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**House Bill 4461 (Substitute H-2 as passed by the Senate)****Sponsor:** Representative Michael J. Griffin**House Committee:** Judiciary**Senate Committee:** Health Policy**Date Completed:** 12-23-87**RATIONALE**

Under rules promulgated by the Office of Substance Abuse Services, a person, regardless of age, has the right to refuse drug treatment and to be informed of the consequences of that refusal. Some people believe that these rules, while attempting to be a reasonable protection of individual rights, have become a hindrance for parents seeking to enroll reluctant children in drug treatment programs. Thus, many Michigan parents who want to place their unwilling children in a substance abuse treatment program must go to other states that offer no patient rights to refuse treatment, which imposes additional personal and financial strains on the family. Rehabilitation programs for the drug-dependent can mean the difference between life and death for many persons suffering from the effects of substance abuse. Some people believe that parents should be able to choose treatment for their children whose addiction has impaired their judgment and threatens their lives.

**CONTENT**

The bill would amend the Public Health Code to allow substance abuse treatment and rehabilitation services to be provided to a child under 14 years old without the child's consent, if a parent or person in loco parentis requested the services. For minors between 14 and 18 years of age, the bill would establish procedures for enrollment in a treatment or screening program, diagnostic evaluation, and judicial review of the need for treatment and rehabilitation services.

Treatment for Children

A program that was requested by a child's parent or a person in loco parentis to a child to perform substance abuse treatment and rehabilitation services for the child could perform those services for the child without the child's consent if the child were less than 14 years of age, as verified by the child's parents or person acting in loco parentis, and if the request were made in writing.

"Person in loco parentis" would mean an individual who was not the parent or guardian of a child or minor but who had legal custody of the child or minor and was providing support and care for the child or minor. "Program" would mean a hospital, clinic, organization, or health professional licensed under the Public Health Code by the Office of Substance Abuse Services to provide treatment services or screening and assessment services.

MinorsTreatment

A minor's parent or a person in loco parentis to a minor could request that substance abuse treatment and rehabilitation services be provided to the minor by a

program. "Minor" would mean an individual 14 or more years of age and less than 18 years of age.

Diagnostic Evaluation

If substance abuse treatment and rehabilitation services were requested and the minor did not consent to those services, the program would be required to have a diagnostic evaluation conducted to determine whether the minor was physiologically dependent. Except as otherwise provided in the bill, a diagnostic evaluation would have to be conducted within 48 hours of the request for substance abuse treatment and rehabilitation services. "Physiological dependency" would mean addiction to alcohol or drugs which altered the body's physical or psychological status, or both.

If it were determined during a diagnostic evaluation that the minor was in need of detoxification, the program could arrange for detoxification services and those services could be performed, with the consent of the minor's parent or person in loco parentis to the minor and without the minor's consent, for a period that could not exceed five days. After the minor's detoxification, the program would be required to have the minor's diagnostic evaluation completed within 48 hours.

Substance Abuse Treatment and Rehabilitation

Except as provided in the bill, after a diagnostic evaluation had been completed, substance abuse treatment and rehabilitation services could not be performed unless one of the following occurred:

- The minor consented to substance abuse treatment and rehabilitation services.
- It was determined through a court hearing that substance abuse treatment and rehabilitation services were necessary for the minor.

If it were determined as a result of a diagnostic evaluation that the minor was physiologically dependent, substance abuse treatment and rehabilitation services could be performed without the minor's consent pending a court hearing and for a period that could not exceed seven business days.

Psychotropic drugs (drugs that have an altering effect on the mind, such as tranquilizers and hallucinogens) could not be used by a program on a minor unless the minor consented or the court ordered the use of the drugs at a hearing, as provided in the bill.

Court Hearing

A minor's parent or a person in loco parentis to a minor could petition the court requesting the court's determination as to whether treatment and rehabilitation services were

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necessary for the minor. "Court" would mean the probate court for the county in which a minor, for whom a request for substance abuse treatment and rehabilitation services had been made, either resided or was found. Upon receipt of a petition, the court would be required to appoint a guardian ad litem to represent the minor and would be required to notify all of the following persons of the time and place for the hearing:

- The minor's parents or the person in loco parentis to the minor.
- The minor.
- The program director.
- The guardian ad litem for the minor.

A hearing on a petition would have to be held within seven days of the court's receipt of the petition.

At a hearing, the court would be required to determine whether substance abuse treatment and rehabilitation services were necessary. If the court determined that these services were necessary, then the court would have to determine a suitable placement for the minor in the least restrictive setting available. In making these determinations, the court would be required to obtain and examine the diagnostic evaluation and treatment plan prepared for the minor, as provided in the bill. A minor would have the right to an independent diagnostic evaluation by a substance abuse program licensed by the State. If an independent diagnostic evaluation were prepared, the court would have to examine that evaluation. Information obtained under this provision could not be used to authorize a delinquency or status offender petition under the juvenile code.

The court could not order substance abuse treatment and rehabilitation services on the grounds that the minor's parent or person in loco parentis to the minor was unwilling or unable to provide or arrange for the management, care, or residence of the minor.

Court records maintained under the bill would have to be confidential and could be opened only by order of the court to persons having a legitimate interest. If consent were not given by an individual who was the subject of a record, the content of the record could be disclosed by court order for the purpose of a hearing, as provided in the bill.

#### Review of Treatment

Not more than 30 days after the court ordered the admission of a minor to a program and at 60-day intervals thereafter, the director of the program would be required to perform or arrange to have performed a review of the minor's treatment plan. The results of the reviews would have to be transmitted in writing within 72 hours after completion of the review to all of the following:

- The minor.
- The minor's parent or the person in loco parentis to the minor.
- The minor's guardian ad litem.
- The court.

#### Objections

A minor could object to his or her treatment plan within 30 days after receipt of the periodic review. The objection would have to be in writing and would have to state the basis on which it was being raised. At the minor's request, the minor's guardian ad litem would have to assist the minor in properly submitting the objection.

Upon receipt of an objection, the court would be required to schedule a hearing to be held within seven business

days. After receipt of the objection, the court would have to notify all of the following persons of the time and place for the hearing:

- The minor.
- The minor's parent or the person in loco parentis to the minor.
- The minor's guardian.
- The program director.

The court would be required to sustain the objection and order the discharge of the minor unless the court found by clear and convincing evidence that the substance abuse treatment and rehabilitation services were necessary. If the court did not sustain the objection, an order could not be entered, the objection would have to be dismissed, and substance abuse treatment and rehabilitation services would have to continue.

#### Discharge

If it were determined that substance abuse treatment and rehabilitation services were no longer necessary, the minor would have to be discharged from the program. If the minor were discharged, the court would have to be notified of the discharge.

MCL 333.6113 et al.

### ***FISCAL IMPACT***

The bill would result in an indeterminate increase in local administrative and court costs. The magnitude of the increase would depend on the number of minors not consenting to treatment requested by the minors' parents, the number of diagnostic evaluations conducted by publicly funded substance abuse programs and the number of petitions for hearings received by the courts.

### ***ARGUMENTS***

#### ***Supporting Argument***

The bill would permit families in Michigan to obtain substance abuse treatment for unwilling children. Substance abuse is a potentially life-threatening illness often characterized by denial of the problem by the abuser. Parents need to be empowered to exercise their parental responsibilities to ensure that their children receive treatment.

#### ***Supporting Argument***

Many Michigan families have experienced overwhelming distress and hardship as the result of substance-abusing children. Parents have seen the lives of their children destroyed by substance abuse. Yet, there is little a parent can do under State law to get help for these children when they refuse treatment. Many families have resorted to enrolling their children in out-of-state programs, where they can be held for treatment. The bill would enable families to institute life-saving treatments without having to undergo the hardship of travelling out of State.

#### ***Supporting Argument***

While the bill would enable parents to place their children in substance abuse treatment programs without a youth's consent, parental authority would not be absolute over a youth old enough to comprehend alternatives and take responsibility for his or her own life — namely a 14-to 18-year old. The bill would establish procedures for program placement, evaluation, and judicial review similar to those in the Mental Health Code for the commitment of minors. Opposing Argument Under the bill, substance abuse treatment and rehabilitation services could not be

performed without the consent of a minor — an individual 14 or more years of age and less than 18. Consent to treatment should not be a factor; parents should be able to place their children — those 18 years old or younger — in a treatment program without seeking the child's consent.

### ***Opposing Argument***

Treatment and rehabilitation services should not be conducted unless all children — regardless of age — have given their consent. Furthermore, all children up to 18 years of age should have the opportunity to petition the court for a hearing on the need for treatment. Even in cases where consent has been given, and not just in those cases where the court ordered the treatment for a minor as provided in the bill, a child's treatment program should be reviewed. These safeguards are needed for all children, regardless of age, since they could have been coerced into consenting to treatment. Precedent of inappropriate treatment of children by their parents exists. During the 1970s, parents who were having trouble with their children reportedly were obtaining the child's consent to have him or her admitted to State mental institutions. Once there, many children realized that this was not just a way out of a bad home situation, but that they actually were being confined to a mental institution. The law at that time required that both the child and parents agree to the child's release. Without the parents' signatures, the child had to remain confined. Attorneys sought habeas corpus petitions arguing that these children were unjustly confined and restrained. While many of these children were approximately 14 to 17 years of age, one child was eight years old when confined and 16 when finally released. In regard to the proposed bill, there is concern that children under 14 years of age could be admitted improperly to a drug treatment program and have no recourse. Furthermore, some people claim that young children who objected to the treatment could rely on the intervention of Preventive and Protective Services within the Department of Social Services. Yet, it is not certain whether this type of situation would come within the purview of Protective Services, which handles physical and sexual abuse as well as neglect of children by parents. Thus, there would not be any automatic mechanism for Protective Services to intervene, and it isn't clear whether Protective Services even would have jurisdiction in the case. In addition, Protective Services personnel may not have the expertise to judge whether the treatment program was appropriate for the child. Some people also claim that a child could petition the probate court, under the juvenile code, and allege that the parents were abusing the child by inappropriately placing him or her in a treatment program. Children then would have to petition the court themselves or rely on personnel conducting the treatment program — the very persons who could profit financially by these same children's participation in the program. Currently, the bill would not provide any protection from parental abuse for children under 14 years of age. Thus, a system of review for all children, not just those 14 to 18 years of age as provided in the bill, should be established.

**Response:** There is a safeguard in the bill for minors. Under the bill, if a minor — a person between 14 and 18 years of age — did not consent to treatment, the parent or person in loco parentis would have to petition the court on the need for treatment in order to place a child in a treatment program.

### ***Opposing Argument***

Success in substance abuse programs is dependent largely on the recipient's willingness to admit to a problem and

take steps to resolve it. A rebellious adolescent is unlikely to be helped substantially by forced drug treatment. Furthermore, the bill raises questions of how a child or minor would be kept in a program against his or her will, and what sort of restraints would be used.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.