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BILL ANALYSIS



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House Bill 5806 (Substitute H-2 as passed by the House)
House Bills 5807 and 5808 (as passed by the House)
Sponsor: Representative Julie Calley
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-10-18

CONTENT

House Bill 5806 (H-2) would add Chapter 10C to the Revised Judicature to do the following:

- Allow the family division of a circuit court to adopt or institute a juvenile mental health court (JMHC).
- Require the family division of a circuit court to enter into a memorandum of understanding (MOU) with certain entities, if it adopted or instituted a JMHC.
- Require a court that adopted a JMHC to comply with the seven common characteristics of a JMHC published by Policy Research Associates.
- Require a JMHC to be certified by the State Court Administrative Office (SCAO), beginning January 1, 2019, and require the SCAO to establish a procedure for certification.
- Allow a JMHC discretion to determine whether a juvenile could be admitted.
- Require a juvenile to cooperate with and complete a preadmission screening and assessment, which would have to include certain information.
- Require JMHC to provide a participant with certain services.
- Require an exit evaluation to be completed to assess a juvenile's continuing need for mental health, developmental disability, or substance abuse services, after a juvenile's completion of a required JMHC program.
- Allow a judge discretion to terminate a juvenile's participation in a JMHC program if the juvenile were accused of a new offense.
- Require a court to find on the record or place a written statement in the court file indicating whether a participant completed the program successfully, or whether his or her participation in the program was terminated and, if it were terminated, the reasons for the termination, upon the participant's complete or termination of a JMHC program.
- Require the SCAO, as directed by the Michigan Supreme Court (MSC) to provide standards for JMHCS in the State.
- Allow the SCAO to establish a JMHC advisory committee.
- Require the SCAO, in conjunction with the Department of Health and Human Services (DHHS), to assure that training and technical assistance were available and provided to all JMHCS.
- Specify that all records of proceedings regarding the participation of a juvenile in the JMHC would have to remain closed to public inspection, and would be exempt from public disclosure.

House Bill 5807 would amend Chapter 10B (Mental Health Court) the Revised Judicature Act to do the following:

- Delete all references and provisions pertaining to juveniles and JMHCs.
- Include in the definition of "state-certified treatment court" a JMHC certified by the SCAO as provided in proposed Chapter 10C.

House Bill 5808 would amend the Probate Code to grant a family division of circuit court jurisdiction as provided in proposed Chapter 10C to make orders affecting adults as in the opinion of the court were necessary for the physical mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction.

House Bills 5806 (H-2) and 5807 are tie-barred to each other. House Bill 5808 is tie-barred to House Bill 5806. Each bill would take effect 90 days after its enactment.

House Bill 5806 (H-2) is described in greater detail below.

House Bill 5806 (H-2)

Juvenile Mental Health Court

The bill would allow the family division of a circuit court in any judicial circuit to adopt or institute a JMHC pursuant to statute or court rules. The creation or existence of a JMHC would not alter or affect the law or court rules concerning discharge or dismissal of an offense, or adjudication. The family division of a circuit court adopting or instituting a JMHC would have to enter into an MOU with all participating prosecuting authorities in the circuit, a representative or representatives of a community mental health services program, a representative of the State Bar of Michigan specializing in juvenile law, and a representative or representatives of community treatment providers that described the roles and responsibilities of each party to the MOU. The MOU also could include other parties considered necessary, including a representative or representatives of the local court funding unit or a domestic violence service provider program that received funding from the Michigan Domestic and Sexual Violence Prevention and Treatment Fund.

"Juvenile mental health court" would mean all of the following:

- A court-supervised treatment programs for juveniles would are diagnosed by a mental health professional with having a serious emotional disturbance, co-occurring disorder, or developmental disability.
- Programs designed to adhere to the seven common characteristics of a JMHC (described below).
- Programs designed to adhere to the 10 essential elements of a mental health court promulgated by the Bureau of Justice Assistance, or amended. (Please see **BACKGROUND** for information on those elements.)

"Serious emotional disturbance" would mean that term as defined in Section 100d of the Mental Health Code (a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the DHHS, and that has resulted in functional impairment that substantially interferes with or limits the minor's role or functioning in family, school, or community activities).

"Co-occurring disorder" would mean having one or more disorders relating to the use of alcohol or other controlled substance of abuse as well as any serious mental illness, serious emotional disturbance, or developmental disability. A diagnosis of co-occurring disorders would occur when at least one disorder of each type could be established independent of the other and was not simply a cluster of symptoms resulting from one disorder. "Serious mental illness" means that term as defined in Section 100d of the Mental Health Code (a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the Department and that has resulted in functional impairment that substantially interferes with or limits one or more major life activities).

"Developmental disability" means that term as defined in the Mental Health Code.

"Court funding unit" would mean that term as defined in Section 151e: one of the following, as applicable: a) a county, for circuit or probate court; b) a district funding unit as that term is defined in Section 8104, for district court; c) the city in which a municipal court is located, for municipal court. (Under Section 8104, "district funding unit" means:

- A county in districts of the first and second class.
- A city or township in districts of the third class.
- A city or incorporated village in districts of the third class in which portions of two townships comprise an incorporated village.)

A court that adopted a JMHC could accept participants from any other jurisdiction in the State based upon the residence of the participant in the receiving jurisdiction. A JMHC could refuse to accept participants from other jurisdictions.

A court that had adopted a JMHC would have to comply with the seven common characteristics of a JMHC published by Policy Research Associates, including:

- Regularly scheduled special docket.
- Less formal style of interaction among court officials and participants.
- Age-appropriate screening and assessment for trauma, substance use, and mental disorder.
- Team management of a participant's treatment and supervision
- System-wide accountability enforced by the JMHC.
- Use of graduated incentives and sanctions.
- Defined criteria for program success.

SCAO Certification

Beginning January 1, 2019, the bill would require a JMHC operating in Michigan, or a circuit court in any judicial circuit or the district court in any judicial district that sought to adopt or institute a JMHC, would have to be certified by the SCAO. The SCAO would have to establish the procedure for certification. Approval and certification of a JMHC would be required to begin or to continue the operation of JMHC under proposed Chapter 10C. The SCAO would have to include a certified juvenile mental on the statewide official list of JMHCs, and could not recognize and include on the list a JMHC that was not certified. A JMHC that was not certified could not perform any of the function of a JMHC, including any of the following functions:

- Charging a reasonable JMHC fee.
- Discharging and dismissing a case.
- Receiving funding from the MSC.

JMHC Duties & Responsibilities

A JMHC could hire, contract, or work in conjunction with mental health professional, in consultation with a local community mental health service provider, and other such appropriate people to assist the court in fulfilling its requirements under proposed Chapter 10C.

"Mental health professional" would mean an individual who is trained and experienced in the area of mental illness or developmental disabilities, and who is one of the following:

- A physician.
- A psychologist.
- A registered professional nurse.
- A licensed master's social worker.
- A licensed professional counselor.
- A licensed marriage and family therapist.

Each JMHC would have to determine whether a juvenile could be admitted, and no juvenile would have a right to be admitted. Admission into a JMHC program would be at the discretion of the court based on the juvenile's legal and clinical eligibility. A court would have to discretion to consider a juvenile's prior participation or completion status in a JMHC. A juvenile could be admitted to a JMHC regardless of prior participation or prior completion status; however, a violent offender could not be admitted into a JMHC. A juvenile who had failed two or more times in his or her participation in or completion of a juvenile mental health program could not be readmitted into the court within three years of a prior adjudication.

"Violent offender" would mean a juvenile who is adjudicated on or has been, with the preceding five years, adjudicated on one or more of the following offenses:

- First-degree murder.
- Second-degree murder.
- First-, second-, or third-degree criminal sexual conduct.
- Assault with intent to do great bodily harm less than murder.

Each JMHC would have to collect and provide data on each individual applicant and participant, and the entire program required by the SCAO. The SCAO would have to provide appropriate training to all courts entering data, as directed by the MSC.

Each JMHC 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.

The information collected regarding individual applicants to JMHC programs for the purpose of application to that program and participants who had successfully completed JMHC would be exempt from disclosure under FOIA.

The MSC would be responsible for the expenditure of State funds for the establishment and operation of JMHCs.

Each JMHC would have to report quarterly to the SCAO in a manner prescribed by the SCAO on the State funds received and spent by that JMHC.

Preadmission Screening and Assessment

Admission to a JMHC would not disqualify a juvenile for any other dispositional options available under State law or court rule.

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

- An assessment of the risk of danger or harm to the juvenile, others, and the community using standardized instruments that have acceptable reliability and validity.
- A mental health assessment, performed by a mental health professional, for an evaluation of a serious emotional disturbance, co-occurring disorder, or developmental disability.
- A review of the juvenile's family situation, special needs, or circumstances that potentially could affect his or her ability to receive mental health or substance abuse treatment and follow the court's orders, including input from family, caregivers, or other collateral supports.
- A review of the juvenile's delinquency history.

A review of the Law Enforcement Information Network (LEIN) could be sufficient for purposes of reviewing the juvenile's delinquency 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 juvenile to submit a statement as to whether or not he or she had previously been admitted to a JMHC, and the results of his or her participation in the prior program or programs.

Except as otherwise permitted in proposed Chapter 10C, any statement or other information obtained as a result of participating in a preadmission screen and assessment would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA), and could not be used in any future juvenile delinquency proceeding.

The court could request that the Michigan State Police provide to the court information contained in LEIN pertaining to a juvenile criminal history for the purposes of determining a juvenile's eligibility for admission in the JMHC.

If a juvenile were alleged to have engaged in activity that would constitute a criminal act if committed by an adult, his or her admission to a JMHC would be subject to both of the following conditions:

- The juvenile admitted responsibility for the violation or violations that he or she was accused of having committed.
- The parent, legal guardian, or legal custodian, and the juvenile would be required to sign all documents for the juvenile's admission in the JMHC, including a written agreement to participate in the JMHC.

Nothing in proposed Chapter 10C would be construed to preclude a court from providing mental health services to a juvenile before he or she admitted responsibility and was accepted into the JMHC.

JMHC Program Admission

A juvenile who had admitted responsibility, as part of his or her referral process to a JMHC, and who was subsequently not admitted to a court could not withdraw his or her admission of responsibility.

In addition to rights accorded a victim under the Crime Victim's Rights Act, a JMHC would have to permit any victim of the offense or offenses for which a juvenile had been petitioned to submit a written statement to the court regarding the advisability of admitting the juvenile into the JMHC.

Upon admitting a juvenile into a JMHC, all of the following would apply:

- The court would have to enter an adjudication upon acceptance of a juvenile's admittance of responsibility to the offense.
- Unless an MOU made to transfer a case between a receiving JMHC and the court of original jurisdiction provided otherwise, the original court of jurisdiction would maintain jurisdiction over the JMHC participant until final disposition of the case.
- The JMHC could require a juvenile and his or her parent to pay a reasonable JMHC fee that was reasonably related to the cost to the court for administering a juvenile mental health program as provided in a MOU.

The court could receive jurisdiction over the juvenile's parent or guardians under The Juvenile Code in order to assist in ensuring the juvenile's continued participation and successful completion of the juvenile mental court, and could issue and enforce any appropriate and necessary order regarding the parent or guardian.

A JMHC would have to transmit a fee collected to the treasurer of the local funding unit at the end of each month.

A JMHC would have to provide a participant with all of the following:

- Consistent and close monitoring of a juvenile's treatment and recovery.
- If found necessary or appropriate, periodic and random testing for the presence of any nonprescribed controlled substance or alcohol, as well as compliance with or effectiveness of prescribed medication using to the extent practicable the best available, accepted, and scientifically valid methods.
- Periodic judicial reviews of the participant's circumstances and progress in the program.
- A regimen or strategy of individualized and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of detainment.
- Mental health services, substance use disorder services, education, and vocational opportunities as appropriate and practicable.

JMHC Program Completion

After a juvenile's completion of a required JMHC program participation, an exit evaluation would have to be conducted in order to assess the juvenile's continuing need for mental health, developmental disability, or substance abuse services.

Any statement or other information obtained as a result of participating in assessment, treatment, or testing while in a JMHC would be confidential and exempt from disclosure under the United States Constitution, the Michigan Constitution, and FOIA, and could not be used in criminal prosecution, unless it revealed criminal act other than, or inconsistent with, personal controlled substance use.

JMHC Program Termination

In order to continue to participate in and successfully complete a JMHC program, a juvenile would have to comply with all court orders, violations of which could be sanctioned at the court's discretion.

If the juvenile were accused of a new offense, the judge would have to discretion to terminate the juvenile's participation in the JMHC program. If the juvenile were adjudicated on or convicted of one more offenses for which a juvenile would be classified as a "violent offender", and the offense that was committed after he or she was admitted into the program, the juvenile would have to be discharged immediately from the program as unsuccessful.

The court would have to require a juvenile to pay all court fines, costs, court fees, restitution, and assessments. However, except as otherwise provided by law, if a court determined that the payment of court fines, costs, court fees, or drug or alcohol testing expenses would be a substantial hardship for the juvenile and his or her family, or would interfere with the juvenile's treatment, the court could waive all or part of those fines, fees, or testing expenses, except those required by statute.

Court Duties & Responsibilities

The responsible mental health provider would have to notify the court of a participant's formal objection to his or her written individual plan of services developed under Section 712(2) of the Mental Health Code. However, the court would not be obligated to take any action in response to a notice. (Section 712(2) specifies that if a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review must be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.)

After a participant's completion or termination of a JMHC program, a 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, if it were terminated, the reasons for the termination.

A court, with the agreement of the prosecutor and in conformity with the terms and conditions of a MOU, could discharge and dismiss the proceedings.

Except as otherwise provided, if a juvenile had successfully completed probation or other court supervision, the court would have to do the following:

- If the court had not already disposed of the juvenile, proceed to disposition pursuant to the agreement under which the juvenile was admitted into JMHC.
- Send a record of adjudication of responsibility and disposition to the MSP and the Secretary of State, as applicable.

SCAO Duties & Responsibilities

As directed by the MSC, the SCAO would have to provide standards for JMHCs in the State, including developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards would have to provide comparability between programs and their outcomes.

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

As directed by the MSC, the SCAO would have to, in conjunction with the DHHS, assure that training and technical assistance were available and provided to all JMHCs.

Record Disclosure Exemption

Except for program termination due to the commission of a new offense, failure to complete a JMHC program could not be a prejudicial factor in disposition. All records of proceedings regarding the participation of a juvenile in the JMHC would have to remain closed to public inspection, and would be exempt from public disclosure, including disclosure under FOIA.

Proposed MCL 600.1099b et al. (H.B. 5806)
MCL 600.1088 et al. (H.B. 5807)
MCL 712A.6 (H.B. 5808)

BACKGROUND

The Bureau of Justice has promulgated 10 elements of a mental health court, as follows:

- A broad-based group of stakeholders representing the criminal justice system, the juvenile justice system, the mental health system, the substance abuse treatment system, any related systems, and the community guide the planning and administration of the court.
- Eligibility criteria that address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for juveniles with mental illnesses, and that take into account the relationship between mental illness and a juvenile's offenses, while allowing the individual circumstances of each case to be considered.
- Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.
- Terms of participation are clear, promote public safety, facilitate the juvenile's engagement in treatment, are individualized to correspond to the level of risk that each juvenile presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.
- Connect participants to comprehensive and individualized treatment supports and services in the community and strive to use, and increase the availability of, treatment and services that are evidence-based.
- Health and legal information are shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights, and information gathered as part of the participants' court-ordered treatment program or services is safeguarded from public disclosure in the event that participants are returned to traditional court processing.
- A team of criminal justice, if applicable, juvenile justice, and mental health staff and treatment providers receive special, ongoing training and assist mental health court participants to achieve treatment and criminal and juvenile justice goals by regularly reviewing and revising the court process.
- Criminal and juvenile justice and mental health staff collaboratively monitored participants' adherence to court conditions, offered individualized graduated incentives and sanctions, and modified treatment as necessary to promote public safety and participants' recovery.
- Data are collected and analyzed to demonstrate the impact of the juvenile mental health court, its performance is assessed periodically, procedures are modified accordingly, court

- processes are institutionalized, and support for the court in the community is cultivated and expanded.
- In accordance with the Michigan Indigent Defense Commission Act, provided legal counsel to juvenile respondents to explain program requirements, including voluntary participation, and guide juveniles in decisions about program involvement.

Procedures must exist in the juvenile mental health court to address, in a timely fashion, concerns about a juvenile's competency whenever they arise.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 5806 (H-2) would have no fiscal impact on the State or local government. The bill would establish a separate chapter of the Revised Judicature Act, Chapter 10C, specifically dedicated to juvenile mental health courts, the provisions of which already exist under Chapter 10B.

House Bills 5807 and 5808 would have no fiscal impact on State or local government.

Fiscal Analyst: Abbey Frazier

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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.