

Legislative Analysis



INVOLUNTARY SUBSTANCE ABUSE ASSESSMENT & TREATMENT

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House Bill 4486

Sponsor: Rep. John Walsh

Committee: Judiciary

Complete to 5-15-13

A SUMMARY OF HOUSE BILL 4486 AS INTRODUCED 3-20-13

The bill would amend the Mental Health Code to establish criteria for the involuntary assessment and stabilization of an adult who is incapacitated by alcohol or other drugs.

Under the Mental Health Code, if a person appears to be incapacitated in a public place, the code authorizes a law enforcement officer to take the person into protective custody and then take the person to an approved service program or emergency medical service, or to a transfer facility (jail) for subsequent transportation to an approved service program or emergency medical service.

House Bill 4486 would revise the code to do both of the following:

- Revise the definition of "incapacitated" to include incapacitation by the use of "other drugs" (not defined). The current definition refers to an individual who, as a result of the use of alcohol, is unconscious or whose mental or physical functioning is so impaired that the person either poses an immediate and substantial danger to his or her own health and safety or is endangering the health and safety of the public.
- Allow certain persons to petition a court to order an individual (18 years of age and older) taken into protective custody for involuntary assessment and stabilization, under certain conditions.

Petition for involuntary assessment and stabilization.

A petition for involuntary assessment and stabilization could be filed in court by the respondent's (person who is the subject of the petition) spouse or guardian, any relative, a private health practitioner, the director or a designee of an approved service program, or any three adults who have personal knowledge of the respondent's substance abuse. "Court" would mean the probate court for the county in which the respondent either resides or is found.

Information required to be included on the petition is specified in the bill, but would include a statement of the respondent's ability to afford an attorney as well as facts that support the need for involuntary assessment and stabilization.

Facts needed to support the petition would have to include:

(1) The reason for the belief that the respondent is engaging in substance abuse;

(2) the reason for the belief that the respondent is incapacitated because of the substance abuse and that the respondent has or is likely to inflict physical harm on self or others unless admitted, and/or the refusal to voluntarily receive care is based on judgment so impaired by reason of substance abuse that the respondent is incapable of appreciating the need for care and of making a rational decision regarding that need for care; and,

(3) Whether the respondent has refused to submit voluntarily to an assessment.

Criteria for involuntary assessment.

An individual would meet the criteria if there is a good faith reason to believe that the individual is engaging in substance abuse, is incapacitated, and because of the substance abuse has lost the power of self-control with respect to substance use and either:

- Has inflicted, threatened or attempted to inflict or, unless admitted, is likely to inflict physical harm on himself or herself or another person.
- Is in need of substance use disorder treatment and rehabilitation services and, by reason of substance abuse, his or her judgment has been so impaired that the individual is incapable of appreciating the need for the services and of making a rational decision in regard to the services. (The mere refusal to receive the services would not constitute evidence of lack of judgment with respect to the person's need for services.)

Duties of a court when a petition is filed.

The court would have to do all of the following:

- Ascertain whether the respondent is represented by an attorney or if one should be appointed based on the petition. If determined appropriate, an attorney would have to be appointed.
- Provide a copy of the petition and notice of hearing to certain individuals, including, but not limited to, the respondent; his or her attorney, if known; and the petitioner.
- Issue a summons to the respondent and conduct a hearing within 10 days.
- If determined to be appropriate, enter an order authorizing the involuntary assessment and stabilization of the respondent or enter an ex parte order authorizing the involuntary assessment and stabilization of the respondent (if an attorney was not appointed and the court relied solely on the contents of the petition).

Protective Custody.

Upon the court's order authorizing the involuntary assessment and stabilization of the respondent, the person would have to be taken into protective custody as provided in Section 276 of the code. The order could, however, authorize the person to be taken to a

less restrictive component of an approved service program for involuntary assessment only.

Section 276 requires law enforcement to take a person who appears to be incapacitated in a public place into protective custody and then to an approved service program, emergency medical service, or transfer facility (jail) for subsequent transport to an approved service program, emergency medical service. The bill would apply this provision also to an individual who is the subject of a court order for involuntary assessment and stabilization under the bill.

FISCAL IMPACT:

An adult individual incapacitated as a result of the use of "other drugs", or determined by the Probate Court to meet the criteria for involuntary assessment and stabilization, and taken into protective custody by a law enforcement officer and an approved service program for substance use disorder treatment and rehabilitation services will result in additional state costs for a department-designated community mental health entity. Data from a FY 2011-12 report on substance abuse prevention, treatment, and recovery programs indicates the following average statewide expenditures per client: \$1,653 per client served in intensive outpatient service category; \$719 per client served in outpatient service category; \$646 per client served in detoxification service category; and \$2,593 per client served in residential service category.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.