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House Bill 4486 (Substitute H-1 as passed by the House)  
Sponsor: Representative John Walsh  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 3-18-14

### **CONTENT**

**The bill would amend Chapter 2A (Substance Abuse Disorder Services) of the Mental Health Code to allow a court to order involuntary treatment for an adult who had a substance use disorder, under particular circumstances. The bill would do the following:**

- Establish procedures and criteria for certain people to petition a court to initiate proceedings for involuntary treatment.
- Require a petition to include a certified statement of a health professional who had examined the respondent to the petition (the person with the alleged disorder) or a statement that the respondent refused to undergo an examination.
- Require a court to examine a petitioner under oath, and schedule a hearing if the court found probable cause to believe the respondent could reasonably benefit from treatment.
- Specify that a respondent could retain counsel or, if indigent, have court-appointed counsel at public expense.
- Allow a respondent to have an independent expert evaluation of his or her physical and mental condition conducted for the court hearing.
- Allow the court to order involuntary treatment if it found by clear and convincing evidence that requirements for involuntary treatment were met.
- Allow the court to order involuntary treatment for up to 72 hours or until a hearing.
- Require a person's release from involuntary treatment immediately when the court-ordered period expired.
- Specify that a respondent who failed to undergo and complete ordered treatment would be in contempt of court.
- Prohibit a respondent from being held in jail pending transportation unless the court previously found him or her in contempt of court for failure to undergo treatment or to appear at an ordered examination.
- Prescribe a misdemeanor penalty for certain violations regarding filing a petition for involuntary treatment.
- Require a community mental health entity designated by the Department of Community Health (DCH) to give the court a list of programs that were able and willing to take respondents ordered held for treatment.

## Court Authority to Order Treatment

According to the provisions described below, the bill would allow a court to order involuntary treatment for an adult if all of the following applied to the individual:

- He or she had a substance use disorder, as verified by a health professional.
- He or she presented an imminent danger or imminent threat of danger to self, family, or others as a result of the substance use disorder, or there existed a substantial likelihood of the threat of danger in the near future.
- He or she could reasonably benefit from treatment.

The Code defines "substance use disorder" as chronic disorder in which repeated use of alcohol, drugs, or both, results in significant and adverse consequences. The term includes substance abuse.

"Treatment" means care, diagnostic, and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual's serious mental illness or serious emotional disturbance. The bill would extend this to treatment of substance use disorder. "Service" means a mental health service. Under the bill, it also would mean a substance use disorder service.

## Petition for Involuntary Treatment

The bill would allow an individual to initiate proceedings for the involuntary treatment of another individual (the respondent) by filing a verified petition in the court and paying any required filing fee. The respondent's spouse, family member, or guardian, or a health professional, could file a petition for involuntary treatment.

The petition would have to include all of the following:

- The petitioner's name and residence address or, if the petitioner were a health professional, his or her business address.
- The petitioner's source of authority to file the petition, including his or her relationship to the respondent.
- The respondent's name, residence address, and current location, if known.
- The name and residence address of the respondent's parents, if living and if known.
- The name and residence address of the respondent's guardian, if any and if known.
- The name and residence address of the respondent's spouse, if any and if known.
- The name and residence address of the individual who had custody of the respondent, if any and if known, or the name and residence address of any other close relative or friend, if no individual with custody were known.
- A description of the facts that led the petitioner to believe the respondent had a substance use disorder and presented an imminent danger or imminent threat of danger, or that a substantial likelihood of the threat of danger existed in the near future if the respondent did not receive treatment.

Unless the respondent refused to be examined, the petition also would have to include a certified statement of a health professional who had examined the respondent within two days before the petition was filed. A certified statement would have to include all of the following:

- The health professional's findings in support of the need for involuntary treatment.
- The health professional's statement regarding whether the respondent presented an imminent danger or imminent threat of danger as a result of the substance use disorder, or that a substantial likelihood of the threat of danger existed in the near future if the respondent did not receive treatment.

- The health professional's statement regarding whether the respondent could reasonably benefit from treatment.
- The health professional's indication of the type and length of treatment required.
- If the need for treatment were indicated, the treatment facilities known to the health professional that were able and willing to provide the recommended treatment, including a disclosure of any ownership interest in or other relationship or affiliation with an identified facility.

In lieu of a health professional's certified statement, the petition could include a statement that the respondent refused to undergo an examination by a health professional concerning the possible need for treatment.

The petitioner would have to submit with the petition the name and address of the person, or public or private facility, with which the petitioner had arranged for the treatment of the respondent. The petitioner also would have to include a verification from the person or facility that it had agreed to provide the treatment and the estimated cost. Unless waived by the court for good cause, the petitioner would have to submit with the petition a guarantee, signed by the petitioner or another person authorized to submit a petition, obligating the guarantor to pay the costs of required examinations, the respondent's costs that were associated with a hearing and determined appropriate by the court, and the costs of any treatment ordered by the court.

A person who did any of the following would be guilty of a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$5,000:

- Furnished false information for the purpose of obtaining an order of involuntary treatment.
- Caused or otherwise secured, or conspired with or assisted another to cause or secure, an order of involuntary treatment without a reason to believe the respondent had a substance use disorder.
- Caused, or conspired with or assisted another to cause, the denial to any individual of a right accorded to him or her under Chapter 2A.

#### Court Examination & Hearing

Under the bill, upon receiving a petition for involuntary treatment of a person for a substance use disorder and the payment of a filing fee, if any, the court would have to examine the petitioner under oath as to the contents of the petition. If, after reviewing the petition and examining the petitioner, it appeared to the court that there was probable cause to believe the respondent could reasonably benefit from treatment, the court would have to do all of the following:

- Schedule a hearing to be held within seven days to determine if there was clear and convincing evidence that the respondent could reasonably benefit from treatment.
- Notify the respondent and all other individuals named in the petition concerning the allegations and contents of the petition and of the date and the purpose of the hearing.
- Notify the respondent that he or she could retain counsel and, if unable to retain counsel, that he or she could be represented by court-appointed counsel at public expense if he or she were indigent.
- Notify the respondent that the court would cause him or her to be examined, within 24 hours before the hearing, by a physician for the purpose of a physical examination, and by an independent health professional for the purpose of a substance use disorder assessment and diagnosis.
- Notify the respondent that he or she could have an independent expert evaluation of his or her physical and mental condition conducted at his or her own expense.
- Cause the respondent to be examined as described above.

-- Conduct the hearing.

Upon the appointment of counsel for an indigent respondent, the court would have to notify the respondent of the counsel's name, address, and telephone number.

The physician who examined the respondent for the purpose of a physical examination, the health professional who examined the respondent for the purpose of the substance use disorder assessment and diagnosis, and, if applicable, the individual who conducted the independent expert evaluation of the respondent's physical and mental conditions at the respondent's expense, would have to certify their findings to the court within 24 hours after the examination. The findings would have to include a recommendation for treatment if the physician, health professional, or individual determined that treatment was necessary.

If, upon completion of the hearing, the court found by clear and convincing evidence that requirements for involuntary treatment were met, it could order the involuntary treatment after considering the recommendations for treatment. If ordered, the court would have to order the involuntary treatment to be provided by an approved service program or by a health professional qualified by education and training to provide the treatment.

A respondent who failed to undergo and complete ordered treatment would be in contempt of court. An approved service program to which, or health professional to whom, a respondent was ordered for treatment would have to notify the court of the respondent's failure to undergo or complete treatment.

If, at any time after a petition for involuntary treatment was filed, the court found that there was not probable cause to order or continue treatment or the petitioner withdrew the petition, the court would have to dismiss the proceedings against the respondent.

#### Involuntary Treatment

The bill would allow the court, following an examination by a health professional and his or her certification that the requirements for involuntary treatment were met, to order the respondent held for treatment for up to 72 hours if the court found by clear and convincing evidence that the person presented an imminent danger or imminent threat of danger to self, family, or others as a result of a substance use disorder. If the hearing would not be held within that 72-hour period, however, the court could order the respondent held for treatment until the hearing. In making its order, the court would have to inform the respondent that he or she could immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, a physician, or a health professional; to contact any other person to secure representation by counsel; or to obtain medical or psychological assistance. The court also would have to inform the respondent that he or she would be provided assistance in making calls if the assistance were needed and requested.

A program in which a respondent was held would have to release him or her immediately upon the expiration of the period established by the court for involuntary treatment. If determined appropriate by the court with the assistance of health professionals, a respondent could be transferred from a more-restrictive program setting to a less-restrictive one for the ordered treatment.

A respondent who was ordered held for treatment could not be held in jail pending transportation to the program or evaluation unless the court previously had found the respondent to be in contempt of court for failure to undergo treatment or failure to appear at an ordered examination.

If a court were authorized to order the respondent transported to a program, it could issue a summons. If the respondent failed to attend an examination before the court hearing, the

court would be required to issue a summons. The court would have to direct a summons to the respondent and command him or her to appear at a time and place specified in the summons. If the respondent failed to appear at the program or examination, the court could order a peace officer to transport the respondent to a program for treatment and the peace officer would have to do so. The peace officer's transportation costs would have to be included in the costs of treatment for substance use disorder to be paid as provided in the petition.

A DCH-designated community mental health (CMH) entity, at least annually, would have to submit each of the following lists to the clerk of the court in each county served by the CMH entity:

- A list of all programs in the counties served by the CMH entity that were able and willing to take respondents ordered held for treatment.
- A list of programs and health professionals in the counties served by the CMH entity that were able and willing to provide ordered treatment for a substance use disorder.

#### Other Provisions

Under the Code, a person taken to or seeking voluntary admission to an emergency medical service or a transfer facility must have his or her possessions inventoried and held in a secure place. The possessions, except for contraband discovered in the inventory, must be returned to the person when he or she is released. Under the bill, these provisions also would apply to a respondent under an order for involuntary treatment of substance use disorder.

Currently, upon entry of a court order directing that a person be involuntarily hospitalized or that a person involuntarily undergo a program of alternative treatment or a program of combined hospitalization and alternative treatment, the court must order the State Police to enter the court order into the Law Enforcement Information Network and the State Police must do so. The bill indicates that this provision would apply to involuntary hospitalization and treatment under Chapter 4 (Civil Admission and Discharge Procedures: Mental Illness) of the Code, and would not apply to an order of involuntary treatment for substance use disorder under Chapter 2A.

The Code contains various provisions regarding an individual who is incapacitated, including a requirement that a person who appears incapacitated in public be taken into protective custody and transported to an approved service program or emergency medical service for treatment, and provisions concerning the voluntary admission of an incapacitated individual. The Code defines "incapacitated" as an individual who, as a result of the use of alcohol, is unconscious or has his or her mental or physical functioning so impaired that he or she 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. The bill would include an individual who met these criteria as a result of the use of "other drugs".

MCL 330.1100b et al.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have a negative fiscal impact on both State and local government. By expanding the criteria for involuntary assessment and stabilization, the bill would increase costs to community health service providers. According to data found in the Report on Substance Abuse Prevention, Treatment and Recovery Programs for FY 2011-2012, intensive outpatient programs served 3,236 unduplicated clients with a total cost of

\$5,347,738 or an average statewide cost of approximately \$1,653 per client, outpatient programs served 47,771 unduplicated clients with a total cost of \$34,345,307 or approximately \$719 per client, detoxification programs served 11,766 unduplicated clients with a total cost of \$7,602,743 or approximately \$646 per client, and residential service programs served 13,707 unduplicated clients with a total cost of \$35,529,588 or approximately \$2,592 per client. These costs would be partially, although not entirely, offset by the collection of a fee when a petition for involuntary treatment of an individual was filed.

There could be additional costs to local government related to protective custody and involuntary assessment and stabilization from implementing the revised definition of "incapacitated" which the bill would extend to incapacitation from other drugs. Also, additional training could be warranted by local government law enforcement operations to accurately recognize individuals under the influence of other drugs. Additionally, with a potential for added caseload through petitions for involuntary assessment and stabilization, there could be an increase in costs to local courts.

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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.