STATE OF NEW YORK

3666

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. GRAF, GIGLIO, MONTESANO, McDONOUGH, MURRAY, RA, GARBARINO, PALUMBO, LUPINACCI, RAIA, FRIEND, CURRAN, BRABENEC, FINCH, CRESPO, DiPIETRO, PALMESANO, GOODELL -- Multi-Sponsored by -- M. of A. BARCLAY, BLANKENBUSH, BUTLER, HAWLEY, McLAUGHLIN, OAKS, STEC -- read once and referred to the Committee on Alcoholism and Drug Abuse

AN ACT to amend the mental hygiene law, in relation to involuntary substance abuse admission procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The mental hygiene law is amended by adding a new article 20 to read as follows:

ARTICLE 20

INVOLUNTARY SUBSTANCE ABUSE ADMISSION PROCEDURES

Section 20.01 Criteria for involuntary admissions.
20.02 Service provider responsibilities regarding involuntary admissions.
20.03 Referral of involuntarily admitted individual for voluntary treatment.
20.04 Release of individual from protective custody, emergency admission, involuntary assessment, and involuntary treatment.
20.05 Parental participation in treatment.
20.06 Protective custody; circumstances justifying.
20.07 Protective custody with consent.
20.08 Protective custody without consent.
20.09 Dispositional alternatives after protective custody.
20.10 Office to maintain lists of licensed facilities.
20.11 Immunity from liability.
20.12 Emergency admission; circumstances justifying.
20.13 Emergency admission; persons who may initiate.
20.14 Evaluator's certificate for emergency admission.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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20.15 Transportation-assisted delivery of persons for emergency assessment.
20.16 Dispositional alternatives after emergency admission.
20.17 Involuntary petitions; general provisions; court jurisdiction and right to counsel.
20.18 Involuntary assessment and stabilization.
20.19 Involuntary assessment and stabilization; contents of petition.
20.20 Involuntary assessment and stabilization; procedure.
20.21 Court determination.
20.22 Involuntary assessment and stabilization; responsibility of licensed service provider.
20.23 Extension of time for completion of involuntary assessment and stabilization.
20.24 Disposition of individual after involuntary assessment.
20.25 Involuntary treatment.
20.26 Involuntary treatment; persons who may petition.
20.27 Contents of petition for involuntary treatment.
20.28 Duties of court upon filing of petition for involuntary treatment.
20.29 Hearing on petition for involuntary treatment.
20.30 Court determination; effect of court order for involuntary substance abuse treatment.
20.31 Early release from involuntary substance abuse treatment with permission of the court.
20.32 Extension of involuntary substance abuse treatment period.
20.33 Disposition of individual upon completion of involuntary substance abuse treatment.

§ 20.01 Criteria for involuntary admissions.

Criteria for involuntary admissions includes protective custody, emergency admission and other involuntary assessment and involuntary treatment, for purposes of assessment and stabilization. A person meets the criteria for involuntary admission if there is a good faith reason to believe such person is substance abuse impaired and, because of such impairment:

(a) has been determined of being incapable of self-management or management of personal affairs by reason of the habitual and excessive use of alcohol, drugs, or other mind-altering substances; and

(b) (1) has inflicted, threatened, attempted to inflict, or admitted is likely to inflict, physical harm on himself, herself or another; or

(2) has committed a crime or crimes or what would be considered criminal if committed to support addiction; or

(3) is in need of substance abuse services and, by reason of substance abuse impairment his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regard thereto; however, mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.

§ 20.02 Service provider responsibilities regarding involuntary admissions.

It is the responsibility of the service provider to:

(a) determine whether the cost of services is within the financial means of the person involuntarily admitted pursuant to section 20.01 of this article or those who are financially responsible for such person's care. If the financial means are not available the facility where the

person is held must acquire coverage through insurance, Medicaid or other state means; and

(b) take all necessary measures to ensure that each individual in treatment is provided with a safe environment. If an individual's medical condition or behavioral problem becomes such that he or she cannot be safely managed by the service component such service component must petition the court for reassignment to a proper facility who is able to safely manage such individual.

§ 20.03 Referral of involuntarily admitted individual for voluntary treatment.

Upon giving his or her written informed consent and with the permission of the court, an involuntarily admitted individual, as described in section 20.01 of this article, may be referred to a service provider for voluntary admission when the court determines that the individual does not meet the involuntary criteria, described in such section, after a hearing is conducted.

§ 20.04 Release of individual from protective custody, emergency admission, involuntary assessment, and involuntary treatment.

An individual involuntarily admitted to a licensed service provider may be released with permission of the court. Notice of the release must be provided to the applicant in the case of an emergency admission or an alternative involuntary assessment for a minor, or to the petitioner and the court if the involuntary assessment or treatment was court ordered. A monthly report must be provided to the court on the individual's recovery process. In the case of a minor, the release must be:

(a) to the individual's parent, legal guardian, or legal custodian or the authorized designee thereof; or

(b) to a person authorized to take custody of the individual pursuant to section four hundred seventeen of the social services law.

§ 20.05 Parental participation in treatment.

A parent, legal guardian, or legal custodian who seeks involuntary admission of a minor pursuant to this article is required to be advised on all aspects of treatment as determined appropriate by the director of the licensed service provider.

§ 20.06 Protective custody; circumstances justifying.

A law enforcement officer may implement protective custody measures as specified in this section when a minor or an adult who appears to meet the involuntary admission criteria in section 20.01 of this article is:

(a) brought to the attention of law enforcement in a public or private place; or

(b) If a person is to be brought to the hospital for a medical evaluation, law enforcement must attempt to notify the nearest relative or guardian and advise them on their ability to petition the court to involuntarily commit the individual to rehab. For purposes of this section, a person's "nearest relative" shall be identified as follows and are ranked in priority from highest to lowest: (1) a guardian authorized by the court; (2) a spouse, if not legally separated from the person, or domestic partner; (3) a child of the person who is at least eighteen years of age; (4) a parent of the person; or (5) a sibling of the person who is at least eighteen years of age. If such relative is not reasonably available, willing or competent to act, the person may designate an alternative nearest relative.

§ 20.07 Protective custody with consent.

A person in circumstances which justify protective custody, as described in section 20.06 of this article, may consent to be assisted by a law enforcement officer to a hospital.

§ 20.08 Protective custody without consent.

(a) If a person in circumstances which justify protective custody as described in section 20.06 of this article fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital is the most appropriate place for such person, the officer may take the person to a hospital without the person's consent.

(b) If a person is to be brought to the hospital for a medical evaluation, law enforcement must attempt to notify the nearest relative or guardian and advise them on their ability to petition the court to involuntarily commit the individual to rehabilitation services.

§ 20.09 Dispositional alternatives after protective custody.

(a) An individual who is in protective custody must be released by a qualified professional when: (1) the individual no longer meets the involuntary admission criteria set forth in subdivision (a) of section 20.01 of this article; or

(2) a five-day period has lapsed.

(b) An individual may only be retained in protective custody beyond a five day period when a petition for involuntary assessment or treatment has been initiated. The timely filing of the petition authorizes the service provider to retain physical custody of the individual pending further order of the court.

§ 20.10 Office to maintain lists of licensed facilities.

The office shall provide appropriate law enforcement with a list of licensed hospitals, including the name, address, and phone number of the hospital.

§ 20.11 Immunity from liability.

A law enforcement officer acting in good faith pursuant to this article may be not be held criminally or civilly liable for false imprisonment.

§ 20.12 Emergency admission; circumstances justifying.

A person who meets the criteria for involuntary admission as described in section 20.01 of this article may be admitted to a hospital for emergency assessment and/or stabilization upon receipt by the facility of the physician's certificate and the completion of an application for emergency admission.

§ 20.13 Emergency admission; persons who may initiate.

(a) In the case of an adult, the certifying physician, the person's spouse or guardian, any relative of the person, or any other responsible adult who has personal knowledge of the person's substance abuse impairment may request an emergency admission for such adult.

(b) In the case of a minor, the minor's parent, legal guardian, or legal custodian may request an emergency admission for such minor.

§ 20.14 Evaluator's certificate for emergency admission.

A court appointed evaluator may be a physician, licensed clinical social worker, nurse practitioner, or licensed clinical psychologist that is certified by the office. (a) The evaluator's certificate must include the name of the person to be admitted, the relationship between the person and the physician, the relationship between the applicant and the physician, any relationship between the physician and the licensed service provider, and a statement that the person has been examined and assessed within five days of the application date, and must include factual allegations with respect to the need for emergency admission, including: (1) The reason for the evaluator's belief that th person is substance abuse impaired; and

(2) the reason for the evaluator's belief that because of such impairment the person has become incapable of self-management or management of personal affairs; and either

(3) (i) the reason the evaluator believes that the person has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(ii) the reason the evaluator believes that the person's refusal to voluntarily receive care is based on impaired judgment by reason of substance abuse that the person is incapable of appreciating his or her need for care and of making a rational decision regarding his or her need for care; or

(iii) the reason the evaluator believes that the person may have committed acts that would be considered a crime or has in fact been charged with a crime as a result of their addiction.

(b) The evaluator's certificate must recommend the least restrictive type of service that is appropriate for the person. The certificate must be signed by the physician.

(c) A signed copy of the evaluator's certificate shall accompany the person, and shall be made a part of the person's clinical record, together with a signed copy of the application. The application and physician's certificate authorize the involuntary admission of the person pursuant to, and subject to the provisions of this section and sections 20.13, 20.15, 20.16 and 20.17 of this article.

(d) The evaluator's certificate must indicate whether the person requires transportation assistance for delivery for emergency admission and specify, pursuant to section 20.15 of this article, the type of transportation assistance necessary.

§ 20.15 Transportation-assisted delivery of persons for emergency assessment.

An applicant for a person's emergency admission, or the person's spouse or guardian, or a law enforcement officer may deliver a person named in the evaluator's certificate for emergency admission to a hospital for emergency assessment and/or stabilization.

§ 20.16 Dispositional alternatives after emergency admission.

Within seventy-two hours after an emergency admission to a hospital, the individual must be assessed by the attending physician or evaluator to determine the need for further services. Based upon that assessment, a qualified evaluator of the hospital must either:

(a) release the individual and, where appropriate, refer the individual to other needed services; or

(b) retain the individual when a petition for involuntary assessment or treatment has been initiated, the timely filing of which authorizes the service provider to retain physical custody of the individual pending further order of the court.

§ 20.17 Involuntary petitions; general provisions; court jurisdiction and right to counsel.

(a) Petitions for jurisdiction must be filed in the supreme, county, or family court in the county where the person is present or reasonably believed to be present. The alleged substance abuse impaired person shall be named as the respondent.

(b) A respondent has the right to have assigned counsel at every stage of a proceeding relating to a petition for his or her involuntary assessment and a petition for his or her involuntary treatment for substance abuse impairment. A respondent who desires counsel and is unable to afford private counsel has the right to court-appointed counsel. If the respondent is a minor not otherwise represented in the

proceeding, the court shall immediately appoint a guardian ad litem to act on the minor's behalf.

§ 20.18 Involuntary assessment and stabilization.

A person determined by the court to appear to meet the criteria for involuntary admission under section 20.01 of this article may be admitted for a period of seven days to a hospital or an appropriate treatment facility designated by the office, for involuntary assessment and stabilization or to a less restrictive component of a licensed service provider for assessment only upon entry of a court order. Involuntary assessment and stabilization may be initiated by the submission of a petition to the court.

(a) If the petition is filed on behalf of an adult, a petition for involuntary assessment and stabilization may be filed by the respondent's parent, spouse or guardian, any person eighteen years of age or older that resides with the respondent, any child or sibling of the respondent who is eighteen years of age or older, a physician, a psychologist, a licensed clinical social worker, the director of a licensed service provider or the director's designee, a parole officer or probation officer assigned to supervise the respondent.

(b) If the petition is filed on behalf of a minor, a petition for involuntary assessment and stabilization may be filed by a parent, legal guardian, legal custodian, or licensed service provider.

§ 20.19 Involuntary assessment and stabilization; contents of petition.

A petition for involuntary assessment and stabilization must contain the name of the respondent; the name of the applicant or applicants; the relationship between the respondent and the applicant; and if represented, the name of the respondent's attorney, if known, and must state facts to support the need for involuntary assessment and stabilization, including:

(a) the reason for the petitioner's belief that the respondent is substance abuse impaired, including any propensity to commit crime to sustain his or her addiction; and

(b) the reason for the petitioner's belief that because of such impairment the respondent has become incapable of self-management or management of personal affairs; and

(c) (1) the reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself, herself or others unless admitted; or

(2) the reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on impaired judgement by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care. If the respondent has refused to submit to an assessment, such refusal must be alleged in the petition.

§ 20.20 Involuntary assessment and stabilization; procedure.

Upon receipt and filing of the petition for the involuntary assessment and stabilization of a substance abuse impaired person by the clerk of the court, the court shall ascertain whether the respondent is represented by an attorney, and if not, whether, on the basis of the petition, an attorney should be appointed and shall:

(a) provide a copy of the petition and notice of hearing to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct, and have such petition and notice personally delivered to the respondent if he or she is a minor. The

court shall also issue a summons to the person whose admission is sought and conduct a hearing with ten days; or

(b) without the appointment of an attorney and, relying solely on the contents of the petition, enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent. The court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.

§ 20.21 Court determination.

At the hearing initiated in accordance with subdivision (a) of section 20.20 of this article, the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of section 20.01 of this article.

(a) Based on its determination, the court shall either dismiss the petition or immediately enter an order authorizing the involuntary assessment and stabilization of the respondent; or, if in the course of the hearing the court has reason to believe that the respondent, due to mental illness other than or in addition to substance abuse impairment, is likely to injure himself or herself or another if allowed to remain at liberty, the court may initiate involuntary proceedings under the provisions of article nine of this chapter.

(b) If the court enters an order authorizing involuntary assessment and stabilization, the order shall include the court's findings with respect to the availability and appropriateness of the least restrictive alternatives and the need for the appointment of an attorney to represent the respondent, and may designate the specific licensed service provider to perform the involuntary assessment and stabilization of the respondent. The respondent may choose the licensed service provider to deliver the involuntary assessment where possible and appropriate.

(c) If the court finds it necessary, it may order the appropriate law enforcement to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment.

§ 20.22 Involuntary assessment and stabilization; responsibility of licensed service provider.

A licensed service provider may admit an individual for involuntary assessment and stabilization for a period not to exceed seven days. The individual must be assessed without unnecessary delay by a qualified evaluator.

§ 20.23 Extension of time for completion of involuntary assessment and stabilization.

If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within seven days after the court's order, it may, within the original time period, file a written request for an extension of time to complete its assessment, and shall, in accordance with confidentiality requirements, furnish a copy to all parties. With or without a hearing, the court may grant additional time, not to exceed seven days after the date of the renewal order, for the completion of the involuntary assessment and

stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed pursuant to this section, constitutes legal authority to involuntarily hold the individual for a period not to exceed fourteen days in the absence of a court order to the contrary.

§ 20.24 Disposition of individual after involuntary assessment.

(a) Based upon the involuntary assessment described in section 20.22 of this article, a qualified professional of the hospital, court appointed evaluator, or licensed service provider, with permission of the court must:

(1) release the individual and, where appropriate, refer the individual to another treatment facility or service provider, or to outpatient services;

(2) if an individual does not meet the standards set forth in section 20.01 of this article, the service provider may allow the individual, with consent, to remain voluntarily at the licensed provider; or

(3) retain the individual when a petition for involuntary treatment has been initiated, the timely filing of which authorizes the service provider to retain physical custody of the individual pending further order of the court.

(b) Notice of disposition must be provided to the petitioner and to the court.

§ 20.25 Involuntary treatment.

A person may petition for court-ordered involuntary treatment pursuant to this section if such person meets the criteria for involuntary admission provided in section 20.01 of this article and:

(a) has been placed under protective custody pursuant to section 20.06 of this article within the previous fourteen days;

(b) has been subject to an emergency admission pursuant to section 20.12 of this article within the previous fourteen days;

(c) has been assessed by a qualified evaluator within seven days; or

(d) has been subject to involuntary assessment and stabilization pursuant to section 20.20 of this article within the previous fourteen days.

§ 20.26 Involuntary treatment; persons who may petition.

(a) If the respondent is an adult, a petition for involuntary treatment may be filed by the respondent's parent, spouse or guardian, any person eighteen years of age or older that resides with the respondent, any child or sibling of the respondent who is eighteen years of age or older or a service provider.

(b) If the respondent is a minor, a petition for involuntary treatment may be filed by a parent, legal guardian, law enforcement officer, or service provider.

§ 20.27 Contents of petition for involuntary treatment.

A petition for involuntary treatment shall contain the name of the respondent to be admitted; the name of the petitioner or petitioners; the relationship between the respondent and the petitioner; the name of the respondent's attorney, if known, and a statement of the petitioner's knowledge of the respondent's ability to afford an attorney; the findings and recommendations of the assessment performed by the qualified professional; and the factual allegations presented by the petitioner establishing the need for involuntary treatment, including:

(a) the reason for the petitioner's belief that the respondent is substance abuse impaired; and

(b) the reason for the petitioner's belief that because of such impairment the respondent has become incapable of self-management or management of personal affairs; and

(c) (1) the reason the petitioner believes that the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(2) the reason the petitioner believes that the respondent has a propensity to commit crime, or has committed what would be considered crimes to support his or her addiction; or

(3) the reason the petitioner believes that the respondent's refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

§ 20.28 Duties of court upon filing of petition for involuntary treatment.

Upon the filing of a petition for the involuntary treatment of a substance abuse impaired person with the clerk of the court, the court shall immediately determine whether the respondent is represented by an attorney or whether the appointment of counsel for the respondent is appropriate. The court must appoint an evaluator to determine the need for emergency admission under section 20.14 of this article. The court shall schedule a hearing to be held on the petition within ten days. A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct, and have such petition and order personally delivered to the respondent if he or she is a minor. The court shall also issue a summons to the person whose admission is sought. The court must order law enforcement to take the individual into custody and bring the individual before the court. If court is not in session, law enforcement must bring the individual to a designated treatment center and notify the court immediately of placement.

§ 20.29 Hearing on petition for involuntary treatment.

(a) At a hearing on a petition for involuntary treatment, the court shall hear and review all relevant evidence, including the review of results of the assessment completed by the qualified professional in connection with the respondent's protective custody, emergency admission, or involuntary assessment. The respondent must be present unless the court finds that his or her presence is likely to be injurious to himself or herself or others, in which event the court must appoint a guardian advocate to act on behalf of the respondent throughout the proceedings.

(b) The petitioner has the burden of proving by clear and convincing evidence:

(1) the respondent is substance abuse impaired, and

(2) because of such impairment the respondent has become incapable of self-management or management of personal affairs; and

(i) the respondent has inflicted or is likely to inflict physical harm on himself or herself or others unless admitted; or

(ii) the respondent has a propensity to commit crime, or has committed what would be considered crimes, to sustain his or her addiction; or

(iii) the respondent's refusal to voluntarily receive care is based on judgement so impaired by reason of substance abuse that the respondent

is incapable of appreciating his or her need for care and of making a rational decision regarding that need for care.

(c) At the conclusion of the hearing the court shall either dismiss the petition or order the respondent to undergo involuntary substance abuse treatment, with a licensed service provider; as directed by the court with the assistance of the office of alcoholism and substance abuse's database.

§ 20.30 Court determination; effect of court order for involuntary substance abuse treatment.

(a) When the court finds that the conditions for involuntary substance abuse treatment have been proved by clear and convincing evidence, it may order the respondent to undergo involuntary treatment by a licensed service provider. If the court finds it necessary, it may direct the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order, or to the nearest appropriate licensed service provider, for involuntary treatment. When the conditions justifying involuntary treatment no longer exist, the individual must be released as provided in section 20.31 of this article. When the conditions are justifying involuntary treatment are expected to exist after sixty days of treatment, a renewal of the involuntary treatment order may be requested pursuant to section 20.32 of this article prior to the end of the sixty-day period.

(b) In all cases resulting in an order for involuntary substance abuse treatment, the court shall retain jurisdiction over the case and the parties for the entry of such further orders as the circumstances may require. The court's requirements for notification of proposed release must be included in the original treatment order.

(c) An involuntary treatment order authorizes the licensed service provider to require the individual to undergo such treatment as will benefit him or her, including treatment at any program licensed or certified by the office.

§ 20.31 Early release from involuntary substance abuse treatment with permission of the court.

(a) At any time prior to the end of the sixty-day involuntary treatment period, or prior to the end of any extension granted pursuant to section 20.32 of this article, an individual admitted for involuntary treatment may be determined eligible for discharge to the most appropriate referral or disposition for the individual when;

(1) the individual was admitted on the grounds of likelihood of infliction of physical harm upon himself or herself or others, such likelihood no longer exists; or

(2) the individual was admitted on the grounds of need for assessment and stabilization or treatment, accompanied by inability to make a determination respecting such need, such inability no longer exists.

(b) Whenever a qualified professional determines that an individual admitted for involuntary treatment is ready for early release for any of the reasons listed in subdivision one of this section, the service provider shall petition the court for permission for early release.

§ 20.32 Extension of involuntary substance abuse treatment period.

(a) Whenever a service provider believes that an individual who is nearing the scheduled date of release from involuntary treatment continues to meet the criteria for involuntary treatment in section 20.25 of this article, a petition for renewal of the involuntary treatment order may be filed with the court at least ten days before the expiration of the court-ordered treatment period. The court shall immediately schedule a hearing to be held not more than fifteen days after filing of the

petition. The court shall provide the copy of the petition for renewal and the notice of the hearing to all parties to the proceeding. The hearing is conducted pursuant to section 20.29 of this article.

(b) If the court finds that the petition for renewal of the involuntary treatment order should be granted, it may order the respondent to undergo involuntary treatment for a period not to exceed an additional sixty days. When the conditions justifying involuntary treatment no longer exist, the individual must be released as provided in section 20.31 of this article. When the conditions justifying involuntary treatment continue to exist after sixty days of additional treatment, a new petition requesting renewal of the involuntary treatment order may be filed pursuant to this section.

§ 20.33 Disposition of individual upon completion of involuntary substance abuse treatment.

At the conclusion of the sixty-day period of court-ordered involuntary treatment, the individual is discharged pursuant to a court order for involuntary treatment unless an application for renewal of the involuntary treatment order has been filed with the court pursuant to section 20.32 of this article.

§ 2. This act shall take effect immediately.