

HOUSE BILL No. 5827

April 9, 2002, Introduced by Reps. Bernero, George, Raczkowski, Vander Veen, Van Woerkom and Lemmons and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding sections 369, 371, 373, 375,
377, 379, 381, 383, 385, 387, 389, 391, 393, 395, and 397.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 369. (1) THE COURT SHALL NOT ORDER ASSISTED OUTPATIENT
2 TREATMENT UNLESS AN EXAMINING PHYSICIAN OR LICENSED PSYCHOLOGIST
3 APPOINTED BY THE ASSISTED OUTPATIENT TREATMENT PROGRAM DIRECTOR
4 DEVELOPS AND PROVIDES TO THE COURT A PROPOSED WRITTEN TREATMENT
5 PLAN. THE PROPOSED TREATMENT PLAN SHALL INCLUDE CASE MANAGEMENT
6 SERVICES OR ASSERTIVE COMMUNITY TREATMENT TEAMS TO PROVIDE CARE
7 COORDINATION.

8 (2) IF A PROPOSED TREATMENT PLAN INCLUDES MEDICATION, THE
9 PROPOSED TREATMENT PLAN SHALL STATE WHETHER THE MEDICATION SHOULD
10 BE SELF-ADMINISTERED OR ADMINISTERED BY AUTHORIZED PERSONNEL AND

1 SHALL SPECIFY THE TYPE OR TYPES OF MEDICATION MOST LIKELY TO
2 PROVIDE MAXIMUM BENEFIT FOR THE SUBJECT OF THE PETITION UNDER
3 THIS CHAPTER.

4 (3) IN DEVELOPING A PROPOSED TREATMENT PLAN, THE PHYSICIAN
5 OR LICENSED PSYCHOLOGIST SHALL PROVIDE AN OPPORTUNITY TO ACTIVELY
6 PARTICIPATE IN THE DEVELOPMENT OF THE PLAN TO ALL OF THE FOLLOW-
7 ING INDIVIDUALS:

8 (A) THE SUBJECT OF THE PETITION.

9 (B) IF APPLICABLE, THE SUBJECT OF THE PETITION'S GUARDIAN.

10 (C) IF APPLICABLE, THE PSYCHIATRIST, PHYSICIAN, OR LICENSED
11 PSYCHOLOGIST WHO HAS BEEN PROVIDING SERVICES TO THE SUBJECT OF
12 THE PETITION.

13 (D) UPON THE REQUEST OF THE SUBJECT OF THE PETITION, AN
14 INDIVIDUAL DESIGNATED BY THE SUBJECT OF THE PETITION.

15 (E) A RELATIVE, A CLOSE FRIEND, OR AN INDIVIDUAL OTHERWISE
16 CONCERNED WITH THE WELFARE OF THE SUBJECT OF THE PETITION.

17 (F) IF APPLICABLE, THE PATIENT ADVOCATE.

18 (4) IF THE PETITIONER IS A DIRECTOR OF A COMMUNITY MENTAL
19 HEALTH SERVICES PROGRAM OR HIS OR HER DESIGNEE, THE PROPOSED
20 TREATMENT PLAN SHALL BE PROVIDED TO THE COURT BEFORE THE HEARING
21 ON THE PETITION. IF THE PETITIONER IS AN INDIVIDUAL OTHER THAN
22 THE DIRECTOR OF A COMMUNITY MENTAL HEALTH SERVICES PROGRAM OR HIS
23 OR HER DESIGNEE, THE PROPOSED TREATMENT PLAN SHALL BE PROVIDED TO
24 THE COURT NO LATER THAN THE DATE SET BY THE COURT UNDER SECTION
25 373.

26 SEC. 371. THE COURT SHALL NOT ORDER ASSISTED OUTPATIENT
27 TREATMENT UNLESS A PHYSICIAN OR LICENSED PSYCHOLOGIST SUBMITS AN

1 AFFIDAVIT TO EXPLAIN THE PROPOSED TREATMENT PLAN. THE
2 PHYSICIAN'S OR LICENSED PSYCHOLOGIST'S AFFIDAVIT SHALL STATE THE
3 CATEGORIES OF ASSISTED OUTPATIENT TREATMENT RECOMMENDED, THE
4 RATIONALE FOR EACH CATEGORY, FACTS THAT ESTABLISH THAT THE TREAT-
5 MENT IS THE LEAST RESTRICTIVE ALTERNATIVE, AND, IF THE RECOM-
6 MENDED ASSISTED OUTPATIENT TREATMENT INCLUDES MEDICATION, THE
7 TYPES OR CLASSES OF MEDICATION RECOMMENDED, THE BENEFICIAL AND
8 POSSIBLE DETRIMENTAL PHYSICAL AND MENTAL EFFECTS OF THE MEDICA-
9 TION, AND WHETHER THE MEDICATION SHALL BE SELF-ADMINISTERED OR
10 ADMINISTERED BY AN AUTHORIZED PROFESSIONAL.

11 SEC. 373. (1) IF, AFTER HEARING ALL RELEVANT EVIDENCE, THE
12 COURT FINDS THAT THE SUBJECT OF A PETITION UNDER THIS CHAPTER
13 DOES NOT MEET THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT, THE
14 COURT SHALL DISMISS THE PETITION.

15 (2) IF, AFTER HEARING ALL RELEVANT EVIDENCE, THE COURT FINDS
16 BY CLEAR AND CONVINCING EVIDENCE THAT THE SUBJECT OF A PETITION
17 UNDER THIS CHAPTER MEETS THE CRITERIA FOR ASSISTED OUTPATIENT
18 TREATMENT AND THAT THERE IS NO APPROPRIATE LESS RESTRICTIVE
19 ALTERNATIVE, THE COURT MAY ORDER THE SUBJECT OF THE PETITION TO
20 RECEIVE ASSISTED OUTPATIENT TREATMENT FOR AN INITIAL PERIOD NOT
21 TO EXCEED 6 MONTHS. THE ORDER SHALL SET FORTH AN ASSISTED OUTPA-
22 TIENT TREATMENT PLAN THAT SHALL INCLUDE ALL OF THE CATEGORIES OF
23 ASSISTED OUTPATIENT TREATMENT THAT THE SUBJECT OF THE PETITION
24 SHALL RECEIVE. THE COURT SHALL NOT ORDER TREATMENT THAT HAS NOT
25 BEEN RECOMMENDED BY THE EXAMINING PHYSICIAN OR LICENSED PSYCHOLO-
26 GIST OR INCLUDED IN THE PROPOSED TREATMENT PLAN FOR ASSISTED
27 OUTPATIENT TREATMENT.

1 (3) IF, AFTER HEARING ALL RELEVANT EVIDENCE, THE COURT FINDS
2 BY CLEAR AND CONVINCING EVIDENCE THAT THE SUBJECT OF A PETITION
3 UNDER THIS CHAPTER MEETS THE CRITERIA FOR ASSISTED OUTPATIENT
4 TREATMENT BUT HAS NOT YET BEEN PROVIDED WITH A PROPOSED TREATMENT
5 PLAN AND AN AFFIDAVIT AS REQUIRED UNDER THIS CHAPTER, THE COURT
6 SHALL ORDER THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM DIRECTOR
7 OR HIS OR HER DESIGNEE TO PROVIDE THE COURT WITH THE PROPOSED
8 TREATMENT PLAN AND AFFIDAVIT NOT LATER THAN 6 DAYS AFTER THE DATE
9 OF THE ORDER, EXCLUDING SUNDAYS AND HOLIDAYS. THE COURT MAY
10 ORDER THE SUBJECT OF THE PETITION TO BE RETAINED FOR AN EXAMINA-
11 TION BY A PHYSICIAN OR LICENSED PSYCHOLOGIST DESIGNATED BY THE
12 COMMUNITY MENTAL HEALTH SERVICES PROGRAM DIRECTOR OR HIS OR HER
13 DESIGNEE. THE SUBJECT OF THE PETITION MAY BE RETAINED UNDER A
14 COURT ORDER ISSUED UNDER THIS SUBSECTION FOR NOT MORE THAN 24
15 HOURS. AFTER RECEIVING A PROPOSED TREATMENT PLAN AND AN AFFIDA-
16 VIT, THE COURT MAY ORDER ASSISTED OUTPATIENT TREATMENT AS PRO-
17 VIDED IN THIS CHAPTER.

18 SEC. 375. A COURT MAY ORDER THE SUBJECT OF A PETITION TO
19 SELF-ADMINISTER PSYCHOTROPIC DRUGS OR ACCEPT THE ADMINISTRATION
20 OF PSYCHOTROPIC DRUGS BY AUTHORIZED PERSONNEL. THE ORDER MAY
21 SPECIFY THE TYPES OF PSYCHOTROPIC DRUGS. THE ORDER IS EFFECTIVE
22 FOR THE DURATION OF THE ASSISTED OUTPATIENT TREATMENT.

23 SEC. 377. A COURT ORDER FOR ASSISTED OUTPATIENT TREATMENT
24 ISSUED UNDER THIS CHAPTER SHALL DIRECT THE COMMUNITY MENTAL
25 HEALTH SERVICES PROGRAM DIRECTOR OR HIS OR HER DESIGNEE TO PRO-
26 VIDE OR ARRANGE FOR ALL CATEGORIES OF ASSISTED OUTPATIENT

1 TREATMENT FOR THE ASSISTED OUTPATIENT THROUGHOUT THE PERIOD
2 SPECIFIED IN THE ORDER.

3 SEC. 379. THE ASSISTED OUTPATIENT TREATMENT PROGRAM DIREC-
4 TOR SHALL PROVIDE A WRITTEN REPORT TO THE APPLICABLE COMMUNITY
5 MENTAL HEALTH SERVICES PROGRAM DIRECTOR WITHIN 5 DAYS AFTER THE
6 DATE THE COURT ORDER IS ISSUED. THE WRITTEN REPORT SHALL
7 INCLUDE, BUT IS NOT LIMITED TO, ALL OF THE FOLLOWING:

8 (A) A COPY OF THE COURT ORDER.

9 (B) A COPY OF THE WRITTEN TREATMENT PLAN.

10 (C) THE IDENTITY OF THE CASE MANAGER OR ASSERTIVE COMMUNITY
11 TREATMENT TEAM, INCLUDING THE NAME AND CONTACT DATA OF THE ORGAN-
12 IZATION THAT THE CASE MANAGER OR ASSERTIVE COMMUNITY TREATMENT
13 TEAM MEMBER REPRESENTS.

14 (D) THE IDENTITY OF THE SERVICE PROVIDERS.

15 (E) THE DATE ON WHICH SERVICES BEGAN OR WILL BEGIN.

16 SEC. 381. THE ASSISTED OUTPATIENT TREATMENT PROGRAM DIREC-
17 TOR OR HIS OR HER DESIGNEE SHALL PETITION THE COURT FOR APPROVAL
18 BEFORE INSTITUTING A PROPOSED MATERIAL CHANGE IN THE ASSISTED
19 OUTPATIENT TREATMENT ORDER UNLESS THE CHANGE IS ADDRESSED IN THE
20 ORDER. A CHANGE THAT IS NOT A MATERIAL CHANGE MAY BE INSTITUTED
21 BY THE ASSISTED OUTPATIENT TREATMENT PROGRAM DIRECTOR WITHOUT
22 PRIOR COURT APPROVAL. NOTICE OF A PETITION FILED UNDER THIS SEC-
23 TION SHALL BE SERVED ON THE INDIVIDUALS REQUIRED TO BE SERVED
24 UNDER SECTION 359.

25 SEC. 383. (1) IF THE ASSISTED OUTPATIENT TREATMENT PROGRAM
26 DIRECTOR OR HIS OR HER DESIGNEE DETERMINES THAT THE ASSISTED
27 OUTPATIENT REQUIRES FURTHER ASSISTED OUTPATIENT TREATMENT, THE

1 ASSISTED OUTPATIENT TREATMENT PROGRAM DIRECTOR OR HIS OR HER
2 DESIGNEE SHALL PETITION THE COURT BEFORE THE EXPIRATION OF THE
3 PERIOD OF ASSISTED OUTPATIENT TREATMENT ORDERED BY THE COURT FOR
4 A SUBSEQUENT ORDER AUTHORIZING CONTINUED ASSISTED OUTPATIENT
5 TREATMENT FOR A PERIOD OF NOT MORE THAN 1 YEAR FROM THE EXPIRA-
6 TION DATE OF THE ORIGINAL ORDER FOR ASSISTED OUTPATIENT
7 TREATMENT. IF THE ASSISTED OUTPATIENT TREATMENT PROGRAM DIRECTOR
8 HAS NOT PETITIONED THE COURT FOR A SUBSEQUENT ORDER UNDER THIS
9 SECTION WITHIN 15 DAYS BEFORE THE EXPIRATION DATE OF THE PERIOD
10 OF ASSISTED OUTPATIENT TREATMENT ORDERED BY THE COURT, A PARENT,
11 GUARDIAN, SPOUSE, SIBLING, OR CHILD OF AN ASSISTED OUTPATIENT MAY
12 PETITION FOR A SUBSEQUENT ORDER. THE PERIOD OF A SUBSEQUENT
13 ORDER OBTAINED UNDER THIS SECTION SHALL NOT EXCEED 1 YEAR.

14 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE PROCEDURE FOR
15 OBTAINING AN ORDER UNDER THIS SECTION SHALL BE IN ACCORDANCE WITH
16 THE PROVISIONS OF OBTAINING AN ORIGINAL ORDER FOR ASSISTED OUTPA-
17 TIENT TREATMENT.

18 (3) IF THE PETITIONER IS AN ASSISTED OUTPATIENT TREATMENT
19 PROGRAM DIRECTOR AND THE ASSISTED OUTPATIENT INFORMS THE COURT BY
20 AFFIDAVIT THAT HE OR SHE AGREES TO CONTINUED ASSISTED OUTPATIENT
21 TREATMENT, THE COURT MAY ORDER CONTINUED ASSISTED OUTPATIENT
22 TREATMENT UNDER THIS SECTION WITHOUT A HEARING.

23 (4) IF A PETITION FOR A SUBSEQUENT ASSISTED OUTPATIENT
24 TREATMENT ORDER HAS BEEN FILED, THE INITIAL ORDER FOR ASSISTED
25 OUTPATIENT TREATMENT REMAINS IN EFFECT UNTIL A HEARING IS HELD ON
26 THAT PETITION.

1 SEC. 385. IN ADDITION TO ANOTHER RIGHT OR REMEDY AVAILABLE
2 BY LAW WITH RESPECT TO AN ORDER FOR ASSISTED OUTPATIENT
3 TREATMENT, ON NOTICE TO THE ASSISTED OUTPATIENT TREATMENT PROGRAM
4 DIRECTOR AND THE ORIGINAL PETITIONER, THE PATIENT, HIS OR HER
5 GUARDIAN, OR HIS OR HER LEGAL COUNSEL MAY APPLY TO THE COURT TO
6 STAY, VACATE, OR MODIFY THE ORDER.

7 SEC. 387. (1) IF, IN THE CLINICAL JUDGMENT OF A PHYSICIAN
8 OR LICENSED PSYCHOLOGIST, AN ASSISTED OUTPATIENT HAS FAILED OR
9 REFUSED TO COMPLY WITH THE TREATMENT ORDERED BY THE COURT AND
10 EFFORTS HAVE BEEN MADE TO SOLICIT COMPLIANCE, THE ASSISTED OUTPA-
11 TIENT TREATMENT PROGRAM DIRECTOR OR HIS OR HER DESIGNEE SHALL
12 DIRECT A PEACE OFFICER TO TAKE INTO PROTECTIVE CUSTODY AND TRANS-
13 PORT THE ASSISTED OUTPATIENT TO A FACILITY DESIGNATED TO RECEIVE
14 ASSISTED OUTPATIENTS BY THE COMMUNITY MENTAL HEALTH SERVICES PRO-
15 GRAM DIRECTOR FOR AN EXAMINATION TO DETERMINE IF THE ASSISTED
16 OUTPATIENT HAS A MENTAL ILLNESS FOR WHICH INVOLUNTARY MENTAL
17 HEALTH TREATMENT IS NECESSARY UNDER THIS ACT. A PEACE OFFICER
18 CONTACTED UNDER THIS SUBSECTION SHALL CARRY OUT THIS DIRECTIVE.

19 (2) IF AN ASSISTED OUTPATIENT IS TAKEN INTO PROTECTIVE CUS-
20 TODY UNDER THIS SECTION, THE ASSISTED OUTPATIENT MAY BE RETAINED
21 FOR UP TO 72 HOURS FOR OBSERVATION, CARE, AND TREATMENT AND FOR
22 FURTHER EXAMINATION IN THE HOSPITAL TO ALLOW A PHYSICIAN OR
23 LICENSED PSYCHOLOGIST TO DETERMINE WHETHER THE ASSISTED OUTPA-
24 TIENT HAS A MENTAL ILLNESS AND IS IN NEED OF INVOLUNTARY MENTAL
25 HEALTH TREATMENT IN A HOSPITAL IN ACCORDANCE WITH THIS ACT.
26 CONTINUED INVOLUNTARY HOSPITALIZATION AFTER THE INITIAL 72-HOUR
27 PERIOD SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT

1 RELATING TO THE INVOLUNTARY HOSPITALIZATION OF AN INDIVIDUAL. IF
2 AT ANY TIME DURING THE 72-HOUR PERIOD THE ASSISTED OUTPATIENT IS
3 DETERMINED NOT TO MEET THE INVOLUNTARY HOSPITALIZATION PROVISIONS
4 OF THIS ACT AND DOES NOT AGREE TO STAY IN THE HOSPITAL AS A VOL-
5 UNTARY OR INFORMAL PATIENT, HE OR SHE SHALL BE RELEASED.

6 SEC. 389. (1) AN ASSISTED OUTPATIENT MAY BE MEDICATED OR
7 TESTED OVER HIS OR HER OBJECTION IF BOTH OF THE FOLLOWING OCCUR:

8 (A) THE ASSISTED OUTPATIENT FAILS OR REFUSES TO TAKE MEDICA-
9 TION OR SUBMIT TO TESTING AS REQUIRED BY A COURT ORDER ISSUED
10 UNDER THIS CHAPTER.

11 (B) THE ASSISTED OUTPATIENT TREATMENT PROGRAM'S PHYSICIAN OR
12 LICENSED PSYCHOLOGIST DETERMINES THAT THERE HAVE BEEN SUFFICIENT
13 EFFORTS TO SOLICIT THE ASSISTED OUTPATIENT'S COMPLIANCE WITH THE
14 REQUIREMENTS OF THE COURT ORDER DESCRIBED IN SUBDIVISION (A).

15 (2) IF IT IS NECESSARY TO ENFORCE A COURT ORDER UNDER THE
16 CONDITION SET FORTH IN SUBSECTION (1), THAT ENFORCEMENT MAY OCCUR
17 EITHER AT THE ASSISTED OUTPATIENT'S RESIDENCE OR AT A TREATMENT
18 CENTER DESIGNATED BY THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM
19 DIRECTOR OR HIS OR HER DESIGNEE, WHICHEVER LOCATION THE ASSISTED
20 OUTPATIENT CHOOSES.

21 (3) AN ASSISTED OUTPATIENT WHO PHYSICALLY RESISTS TREATMENT
22 OR TESTING AS DESCRIBED IN SUBSECTION (1) SHALL BE TRANSPORTED TO
23 A TREATMENT CENTER DESIGNATED BY THE COMMUNITY MENTAL HEALTH
24 SERVICES PROGRAM DIRECTOR OR HIS OR HER DESIGNEE WHERE A PHYSI-
25 CIAN OR LICENSED PSYCHOLOGIST SHALL ADMINISTER THE MEDICATION OR
26 TESTING IN A MANNER THAT IS CLINICALLY APPROPRIATE, SAFE, AND
27 CONSISTENT WITH THE ASSISTED OUTPATIENT'S DIGNITY AND PRIVACY.

1 SUBSEQUENT RETENTION OF AN ASSISTED OUTPATIENT SHALL ONLY BE MADE
2 ACCORDING TO OTHER PROVISIONS OF THIS ACT.

3 (4) UPON REQUEST OF AN ASSISTED OUTPATIENT'S ASSISTED OUTPA-
4 TIENT TREATMENT PROGRAM PHYSICIAN OR LICENSED PSYCHOLOGIST, AN
5 ASSISTED OUTPATIENT TREATMENT PROGRAM DIRECTOR, OR AN ASSISTED
6 OUTPATIENT TREATMENT DIRECTOR'S DESIGNEE, A PEACE OFFICER SHALL
7 TAKE THE ASSISTED OUTPATIENT INTO PROTECTIVE CUSTODY AND TRANS-
8 PORT HIM OR HER TO A TREATMENT CENTER DESIGNATED BY THE COMMUNITY
9 MENTAL HEALTH SERVICES PROGRAM DIRECTOR OR HIS OR HER DESIGNEE.
10 AN ASSISTED OUTPATIENT MAY BE RETAINED AT A TREATMENT CENTER FOR
11 ONLY THE TIME PERIOD REASONABLY NECESSARY TO ADMINISTER TREATMENT
12 OR TESTING AS PROVIDED UNDER THIS SECTION.

13 SEC. 391. THE DETERMINATION BY A COURT THAT AN INDIVIDUAL
14 IS IN NEED OF ASSISTED OUTPATIENT TREATMENT UNDER THIS CHAPTER IS
15 NOT A DETERMINATION THAT THE INDIVIDUAL IS AN INCAPACITATED INDI-
16 VIDUAL AS DEFINED IN SECTION 1105 OF THE ESTATES AND PROTECTED
17 INDIVIDUALS CODE, 1998 PA 386, MCL 700.1105.

18 SEC. 393. AN INDIVIDUAL MAKING A FALSE STATEMENT OR PROVID-
19 ING FALSE INFORMATION OR FALSE TESTIMONY IN A PETITION OR HEARING
20 UNDER THIS CHAPTER IS SUBJECT TO CRIMINAL PROSECUTION.

21 SEC. 395. NOTHING IN THIS CHAPTER AFFECTS THE ABILITY OF A
22 HOSPITAL DIRECTOR TO RECEIVE, ADMIT, OR RETAIN PATIENTS WHO OTH-
23 ERWISE MEET THE PROVISIONS OF THIS ACT REGARDING RECEIPT, RETEN-
24 TION, OR ADMISSION.

25 SEC. 397. THE DEPARTMENT, IN CONSULTATION WITH THE STATE
26 COURT ADMINISTRATIVE OFFICE, SHALL PREPARE EDUCATIONAL AND
27 TRAINING MATERIALS ON THE USE OF THIS CHAPTER THAT SHALL BE MADE

1 AVAILABLE TO LOCAL GOVERNMENTAL UNITS, PROVIDERS OF MENTAL HEALTH
 2 SERVICES, JUDGES, COURT PERSONNEL, LAW ENFORCEMENT OFFICIALS, AND
 3 THE GENERAL PUBLIC.

4 Enacting section 1. This amendatory act does not take
 5 effect unless all of the following bills of the 91st Legislature
 6 are enacted into law:

7 (a) Senate Bill No. _____ or House Bill No. 5825 (request
 8 no. 00734'01).

9 (b) Senate Bill No. _____ or House Bill No. 5826 (request
 10 no. 05114'01).