

Act No. 252
Public Acts of 1993
Approved by the Governor
November 29, 1993
Filed with the Secretary of State
November 29, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Reps. Hammerstrom, McNutt, Goschka, DeLange and Galloway

ENROLLED HOUSE BILL No. 4591

AN ACT to amend sections 1001a, 1001b, 1003, 1003a, 1003b, 1004, 1005d, 1005f, and 1006 of Act No. 258 of the Public Acts of 1974, entitled as amended "An act to modernize, add to, revise, consolidate, and codify the statutes relating to mental health; to delineate the powers and duties of the department of mental health; to establish county community mental health programs; to delineate state and county financial responsibility for public mental health services; to create certain funds; to establish procedures for the civil admission and discharge of mentally ill persons to and from mental health facilities; to establish procedures for the civil admission and discharge of persons with developmental disabilities to and from facilities; to establish guardianship arrangements for persons with developmental disabilities; to establish certain rights of persons who receive mental health services; to establish financial liability for the receipt of public mental health services; to establish certain miscellaneous provisions relating to mental health; to establish procedures pertaining to persons with mental illness or developmental disabilities who are under criminal sentence, to persons who are mentally incompetent to stand trial, and to persons who have been found not guilty by reason of insanity; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date," being sections 330.2001a, 330.2001b, 330.2003, 330.2003a, 330.2003b, 330.2004, 330.2005d, 330.2005f, and 330.2006 of the Michigan Compiled Laws; to add sections 1003c, 1004a, 1004b, and 1006a; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. Sections 1001a, 1001b, 1003, 1003a, 1003b, 1004, 1005d, 1005f, and 1006 of Act No. 258 of the Public Acts of 1974, being sections 330.2001a, 330.2001b, 330.2003, 330.2003a, 330.2003b, 330.2004, 330.2005d, 330.2005f, and 330.2006 of the Michigan Compiled Laws, are amended and sections 1003c, 1004a, 1004b, and 1006a are added to read as follows:

Sec. 1001a. (1) "Center for forensic psychiatry program" means that program established by the center for forensic psychiatry to provide services related to all of the following:

- (a) Persons who are alleged to be incompetent to stand trial.
- (b) Persons who are acquitted of criminal charges by reason of insanity.
- (c) Persons who are transferred to the center from places of detention or from other state psychiatric hospitals.

(2) "Corrections mental health program" means that program of the department of corrections that is responsible for the provision of mental health services to certain prisoners under this chapter.

(3) "Hearing committee" means a committee appointed by the corrections mental health program pursuant to section 1003c.

(4) "Mental health services" means the provision of mental health care in a protective environment to prisoners with mental illness or mental retardation, including, but not limited to, chemotherapy and individual and group therapies.

(5) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(6) "Mentally retarded" means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.

Sec. 1001b. (1) "Place of detention" means a detention facility operated by a political subdivision of the state.

(2) "Prisoner" means a person confined in a state correctional facility, but does not include a person confined pursuant to an order of a juvenile division of the probate court or a person confined in a place of detention.

(3) "Protective environment" means an environment that supports mental health services in accordance with a prisoner's individual plan of services.

(4) "Psychologist" means that term as defined in section 400.

(5) "State correctional facility" means a facility operated by the department of corrections for the purpose of supervising and housing prisoners before parole or discharge.

Sec. 1003. The department of corrections shall establish and operate the corrections mental health program to provide mental health services for prisoners who are mentally retarded or mentally ill and need those services. The director of the department of mental health shall review the program's structure, content, quality standards, and implementation. The department of corrections may contract with the department of mental health to operate the corrections mental health program. The department of corrections shall not contract with any other provider to operate the program. The director of the department of corrections shall appoint the director of the corrections mental health program. The director of the corrections mental health program shall be an individual with an advanced degree in a mental health field and a minimum of 5 years' experience in a mental health field.

Sec. 1003a. The following procedures apply to involuntary admission to the corrections mental health program:

(a) A person may file with the officer in charge of a state correctional facility a written notice alleging that a particular prisoner is mentally ill or mentally retarded and requires treatment. Upon receipt of the written notice, the officer in charge of the facility shall contact the corrections mental health program, which shall initiate an evaluation by a mental health professional. If the officer in charge of a state correctional facility receives a report from a mental health professional that a prisoner may be mentally ill, the officer shall ensure that the prisoner is examined by a psychiatrist as soon as administratively possible. If the report from the mental health professional states that the prisoner may be mentally retarded, the officer shall ensure that the prisoner is examined by a psychologist as soon as administratively possible. Unless the prisoner can be examined within the facility where he or she is housed, the prisoner shall be transferred to an appropriate facility for examination.

(b) Upon completion of the examination described in subdivision (a), the psychiatrist or psychologist shall execute a certificate of findings that specifies whether, in the psychiatrist's or psychologist's opinion, the prisoner is mentally ill or mentally retarded. If a finding of mental illness or mental retardation is made, the psychiatrist or psychologist shall recommend suitable treatment available within the corrections mental health program.

(c) Upon completion of the examination described in subdivision (a), if the psychiatrist or psychologist determines that the prisoner is mentally ill or mentally retarded and is a present danger to himself or herself or to others, and if the prisoner refuses treatment, the psychiatrist may order involuntary administration of psychotropic medication pending a hearing pursuant to section 1003c.

(d) Upon completion of the certificate required under subdivision (b), the officer in charge of the state correctional facility shall provide to the prisoner and the guardian of the person, if applicable, a copy of the certificate, a copy of the psychiatrist's or psychologist's report of the examination, and a notice of hearing explaining hearing procedures and rights set forth in section 1003c. The documents shall be provided at least 24 hours before the hearing.

(e) If the prisoner agrees with the treatment recommended under subdivision (b), the prisoner may execute a waiver of hearing and consent to treatment.

(f) If the prisoner refuses the treatment recommended under subdivision (b), a hearing shall be held pursuant to section 1003c.

(g) The prisoner shall not be medicated for 24 hours before a hearing held under section 1003c.

(h) If, following a hearing held pursuant to section 1003c, the hearing committee finds that the prisoner is not mentally retarded or mentally ill, the prisoner shall be placed according to normal procedures of the department of corrections. If the hearing committee finds that the prisoner is mentally retarded or mentally ill and that the proposed services are suitable to the prisoner's condition, the corrections mental health program shall provide the mental health services designated by the hearing committee. If the hearing committee finds that the prisoner is mentally ill or mentally retarded but that the proposed services are not suitable to the prisoner's condition, the corrections mental health program shall provide services that are available within the corrections mental health program that are suitable to the prisoner's condition as ordered by the hearing committee.

Sec. 1003b. The following procedures apply to voluntary admission to the corrections mental health program:

(a) If a prisoner desires to be voluntarily admitted to the corrections mental health program, the officer in charge of the state correctional facility in which the prisoner is housed shall transfer the prisoner, if necessary, to the appropriate location designated by the corrections mental health program for an examination by a psychiatrist or a psychologist, as applicable. If the examining psychiatrist or psychologist certifies to the corrections mental health program that the prisoner is mentally ill or mentally retarded and is clinically suited for admission, the corrections mental health program shall provide the prisoner with a written individual plan of services pursuant to section 712. Upon the prisoner's consent to the individual plan of services, the corrections mental health program shall admit the prisoner to the program.

(b) Except as otherwise provided in subdivision (c), a prisoner who is voluntarily transferred under this section shall not be admitted to the corrections mental health program for more than 3 days, excluding Sundays and legal holidays, after the prisoner gives written notice of his or her intention to terminate the admission and return to the general population of the state correctional facility. If the corrections mental health program is advised by a prisoner of an intention to terminate admission, the program shall promptly provide the written form required for termination of admission and return the prisoner to the general population of the state correctional facility.

(c) If written notice of termination of admission has been given pursuant to subdivision (b) and has not been withdrawn, and if the director of the corrections mental health program determines that the prisoner continues to require mental health services, the director, or a person designated by the director, within 3 days, excluding Sundays and holidays, after the receipt by the corrections mental health program of the notice, shall provide the prisoner and the guardian of the person, if applicable, with a notice of hearing explaining hearing rights set forth in section 1003c. The prisoner shall not be medicated for 24 hours prior to the hearing. If, following the hearing, the hearing committee finds that the prisoner does not require mental health services, the prisoner shall be placed according to normal procedures of the department of corrections. If the hearing committee finds that the prisoner continues to require mental health services, the corrections mental health program shall continue to provide those services.

Sec. 1003c. (1) If a prisoner refuses treatment or services recommended under section 1003a or if the corrections mental health program determines that a voluntary admittee to the program who wishes to terminate admission continues to require mental health services, the corrections mental health program shall appoint a hearing committee to hear the matter. The hearing committee shall consist of a psychiatrist, a psychologist, and another mental health professional, whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university, none of whom is, at the time of hearing, involved in the prisoner's treatment or diagnosis.

(2) A hearing under this section shall be held not less than 24 hours after the prisoner and the guardian of the person, if applicable, are provided the documents required under section 1003a(d) or section 1003b(c), but not more than 7 business days after the documents have been provided to the prisoner.

(3) A prisoner has the following rights with respect to the hearing under this section:

(a) Attendance at the hearing, and if the prisoner has a guardian of the person, the guardian's attendance at the hearing.

(b) Presentation of evidence, including witnesses, who may be family members, and cross-examination of witnesses, unless the hearing committee finds 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.

(c) Assistance of 1 of the following persons designated by the director of the corrections mental health program:

(i) A recipient rights advisor from the office of recipient rights.

(ii) A mental health professional who is not involved in the prisoner's treatment or diagnosis and whose licensure or registration requirements include a minimum of a baccalaureate degree from an accredited college or university.

(4) The hearing committee appointed under subsection (1) shall consider the report of the mental health professional who has alleged that the prisoner is mentally ill or mentally retarded, the certificate described in section 1003a(1)(b), proof of service of the notice of hearing, proof of nonmedication for 24 hours prior to the hearing, and any other admissible evidence presented at the hearing. To be admissible, evidence shall be relevant, nonrepetitious, and of a type relied upon by a person in the conduct of everyday affairs.

(5) The hearing committee appointed under subsection (1) shall prepare an official record of the hearing including all evidence described in subsection (4). The hearing shall be recorded, but need not be transcribed unless requested by a party. A party who requests transcription shall pay for the transcription of the portion requested.

(6) After a hearing under this section, the hearing committee shall decide by a majority vote that includes an affirmative vote by the psychiatrist whether the prisoner is mentally ill or mentally retarded and whether the proposed mental health services are suitable to the prisoner's condition. If the hearing committee finds that the prisoner is mentally ill or mentally retarded but that the proposed services are not suitable to the prisoner's condition, the hearing committee shall order services available within the corrections mental health program that are suitable to the prisoner's condition.

(7) Upon reaching a decision, the hearing committee shall prepare a report and order expressing the findings of the hearing committee and the basis for those findings. Each member shall indicate his or her agreement or disagreement with the hearing committee findings. Within 24 hours after the hearing, the hearing committee shall provide a copy of the hearing committee report and order to the prisoner.

(8) A prisoner may appeal the decision of the hearing committee under this section to the director of the corrections mental health program if the appeal is filed within 48 hours of the prisoner's receipt of the hearing committee's report and order under subsection (7). The director of the corrections mental health program shall render a decision within 2 business days after receipt of the appeal.

(9) A prisoner may appeal the decision of the director of the corrections mental health program under subsection (8) pursuant to section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws, except that no oral argument shall be permitted. If the director of the corrections mental health program upholds the hearing committee's findings of mental illness or mental retardation and the hearing committee's proposed services, the prisoner's treatment shall not be stayed pending the appeal.

Sec. 1004. (1) A prisoner shall continue to be credited with those good time credits and other statutory reductions of his or her penal sentence to which he or she is entitled while in the corrections mental health program, subject to the terms and conditions that are applicable in a state correctional facility. The prisoner shall continue to be subject to all disciplinary sanctions that are not attributable to the prisoner's mental illness or mental retardation.

(2) At the time a prisoner is admitted to the corrections mental health program, the department of corrections shall notify the director of the corrections mental health program of the date on which the sentence of the prisoner is to expire and of any reductions of the sentence recorded to date. The corrections mental health program shall enter the sentence expiration date in the record it maintains for the prisoner.

Sec. 1004a. (1) In addition to the rights, benefits, and privileges guaranteed to prisoners by other provisions of law, the state constitution of 1963, and the constitution of the United States, a prisoner receiving services from the corrections mental health program has the rights enumerated in this section. The rights enumerated in this section do not replace or limit any other rights, benefits, or privileges of a prisoner.

(2) The rights enumerated in this section pertain to the manner in which mental health services are provided to the prisoner. This section does not affect the regulations and policies of the department of corrections relating to the operation of a state correctional facility. In an instance in which a right enumerated in this section conflicts with a regulation or policy of the department of corrections affecting the security of a state correctional facility or the protection of prisoners, employees, or the public, the department of corrections regulation or policy shall control.

(3) A prisoner is entitled to receive mental health services suitable to his or her condition in a manner that protects and promotes the basic human dignity of the prisoner.

(4) Subject to subsection (2), a prisoner receiving services from the corrections mental health program is entitled to those rights enumerated in sections 706, 710, 712, 714, 716, 722, 740, 742, 744, and 746.

(5) Information in the medical record of a prisoner receiving services from the corrections mental health program and other information acquired in the course of the prisoner's treatment in the program is confidential and shall not be open to public inspection. The corrections mental health program is the holder of the record and may disclose the information only in the circumstances and under the conditions set forth in this subsection. If information made confidential by this subsection is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought; and, if practicable, other information shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. A person receiving information made confidential by this subsection shall disclose the information to others only to the extent consistent with the authorized purpose for which the information was obtained. With the exception of records, data, and knowledge generated by individuals or committees performing a peer review function, which is not subject to disclosure, information pertaining to a prisoner receiving mental health services from the corrections mental health program may be disclosed under 1 or more of the following circumstances:

(a) Pursuant to orders or subpoenas of a court of record, or subpoenas of the legislature, unless the information is made privileged by law.

(b) To an attorney for the prisoner, with the prisoner's consent.

(c) If necessary to comply with another provision of law.

(d) To the department of corrections if the information is necessary to protect the safety of the prisoner, other prisoners, or the public, or to protect the prisoner's interactions with others in the state correctional facility.

(e) To the department of mental health if the information is necessary for the department to discharge a responsibility placed upon it by law.

(f) To the office of the auditor general if the information is necessary for that office to discharge its constitutional responsibility.

(g) As necessary to enable a prisoner or the prisoner's surviving spouse or other related person to apply for or receive benefits.

(h) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation, if the prisoner can be identified from the disclosure only if that identification is essential in order to achieve the purpose for which the information is sought or if preventing that identification would clearly be impractical, but in no event if the prisoner is likely to be harmed by the identification.

(i) To providers of mental health or other health services or a public agency, when there is a compelling need for disclosure based upon a substantial probability of harm to the prisoner or to other persons.

(j) To a representative of the protection and advocacy system designated by the governor in section 931 if both of the following apply:

(i) A complaint regarding the provision of mental health services by the corrections mental health program has been received by the protection and advocacy system from or on behalf of the prisoner.

(ii) The prisoner does not have a legal guardian, or the state or the designee of the state is the legal guardian of the prisoner.

Sec. 1004b. (1) Not later than 7 days after a prisoner is admitted to the corrections mental health program, the corrections mental health program shall provide the prisoner with a notice of the rights guaranteed under section 1004a. The program shall also provide the prisoner with an opportunity to consult with 1 of the following persons designated by the director of the corrections mental health program:

(a) A recipient rights advisor from the office of recipient rights.

(b) A field investigator from the office of the legislative corrections ombudsman.

(c) A representative of the protection and advocacy agency designated by the governor pursuant to section 931.

(2) The corrections mental health program shall place in the record of each prisoner admitted to the program a document signed by the prisoner stating that the prisoner received the notice required under subsection (1) and was offered an opportunity to consult with a person described in subsection (1)(a) to (c).

Sec. 1005d. (1) An initial order for treatment under section 1003c shall be for a period not to exceed 90 days.

(2) If, before the expiration of the initial 90-day order, the treating psychiatrist or psychologist believes that a prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, a hearing committee appointed pursuant to section 1003c may authorize continued care in the corrections mental health program for an additional period not to exceed 90 days.

(3) If, before the expiration of the second 90-day order, the treating psychiatrist or psychologist believes that the condition of a prisoner is such that the prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist, not less than 14 days before the expiration of the order, shall file with the director of the corrections mental health program or the director's designee a report of the determination that the prisoner continues to require those services. Upon receipt of the report under this subsection and proof of notice to the prisoner of an opportunity for a hearing, and following a hearing, if requested by the prisoner, the hearing committee may authorize continued care in the corrections mental health program for an additional period not to exceed 180 days. Upon completion of the order for continuing admission to the corrections mental health program, if the treating psychiatrist or psychologist believes that the prisoner continues to be mentally ill or mentally retarded and requires mental health services, the treating psychiatrist or psychologist shall request an initial order of admission pursuant to section 1003c.

(4) A report of a determination under subsection (2) or (3) shall be accompanied by a certificate executed by the psychiatrist or psychologist and shall contain a statement setting forth all of the following:

(a) The reasons for the treating psychiatrist's or psychologist's determination that the prisoner continues to be mentally ill or mentally retarded and requires mental health services.

(b) A statement describing the treatment program provided to the prisoner.

(c) The results of the course of treatment.

(d) A clinical estimate as to the time further treatment will be required.

(5) If at any hearing held under this section the hearing committee appointed under section 1003c finds that the prisoner is not mentally ill or mentally retarded, the hearing committee shall enter a finding to that effect and the prisoner shall be placed according to normal procedures of the department of corrections.

Sec. 1005f. (1) A person may be transferred to the center for forensic psychiatry program under this chapter and may be transferred between state mental health facilities upon authorization by the director of the center for forensic psychiatry program. The person is entitled to an administrative hearing pursuant to rules of the department of mental health regarding the need and appropriateness of a transfer to another state mental health facility upon receipt by the director of the center for forensic psychiatry program of the person's objection to the transfer. If an emergency transfer is required, and if objection is made to the transfer, the hearing will be held at the receiving facility.

(2) A person transferred to another state mental health facility under this section shall not be commingled with other recipients of mental health services except in cases in which it is determined by the director of the center for forensic psychiatry program, after consultation with the department of corrections, and pursuant to rules promulgated by the department of mental health, that the person and the other recipients of mental health services exhibit the same propensity for dangerous behavior and require similar treatment plans and modalities.

(3) A person transferred under this section is entitled to all the rights and privileges afforded to other mental health recipients pursuant to chapter 7, except those rights and privileges specifically excluded or modified by law.

Sec. 1006. (1) A prisoner admitted to the corrections mental health program pursuant to section 1003a or section 1003b shall be discharged from the program when 1 or more of the following occur:

(a) The prisoner ceases to require mental health services.

(b) The prisoner is paroled or discharged from prison.

(2) If a prisoner is to be discharged from the corrections mental health program before the expiration of the prisoner's criminal sentence, the director of the corrections mental health program shall first notify the department of corrections of the pending discharge, and shall transmit a full report on the condition of the prisoner to the department of corrections.

(3) If the prisoner is paroled or discharged from prison, and the corrections mental health program considers the prisoner to be a person requiring treatment, as defined in section 401, or a person who meets the criteria for judicial admission, as prescribed in section 515, the director of the corrections mental health program at least 14 days before the parole date or the date of discharge shall file a petition pursuant to section 434 or section 516 asserting that the prisoner is a person requiring treatment or that the prisoner meets the criteria for judicial admission. The petition shall be filed with the probate court of the prisoner's county of residence.

(4) The department of mental health is responsible for assuring that needed aftercare reintegration and community-based mental health services are offered to mentally ill and mentally retarded persons who are leaving prison, upon referral by the department of corrections. Upon request from the department of corrections, community-based mental health services shall be provided by the department of mental health throughout the parole period.

Sec. 1006a. (1) Not later than April 1, 1995, the department of corrections and the department of mental health shall submit a report to the legislature, based on a joint evaluation, that includes, but is not limited to, all of the following with respect to the 18-month period preceding the report:

(a) A description of the provision of mental health services to prisoners.

(b) The total number of prisoners served.

(c) The number of hearings held pursuant to section 1003c and the disposition of each hearing.

(d) The number of developmentally disabled prisoners in the corrections system and a description of the services those prisoners received.

(e) The characteristics of the prisoners served and a description of the services they received, including, but not limited to, the length of stay in the corrections mental health program and the type of treatment received.

(2) The report required under subsection (1) shall include recommendations for appropriate changes in mental health programs for prisoners.

Section 2. Sections 1005, 1005a, 1005b, 1005c, and 1005e of Act No. 258 of the Public Acts of 1974, being sections 330.2005, 330.2005a, 330.2005b, 330.2005c, and 330.2005e of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.