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BILL ANALYSIS



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House Bill 4694 (Substitute H-2 as passed by the House)
House Bill 4695 (Substitute H-1 as passed by the House)
House Bill 4696 (Substitute H-1 as passed by the House)
House Bill 4697 (Substitute H-1 as passed by the House)
Sponsor: Representative Kevin Cotter (H.B. 4694)
Representative John Walsh (H.B. 4695)
Representative Gail Haines (H.B. 4696)
Representative Margaret O'Brien (H.B. 4697)

House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

The bills would add Chapter 10B (Mental Health Court) to the Revised Judicature Act.

House Bill 4694 (H-2) would do the following:

- **Authorize circuit and district courts to adopt or institute a mental health court.**
- **Authorize the family division of circuit court (family court) to adopt or institute a juvenile mental health court.**
- **Allow a mental health court to accept participants from other Michigan jurisdictions under certain circumstances.**
- **Establish requirements for admission to a mental health court and require each mental health court to determine a person's eligibility.**
- **Allow a person's admission to a mental health court if he or she were subject to the dismissal and deferral of criminal charges under other provisions of law.**
- **Specify that information obtained in a preadmission screening and evaluation would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA).**

House Bill 4695 (H-1) would do the following:

- **Require an individual's compliance with court orders for continued participation in a mental health court program, subject to sanctions including terminating participation in the program.**
- **Specify that a court would have to require a participant to pay certain costs, fines, fees, restitution and assessments, unless waived by the court.**
- **Provide for a person's disposition upon completion or termination of a mental health court program, including discharge and dismissal of criminal proceedings under certain circumstances.**
- **Require the court to send a record of the discharge and dismissal of criminal proceedings to the Michigan Department of State Police (MSP), which would**

- have to enter the information in the Law Enforcement Information Network (LEIN), indicating participation in the mental health court.
- Specify that records of a person's participation in mental health court would be confidential and exempt from disclosure under FOIA, but would be available to courts and law enforcement for certain purposes.
- Require a court to enter an adjudication of guilt or juvenile responsibility if a person failed to successfully complete a mental health court program, or his or her participation were terminated.

House Bill 4696 (H-1) would do the following:

- Establish conditions of admission to and participation in a mental health court, including a plea of guilty or no contest, a conviction, or an admission of responsibility.
- Specify the actions a court would have to take regarding a person who was admitted to a mental health court.
- Require a mental health court to provide certain services for a participant, including monitoring, drug and alcohol testing, and periodic evaluation.
- Specify that information from a person's participation in a mental health court would be confidential and exempt from disclosure under FOIA.

House Bill 4697 (H-1) would do the following:

- Require each mental health court to collect data on each individual applicant and participant, and the entire mental health court program, as required by the State Court Administrative Office (SCAO).
- Require each court to maintain files or databases on each participant, as directed by the SCAO.
- Specify that the Supreme Court would be responsible for the expenditure of State funds for mental health courts.
- Require the SCAO, in conjunction with the Department of Community Health, to ensure training and technical assistance for mental health courts.

All of the bills are tie-barred.

House Bill 4694 (H-2) would define "mental health court" as a court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability. The term also would include programs designed to adhere to the 10 Essential Elements of a mental health court promulgated by the Bureau of Justice Assistance, that include certain characteristics specified in the bill.

The bill would define "serious mental illness", "serious emotional disturbance", and "developmental disability" as those terms are defined in the Mental Health Code.

The bill would define "co-occurring disorder" as having one or more disorders relating to the use of alcohol or other controlled substances of abuse as well as any serious mental illness, serious emotional disturbance, or developmental disability. The bill states, "A diagnosis of co-occurring disorders occurs when at least 1 disorder of each type can be established independent of the other and is not simply a cluster of symptoms resulting from 1 disorder."

House Bill 4694 (H-2)

Adoption of Mental Health Courts

The bill would allow the circuit court or district court in any judicial circuit or district to adopt or institute a mental health court pursuant to statute or court rules. If the mental health court would include in its program individuals who could be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, however, the circuit or district court could not adopt or institute the mental health court unless it entered into a memorandum of understanding (MOU) with each participating prosecuting attorney in the circuit or district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The MOU also could include other parties considered necessary, including a representative or representatives of the local court funding unit. It would have to describe each party's role.

A family court in any judicial circuit could adopt or institute a juvenile mental health court pursuant to statute or court rules. The creation or existence of a mental health 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. A family court adopting or instituting a juvenile mental health court would have to enter into a memorandum of understanding with all prosecuting authorities in the circuit or district court, a representative or representatives of the community mental health services program, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers. The MOU also could include other parties considered necessary, including a representative or representatives of the local court funding unit. The MOU would have to describe each party's role. A juvenile mental health court would be subject to the same procedures and requirements provided in Chapter 10B for a mental health court, except as specifically provided otherwise for a juvenile mental health court.

A court that adopted a mental health court could accept participants from any other jurisdiction in Michigan based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant was charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court could refuse to accept participants from other jurisdictions.

A mental health court could hire or contract with licensed or accredited treatment providers, in consultation with the local community mental health service provider, and other appropriate people to assist the court in fulfilling its requirements under Chapter 10B.

Admission to Mental Health Court

Each mental health court would have to determine whether an individual could be admitted to the court. No person would have a right to be admitted to a mental health court. Admission would be at the discretion of the court based on the individual's legal or clinical eligibility. A person could be admitted regardless of prior participation or prior completion status, but in no case could a violent offender be admitted to mental health court. (The bill would define "violent offender" as an individual who is currently charged with, or has been convicted of, an offense involving the death of, or a serious bodily injury to, any person, regardless of whether any of those circumstances are an element of the offense, or with criminal sexual conduct in any degree.)

In addition to admission to a mental health court under Chapter 10B, an individual who was eligible for admission also could be admitted to a mental health court if he or she had been assigned to youthful trainee status under Chapter II of the Code of Criminal Procedure. A

person also could be admitted to a mental health court if he or she had criminal proceedings against him or her deferred and had been placed on probation under any of the following:

- Section 7411 of the Public Health Code.
- Section 4a of Chapter IX of the Code of Criminal Procedure.
- Section 350a or 430 of the Michigan Penal Code.

(Those provisions allow for the discharge and dismissal of certain charges upon the successful completion of terms of probation.)

To be admitted to a mental health court, an individual would have to cooperate with and complete a preadmission screening and evaluation assessment and submit to any future evaluation assessment as directed by the court. A preadmission screening and evaluation assessment would have to include all of the following:

- A review of the person's criminal history.
- An assessment of the risk of danger or harm to the individual, others, or the community.
- A clinical mental health assessment, using standardized instruments with acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.
- A review of any of the individual's special needs or circumstances that could potentially affect his or her ability to receive mental health or substance abuse treatment and follow the court's orders.
- For a juvenile, an assessment of his or her family situation including, to the extent practicable, a comparable review of any guardians or parents.

A review of LEIN could be considered sufficient for the review of a person's criminal history, unless a further review was warranted. The court could accept other verifiable and reliable information from the prosecution or defense to complete its review and could require the individual to submit a statement as to whether he or she had previously been admitted to a mental health court and the results of his or her participation in the program or programs.

The court could request that the MSP give it information contained in LEIN pertaining to an individual applicant's criminal history for the purposes of determining a person's eligibility for admission to a mental health court and general criminal history review.

Confidential Information

Except as otherwise allowed in Chapter 10B, any statement or other information obtained as a result of participation in a preadmission screening and evaluation assessment would be confidential and exempt from disclosure under FOIA. That information could not be used in a criminal prosecution, unless it revealed crimes other than, or inconsistent with, personal drug use.

House Bill 4695 (H-1)

Participation in Mental Health Court

The bill would require a person to comply with all court orders in order to continue to participate in and successfully complete a mental health court program. Violations of court orders could be sanctioned at the court's discretion. If the participant were accused of a new crime, the judge would have the discretion to terminate the person's participation in the mental health court program.

The court would have to require a participant to pay all court fines, court costs, court fees, restitution, and assessments. The court also would have to require a participant to pay all,

or make substantial contributions toward the payment of, the costs of the treatment and the mental health court program services provided to him or her, including the costs of drug or alcohol testing or counseling. Except as otherwise provided by law, however, if the court determined that the payment of fines, fees, or testing expenses would be a substantial hardship for the person or would interfere with his or her treatment, the court could waive all or part of those fines, fees, and testing expenses.

Completion of Program & Participant Disposition

Upon completion or termination of a mental health court program, the court would have to find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether his or her participation in the program was terminated and the reason for termination.

If a person were participating in a mental health court under Section 11 of Chapter II of the Code of Criminal Procedure, Section 7411 of the Public Health Code, Section 4a of Chapter IX of the Code of Criminal Procedure, or Section 350a or 430 of the Michigan Penal Code, the court would have to proceed under the applicable section of law. Unless a memorandum of understanding under Chapter 10B allowed a person to obtain two discharges and dismissals, an individual could receive only one discharge or dismissal under this provision.

Except as otherwise provided, the court, with the agreement of the prosecutor and in conformity with the terms and conditions of an MOU under Chapter 10B, could discharge and dismiss the proceedings against an individual if he or she had participated in a mental health court for the first time, had successfully completed the program's terms and conditions, were not required by law to be sentenced to a correctional facility for the crimes to which he or she had pleaded guilty, and had not previously been subject to more than one of the following:

- Assignment to youthful trainee status under the Code of Criminal Procedure.
- The dismissal of criminal proceedings under Section 7411 of the Public Health Code, Section 4a of Chapter IX of the Code of Criminal Procedure, or Section 350a or 430 of the Michigan Penal Code.

The court could order a discharge and dismissal of a domestic violence offense only if all of the following circumstances applied:

- The person had not previously had proceedings dismissed under Section 4a of Chapter IX of the Code of Criminal Procedure.
- The domestic violence offense was eligible to be dismissed under Section 4a.
- The person fulfilled the terms and conditions imposed under Section 4a, and the discharge and dismissal of proceedings were processed and reported under that provision.

Discharge and dismissal would have to be without adjudication of guilt or, for a juvenile, without adjudication of responsibility, and would not be a conviction or a finding of juvenile responsibility for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or a finding of juvenile responsibility. The bill would allow only one discharge and dismissal for one individual.

The court would have to send a record of the discharge and dismissal to the MSP's Criminal Justice Information Center, which would have to enter the information into LEIN with an indication of participation by the individual in a mental health court. All records of the proceedings regarding a person's participation would be closed to public inspection from the date of deferral and would be exempt from public disclosure under FOIA. Those records

would be open, however, to the courts of this State, another state, or the United States, and the Department of Corrections, law enforcement personnel, and prosecutors for use in the performance of their duties or to determine whether an employee had violated his or her conditions of employment or whether an applicant met criteria for employment with those entities. The MSP's records and identifications division would have to retain a nonpublic record of an arrest, court proceedings, and the discharge and dismissal.

Except as described above for discharge and dismissal, if an individual had successfully completed probation or other court supervision, the court would have to do the following:

- Enter an adjudication of guilt or, in the case of a juvenile, enter a finding or adjudication of responsibility, if the court had not already entered an adjudication of guilt or responsibility.
- Proceed to sentencing or juvenile disposition, if the court had not already sentenced the person.
- Send a record of the conviction and sentence or the finding or adjudication of juvenile responsibility and disposition to the MSP's Criminal Justice Information Center.

For a person whose participation was terminated or who failed to successfully complete the mental health court program, the court would have to enter an adjudication of guilt or a finding of juvenile responsibility, if the entry of guilt or adjudication of responsibility were delayed or deferred under Section 1094 (which would prescribe conditions of admission to a mental health court). The court then would have to proceed to sentencing or disposition of the individual for the original charges to which he or she pleaded guilty or admitted responsibility before admission to the mental health court. Except for program termination due to the commission of a new crime, failure to complete a mental health court program could not be a prejudicial factor in sentencing. All records of the proceedings regarding the person's participation in the mental health court would remain closed to public inspection and exempt from public disclosure.

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Conditions of Admission

Under Section 1094, if an individual were charged in a criminal case or a juvenile were alleged to have engaged in activity that would constitute a crime if committed by an adult, his or her admission to a mental health court would be subject to the conditions described below.

If an adult, the person would have to plead guilty or no contest, or be convicted of a crime on the record. If a juvenile, the person would have to admit responsibility for the violation or violations of which he or she was accused. At the plea, the person would have to waive, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination. He or she would have to sign a written agreement to participate in the mental health court. If the person were a juvenile or an individual for whom a guardian had been assigned, the parent or legal guardian would have to sign all documents for the individual's admission to the mental health court.

A person who waived his or her right to a preliminary examination and pleaded guilty or no contest, or admitted juvenile responsibility, as part of his or her referral process to a mental health court, and who was subsequently not admitted to a mental health court, could withdraw his or her plea and would be entitled to a preliminary examination. A juvenile could withdraw his or her admission of responsibility.

In addition to rights accorded a victim under the Crime Victim's Rights Act, the mental health court would have to permit any victim of the offense or offenses of which the individual was

charged or alleged to have committed, as well as any victim of a prior offense, to submit a written statement to the court regarding the advisability of admitting the person into the mental health court.

Court Actions

For an individual who was admitted to a mental health court based upon having criminal charges currently filed against him or her and who had not already pleaded guilty or no contest or admitted juvenile responsibility, the court would have to accept the guilty or no contest plea or the admission of responsibility. For a person who pleaded guilty or no contest to, or admitted juvenile responsibility for, criminal charges for which he or she was admitted to the mental health court, the court would have to take the actions described below.

In the case of a person who pleaded guilty or no contest to criminal offenses that were not traffic offenses and who could be eligible for discharge and dismissal under the agreement for which he or she was admitted to a mental health court upon successful completion of the mental health court program, the court could not enter a judgment of guilt or an adjudication of juvenile responsibility.

In the case of a person who pleaded guilty to a traffic offense or who pleaded guilty to an offense but might not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the mental health court program, the court would have to enter a judgment of guilt or an adjudication of juvenile responsibility.

Pursuant to the agreement with the person and the prosecutor, the court could either delay further proceedings or proceed to sentencing, as applicable, and place the person on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court.

Provision of Services

The bill would require a mental health court to provide a participant with all of the following:

- Consistent and close monitoring and interaction among the court, treatment providers, probation, and the participant.
- Periodic and random testing for the presence of any nonprescribed controlled substance or alcohol in a participant's blood, urine, or breath, if the court determined it necessary or appropriate, using to the extent practicable the best available, accepted, and scientifically valid methods.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.
- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Mental health services, substance use disorder services, education, and vocational opportunities, as appropriate and practicable.

The bill specifies that, upon an individual's completion of the required mental health court program participation, an exit evaluation "should" be conducted in order to assess the individual's continuing need for mental health, developmental disability, or substance abuse services.

Mental Health Court Jurisdiction

The court would have to maintain jurisdiction over the mental health court participant, as provided in Chapter 10B, until final disposition of the case, but not longer than the probation period fixed under the Code of Criminal Procedure. In the case of a juvenile participant, the court could obtain jurisdiction over the juvenile's parents or guardians in order to assist in ensuring 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.

Mental Health Court Fee

The mental health court could require a person admitted to it to pay a reasonable mental health court fee that was reasonably related to the court's cost of administering the program, as provided in the memorandum of understanding. The clerk of the mental health court would have to transmit the collected fees to the treasurer of the court's local funding unit at the end of each month.

Confidential Information

Any statement or other information obtained as a result of participation in assessment, treatment, or testing while in a mental health court would be confidential and exempt from disclosure under FOIA. The information could not be used in a criminal prosecution, unless it revealed criminal acts other than, or inconsistent with, personal controlled substance use.

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Data Collection

The bill would require each mental health court to collect and provide data on each individual applicant and participant and the entire program, as required by the SCAO. The SCAO would have to provide appropriate training to all courts entering data, as directed by the Supreme Court.

Each mental health court would have to maintain files or databases on each individual participant in the program for review and evaluation, as well as treatment, as directed by the SCAO. The information collected for evaluation purposes would have to include a minimum standard data set developed and specified by the SCAO. As directed by the Supreme Court, the SCAO would have to provide standards for mental health courts in Michigan, including developing a list of approved measurement instruments and indicators for data collection and evaluation. The standards would have to provide comparability between programs and their outcomes.

Collected information regarding individual mental health court applicants and participants who had successfully completed mental health courts would be exempt from disclosure under FOIA.

Oversight & Support

The Supreme Court would be responsible for the expenditure of State funds for the establishment and operation of mental health courts. Each mental health court would have to report quarterly to the SCAO, in a manner it prescribed, on the State funds received and spent by that mental health court.

The SCAO could establish an advisory committee, which would be separate from and independent of the State's Drug Treatment Court Advisory Committee.

As directed by the Supreme Court, the SCAO, in conjunction with the Department of Community Health, would have to assure that training and technical assistance were available and provided to all mental health courts.

Proposed MCL 600.1090-600.1093 (H.B. 4694)
600.1097 & 600.1098 (H.B. 4695)
600.1094-600.1096 (H.B. 4696)
600.1099 & 600.1099a (H.B. 4697)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would provide statutory guidance for mental health courts in the State; however, the bills would not directly call for the creation of any mental health courts. As of FY 2013-14, the state has 18 mental health courts, of which 14 are receiving grant funding administered through the State Court Administrative Office. Mental health courts began in FY 2008-09 as a pilot project involving eight mental health courts. The project was funded jointly between the Judiciary budget and the Department of Community Health budget, with the Judiciary funding of \$550,000 coming from the Federal government via the American Recovery and Reinvestment Act (ARRA). In the FY 2012-13 budget, mental health courts were funded at \$2.1 million, both to offset the ARRA funding that was no longer available, and to expand the program in conjunction with the Governor's Public Safety Initiative to one additional location (Saginaw), bringing the total number of funded courts to nine. In the FY 2013-14 Judiciary budget, the program funding was further increased to \$4.1 million, which has allowed the number of mental health courts in the State to reach 18, with 14 of those courts receiving grant funding through the SCAO.

While the statutory guidance provided under the bills would not directly create any additional mental health courts, it is possible that the existence of such guidance, coupled with the successful operation of the pilot mental health courts over the last five years, could result in additional interest from local systems to begin establishing such courts. To the extent that additional courts were created, the SCAO could have increased administrative costs associated with training local court staff, and collecting and evaluating data. Whether these additional courts could receive grant funding through the SCAO would be contingent on future appropriations.

The bills would allow, but not mandate, mental health courts to charge an individual admitted to the court to pay a fee to offset or partially offset the cost of administering the program. The bills also would require mental health courts to require participants to pay court costs and fees, and other amounts; however, the bills would allow the courts to waive these amounts in some circumstances, such as if the costs would cause financial hardship. Historically, the population served by mental health courts has high percentages of indigence, so the collection of fees and costs could be infrequent. In some cases, an individual admitted to the court could have the ability to pay, but restitution to victims, penal fines, and court costs would take precedence over any program fees that would be required. The nine courts funded by SCAO grants during FY 2012-13 have not charged program fees.

There are currently four mental health courts in the State that are not receiving grant support through the SCAO. These courts are supported through partnerships between the local court system, community mental health agencies, and related organizations. However, in some cases they specifically admit only offenders who have health insurance or are Medicaid-eligible, which covers the cost of the mental health treatment required by the courts. In all 18 mental health courts, the courts first seek to have the mandated mental health treatment paid for through private insurance, Medicaid, or the local community mental health agency. However, for the 14 courts funded by the SCAO, a portion of the grant dollars is set aside to provide for needed treatment for which

an alternative payer is not available. The grant dollars not used for treatment cover the administrative costs for the local court system, such as case management.

Fiscal Analyst: Dan O'Connor

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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.