

CHAPTER 16: SPECIAL ISSUES FOR PRISONERS WITH MENTAL ILLNESS

A. INTRODUCTION

This Chapter is written for prisoners who have psychological illnesses and who have symptoms that can be diagnosed. It is meant for prisoners who suffer from mental illness while in prison. This Chapter does not address the separate issue of people who have been found not guilty by reason of insanity (“NGIs”). Rather, it explains your rights as a prisoner with a mental illness in Louisiana. This Chapter should be read together with Chapter 29 of the main *Jailhouse Lawyer’s Manual* (“JLM”), “Special Issues for Prisoners with Mental Illness.” Keep in mind that as a prisoner in Louisiana, you should rely on the state law discussed in this chapter.

This Chapter covers several topics that are important for prisoners who may have a mental illness. Part B provides some basic information you will need to understand how the law applies to prisoners with mental illnesses, including definitions of important terms such as “mental illness” and “treatment.” Part C explains your right to receive treatment for a mental illness. Part D details the process for commitment and treatment of prisoners with mental illnesses. Part E talks about your right to refuse unwanted treatment and the limits on that right.

B. DEFINING “MENTAL ILLNESS” AND “TREATMENT”

You may have heard the terms mental illness, mental disorder, mental sickness, mental abnormality, or mentally retarded. Sometimes people use these terms to mean the same thing. They are not the same. If you are a state prisoner in Louisiana, it is important for you to know what the term “mental illness” means under Louisiana law. This section will provide you with that definition and help you understand if the issues discussed in this chapter apply to you.

1. What is “Mental Illness”?

Louisiana law defines a “person who has a mental illness” as someone “with a psychiatric disorder which has substantial adverse effects on his ability to function and who requires care and treatment.”¹ This means that a mentally ill person must have a mental disorder that makes it very hard for him to function. The mental disorder must also require treatment and care. Intellectual disability, epilepsy, or a drug problem are not by themselves mental illnesses.²

For more information about your right to medical treatment for issues that do not come within the definition of mental illness, you should read Chapter 14 of the *Louisiana State Supplement*, “Your Right to Adequate Medical Care,” and Chapter 23 of the main *JLM*, also called “Your Right to Adequate Medical Care.”

2. What is “Treatment”?

Louisiana law defines “treatment” as “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.”³ Treatment might be “hospitalization, partial hospitalization, outpatient services, examination, diagnosis, training, [and] the use of pharmaceuticals”⁴ Treatment might be something else too. Part C discusses your right to treatment for mental illness and what treatment the state must provide for you.

¹ LA. REV. STAT. ANN. § 28:2(20) (2017).

² LA. REV. STAT. ANN. § 28:2(20) (2017).

³ LA. REV. STAT. ANN. § 28:2(31) (2017).

⁴ LA. REV. STAT. ANN. § 28:2(31) (2017).

C. YOUR RIGHT TO TREATMENT

This Part explains two rules regarding your right to psychiatric medical care. Section 1 of this Part discusses your right to reasonable medical care. Section 2 talks about your rights if psychiatric care is delayed or denied. These sections both discuss standards as they have been specifically applied in Louisiana, but you should also read Part D(1) and Part D(2) of Chapter 29 of the main *JLM*, “Special Issues for Prisoners with Mental Illness” for more information on the constitutional standards that may apply.

1. Your Right to Reasonable Psychiatric Medical Care

You have a right to adequate medical care and treatment. The Eighth Amendment of the Constitution⁵ requires the government to provide medical care to prisoners.⁶ This right covers the regular medical care necessary for your health and safety. For more information about this general right, you should read Chapter 23 of the main *JLM*, “Your Right to Adequate Medical Care.”

In Louisiana, the state must provide reasonable medical care to prisoners.⁷ Courts have decided that this includes treatment for mental illness. The Fifth Circuit said that mental health needs are as important as physical health needs.⁸ You have a right to reasonable treatment, but this does not have to be the same as the treatment you want.⁹ Reasonable care also does not mean the best possible treatment.¹⁰

2. Denied or Delayed Treatment

Courts do not like to doubt doctors' decisions,¹¹ but a prison official who denies or delays treatment might be violating your constitutional rights if he knows you need that treatment. You have a right to be free of “cruel and unusual treatment” under the Eighth Amendment.¹² This section discusses your rights when treatment you need has been *deliberately* or purposely denied or delayed.

⁵ U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted.*”) (emphasis added).

⁶ *Estelle v. Gamble*, 429 U.S. 97, 103–104, 97 S. Ct. 285, 290–291, 50 L. Ed. 2d 251, 259–260 (1976) (holding that the 8th Amendment prohibits denying needed medical care); *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981) (“It is now firmly established that the Eighth Amendment imposes an obligation on prison and jail administrators to provide reasonable medical care for those who are incarcerated.”).

⁷ *Brown v. State*, 392 So. 2d 113, 115 (La. App. 1 Cir. 1980); *see also*, *Harper v. Goodwin*, 41-053, p. 6 (La. App. 2 Cir. 5/17/06), 930 So. 2d 1160, 1163 (prison authorities owe a duty to provide prisoners with reasonable medical care); *Moreau v. State through Dept. of Corr.*, 333 So. 2d 281, 284 (La. App. 1 Cir. 1976) (the duty to provide reasonable medical care for prisoners “does not require the defendant to maintain a full hospital at the site of each of its prisons in order to protect the inmates against every known medical risk,” but “does encompass the risk . . . that an inmate would be injured and require life-saving medical attention”).

⁸ *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004); *see also*, *Wilkerson v. Stalder*, 639 F. Supp. 2d 654, 677 (M.D. La. 2007) (“The Eighth Amendment protects not only inmates’ physical health, but their mental health as well.”); *Adams v. Mathis*, 458 F. Supp. 302, 308 (M.D. Ala. 1978), *aff’d*, 614 F.2d 42 (5th Cir. 1980) (“When a state or county takes a citizen into custody the state assumes the responsibility for the individual’s physical and mental health.”).

⁹ *See, e.g.*, *Mayweather v. Foti*, 958 F.2d 91, 91 (5th Cir. 1992) (where prisoner received continuous treatment for his back injury, the fact that treatment was not “the best that money could buy” and that medication may have been forgotten occasionally did not amount to an unreasonable standard of care).

¹⁰ *See, e.g.*, *Robinson v. Stalder*, 98-0558, p. 6 (La. App. 1 Cir. 4/1/99), 734 So. 2d 810, 813 (finding obligation to provide reasonable medical care met where prisoner was provided with crutches and wheelchair when artificial leg could no longer be repaired); *Cole v. Acadia Parish Sheriff’s Dep’t.*, 2007-1386 pp. 8–14 (La. App. 3 Cir. 11/5/08); 998 So. 2d 212, 217–221 (delay in antibiotic treatment was reasonable where there was a lack of symptoms indicating infection and seventeen day delay in dental appointment following prisoner’s complaint of toothache was reasonable where there was no sign of infection and no dental emergency).

¹¹ *See, e.g.*, *Varnado v. Lynaugh*, 920 F.2d 320, 321 (5th Cir. 1991) (finding prisoner’s disagreement with medical treatment did not rise to the level of violating his rights).

¹² *Estelle v. Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285, 291, 50 L. Ed. 2d 251, 260 (1976) (citing *Gregg v. Georgia*, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925, 49 L. Ed. 2d 859, 875 (1976)) (“We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the ‘unnecessary and wanton infliction of pain . . . proscribed by the

a. The “Deliberate Indifference” Standard

To make a successful claim for denial or delay of treatment, you must show that prison officials acted with “deliberate indifference” to your serious medical or mental health needs.¹³ The deliberate indifference standard was first used in cases about serious medical care. Now it applies to treatment that is needed for mental illness as well.¹⁴ However, this is a hard standard for you to meet.¹⁵ The facts set out in your claim of deliberate indifference must first make clear to the court what your medical need is. Then you must show how prison officials have failed to attend to that need.¹⁶

The deliberate indifference standard is a *subjective* standard. This means you must show that prison officials *actually* knew about a risk to your health and still ignored it.¹⁷ It is not enough to show that prison officials *should have known* about a risk to your health.

To meet this standard, a prisoner might submit evidence that officials “refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a *wanton* disregard for any serious medical needs.”¹⁸ It is important to show that the prison official’s conduct was “wanton.” The Supreme Court laid out the following test to determine when an action is “wanton”:

- 1) A health specialist or prison official had a **duty to prevent harm** to you or others;
- 2) A health specialist **knowingly failed** to prevent injury after discovering the danger to you or others, **or** a mental health specialist **should have known** of such danger; and
- 3) In either case, the health specialist or prison official must also have **known of the unavoidable or probable results** of his failure.¹⁹

If the risk is obvious, the court will probably say that the prison official had knowledge of that risk.²⁰ An example of an obvious risk is when prison officials fail to provide immediate medical assistance to a prisoner who is unconscious.²¹ Prison officials also cannot ignore obvious risks to mental health.²² For

Eighth Amendment.”). *But see* Billings v. Gates, 133 Or. App. 236, 242, 890 P.2d 995, 998 (Or. Ct. App. 1995), *aff’d*, 323 Or. 167, 916 P.2d 291 (state court declining to follow the “deliberate indifference” test, instead opting to follow state precedent regarding cruel and unusual punishment).

¹³ Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct. 285, 292, 50 L. Ed. 2d 251, 261 (1976) (“[A] prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.”).

¹⁴ See Gates v. Cook, 376 F.3d 323, 343, 28 NDLR P 190 (5th Cir. 2004) (where deliberate indifference is alleged, “mental health needs are no less serious than physical needs.”); Partridge v. Two Unknown Police Officers, 791 F.2d 1182, 1187 (5th Cir. 1986) (“A serious medical need may exist for psychological or psychiatric treatment, just as it may exist for physical illness.”).

¹⁵ Domino v. Texas Dep’t. of Crim. Justice, 239 F.3d 752, 756 (5th Cir. 2001) (“Deliberate indifference is an extremely high standard to meet,” as a prisoner must show that the official had a “wanton disregard for any serious medical needs.”).

¹⁶ Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (holding that a complaining prisoner “must *clearly evince* the medical need in question and the alleged official dereliction.”) (emphasis in original).

¹⁷ See Lawson v. Dallas County, 286 F.3d, 257, 262 (5th Cir. 2002) (“The deliberate indifference standard is a subjective inquiry; the plaintiff must establish that the prison officials were actually aware of the risk, yet consciously disregarded it.”).

¹⁸ Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (refusing to hold for plaintiff where he did not present this evidence) (emphasis added).

¹⁹ Johnson v. Treen, 759 F.2d 1236, 1238 (5th Cir. 1985) (quoting Smith v. Wade, 461 U.S. 30, 39 n.8, 103 S. Ct. 1625, 1632 n.8, 75 L. Ed. 2d 632 (1983) (defining wanton as “the conscious failure by one charged with a duty to exercise due care and diligence to prevent an injury after the discovery of the peril, or under circumstances where he is charged with a knowledge of such peril, and being conscious of the inevitable or probable results of such failure”).

²⁰ Bias v. Woods, 288 Fed. App’x. 158, 162 (5th Cir. 2008) (“Under exceptional circumstances, a prison official’s knowledge of a substantial risk of harm may be inferred by the obviousness of a substantial risk.”).

²¹ See, e.g., Bias v. Woods, 288 Fed. App’x. 158, 159–161, 164 (5th Cir. 2008) (finding deliberate indifference to a serious medical need where doctor ordered transport of unconscious prisoner to a separate prison unit 150 miles away instead of providing immediate medical assistance); Austin v. Johnson, 328 F.3d 204, 210 (5th Cir. 2003) (“[F]ailure to call an ambulance for almost two hours while [prisoner] lay unconscious and vomiting rises to the level of deliberate indifference.”).

example, in *Gates v. Cook*, the Fifth Circuit said that prison officials cannot ignore serious mental health risks for prisoners on Death Row. Before this case, inmates were kept in conditions of isolation and poor hygiene. They were also rarely seen by medical staff and had their medication monitored only occasionally.²³

It may be harder to show deliberate indifference if you were diagnosed incorrectly. An incorrect diagnosis does not by itself prove deliberate indifference. This means that it is not enough to show that prison officials did not diagnose you as having severe depression. Nor is it enough to show that your treatment has been unsuccessful.²⁴ In addition, it is not enough to show that you disagreed with prison officials about what treatment is appropriate for you.²⁵ Rather, you must demonstrate that:

- 1) You had a medical need;
- 2) The denial of treatment was much more likely than not to result in serious medical consequences; and
- 3) Prison officials had sufficient knowledge of your need, so that the denial of medical care constituted an unjustifiable disregard of your rights.²⁶

This test mostly applies to cases of physical injury. If you were wrongly denied psychiatric care, you will need to provide some additional information. In the Fifth Circuit, courts balance a number of factors in deciding whether a prisoner was unconstitutionally denied psychiatric care:²⁷

- 1) The seriousness of the prisoner's illness;
- 2) The need for immediate treatment;
- 3) The length of the prisoner's sentence;
- 4) The possibility of substantial harm caused by delayed treatment;
- 5) The possibility or likelihood of some cure or substantial improvement in the prisoner's condition;
- 6) The extent to which the prisoner presents a risk of danger to himself or other prisoners;
- 7) The availability and cost of providing psychiatric treatment; and
- 8) The effect of such unusual care on ordinary [prison] administration.²⁸

You will also need to show that your need for psychiatric care is a medical necessity. This means that the court will only consider services you need.²⁹ To set out a case of medical necessity, you will need to show:

- 1) Prior psychiatric illness or treatment,
- 2) Expert medical opinion, or
- 3) Behavior that indicates psychiatric illness.³⁰

This evidence should make it reasonable for the court to believe that you need psychiatric treatment for your health and well-being.³¹ In addition, the factors listed above are not the only factors

²² *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004).

²³ *Gates v. Cook*, 376 F.3d 323, 343 (5th Cir. 2004).

²⁴ *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985).

²⁵ *Norton v. Dimazana*, 122 F.3d 286, 292 (5th Cir. 1997) ("Disagreement with medical treatment does not state a claim for Eighth Amendment indifference to medical needs.").

²⁶ *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985).

²⁷ *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981).

²⁸ *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981).

²⁹ *Woodall v. Foti*, 648 F.2d 268, 272 (5th Cir. 1981) ("In balancing the needs of the prisoner against the burden on the penal system . . . the essential test is one of medical necessity and not one simply of desirability.").

³⁰ *Woodall v. Foti*, 648 F.2d 268, 273 (5th Cir. 1981) ("The complaint must allege enough facts of prior psychiatric illness or treatment, of expert medical opinion, or of behavior clearly evincing some psychiatric ill to create a reasonable ground to believe that psychiatric treatment is necessary for his continued health and well-being.")

³¹ *Woodall v. Foti*, 648 F.2d 268, 273 (5th Cir. 1981).

that courts will consider. Because each case will have different facts, the courts will review each prisoner's case individually.³²

D. TRANSFER FOR TREATMENT

Many treatments are available for prisoners with mental illness. Sometimes these treatments must be administered at a location outside of the prison. The Louisiana Department of Corrections ("LDOC") has the power to provide mental health treatment for prisoners within their own facilities. LDOC also has power to transfer prisoners to a separate facility.³³ A transfer for treatment of mental illness may involve commitment to a psychiatric treatment center.

A prisoner may voluntarily apply to transfer for treatment. In other cases, a prisoner may be committed to a treatment center involuntarily. Before you can be involuntarily committed, LDOC must follow certain standards and procedures. If these procedures and standards are not met, then your due process rights may be violated.³⁴ This Section discusses your rights if you refuse to be transferred for treatment.

It is important to remember that this Chapter is written for prisoners who have developed or suffered from mental illness **while in prison**. It does not address the separate issue of insanity acquitees, or people who had a mental illness at the time they were convicted. Insanity acquitees are subject to different procedures for commitment.³⁵

1. Commitment of Prisoners

a. Judicial Commitment

Under Louisiana law, the procedures for committing mentally ill prisoners are the same as for committing any other person for psychiatric treatment.³⁶ This means that you must be given the same rights as non-prisoners before you can be committed to a psychiatric treatment center.³⁷ In order to be committed, the party trying to commit you must show:

- 1) That you are suffering from a mental illness, and
- 2) That your mental illness makes you a danger to yourself or others.³⁸

³² Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (the court "should take into account a number of competing considerations").

³³ LA. REV. STAT. ANN. § 15:830(A) (2017) ("The department may establish resources and programs for the treatment of mentally ill and mentally retarded inmates, either in a separate facility or as part of other institutions or facilities of the department.").

³⁴ Vitek v. Jones, 445 U.S. 480, 488, 100 S. Ct. 1254, 1261, 63 L. Ed. 2d 552, 561–562 (1980) ("We have repeatedly held that state statutes may create liberty interests that are entitled to the procedural protections of the Due Process Clause of the Fourteenth Amendment.").

³⁵ LA. REV. STAT. ANN. § 28:59(A) (2017) ("Any person acquitted of a crime 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.").

³⁶ LA. REV. STAT. ANN. § 28:59(C) (2017) ("Any person serving a sentence who develops a mental illness may be committed to the proper institution in the manner provided for judicial commitment by the district court of the place of incarceration . . ."); LA. REV. STAT. ANN. § 15:830(B) (2017) ("If the inmate is found to be subject to civil commitment for psychosis or other mental illness or retardation, the secretary of the Department of Corrections shall initiate legal proceedings for such commitment.").

³⁷ LA. REV. STAT. ANN. § 15:830(B) (2017) ("If the inmate is found to be subject to civil commitment for psychosis or other mental illness or retardation, the secretary of the Department of Corrections shall initiate legal proceedings for such commitment.").

³⁸ LA. REV. STAT. ANN. § 28:54(A) (2017) ("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 . . ."); LA. REV. STAT. ANN. § 28:55(E)(1) (2017) ("If the court finds by clear and convincing evidence that the respondent is dangerous to self or others . . . as a result of a substance-related or addictive disorder or mental illness, it shall render a judgment for his commitment."); Jackson v. Foti, 670 F.2d 516, 521 (5th Cir. 1982) ("[B]efore judicial commitment is permitted, Louisiana requires a dual finding: the person is mentally ill and poses a danger to self or others.").

This judgment must be made in a court hearing.³⁹ You are entitled to a number of procedural rights in this hearing, including your right to:

- 1) Reasonable notice of the hearing;
- 2) Be present at the hearing;
- 3) Have your counsel present, or if you are unable to afford counsel, to have counsel appointed to represent you; and
- 4) Present evidence and cross-examine witnesses testifying at the hearing.⁴⁰

Before the hearing, the court will appoint a doctor to examine you.⁴¹ After the examination, the doctor will state in a written report the specific reasons for the finding that you are in need of involuntary commitment and treatment.⁴² By law, this report must be given to your lawyer at least three days before the hearing.⁴³ You have the right to “seek an additional independent medical opinion.”⁴⁴ If you are unable to pay for it, you may have the right to have this additional opinion paid for by the Mental Health Advocacy Service.⁴⁵

At the hearing, the state will present its witnesses and evidence first.⁴⁶ After the state's evidence has been presented, you or your lawyer will have the opportunity to present evidence.⁴⁷ You will also have the opportunity to cross-examine any witnesses who testified.⁴⁸ In order to have you committed, the state must prove by *clear and convincing* evidence that you are dangerous to yourself or others as a result of mental illness.⁴⁹ The clear and convincing standard of evidence is higher than a “more likely than not” standard but lower than the “beyond a reasonable doubt” standard used in criminal trials.⁵⁰

If you are involuntarily committed for psychiatric treatment, the court must review that commitment periodically.⁵¹ Under Louisiana law, judicial commitment orders expire after 180 days.⁵² This means that after 180 days, you are entitled to another hearing. In order to commit you again, the court must again find that you are dangerous to yourself or others as a result of mental illness.⁵³ In this re-hearing, you must be given all of the same rights as you were in the first hearing.⁵⁴ You should note, however, that if you have been committed by the court four or more times in a row, you are only entitled to a re-hearing once per year, instead of every 180 days.⁵⁵

In addition to the required periodic reviews of your commitment, you also have the right to appeal your judicial commitment in the court of appeal.⁵⁶

³⁹ LA. REV. STAT. ANN. § 28:54(C) (2017) (“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 . . .”); LA. REV. STAT. ANN. § 28:55(A) (2017) (“At the appointed time, the court shall conduct a hearing on the petition.”).

⁴⁰ LA. REV. STAT. ANN. § 28:54(C) (2017); LA. REV. STAT. ANN. § 28:55(C) (2017); LA. REV. STAT. ANN. § 28:55(D) (2017).

⁴¹ LA. REV. STAT. ANN. § 28:54(D)(1) (2017).

⁴² LA. REV. STAT. ANN. § 28:54(D)(1) (2017).

⁴³ LA. REV. STAT. ANN. § 28:54(D)(1) (2017).

⁴⁴ LA. REV. STAT. ANN. § 28:54(D)(2) (2017).

⁴⁵ LA. REV. STAT. ANN. § 28:54(D)(2) (2017).

⁴⁶ LA. REV. STAT. ANN. § 28:55(D) (2017).

⁴⁷ LA. REV. STAT. ANN. § 28:55(D) (2017).

⁴⁸ LA. REV. STAT. ANN. § 28:55(D) (2017).

⁴⁹ LA. REV. STAT. ANN. § 28:55(E)(1) (2017).

⁵⁰ *In re M.M.*, 42-899, p. 3 (La. App. 2 Cir. 11/21/07); 969 So. 2d 835, 837 (holding that under the clear and convincing evidence standard, “the existence of the disputed fact must be highly probable, or much more probable than not”).

⁵¹ LA. REV. STAT. ANN. § 28:56(A)(2)(b) (2017).

⁵² LA. REV. STAT. ANN. § 28:56(A)(1)(a) (2017).

⁵³ LA. REV. STAT. ANN. § 28:56(A)(1)(a) (2017).

⁵⁴ LA. REV. STAT. ANN. § 28:56(A)(2)(a) (2017).

⁵⁵ LA. REV. STAT. ANN. § 28:56(A)(1)(b) (2017).

⁵⁶ LA. REV. STAT. ANN. § 28:56(D) (2017).

b. Admission by Emergency Certificate

Typically, you have a right to a hearing **before** being committed. However, under certain circumstances, you may be transferred for observation, diagnosis and treatment without having a hearing first.⁵⁷ If a doctor, mental health nurse, or psychologist determines that you need *immediate* treatment, you may be transferred on the basis of an **emergency certificate**.⁵⁸ An emergency certificate allows for your immediate transfer to a treatment facility. If you are committed by emergency certificate, you cannot be committed for more than fifteen days.⁵⁹

In order to issue an emergency certificate, a doctor, mental health nurse, or psychologist must actually examine you.⁶⁰ Once an examination has taken place, an emergency certificate must be issued within seventy-two hours.⁶¹ The certificate must specifically explain why the doctor, nurse or psychologist believes you are dangerous to yourself or others because of mental illness.⁶² It must also explain why you need immediate care and treatment.⁶³

You have the right to challenge your emergency confinement in a judicial hearing.⁶⁴ Once a request has been made, a hearing must be held within five days.⁶⁵ In order to hold you in the treatment facility for longer than fifteen days, the state must go through the process for judicial commitment that is detailed above in Part D(1)(a) of this Chapter.⁶⁶

c. Effect of Commitment on Sentence Time

By state law, if you are committed for psychiatric treatment, the period of commitment must be credited against your sentence.⁶⁷ This means that if your sentence is ten years, and you spend two years under judicial commitment, those two years of commitment count towards your ten-year sentence.

E. UNWANTED TREATMENT

While Part C above focused on your right to receive medical treatment for your mental illness, this Part discusses when you may be able to refuse treatment that you do not want. You should also read Part C(2) of Chapter 29 of the main *JLM*, “Special Issues for Prisoners with Mental Illness,” as well as Part C(5)(a) of Chapter 23 of the main *JLM*, “Your Right to Adequate Medical Care.” You should always keep in mind, however, that not all of the law in the main *JLM* will apply to you, and you should also read the state law discussed in this Chapter.

Louisiana law limits your right to refuse treatment for mental illness. If you are mentally ill, you may be medicated over your objection if a doctor or psychiatrist finds that such treatment is necessary to prevent harm or injury to yourself or to other prisoners.⁶⁸ Even if a doctor or psychiatrist finds that you need to be treated against your will, that treatment cannot last longer than fifteen days.⁶⁹

⁵⁷ LA. REV. STAT. ANN. § 28:53(A)(1) (2017).

⁵⁸ LA. REV. STAT. ANN. § 28:53(B)(1) (2017).

⁵⁹ LA. REV. STAT. ANN. § 28:53(A)(1) (2017).

⁶⁰ LA. REV. STAT. ANN. § 28:53(B)(1) (2017).

⁶¹ LA. REV. STAT. ANN. § 28:53(B)(3) (2017).

⁶² LA. REV. STAT. ANN. § 28:53(B)(2) (2017).

⁶³ LA. REV. STAT. ANN. § 28:53(B)(2) (2017).

⁶⁴ LA. REV. STAT. ANN. § 28:53(D) (2017).

⁶⁵ LA. REV. STAT. ANN. § 28:53(D) (2017).

⁶⁶ LA. REV. STAT. ANN. § 28:2(32)(b) (2017) (“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”).

⁶⁷ LA. REV. STAT. ANN. § 28:59(C) (2017); LA. REV. STAT. ANN. § 15:830(B) (2017); *Jennings v. Hunt*, 272 So. 2d 333, 334–335 (La. 1973) (“If, as a result of the Louisiana sentence, the prisoner had been confined in a Louisiana mental institution . . . the period of commitment therein by our own state law must be credited against the sentence imposed by the court.”).

⁶⁸ LA. REV. STAT. ANN. § 15:830.1(A) (2017).

⁶⁹ LA. REV. STAT. ANN. § 15:830.1(A) (2017).

After fifteen days, you have a right to a court hearing. In order to continue treating you involuntarily, the state must file a petition with the court describing the reasons that further treatment is required.⁷⁰ At the hearing, you have the right to be represented by a lawyer.⁷¹ If you do not have a lawyer, the court will appoint one for you.⁷² After the hearing, the judge will determine if you are competent to refuse treatment. If the judge finds that you are not competent as a result of mental illness, then he will order that treatment continue to be provided.⁷³

By law, in hearings for involuntary treatment, you must be given all of the same procedural rights that are provided in judicial commitments, as discussed above in Part D(1)(a).⁷⁴

F. CONCLUSION

This Chapter explains your rights as a prisoner with mental illness. It covers the basic information you will need to understand how the law applies to prisoners with mental illness, your right to receive treatment for mental illness, and your limited right to refuse unwanted treatment and transfer.

⁷⁰ LA. REV. STAT. ANN. § 15:830.1(A) (2017). You should note that once a petition has been filed the state has the right to continue treating you while a hearing is pending. LA. REV. STAT. ANN. § 15:830.1(A) (2017).

⁷¹ LA. REV. STAT. ANN. § 15:830.1(A) (2017).

⁷² LA. REV. STAT. ANN. § 15:830.1(A) (2017).

⁷³ LA. REV. STAT. ANN. § 15:830.1(A) (2017).

⁷⁴ LA. REV. STAT. ANN. § 15:830.1(C) (2017) (“Commitments pursuant to this Section shall be in accord with all procedures required by law in the case of judicial commitment.”).