

SENATE BILL No. 1070

March 3, 2004, Introduced by Senators BRATER, JACOBS, BERNERO, CHERRY and GEORGE and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding section 85 to chapter VII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER VII

1
2 Sec. 85. (1) Upon the motion of a party or upon the court's
3 own motion, the court may conduct a hearing to determine whether
4 an individual charged with committing a crime desires or requires
5 treatment or has previously been treated or applied for treatment
6 or services for a mental illness, emotional disturbance, mental
7 disability, or mental retardation and whether the interests of
8 the public and the individual would be best served by requiring
9 the individual to obtain treatment for the mental illness,
10 emotional disturbance, developmental disability, or mental
11 retardation. In making the determination under this subsection,

1 the court shall consider all of the following:

2 (a) The nature and seriousness of the crime allegedly
3 committed.

4 (b) The individual's prior criminal record.

5 (c) The individual's prior mental health record.

6 (d) The likelihood that the individual would benefit from
7 mental health treatment or services.

8 (e) Other information considered relevant by the court.

9 (2) The court shall inform the individual and his or her
10 attorney that the individual may refuse to participate in a
11 program of treatment offered under this section and instead allow
12 the criminal proceeding to proceed.

13 (3) If the individual does not inform the court that he or
14 she does not wish to participate in a mental health treatment
15 program as provided in subsection (1), the court shall present to
16 the individual a diversion contract to be signed by the
17 individual and the court. By signing the diversion contract, the
18 individual agrees for the term of the diversion period to abide
19 by the terms of any court order entered with respect to his or
20 her case, to remain in substantial compliance with any course of
21 treatment recommended or ordered under an order of the court, and
22 not to violate any criminal law or ordinance of the United
23 States, this state, or a political subdivision of this state. By
24 signing the diversion contract, the court agrees to stay further
25 adjudication of the underlying criminal charge and to dismiss the
26 charge at the conclusion of the period of diversion if the
27 individual abides by the terms of the diversion contract.

1 (4) If a diversion contract has been signed under
2 subsection (3), the court shall stay the criminal case for not
3 more than 1 year.

4 (5) If the court is informed at any time during the
5 diversionary period that the individual has not abided by the
6 terms of the diversion contract, the court may rescind the
7 diversion contract and renew adjudication of the criminal case.
8 If the court chooses not to rescind the diversion contract, the
9 contract remains in effect and is binding on all of the parties.

10 (6) If the court rescinds the diversion contract during the
11 period of diversion under subsection (5), the court shall provide
12 a written notice of the rescission to the individual and his or
13 her attorney and to the prosecuting attorney.

14 (7) At the conclusion of the diversion period, the court
15 shall comply with the terms of the diversion contract.

16 (8) Statements made by a defendant to a psychiatrist,
17 psychologist, or other mental health professional who conducts an
18 examination of an individual under this section are not
19 admissible during any subsequent criminal proceeding involving
20 the alleged criminal conduct on any issue other than the
21 individual's mental illness, insanity, or diminished capacity at
22 the time of the alleged offense.

23 (9) An individual who has a mental illness, emotional
24 disturbance, developmental disability, or mental retardation
25 shall not be held in a jail or other place of criminal detention
26 as an alternative to mental health treatment unless he or she is
27 being held in protective custody as defined in section 100c of

1 the mental health code, 1974 PA 258, MCL 330.1100c.

2 Enacting section 1. This amendatory act does not take

3 effect unless Senate Bill No. 1071

4 of the 92nd Legislature is enacted into

5 law.