

## MENTAL HEALTH COURT

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**House Bill 4694 (Substitute H-1)**  
**Sponsor: Rep. Kevin Cotter**

**House Bill 4696 (Substitute H-1)**  
**Sponsor: Rep. Gail Haines**

**House Bill 4695 (Substitute H-1)**  
**Sponsor: Rep. John Walsh**

**House Bill 4697 (Substitute H-1)**  
**Sponsor: Rep. Margaret E. O'Brien**

**Committee: Judiciary**  
**Complete to 9-18-13**

## A SUMMARY OF HOUSE BILLS 4694-4697 AS REPORTED BY COMMITTEE 9-18-13

As a package, the bills would authorize the establishment of mental health courts. Each bill would amend the Revised Judicature Act and together would add a Chapter 10B, entitled "Mental Health Court." The bills are tie-barred to each other, meaning that no single bill could take effect unless all were enacted. A brief description of each bill follows.

**House Bill 4694** would add Sections 1090-1093 to:

- Define "mental health court" as a court-supervised treatment program for individuals diagnosed by a licensed clinician as having a mental disorder, a co-occurring disorder (defined in the bill), or a developmental disability (as defined by the Mental Health Code) **or** as a program designed to adhere to the 10 Essential Elements of a Mental Health Court promulgated by the Bureau of Justice Assistance that included certain characteristics listed in the bill.
- Allow a mental health court (hereinafter "court") for adults to be established by a circuit court or district court as specified in the bill.
- If an adult mental health court will include individuals eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, require the court to enter into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district and representatives of the community mental health services programs, criminal defense bar, and community treatment providers. The MOU could include others as considered necessary such as a representative of the local court funding unit. The MOU would describe the roles and responsibilities of each party.
- Allow a juvenile mental health court to be adopted or instituted by the family division of circuit court in any judicial district. Creating a court would not change the statutes or court rules concerning discharge or dismissal of an offense, or a delayed sentence or deferred entry of judgment. The circuit court must first enter into a memorandum of understanding with all participating prosecuting

authorities in the circuit or district court and representatives of the community mental health services program, criminal defense bar who specialize in juvenile law, and community treatment providers. The MOU would describe the roles and responsibilities of each party and could include others considered necessary. A juvenile mental health court would be subject to the same procedures and requirements as for an adult court, except as otherwise specifically provided.

- Allow, but not require, a court to accept participants from any other jurisdiction in the state. In general, admittance into a court would be at the discretion of the court and based on the individual's legal or clinical eligibility. An individual could be admitted to a court more than once.
- Allow an individual eligible for admission into a court to be admitted if assigned the status of youthful trainee or if he or she has had certain criminal proceedings deferred and the individual has been placed on probation.
- Prohibit a violent offender from acceptance into a mental health court. The term would mean an individual who has been convicted of an offense involving the death of, or a serious bodily injury to, any individual, whether or not any of these circumstances are an element of the offense.
- Require as a condition for admittance into a mental health court that an individual cooperate with and complete a preadmission screening and evaluation assessment, and submit to any further assessment as directed by the court. (See the bill for preadmission screening and evaluation assessment requirements.)
- Except as permitted in Chapter 10B, make confidential any statement or other information obtained as a result of participation in a preadmission screening and evaluation assessment and exempt it from disclosure under the Freedom of Information Act. It could not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
- Allow the court to request the Department of State Police for information in the LEIN pertaining to an applicant's criminal history for the purpose of determining eligibility into the mental health court and general criminal history review.

**House Bill 4696** would add Sections 1094-1096 to do the following:

- If charged in a criminal case, as a condition of admittance into a mental health court, require that an individual (1) if an adult, plead guilty, no contest, or be convicted of any criminal charge on the record, or if a juvenile, admit responsibility; (2) waive the right to a speedy trial and right to a preliminary examination at the plea; (3) sign a written agreement to participate in the court, with a parent or legal guardian to sign for a juvenile.

- If subsequently not admitted into a mental health court, allow the individual to withdraw the plea and be entitled to a preliminary examination; a juvenile could withdraw an admission of responsibility.
- Allow a victim of the individual seeking admission to a mental health court to submit a written statement regarding the advisability of admitting that individual into the mental health court. (This includes a victim of a prior offense.)
- Require the court to maintain jurisdiction over the participant until final disposition of the case, but not longer than the probation period allowed under the Code of Criminal Procedure. The court could obtain jurisdiction over a juvenile's parents or guardians in order to ensure the juvenile's continued participation and successful completion of the mental health court and could issue and enforce any appropriate and necessary order regarding the parent or guardian.
- Allow the court to require a participant to pay a reasonable mental health court fee reasonably related to the cost to the court for administering the program as provided in the MOU (described in HB 4694). The clerk of the court would transmit the fees collected to the treasurer of the local funding unit at the end of each month.
- Specify what a mental health court would have to provide a participant, such as consistent and close monitoring and periodic evaluation assessments of the participant's situation and progress in the program.
- Specify that any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a mental health court is confidential and exempt from disclosure under the Freedom of Information Act, and could not be used in a criminal prosecution unless it reveals criminal acts other than, or inconsistent with, personal controlled substance drug use.

**House Bill 4695** would add Sections 1097 and 1098 to do the following:

- Require a participant to comply with all court orders as a condition of continued participation in a program; violations could be sanctioned at the court's discretion.
- Allow a judge to terminate participation in the program if the participant is accused of a new crime.
- Require a participant to pay all court fines, court costs, court fees, restitution, and assessments and pay all, or make substantial contributions toward payment of, the costs of the treatment and the program services. With the exception of restitution and crime victim rights assessments, a court could waive all or part of the costs, fees, or alcohol testing expenses if paying them would pose a substantial hardship.

- Require a court to indicate whether the participant completed the program successfully or, if participation had been terminated, the reason why.
- Establish criteria relating to cases involving a discharge or dismissal of the proceedings and specify that there may be only one discharge and dismissal under the bill.
- Allow a discharge and dismissal of a domestic violence offense under certain circumstances.
- Specify that all records regarding participation in a mental health court discharge and dismissal proceeding are closed to public inspection from the date of deferral and exempt from public disclosure under the Freedom of Information Act. The records must be open to all state courts and other state and federal courts, the Department of Corrections, law enforcement personnel, and prosecutors, but only for limited purposes as detailed in the bill. A nonpublic record of an arrest, court proceedings, and discharge and dismissal would have to be retained by the Department of State Police.
- Require the court, when an individual successfully completed probation or other court supervision, to enter the conviction and sentence (or finding or adjudication of responsibility) and send a record to the Criminal Justice Information Center of the Department of State Police.
- If a participant subject to a deferral and dismissal proceeding fails to successfully complete the program or the person's participation is terminated, require the court to enter an adjudication of guilt or finding of responsibility and then proceed to sentencing or disposition for the original charges to which the individual had pled guilty or admitted responsibility. Unless the program termination was due to the commission of a new crime, failure to complete a mental health court program would not be a prejudicial factor in sentencing.
- Specify that all records of the proceedings regarding the participation of the individual in the mental health court would remain closed to public inspection and exempt from public disclosure.

**House Bill 4697** would add Sections 1099 and 1099a to do the following:

- Require each mental health court to collect and provide data on each individual applicant and participant and the entire program as required by the State Court Administrative Office (SCAO). Training to do this would be provided by SCAO.
- Require the courts to maintain files or databases on each participant for review and evaluation, as well as treatment, as directed by SCAO, including a minimum standard data set developed and specified by SCAO.

- Require SCAO to provide standards for mental health courts, including developing a list of approved measurement instruments and indicators for data collection and evaluation that can provide comparability between programs and their outcomes.
- Exempt from disclosure under the Freedom of Information Act all information collected under the bill regarding applicants to and participants who successfully completed a mental health court.
- Place responsibility for the expenditure of state funds for the establishment and operation of mental health courts with the Michigan Supreme Court.
- Require quarterly reporting by mental health courts to SCAO regarding the state funds received and expended by that court.
- Allow SCAO to establish an advisory committee separate from and independent of the state's Drug Treatment Court Advisory Committee.
- Subject to the existence of sufficient funding, require SCAO and DCH to assure that training and technical assistance be available and provided to all mental health courts.

**FISCAL IMPACT:**

A fiscal analysis is in process.

**BRIEF DISCUSSION OF THE ISSUE:**

The bills seek to provide a framework by which judicial circuits around the state could establish mental health courts. Known as specialty courts, such courts are able to structure programs, penalties, and oversight of offenders in a more focused manner unique to the issues that appear to underlie the offense. Testimony offered by the Kalamazoo County Prosecuting Attorney, along with defense counsel of Kalamazoo County and a judge representing the Kalamazoo Mental Health Recovery Court highlighted benefits of a mental health court, such as fewer hospital days, fewer jail days, and reduced emergency room visits. The oversight provided by the court increased accountability, which led to participants able to make restitution and to take back control over their lives. Like all specialty courts, the design of the program is geared on identifying and treating the underlying issues so to break the cycle of recidivism.

However, those who serve the mentally ill population, while generally supportive of the mental health court initiative, still have concerns with some aspects of the bills, such as the lack of an exit strategy or aftercare program to maintain the supports established during participation in the mental health court. Also, some concerns regarding affordability for participants have been raised.

Some people have expressed opposition to the bills and say that the bills represent an attempt to create yet another secret court system. They cite the history of the court system being open and raise concerns that the secrecy and lack of access to court records regarding participation in specialty courts can lead to some using such courts to "hide" their criminal offenses from the public. Another concern raised is that the bills do not give participants say in such things as medication that may be court-ordered. Many drugs used to treat mental illnesses have terrible side effects, especially some of the older, cheaper drugs. A person's participation in a drug court should not be effected solely on refusal to take a drug for which the person experiences, or may experience, debilitating side effects or drug interactions if the person meets other participation criteria.

## **POSITIONS:**

A representative of the Michigan Association of Drug Court Professionals testified in support of the bills. (9-12-13)

A representative of the Mental Health Association of Michigan testified that the association conceptually supports the bill. (9-12-13)

A representative of the State Court Administration Office testified in support of the bills. (6-6-13)

The State Bar of Michigan submitted a letter supporting the bills. (9-12-13)

The Michigan Coalition to End Domestic and Sexual Violence indicated support for the concept of the bills. (9-12-13)

Michigan Health and Hospital Association indicated support for the bills. (9-12-13)

The Michigan Council on Crime and Delinquency indicated support for the bills. (9-12-13)

Mid-Michigan Health indicated support for the bills. (6-4-13)

A representative of Michigan Protection and Advocacy presented continuing concerns regarding the bills. (9-12-13)

The Michigan Coalition for OpenGovernment submitted a letter in opposition to the bills. (9-10-13)

Legislative Analyst: Susan Stutzky  
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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.