Legislative Analysis

MENTAL HEALTH ASSISTED OUTPATIENT TREATMENT

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House Bill 5810 (reported from committee as substitute H-4)
Sponsor: Rep. Hank Vaupel
Committee: Health Policy
Complete to 5-29-18

Analysis available at
http://www.legislature.mi.gov

BRIEF SUMMARY: House Bill 5810 would amend the Mental Health Code to do all of the following:

- Require that court orders for protective custody for a person requiring treatment (defined below) be executed within 10 days, or that the responsible law enforcement agency report to the court the reason for the delay.
- Reduce the number of specified licensed professionals required to attest to the need for assisted outpatient treatment from 2 to 1.
- Add the requirement that a psychiatrist supervise the preparation and implementation of an assisted outpatient plan once ordered by the court.
- Replace references throughout the Code to "alternative treatment" with "assisted outpatient treatment" (AOT).

The bill is related to 2004-2005 legislation known as "Kevin's Law"[1] that was intended to allow judges to order outpatient treatment for unstable individuals with severe mental illness like schizophrenia or bipolar disorder. Public Act 320 of 2016[2] amended Kevin's Law to allow family members to petition for treatment earlier. HB 5810 is understood to build on that effort.

FISCAL IMPACT: Currently, Section 308 of the Mental Health Code (MCL 330.1308) establishes the financial liability of the state for mental health services at 90% of the net cost, but Section 308 also specifies that state financial liability is subject to the funds appropriated by the Legislature. The state has specifically set aside $2.0 million GF/GP to help counties implement court-ordered assisted outpatient treatments. With the addition of Section 308a, the financial liability for any increase in the number of persons requiring treatment would be incurred entirely by the state. So this bill would not have a fiscal impact on local units of government.

Any potential costs or savings from court-ordered assisted outpatient treatment expansion are not mandated by this bill, and it would therefore be left to each local unit to decide if investment in court-ordered assisted outpatient treatment is a worthwhile endeavor. Therefore, the state fiscal impact of an expansion of court-ordered assisted outpatient treatment is unknown at this time.

[1] House Fiscal Agency analysis of Public Acts 496 to 499 of 2004 (Senate Bills 683 to 686), known collectively as "Kevin's Law." http://www.legislature.mi.gov/documents/2003-2004/billanalysis/House/pdf/2003-HLA-0683-5.pdf
[2] House Fiscal Agency analysis for Public Act 320 of 2016 (HB 4674): http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4674-ED1CE89A.pdf

THE APPARENT PROBLEM:

In 2004, the Michigan Legislature enacted four laws—known collectively as Kevin's Law— to authorize courts and community mental health agencies to develop and utilize "assisted outpatient treatment" programs, generally used in lieu of hospitalization for people who fail to comply with prescribed treatments. Public Acts 496, 497, 498, and 499 of 2004 went into effect March 30, 2005.

Generally, Kevin's Law amended the Mental Health Code to allow court-ordered "assisted outpatient treatment" for people with mental illness who were least able to help themselves or most likely to present a risk to others. Under the laws, probate court judges could order treatment for individuals with serious mental illness who did not meet the traditional Section 401 statutory criteria for involuntary hospitalization, but who needed mandated outpatient mental health treatment to protect themselves and others.

PA 320 of 2016 was intended to make Kevin's Law more accessible to the people likely to invoke it for a friend or family member.[3]

THE CONTENT OF THE BILL:

First, Section 436 of the Code provides that a court may order a peace officer to take an individual into protective custody and transport the individual to a suitable place for an ordered examination if it appears to the court that the individual will not comply with the order.

The bill would add the requirement that the court-ordered custody and transport take place within 10 days of the order. If the order were not executed within that time period, the bill would require the law enforcement agency to report to the court the reason the order was not executed.

Additionally, Section 461 of the Code states that a person may not be found to require treatment unless at least one physician or licensed psychologist who has personally examined the person testifies in person or by written deposition that such a need exists. It also states that, when a petition for involuntary treatment only requests AOT and is not accompanied by a clinical certificate, a person cannot be found to require treatment unless a physician or licensed psychologist and a psychiatrist who have personally examined the person testify in person or written deposition that the need exists.

The bill would amend the requirements for AOT petitions so that only one medical professional (physician, psychiatrist, or psychologist) would be required to testify.

In addition, the bill would add a requirement that, when a court has determined pursuant to an AOT petition that the person in fact requires treatment, a psychiatrist must supervise the preparation and implementation of the AOT plan. The plan would need to be completed within 30 days of the court order and a copy forwarded to the probate court for filing within

[3] See https://www.bridgemi.com/children-families/revision-kevins-law-means-quicker-treatment-mentally-ill

three days of the plan's completion. The bill would also state that the decision to release an individual from the AOT program would need to be a clinical decision made by a psychiatrist designated by the director of the AOT program.

The Code refers throughout to alternative treatment in lieu of or in addition to hospitalization; however, alternative treatment is not defined. The bill would replace "alternative treatment" with "assisted outpatient treatment," which is defined in statute (below) and which may be as broadly or narrowly defined as the court determines necessary.

> ***Assisted outpatient treatment*** means the categories of outpatient services ordered by the court under Section 468 or 469a. AOT may include a case management plan and case management services to provide care coordination. AOT may also include 1 or more of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; vocational, educational, or self-help training or activities; assertive community treatment team services; alcohol or substance use disorder treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol abuse or substance use disorder; supervision of living arrangements; and any other service within a local or unified services plan developed under this act that are prescribed to treat the individual's mental illness and to assist the individual in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide, the need for hospitalization, or serious violent behavior. The medical review and direction included in an AOT plan shall be provided under the supervision of a psychiatrist. (Underlined words added by HB 5810)

Currently, the Code defines a ***person requiring treatment*** as any one of the following (the bill would amend the third category, remove the fourth, and add an additional category):

- An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- An individual who has mental illness, whose judgment is so impaired by that mental illness that he or she is unable to understand his or her need for treatment, and whose impaired judgment, on the basis of competent clinical opinion, presents a substantial risk of significant physical or mental harm to the individual in the near future or presents a substantial risk. (HB 5810 would remove the underlined section and replace it with "harm.")

- [To be removed:] An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to voluntarily participate in or adhere to treatment that has been determined necessary to prevent a relapse or harmful deterioration of his or her condition, and whose noncompliance with treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least two times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual under this subdivision is only eligible to receive AOT.
- [To be added:] An individual who has mental illness, whose understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that, on the basis of competent clinical opinion, is necessary to prevent a relapse or harmful deterioration of his or her condition, and whose unwillingness to voluntarily participate in or adhere to treatment presents a substantial current or future risk of significant physical or mental harm to the individual or physical harm to others.

The bill would provide that, if these changes to the definition of ***person requiring treatment*** increase the number of those persons, the state would have to pay all additional costs associated with the increase.

The bill would take effect 90 days after enactment.

MCL 330.1100a et al.

POSITIONS:

A representative of the State Court Administrative Office testified in support of the bill. (4-25-18)

The following organizations indicated support for the bill:
- The Office of the Lieutenant Governor (4-25-18)
- Michigan Protection and Advocacy Service, Inc. (4-25-18)
- Mental Health Association (4-25-18)

The Michigan Psychiatric Society indicated a neutral position on the bill. (5-16-18)

The Community Mental Health Association of Michigan indicated a neutral position on the bill. (5-16-18)

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