



**House
Legislative
Analysis
Section**

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**MENTAL HEALTH HEARINGS:
PROSECUTOR'S PARTICIPATION**

**House Bill 5828 with committee
amendment
First Analysis (5-8-96)**

**Sponsor: Rep. James McNutt
Committee: Mental Health**

THE APPARENT PROBLEM:

Under provisions in the Mental Health Code, a person may petition a court to hold a hearing to determine an individual's need for mental health services. If the court finds that the individual is in need of services, but is unwilling to seek the services voluntarily, the court can order the individual to receive mental health services through inpatient treatment, outpatient treatment, or a combination of both. Based on the type and duration of services ordered by the court, the code requires periodic reviews to determine the individual's continuing need for treatment. The code requires that the county prosecutor or his or her assistant participate in hearings convened by his or her county court to represent the person bringing the petition before the court.

Reportedly, the code's requirement that the county prosecutor or his or her assistant participate in these hearings and reviews have created a hardship through the years on the prosecutors and on those involuntarily committed to inpatient facilities. According to a representative from the Department of Community Health, many years ago, the probate judges wanted the patients to come to the court. For some facilities, such as Grand Traverse Hospital which served 23 counties, this posed a hardship for the patients as well as for the hospital. Several workers as well as a psychiatrist from the hospital would have to accompany the patients to the courthouse. For patients from outlying counties, the trip to the courthouse for the hearing could be several hundred miles and many hours in duration. To ease the burden on the patients, many facilities built small "courtrooms" within the facilities so that hearings could be held on the facility premises. A system was developed whereby probate judges were assigned on a rotating basis to conduct the hearings on the facilities' premises. Still other state facilities are equipped with closed circuit TV connecting the facility to the courtroom.

With the recent closing and consolidation of many state in-patient facilities, an increasing number of individuals are receiving in-patient treatment in facilities located outside their home counties. Approximately 20 percent of people receiving inpatient care are hospitalized in

counties other than their home counties. For some prosecutors from larger counties that have a higher percentage of people receiving in-patient treatment, this can amount to 20 or more hearings a year in out-county facilities. This represents a hardship for counties which must incur added expenses to send a prosecutor out of town, not to mention the work hours spent in traveling that are taken away from other business before the court. In an attempt to address this problem, many counties have established a system for county prosecutors similar to the rotation system used by probate judges whereby county prosecutors "take turns" handling the hearings at a facility on a particular day. In this way, a prosecutor from Jackson County may take a rotation in a Washtenaw County facility where scheduled hearings for the day may involve patients from five different counties from around the state. Rather than have all five county prosecutors travel to the Washtenaw facility to participate in their respective hearings, the Jackson County prosecutor would participate in all scheduled hearings for that day to represent the petitioners. Where the judges have authority under provisions granted by the supreme court to conduct hearings in other counties, the county prosecutors do not have statutory authority to participate in hearings convened by other than their home counties. At the request of prosecutors, legislation has been proposed to grant statutory authority for county prosecutors to appear on the behalf of a prosecutor from another county.

THE CONTENT OF THE BILL:

Under the Mental Health Code, a person, such as a relative, physician, or police officer, can petition a court to hold a hearing to determine another individual's need for mental health treatment, involuntary commitment, or for a finding of incompetency. Unless the petitioner has retained private counsel who will appear in court and present the case, the prosecuting attorney of the county in which the court has its principal office (or his or her assistant) is required to participate in the hearings convened by the court in his or her county. House Bill 5828 would allow a

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prosecuting attorney to permit a prosecuting attorney or assistant from another county to participate in the hearing on his or her behalf.

MCL 330.1457

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, local units of government may incur minimal costs, but there would be no fiscal impact on state government. (5-6-96)

ARGUMENTS:

For:

The bill merely puts into statute a practice that has worked for many counties for many years. The current budget cutting measures instituted in recent years by state and county governments has created a situation where state hospitals have closed or consolidated, often necessitating a drive across the state by a county prosecutor in order to fill the code's requirement that he or she participate in the hearing. Yet, a prosecutor or his or her assistant may not have the time or budget to attend hearings in a county hundreds of miles away. Under the bill, county prosecutors would have the authority to establish a rotating system of staffing the hearings at various facilities in a similar fashion to what probate judges have done for nearly two decades. For counties with a higher commitment rate, this could result in a reduction of attending from up to 20 or more hearings a year in outlying counties to maybe participating in two or three assigned days on a rotation basis. In addition, should a prosecutor who had been planning to travel to a hearing find that he or she is now involved in an on-going trial or other county business that he or she cannot leave, the bill would allow the prosecutor to contact the county prosecutor's office in the county where the facility is located and arrange for someone to take his or her place. Since the prosecutors represent the petitioner and not the patient, the patient's due process rights would not be infringed. In fact, the bill's provisions could make it less likely that hearings would have to be rescheduled due to conflicts with a prosecutor's schedule, thus ensuring the patient receives his or her day in court in a timely fashion.

POSITIONS:

The Department of Community Health supports the bill as reported from committee. (5-7-96)

The Prosecuting Attorneys Association of Michigan supports the bill. (5-7-96)

The Michigan Association of Counties supports the bill as reported from committee. (5-7-96)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.