SENATE BILL 2921
By Overbey

HOUSE BILL 3115

By Ramsey

AN ACT to amend Tennessee Code Annotated, Title 33, relative to assisted outpatient treatment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, Part 6, is amended by adding the following as a new section:

33-6-624.

(a) As authorized by § 33-6-502, a court of competent jurisdiction may order a proposed patient to receive assisted outpatient treatment upon finding that the conditions of § 33-6-502(1)-(4) have been met.

(b) Before ordering an outpatient treatment plan pursuant to § 33-6-502(6), the court shall comply with subsections (c)-(f).

(c)

(1) A proposed outpatient treatment plan, developed pursuant to this section by a physician who has examined the proposed patient no more than ten (10) days prior to the entering of an order pursuant to § 33-6-502(6), shall be presented to the court in writing. The plan shall include all services the examining physician recommends that the proposed patient receive, and for each such recommended service, identify an appropriate community-based provider that has agreed to provide it.

(2) If the proposed outpatient treatment plan includes medication, it shall state whether such medication should be self-administered or administered by a treatment professional, and specify type and dosage range of medication most likely to provide maximum benefit for the subject.

(3) If the proposed outpatient treatment plan includes alcohol or substance abuse counseling and treatment, it may include a provision requiring relevant testing for either alcohol or illegal substances; provided, the physician's clinical basis for recommending such plan provides sufficient facts for the court to find:

(A) That such person has a history of alcohol or substance abuse that is clinically related to the mental illness; and

(B) That such testing is necessary to prevent a relapse or deterioration which would be likely to result in serious harm to the person or others.

(4) The examining physician shall:

(A) Provide an opportunity to actively participate in the development of the treatment plan to the proposed patient, the treating physician if any, and, upon the request of the proposed patient, any other individual significant to the proposed patient; and

(B) Make reasonable efforts to gather information that may be relevant in the development of the treatment plan from the proposed patient’s family or significant others.

(d) At all stages of a proceeding commenced under this section, the proposed patient shall have the right to be represented by counsel. If neither the patient nor others provide counsel, the court shall appoint counsel for the proposed patient. Upon request of the proposed patient, the court shall order an independent examination by a licensed physician of the proposed patient’s selection.

(e)

(1) Upon receipt of a petition for which assisted outpatient treatment may be an option, the court shall fix the date for a hearing. Such date shall be no later than three (3) days from the date such petition is received by the court, excluding Saturdays, Sundays, and holidays. Adjournments shall be permitted only for good cause shown. In granting adjournments, the court shall consider the need for further examination of the proposed patient and the potential need to provide assisted outpatient treatment expeditiously. The court shall cause the proposed patient, any other person to whom notice is due under this chapter, the petitioner, the physician whose affirmation or affidavit accompanied the petition, and such other persons as the court may determine to be advised of such date. Upon such date, or upon such other date to which the proceeding may be adjourned, the court shall hear testimony and, if it is deemed advisable and the proposed patient is available, examine the proposed patient in or out of court. If the proposed patient does not appear at the hearing, and appropriate attempts to elicit the attendance of the proposed patient have failed, the court may conduct the hearing in the proposed patient's absence. In such case, the court shall set forth the factual basis for such determination.

(2) If the physician’s affidavit or affirmation accompanying the petition indicates that the proposed patient has not submitted to an examination in the ten (10) days prior to the filing of the petition, the court may request the proposed patient to submit to an examination by a physician appointed by the court. If the proposed patient does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order law enforcement officers to take proposed patient into custody and transport the patient to a hospital for examination by a physician in accordance with parts 4

and 9 of this chapter. Retention of the proposed patient under such order shall not exceed twenty-four (24) hours. The physician whose affirmation or affidavit accompanied the petition may perform such examination of the proposed patient if the physician is privileged or otherwise authorized by such hospital to do so. If such examination is performed by another physician, the examining physician may consult with the physician whose affirmation or affidavit accompanied the petition as to whether the subject meets the criteria for assisted outpatient treatment. The court shall not hold a hearing on the petition unless and until the examining physician submits to the court:

(A) An affidavit or affirmation stating that the physician concurs that the proposed patient meets the criteria for assisted outpatient treatment; and

(B) A proposed assisted outpatient treatment plan for the proposed patient, developed by the examining physician, and conforming to the requirements of subsection (c).

(3) The court shall not order assisted outpatient treatment unless an examining physician, who has personally examined the proposed patient no more than ten (10) days before the filing of the petition and recommends assisted outpatient treatment, testifies at the hearing. Such physician shall testify to:

(A) The facts and clinical determinations that support the allegations that the proposed patient meets each of the criteria for assisted outpatient treatment; and

(B) The proposed assisted outpatient treatment plan, the rationale for each component of such plan, and whether each such component is the least restrictive available alternative to serve the clinical needs of the

proposed patient. If the proposed assisted outpatient treatment plan includes medication, the physician's testimony shall describe the types or classes of medication which should be authorized, describe the beneficial and detrimental physical and mental effects of such medication, and recommend whether such medication should be self-administered or administered by a treatment professional.

(4) The proposed patient shall be afforded an opportunity to present evidence, to call witnesses on the patient's behalf, and to cross-examine adverse witnesses.

(5) Unless the proposed patient requests a public hearing, the hearing shall be confidential and a report of the proceedings shall not be released to the public or press.

(f)

(1) If after hearing all relevant evidence, the court does not find by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment, the court shall not order outpatient treatment under this section and shall order inpatient care and treatment under § 33-6-502 or make other dispositions as authorized by law.

(2) If after hearing all relevant evidence, the court finds by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment, the court may order the proposed patient to receive assisted outpatient treatment for an initial period not to exceed one (1) year. In fashioning the order, the court shall specifically make findings by clear and convincing evidence that the ordered treatment is the least restrictive treatment appropriate and feasible for the proposed patient, and that community resources

are available to support such treatment. The order shall state an assisted outpatient treatment plan, which shall include all categories of assisted outpatient treatment that the proposed patient is to receive, but shall not include any such category that has not been recommended in both the proposed written treatment plan and the testimony provided to the court.

(3) If after hearing all relevant evidence the court finds by clear and convincing evidence that the proposed patient meets the criteria for assisted outpatient treatment and that the treatment recommended by the examining physician is in whole or in part appropriate, but the court does not find by clear and convincing evidence that community resources are available to provide such treatment, the court shall state such findings of fact on the record and deny assisted outpatient treatment without prejudice and may order such other treatment or commitment as authorized by law.

(4) The petitioner shall cause a copy of any court order issued pursuant to this section to be served personally, or by mail, facsimile or electronic means, upon the assisted outpatient and all service providers identified in the treatment plan.

(g) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, either party to the order may apply to the court, on notice to the other party and all others entitled to notice, to stay, vacate, or modify the order.

(h) Within thirty (30) days prior to the expiration of an order of assisted outpatient treatment, the original applicant, if the petitioner retains the status of an authorized petitioner pursuant to this chapter, or, in the absence of a timely petition by the original petitioner, any other person authorized to petition pursuant to this chapter, may apply to

the court to order continued assisted outpatient treatment for a period not to exceed one (1) year from the expiration date of the current order. If the court's disposition of such petition does not occur prior to the expiration date of the current order, the current order shall remain in effect until such disposition. The procedures for obtaining any order pursuant to this subsection (h) shall be in accordance with this section; provided, that in considering whether the assisted outpatient is unlikely to comply with outpatient treatment voluntarily, the court need not limit any consideration of the assisted outpatient's prior actions to the two-year period immediately preceding the filing of the petition for continued assisted outpatient treatment.

(i) Section 33-6-607 shall apply to the costs incurred for services ordered under this section.

(j) An assisted outpatient's substantial failure to comply with the order of the court shall constitute reason for a licensed physician, psychologist authorized under § 33-6-427(a), or professional designated by the commissioner under § 33-6-427(b), to determine whether the assisted outpatient is subject to emergency detention under § 33-6-401, and shall give rise to the authority under § 33-6-402 for such physician, psychologist, or designated professional to take custody of the assisted outpatient. Failure to comply with an order of assisted outpatient treatment shall not be grounds for a finding of contempt of court or for non-emergency involuntary detention under this title. Nothing in this section precludes the use of detention by law enforcement officers under § 33-6-402.

(k) The commissioner of mental health is authorized to promulgate rules to implement the provisions of this section in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 33-6-502, is amended by deleting the punctuation "." at the end of the section and by substituting instead the following:

; OR

(6) the person may be judicially committed to assisted outpatient treatment under § 33-6-624.

SECTION 3. This act shall take effect July 1, 2012, the public welfare requiring it.