent with any desires the principal has expressed in the declaration.

§224. Execution of advance directive; witnesses; mental status examination

An advance directive for mental health treatment shall be valid only if it is signed by the principal and two competent witnesses and accompanied by a written mental status examination performed by a physician or psychologist attesting to the principal's ability to make reasoned decisions concerning his mental health treatment. The witnesses shall attest that the principal is known to them, signed the advance directive in their presence, and does not appear to be unable to make reasoned decisions concerning his mental health treatment or under duress, fraud, or undue influence. Individuals specified in R.S. 28:234 may not act as witnesses. In determining the principal's ability, the physician or psychologist should consider (1) whether the principal demonstrates an awareness of the nature of his illness and situation; (2) whether the principal demonstrates an understanding of treatment and the risks, benefits, and alternatives; and (3) whether the principal communicates a clear choice regarding treatment that is a reasoned one, even though it may not be in the person's best interest.

§225. Operation of advance directive; physician or provider to act in accordance with advance directive

A. An advance directive shall become operative when it is delivered to the principal's treating physician or other mental health treatment provider and shall remain valid until revoked or expired.

B. The treating physician or provider shall act in accordance with an operative advance directive when the principal has been found to be incapable pursuant to R.S. 28:226. Notwithstanding the operative advance directive, the treating physician or provider shall endeavor to communicate with the principal regarding his proposed mental health treatment and even continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

§226. Determination of incapacity

A. The incapacity of a principal shall be established by two physicians who have personally examined the principal, determined that he is incapable, and signed a written certificate. The written certificate shall be made part of the principal's medical record.

B. The determination that the principal has regained his capacity while in the treatment facility shall be made by any licensed physician and entered in the principal's medical record. The principal automatically regains his capacity when he is discharged from the treatment facility.

§227. Scope of authority of representative; powers and duties; limitation on liability

A. The representative shall not have the authority to make mental health treatment decisions unless the principal is determined to be incapable as provided in R.S. 28:226.

B. The representative shall not be, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

C. Except to the extent the right is limited by the advance directive or any federal law, a representative shall have the same right as the principal to receive information regarding both proposed and administered mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This representative's right of access to the principal's mental health treatment information shall not waive any evidentiary privilege.

D. In exercising authority under the advance directive, the representative shall act consistently with the expressed desires of the principal. If the principal's desires are not expressed in the advance directive and not otherwise known by the representative, the representative shall act in what the representative in good faith believes to be the best interests of the principal.

E. A representative shall not be subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance directive for mental health treatment.

§228. Prohibitions against requiring an individual to execute or refrain from executing advance directive

An individual shall not be required to execute or to refrain from executing an advance directive for mental health treatment as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a treatment facility.

§229. Advance directive for mental health treatment; part of medical record; physician or provider compliance; withdrawal of physician or provider

A. Upon being presented with an advance directive for mental health treatment, a physician or other provider shall make the advance directive a part of the principal's medical record. When acting under authority of an advance directive, a physician or provider shall comply with it to the fullest extent possible, consistent with the appropriate standard of care, reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unable or unwilling at any time to carry out preferences or instructions contained in an advance directive for mental health treatment or the decisions of the representative, the physician or provider may withdraw from providing treatment to the principal.

B. Such withdrawal shall be consistent with the continuity of the appropriate standard of care by the withdrawing physician or provider ensuring that another physician or provider agrees to treat the principal prior to the effectiveness of his withdrawal. Upon withdrawal, a physician or provider shall promptly notify the principal and the representative and document the notification in the principal's medical record. A withdrawal of a physician or provider pursuant to the provisions of this Section shall not be construed to constitute patient abandonment.

C. For the purposes of this Section, "physician" means the treating physician or any other physician proposing or administering mental health treatment to the principal.

§230. Disregarding advance directives; circumstances

A. The physician or provider may subject a principal determined to be incapable pursuant to R.S. 28:226 to mental health treatment in a manner contrary to the principal's wishes as expressed in an advance directive for mental health treatment only:

(1) In case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency. An emergency occurs when the principal presents an imminent and significant danger of physical harm to himself or others.

(2) When the treating physician determines that psychotropic medication is essential and after compliance with the following procedures:

(a) When a principal's advance directive or his representative refuses medication that the treating physician believes is essential, the director of the treatment facility shall conduct an administrative review to determine whether the principal should be forcibly medicated contrary to his wishes.

(b) The director shall provide written notice to the principal, his representative, if any, and an attorney from the Mental Health Advocacy Service (MHAS) no less than forty-eight hours, excluding weekends and holidays, before the administrative review. The notice shall include the time and place of the administrative review, the diagnosis, and reasons why the physician believes the medication is necessary. The principal's expressed wishes shall be followed pending the administrative review. The administrative review shall be held no later than seventy-two hours after the time that the MHAS has been notified, excluding weekends and holidays, unless the patient and the facility agree to a continuance.

(c) The MHAS attorney shall represent the principal at the administrative review unless the principal chooses someone else to represent him.

(d) A principal may be medicated contrary to the wishes expressed in his advance directive if, based on a review of the advance directive and the reasons stated therein, the patient's medical chart, a personal examination of the patient, the wishes of the principal's representative, if any, and the recommendations of the treating physician, the director determines that the medication is medically essential. The director shall consider the following criteria in making that decision:

(i) The patient is mentally ill and is dangerous to himself or others or gravely disabled without the medication.

(ii) The medication is the least restrictive alternative.

(iii) The medication is the most medically appropriate.

(iv) The medication offers a significant likelihood of improvement in the patient's condition or a speedier recovery and his condition is of such severity that unless the medication is administered the patient's medical condition is very unlikely to improve.

(v) The expected benefits from the medication outweigh the known risks and potential side effects.

(vi) All other reasonable alternatives, including those set forth in the advance directive, have been exhausted.

(e) The director shall require the attendance of the patient at the hearing unless extraordinary circumstances exist precluding his attendance. The principal and the hospital have the right to present evidence and cross- examine witnesses.

(f) The director's decision shall be in writing, shall address each of the criteria, and shall give reasons for the decision. All of the criteria in Subparagraph (d) of this Paragraph shall be met in order to medicate the principal against his expressed wishes.

(g) The director's decision to administer medication contrary to the advance directive should specify the length of time the decision to medicate the principal is to remain valid. The decision shall be effective for no more than sixty days or termination of the principal's stay at the treatment facility, whichever occurs first, unless a new request for an administrative review is made prior to the expiration of the original order and the patient is still hospitalized. If at any time the director believes that the medication is no longer necessary, he shall order the measures discontinued.

(h) The director shall provide the principal, his representative, if any, and the attorney from the Mental Health Advocacy Service with a copy of the decision.

(i) For purposes of this Section, the director of a treatment facility must be a psychiatrist who is not involved in providing medication to the patient. If the director does not meet those criteria, he shall designate a psychiatrist who is not involved in the medication of the patient.

B. An advance directive shall not limit the authority provided in R.S. 28:2 et seq., to take a principal into protective custody or to involuntarily admit or commit a principal to a treatment facility.

C. An advance directive shall not authorize admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

§231. Revocation of advance directive

An advance directive for mental health treatment may be revoked in whole or in part at any time by the principal if the principal is not incapable. Revocation shall be effective when a principal who is not capable communicates the revocation to the treating physician or other provider. The treating physician or other provider shall note the revocation as part of the principal's medical record.

§232. Limitations on liability of physician or provider

A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance directive for mental health treatment shall not be subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance directive's invalidity.

§233. Individuals prohibited from serving as representative

The following individuals shall be prohibited from serving as a representative:

(1) The treating physician, provider, or an employee of the physician or provider if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

§234. Individuals prohibited from serving as witnesses to advance directive for mental health treatment

The following individuals shall be prohibited from serving as a witness to the signing of an advance directive for mental health treatment:

(1) The treating physician, provider, or a relative of the physician or provider.

(2) An owner, operator, or relative of an owner or operator of a mental health treatment facility in which the principal is a patient or resident.

(3) An individual related to the principal by blood, marriage, or adoption.

§235. Withdrawal of representative; rescission of withdrawal

A. A representative may withdraw by giving notice to the principal. If a principal is incapable, the representative may withdraw by giving notice to the treating physician or provider. The treating physician or provider shall document the withdrawal as part of the principal's medical record.

B. An individual who has withdrawn under the provisions of Subsection A of this Section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. An individual who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's physician or provider if the principal is incapable

§236. Form

The Department of Health and Hospitals, in consultation with the Mental Health Advocacy Service, shall develop a form to implement the provisions of this Part.

§237. Status report to the House and Senate Committees on Health and Welfare

The Department of Health and Hospitals, office of mental health, and the Mental Health Advocacy Service shall jointly review the implementation of this Part and report their findings to the House and Senate Committees on Health and Welfare no later than January 15, 2003.