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INVOL. PRISON MH SERVICES

House Bill 4591

Sponsor: Rep. Beverly Hammerstrom
Committee: Mental Health

Complete to 6-9-93

A SUMMARY OF HOUSE BILL 4591 AS INTRODUCED 4-1-93

The bill would rewrite parts of the chapter (Chapter 10, "Criminal Provisions") of the Mental Health Code which deals with the provision of mental health services to prisoners in correctional facilities. More specifically, the bill would replace the current judicial procedures for involuntary treatment of prisoners to an administrative procedure involving a panel of clinical specialists.

Mental Health Code criminal treatment provisions.

Currently, the Mental Health Code requires prisoners to be provided with certain mental health services, either by local community mental health (CMH) services, the Department of Corrections (DOC) or by the Department of Mental Health (DMH). Prisoners in local detention facilities who request mental health services receive these services from the appropriate community mental health program, and the Department of Mental Health establishes by rule procedures for the voluntary admission of these prisoners into state mental health facilities. Involuntary hospitalization of prisoners in local detention facilities is handled under Chapter 4 ("Civil Admission and Discharge Procedures: Mental Illness") of the code.

The code requires that prisoners in state correctional facilities be provided with both general and specialized mental health services. The Department of Corrections (DOC) is responsible for providing "on site" services for prisoners with "prolonged, continuing, or constant condition[s]" that don't require specialized care. The Department of Mental Health is responsible for providing psychiatric inpatient services, at its Center for Forensic Psychiatry, for mentally ill or mentally retarded prisoners requiring intensive or specialized care. However, unless ordered by the probate court, prisoners cannot be transferred to the Center for Forensic Psychiatry without first having been told of possible treatment methods and without having first given written consent to the transfer and treatment.

The bill would delete the requirement that prisoners be provided with the currently specified services, and instead would require the Department of Corrections to establish a corrections psychiatry program to provide mental health services for mentally retarded or mentally ill prisoners requiring such services. The director of the DOC would appoint a director of the corrections psychiatry program.

Currently, the procedures by which prisoners in state correctional facilities are given mental health services begin with a "person" filing with the warden a written notice "alleging" that a particular prisoner is mentally ill or mentally retarded. When wardens receive such notices, they notify the DOC, which then selects a psychiatrist to examine the prisoner. If the psychiatrist decides that the prisoner does need intensive or specialized care or psychiatric inpatient services, the warden must immediately notify the Center for Forensic Psychiatry program. If the prisoner agrees to the transfer, certain further procedures are followed. However, if a DOC psychiatrist decides that a prisoner should be transferred involuntarily to the center, a second psychiatric evaluation must be made of the prisoner and a judicial hearing process must be followed. In cases where a DOC psychiatrist decides that a prisoner should be involuntarily transferred, the Department of Mental Health selects another psychiatrist to examine the prisoner. Whether or not the DMH psychiatrist concurs with the DOC psychiatrist, a hearing process must be followed. (If the two psychiatrists disagree, an independent psychiatrist -- selected and agreed upon by both departments -- is called in, and if the independent psychiatrist agrees with the DOC psychiatrist, the same hearing process is started.) Prisoners transferred to DMH facilities (such as the Center for Forensic Psychiatry Program) remain under the authority of the DOC, specifically with regard to leaving the DMH facility.

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Under the bill, if a warden received a report from a mental health professional that a prisoner might be mentally retarded or mentally ill, the prisoner would have to be examined by a psychiatrist (either in the prison or transferred to some "appropriate" facility) "as soon as administratively possible." If the psychiatrist determined that the prisoner was mentally retarded or mentally ill, the psychiatrist would "execute a certificate of findings" to that effect and recommend the mental health services "available" within the corrections psychiatry program for treating the prisoner. If the prisoner agreed with the recommended treatment, he or she could execute a waiver of hearing and consent to treatment. However, if the prisoner refused the treatment, an administrative hearing (described below) would have to be held. (In addition, if the psychiatrist determined that the prisoner was a present danger to him or herself or to others, the psychiatrist could order involuntary administration of medication pending an administrative hearing. However, prisoners could not be medicated for 24 hours before the hearing.) When a psychiatrist had completed a certificate of findings, the warden would have to give the prisoner (or his or her plenary guardian) the following at least 24 hours before the hearing: a copy of the certificate, a copy of the psychiatrist's report of the examination, and a "notice of hearing" that explained the hearing procedures and rights.

Voluntary acceptance of mental health services. Currently, if a prisoner wants to be voluntarily transferred from a state prison to the Center for Forensic Psychiatry Program, the warden must transfer the prisoner. The prisoner consults with a recipient rights officer of the Department of Mental Health, to make sure that the prisoner had been informed of possible treatment methods and had given written consent to the transfer and treatment. Voluntarily transferred prisoners who want to return to prison cannot be kept more than three days (excluding Sundays and legal holidays) after making the request in writing, unless the director of the center determines that the prisoner continues to need treatment in the center. In such cases, the director (or designee) must file, with the probate court, an application for continued hospitalization. The application must be accompanied by two physicians' certificates (one of whom must be a psychiatrist) supporting the application. A hearing (described below) is held on the application, and the center may keep the prisoner pending the hearing decision.

Under the bill, if a prisoner wanted to be voluntarily admitted to the corrections psychiatry program, the warden would be required to transfer the prisoner, if necessary, to the appropriate location designated by the corrections psychiatry program for the prisoner's care. Like present law, if prisoners voluntarily admitted to the corrections psychiatry program requested in writing to leave the program and return to the general prison population, they could not be kept for more than three days unless the director of the corrections psychiatry program determined that the prisoner continued to require mental health services. In such cases, the director (or a designee) would have three days to provide the prisoner (or his or her plenary guardian, if applicable) with a notice of hearing that explained the prisoner's hearing rights.

Current involuntary treatment hearing process.

Under current law, when a warden receives certification from a DOC psychiatrist that a prisoner is mentally ill or mentally retarded and should be involuntarily transferred to the forensic center, the warden must file a petition (including the required psychiatric certificates) with the probate court of the county in which the prison is located. The hearing must be held no more than seven days after the court receives the petition, and within four days of receipt, the court must see that the prisoner gets a copy of each certificate executed in connection with the petition and a notice of all of the prisoner's rights, as follows: the right to a full hearing, the right to be present at the hearing and represented by counsel, the right to demand a jury trial, and the right to an independent medical examination at the prisoner's expense (or at the state's expense, for indigent prisoners). Timely notice of the petition and of the time and place of the hearing must be given to the prisoner; the prisoner's attorney; the petitioner; the warden; the guardian, if any, of the prisoner; and to other relatives or people the court deems appropriate. Hearings may be held anywhere within the county that the court decides.

Unless the court has been notified of a prisoner's counsel, within 48 hours after receiving a petition the court must appoint counsel to represent the prisoner. The prisoner may waive the right to counsel (after consulting with the appointed counsel), and must be present at all hearings unless also waiving this right (and the court is satisfied that the prisoner's attendance at the hearing would be harmful). Prisoners' counselors must be allowed "adequate" time for investigation and preparation

for the hearing, and must be allowed to present the evidence necessary for a proper determination of the prisoner's mental illness or mental retardation.

Legal counsel for the petitioner is required to participate in hearings convened by the court and must offer proofs that establish that the prisoner is mentally ill or mentally retarded. Parties to the proceeding may present documents and witnesses and may cross-examine witnesses. The court must receive all relevant, competent, and material evidence offered, and rules of evidence in civil actions are used unless specific exceptions have been required by law or court rule. Petitions for continuation are not granted unless stipulated in writing or requested on the record, and then only if based on good cause shown.

Prisoners are not to be found mentally ill or mentally retarded unless at least one psychiatrist who has personally examined the prisoner testifies in person or by written deposition at the hearing (and written depositions are allowed only if the prisoner's attorney had the opportunity to be present during the taking of the deposition and to cross-examine the psychiatrist giving the deposition). The prisoner may waive the testimony or deposition.

If the court finds that a prisoner is mentally ill or mentally retarded, it enters a finding to that effect and must order the prisoner to be transferred to the forensic center for treatment, initially for not more than 90 days. The director of the center may request extensions of the prisoner's hospitalization, basically for two additional 90-day periods. The request for an extension must be made to the court at least fourteen days before the expiration of the order. The court may authorize a second 90 days of hospitalization and treatment after notice and opportunity for testimony, but must hold a hearing before authorizing a third 90-day continuation. If a fourth continuation is requested, the hearing process must start all over again. Petitions for renewal orders must be accompanied by a certificate executed by a psychiatrist and must contain the following: the reasons for the director's determination that the prisoner continues to require hospitalization; a statement describing the treatment program provided to the prisoner; the results of the course of treatment; and a clinical estimate as to how much longer treatment will be required.

Courts may not find that a prisoner is mentally ill or mentally retarded unless that fact has been

established by clear and convincing evidence. If the court finds at any hearing that the prisoner is not mentally ill or mentally retarded, it must order the petition to be dismissed. Copies of court orders issued under this part of the Mental Health Code must be given to the prisoner, his or her attorney, the warden, and the director of the hospital in which the prisoner is or will be a patient.

Upon authorization of the director of the center, prisoners being treated at the forensic center may be transferred between state mental health facilities. However, if the prisoner objects to the transfer, he or she is entitled to an administrative hearing. If the transfer is an emergency transfer, the hearing may be held at the receiving facility. Prisoners transferred to other mental health facilities cannot be mixed with the other patients unless the director of the forensic center, after consulting with the Department of Corrections, decides that the prisoner and other patients "show the same propensity for dangerous behavior" and require similar treatment plans. Prisoners transferred to mental health facilities other than the forensic center are entitled to all of the rights and privileges afforded to other mental health recipients except those specifically excluded or modified by law. Transferred prisoners' freedom of movement can be restricted only to the extent necessary to provide mental health services to them, to prevent injury to them or to others, or to prevent substantial property damage. However, security precautions appropriate to the condition and circumstances of the prisoner may be taken.

Proposed involuntary treatment hearing process. The bill would delete most of the current judicial involuntary treatment hearing process and replace it instead with an administrative hearing process. Under the bill, if a prisoner refused recommended mental health treatment or services or if the corrections psychiatry program determined that a prisoner voluntarily admitted to the program who wanted out in fact needed continued treatment, the corrections psychiatry program would appoint a hearing committee consisting of three mental health professionals: a psychiatrist and two other mental health professionals. None of the hearing committee members could be involved in the prisoner's treatment or diagnosis at the time of the hearing. The hearing would be held not less than 24 hours nor more than seven business days after the prisoner (or his or her plenary guardian, if applicable) had received the required documents for

initial involuntary treatment or to involuntarily continue treatment voluntarily entered by a prisoner wishing to stop.

A prisoner would have the following hearing rights under the bill:

- * attendance at the hearing;
- * presentation of evidence (including witnesses and cross-examination of witnesses), unless the hearing committee found that "the presentation, confrontation, or cross-examination would present a serious threat to the order and security of the facility or the safety of the prisoner or others; and
- * the assistance of a state employee, designated by the director of the DOC as a "lay advisor," who was familiar with mental health services.

The hearing committee would decide, by majority vote (with one of the votes being that of the psychiatrist on the committee), whether or not the prisoner was mentally retarded or mentally ill and whether or not the proposed mental health treatment services were "acceptable." If the hearing committee found that the prisoner was mentally retarded or mentally ill or continued to need mental health services, the corrections psychiatry program would provide (or continue to provide) the mental health services designated by the hearings committee. If the hearing committee found that the proposed services were not acceptable, it would order the appropriate "available" services in the corrections psychiatry program.

If the hearing committee found that the prisoner wasn't mentally retarded or mentally ill or didn't require continued treatment in the corrections psychiatry program, the prisoner would be placed according to the DOC's normal procedures.

After reaching a decision, the hearing committee would have to prepare a report and order stating the findings of the committee and the basis for those findings. (The bill would specify what the hearing committee had to "consider": the report of the mental health professional initiating the process, proof that notice of the hearing had been served and that the prisoner had not been medicated for 24 hours before the hearing, and "any other admissible evidence presented at the hearing." "Admissible evidence" would be defined as "relevant, nonrepetitious, and of a type relied upon by a person in the conduct of everyday affairs.") Each hearing committee member would have to indicate

agreement or disagreement with the hearing committee findings, and the committee would have to give the prisoner a copy of the committee report and order at the end of the hearing.

If a prisoner wanted to appeal the decision of the hearing committee, he or she would have to file the appeal within 48 hours of receiving the committee's report. The director of the corrections psychiatry program would have to make a decision within two business days after receiving the appeal. A prisoner could appeal the decision of the director of the corrections psychiatry program under the Revised Judicature Act (MCL 600.631), but no oral argument would be allowed. During this appeal, the director of the corrections psychiatry program would be allowed to carry out the hearing committee's proposed treatment.

As currently is the case, an initial order for treatment would be for not more than 90 days. However, if the treating psychiatrist believed that the prisoner needed mental health services beyond the initial 90 days, he or she could request from the director of the corrections psychiatry program an additional 90-day treatment period. The psychiatrist would have to file a report with the director of the program at least 14 days before the first 90-day period expired, and (after a hearing, if a hearing was requested by the prisoner) a hearing committee could authorize the continued care (after receiving the report and proof that the prisoner had been notified that he or she could have a hearing).

The treating psychiatrist could request a second 90-day extension of mental health services to the prisoner by the same procedure as for the first extension. If the prisoner requested a hearing, a hearing committee could authorize continued care for up to an additional 180 days. If, after that time, the treating psychiatrist still believed the prisoner needed continuing mental health services, he or she would request an initial order of admission under the hearings process. If, at any hearing held during these requests for extensions of treatment the hearing committee found the prisoner not to be mentally retarded or mentally ill, it would enter a finding to that effect and the prisoner would be returned to the regular prison population according to normal DOC procedures.

Transfers among facilities. Similar to what currently is the case, a prisoner could be transferred to the Center for Forensic Psychiatry Program or between

state mental health facilities "upon authorization by the director of the [forensic] center." Prisoners who objected to a transfer to another state mental health facility still would be entitled to administrative hearings (under departmental rules) regarding the need and appropriateness of the transfer, though if an emergency transfer were required (and the prisoner objected to the transfer), the hearing would (as it is now) be held at the receiving facility.

As is now the case, prisoners transferred to other mental health facilities would not mix with the other patients unless deemed appropriate by the director of the forensic center, after consulting with the DOC. However, the bill would eliminate the part of law saying that prisoners' freedom of movement would not be restricted more than was necessary for mental health services, safety of the prisoners or others, or to prevent substantial property damage. The bill also would specify that Chapter 7 of the Mental Health Code ("Rights of Recipients of Mental Health Services") did not apply to prisoners under the jurisdiction of the Department of Corrections, though it would keep the existing provision that prisoners transferred under this part of the code are entitled to all the rights and privileges afforded to other mental health recipients under Chapter 7 except those rights and privileges specifically excluded or modified by law.

Discharge from treatment. Currently, prisoners admitted to the forensic center who are nearing discharge from the center must be given the benefits of a modified placement review committee process and discharged either when the prisoner no longer needs the intensive or specialized care or inpatient services of the center or when the prisoner's criminal sentence expires (less "good time" and other statutory reductions). Prisoners discharged from the forensic center before their criminal sentences expire trigger a notification and report by the Department of Mental Health to the DOC of the pending discharge, the condition of the prisoner, and specific recommendations for continuing care of the prisoner. Prisoners discharged before their criminal sentences are up are returned to prison, unless paroled or otherwise released from the authority of the DOC. In the case of a prisoner discharged from the forensic center because his or her criminal sentence has expired, the head of the mental health facility can file a petition (at least fourteen days before the sentence expires) with the probate court of the prisoner's county of residence saying that the

prisoner still requires treatment or meets the criteria for judicial admission.

Under the bill, if a prisoner was paroled or discharged from prison and the corrections psychiatry program believed that he or she needed treatment or met the criteria for judicial admission, the director of the corrections psychiatry program would file the petition with the probate court.

Treatment services for former prisoners. Currently, upon referral by the DOC, the Department of Mental Health (DMH) is responsible for assuring that needed "aftercare and reintegration" and community-based mental health services are offered to mentally ill and mentally retarded people leaving prison. Upon request from the DOC, community-based mental health services must be provided by the DMH throughout a prisoner's parole period. The bill would add the proviso that "to the extent provided by law" the DMH provide community-based mental health services to paroled prisoners.

Repealer. The bill would repeal most of the sections of the Mental Health Code that set forth the current hearing process for prisoners regarding involuntary transfer to the forensic center for inpatient mental health services (sections 330.2005, 330.2005a, 330.2005b, 330.2005c, and 330.2005e).