



AN ACT RELATIVE TO  
SUBSTANCE USE  
TREATMENT,  
EDUICATION AND  
PREVENTION  
 (STEP ACT)

H.3817

## STEP ACT, 72-hour Emergency Clinical Assessment

### What is the purpose of the 72-hour Assessment?

Crises in behavioral health (i.e. mental illness and substance use) similar to all other medical diseases occur 24/7. Currently the only pathway to seek involuntary treatment for an individual who poses a risk to himself/herself by reason of addictions and who is resistant to treatment is through the Court system, which is closed on nights, weekend, and holidays.

This new statute will provide medical professionals up to 72 hours to assess and evaluate a patient on an involuntary basis who is in **imminent danger** because of his or her substance use disorder. During this period, medical professionals can work to engage the patient in voluntary treatment. The expectation is that only in certain circumstances, when a patient is in **imminent danger** because of his or her substance use disorder, will medical professionals rely on this new statutory authority to petition the court to commit a patient involuntarily for an extended period of time (section 35s).

### How does this compare to section 12 of chapter 123 of the General Laws?

This proposed statute mirrors the existing involuntary commitment statute for the treatment of mental illness in the Commonwealth. Currently, an individual with a mental illness who presents at imminent risk of harm to themselves or others by reason of mental illness can be involuntarily transported, clinically evaluated, and hospitalized for a period of up to 72 hours for further assessment and treatment. Voluntary treatment is always the preferred option, and the involuntary provision under section 12 can only be used if the person is unable or unwilling to agree to voluntary treatment and is a risk to self or others due to mental illness. This statute creates a second pathway (in addition to the existing court system) to assess and treat individuals with a substance use disorder. **All of the procedural safeguards that are in place to protect the civil liberties of individuals with a mental illness committed under section 12 are included in this statute.**

### Will this exacerbate the emergency department boarding problem?

The administration is assertively working with hospitals and treatment providers to add capacity for individuals treated under section 35 as well as voluntarily for individuals with a substance use disorder.

As drafted, this legislative provision will be implemented nine months post enactment to allow for identification of treatment options and development of clinical protocols and procedures.

Addiction is a chronically relapsing medical condition and medical professionals have the skills to clinically evaluate individuals with a substance use disorder. While concerns about capacity in hospital emergency rooms and adequate

treatment options are reasonable, such concerns should not serve as the justification for continuing to limit pathways to treatment by designating the courts as the only pathway for involuntary treatment. Capacity concerns are a surmountable challenge, not a reason for inaction.

### **How does the process work?**

A physician, psychologist, licensed independent clinical social worker, or advanced practice nurse who has examined an individual and believes that failure to treat the individual would create a likelihood of serious harm may arrange for the transport of the individual to a substance use treatment facility or inpatient unit that provides substance use treatment. In an emergency, a police officer may hold a person who meets commitment criteria and transport the person for treatment.

At the treatment facility or hospital, the individual must be evaluated by a physician to determine if he/she meets the legal commitment criteria. If the physician believes the individual meets commitment criteria, then the individual may be admitted for care and treatment for up to 3 days. The individual must be notified that he/she has a right to consult with an attorney, must be given the opportunity to consent to voluntary treatment, also referred to as a conditional voluntary admission, and may petition the court for an emergency hearing to object to the temporary commitment.

If an individual consents to treatment (conditional voluntary) and then decides to leave within the three day period, the facility **CAN** petition the court to authorize an extended treatment period if the person meets commitment criteria. In other words the individual cannot just leave against medical advice.

The three day period allows the facility to further assess the individual and determine a course of treatment which could include: continued inpatient treatment as a conditional voluntary; petitioning the court for a civil commitment order for inpatient treatment if the individual meets the commitment standard; or discharging the individual to outpatient treatment or aftercare.

At the conclusion of the 3-day assessment period, if the substance use treatment facility or hospital determines that the individual still meets commitment criteria, then the facility may petition the court for a civil commitment order. The court will then hold a hearing and consider expert testimony and determine whether the individual should be civilly committed for treatment for up to 90 days.

### **Who will pay for this treatment?**

Commercial and public insurance. As a result of legislation passed last year, Chapter 258 of the acts of 2014, patients with insurance that is regulated by the Commonwealth will have coverage for inpatient services for up to 14 days.

### **Will families still be able to go to court to seek a commitment order?**

Families and others will continue to be able to access courts and judges.

### **Why is this new pathway for treatment important?**

Since 2006, there has been a 77% increase in the total number of civil commitments, from **2,982 in FY06** to **5,288 in FY14**. Current procedures under section 35 of chapter 123 of the General Laws almost criminalize individuals who are in need of an emergency clinical assessment and are resistant to treatment for their substance use disorder. Courts are not an appropriate treatment setting for individuals who often have significant trauma histories and have little insight into their need for treatment.

The section 35 process starts at the court, the individual is most likely apprehended on a warrant of apprehension, court clinicians conduct private evaluations in loud non-private court lock-ups, a hearing about the individual's disease occurs in an open public proceeding, the individual is held in a cell once the commitment order is issued, and then the individual is shackled and transported by a sheriff to a treatment facility or correctional setting for treatment, where they may be strip searched upon entry.

Making the courtroom the **ONLY** pathway for involuntary treatment perpetuates the inaccurate perception that addiction is a moral failure and should be dealt with through the criminal justice system.

### **What are other states doing?**

Every jurisdiction in the nation has the ability to apply some form of involuntary civil commitment for individuals with mental illness who pose a risk of harm to themselves or others due to that mental illness. As of 2012, thirty-two (32) states have statutory provisions for the civil commitment of persons because of substance abuse.