

HOUSE BILL No. 5807

April 12, 2018, Introduced by Reps. Calley and LaGrand and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 1088, 1091, 1093, 1094, 1095, and 1098 (MCL 600.1088, 600.1091, 600.1093, 600.1094, 600.1095, and 600.1098), section 1088 as added and section 1095 as amended by 2017 PA 161, section 1091 as amended by 2017 PA 163, section 1093 as added by 2013 PA 274, section 1094 as added by 2013 PA 276, and section 1098 as added by 2013 PA 275.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1088. (1) Beginning January 1, 2018, a case may be
2 transferred totally from 1 court to another court for the
3 defendant's participation in a state-certified treatment court. A
4 total transfer may occur prior to or after adjudication, but must
5 not be consummated until the completion and execution of a

1 memorandum of understanding that must include, but need not be
2 limited to, all of the following:

3 (a) A detailed statement of how all funds assessed to
4 defendant will be accounted for, including, but not necessarily
5 limited to, the need for a receiving state-certified treatment
6 court to collect funds and remit them to the court of original
7 jurisdiction.

8 (b) A statement providing which court is responsible for
9 providing information to the department of state police, as
10 required under section 3 of 1925 PA 289, MCL 28.243, and forwarding
11 an abstract to the secretary of state for inclusion on the
12 defendant's driving record.

13 (c) A statement providing where jail sanctions or
14 incarceration sentences would be served, as applicable.

15 (d) A statement that the defendant has been determined
16 eligible by and will be accepted into the state-certified treatment
17 court upon transfer.

18 (e) The approval of all of the following:

19 (i) The chief judge and assigned judge of the receiving state-
20 certified treatment court and the court of original jurisdiction.

21 (ii) A prosecuting attorney from the receiving state-certified
22 treatment court and the court of original jurisdiction.

23 (iii) The defendant.

24 (2) As used in this section, "state-certified treatment court"
25 includes the treatment courts certified by the state court
26 administrative office as provided in section 1062, 1084, 1091,
27 **1099C**, or 1201.

1 Sec. 1091. (1) The circuit court or the district court in any
2 judicial circuit or a district court in any judicial district may
3 adopt or institute a mental health court pursuant to statute or
4 court rules. However, if the mental health court will include in
5 its program individuals who may be eligible for discharge and
6 dismissal of an offense, delayed sentence, or deviation from the
7 sentencing guidelines, the circuit or district court shall not
8 adopt or institute the mental health court unless the circuit or
9 district court enters into a memorandum of understanding with each
10 participating prosecuting attorney in the circuit or district court
11 district, a representative or representatives of the community
12 mental health services programs, a representative of the criminal
13 defense bar, and a representative or representatives of community
14 treatment providers. The memorandum of understanding also may
15 include other parties considered necessary, including, but not
16 limited to, a representative or representatives of the local court
17 funding unit or a domestic violence service provider program that
18 receives funding from the ~~state~~**MICHIGAN** domestic **AND SEXUAL**
19 violence prevention and treatment board. The memorandum of
20 understanding must describe the role of each party.

21 ~~—— (2) A family division of circuit court in any judicial circuit~~
22 ~~may adopt or institute a juvenile mental health court pursuant to~~
23 ~~statute or court rules. The creation or existence of a mental~~
24 ~~health court does not change the statutes or court rules concerning~~
25 ~~discharge or dismissal of an offense, or a delayed sentence or~~
26 ~~deferred entry of judgment. A family division of circuit court~~
27 ~~adopting or instituting a juvenile mental health court shall enter~~

~~into a memorandum of understanding with all participating prosecuting authorities in the circuit or district court, a representative or representatives of the community mental health services program, a representative of the criminal defense bar specializing in juvenile law, and a representative or representatives of community treatment providers that describes the roles and responsibilities of each party to the memorandum of understanding. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the state domestic violence prevention and treatment board. The memorandum of understanding must describe the role of each party. A juvenile mental health court is subject to the same procedures and requirements provided in this chapter for a mental health court created under subsection (1), except as specifically provided otherwise in this chapter.~~

(2) ~~(3)~~—A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions.

(3) ~~(4)~~—Beginning January 1, 2018, a mental health court operating in this state, or a circuit court in any judicial circuit

1 or the district court in any judicial district seeking to adopt or
2 institute a mental health court, must be certified by the state
3 court administrative office. The state court administrative office
4 shall establish the procedure for certification. Approval and
5 certification under this subsection of a mental health court is
6 required to begin or to continue the operation of a mental health
7 court under this chapter. The state court administrative office
8 shall not recognize and include a mental health court that is not
9 certified under this subsection on the statewide official list of
10 mental health courts. The state court administrative office shall
11 include a mental health court certified under this subsection on
12 the statewide official list of mental health courts. A mental
13 health court that is not certified under this subsection shall not
14 perform any of the functions of a mental health court, including,
15 but not limited to, any of the following functions:

16 (a) Charging a fee under section 1095.

17 (b) Discharging and dismissing a case as provided in section
18 1098.

19 (c) Receiving funding under section 1099a.

20 Sec. 1093. (1) Each mental health court shall determine
21 whether an individual may be admitted to the mental health court.
22 No individual has a right to be admitted into a mental health
23 court. Admission into a mental health court program is at the
24 discretion of the court based on the individual's legal or clinical
25 eligibility. An individual may be admitted to mental health court
26 regardless of prior participation or prior completion status.
27 However, in no case shall a violent offender be admitted into

1 mental health court.

2 (2) In addition to admission to a mental health court under
3 this chapter, an individual who is eligible for admission under
4 this chapter may also be admitted to a mental health court under
5 any of the following circumstances:

6 (a) The individual has been assigned the status of youthful
7 trainee under section 11 of chapter II of the code of criminal
8 procedure, 1927 PA 175, MCL 762.11.

9 (b) The individual has had criminal proceedings against him or
10 her deferred and has been placed on probation under any of the
11 following:

12 (i) Section 7411 of the public health code, 1978 PA 368, MCL
13 333.7411.

14 (ii) Section 4a of chapter IX of the code of criminal
15 procedure, 1927 PA 175, MCL 769.4a.

16 (iii) Section 350a or 430 of the Michigan penal code, 1931 PA
17 328, MCL 750.350a and 750.430.

18 (3) To be admitted to a mental health court, an individual
19 shall cooperate with and complete a preadmission screening and
20 evaluation assessment and shall submit to any future evaluation
21 assessment as directed by the mental health court. A preadmission
22 screening and evaluation assessment ~~shall~~**MUST** include all of the
23 following:

24 (a) A review of the individual's criminal history. A review of
25 the law enforcement information network may be considered
26 sufficient for purposes of this subdivision unless a further review
27 is warranted. The court may accept other verifiable and reliable

1 information from the prosecution or defense to complete its review
2 and may require the individual to submit a statement as to whether
3 or not he or she has previously been admitted to a mental health
4 court and the results of his or her participation in the prior
5 program or programs.

6 (b) An assessment of the risk of danger or harm to the
7 individual, others, or the community.

8 (c) A mental health assessment, clinical in nature, and using
9 standardized instruments that have acceptable reliability and
10 validity, meeting diagnostic criteria for a serious mental illness,
11 serious emotional disturbance, co-occurring disorder, or
12 developmental disability.

13 (d) A review of any special needs or circumstances of the
14 individual that may potentially affect the individual's ability to
15 receive mental health or substance abuse treatment and follow the
16 court's orders.

17 ~~—— (e) For a juvenile, an assessment of the juvenile's family~~
18 ~~situation, including, to the extent practicable, a comparable~~
19 ~~review of any guardians or parents.~~

20 (4) Except as otherwise permitted in this chapter, any
21 statement or other information obtained as a result of
22 participating in a preadmission screening and evaluation assessment
23 under subsection (3) is confidential and is exempt from disclosure
24 under the freedom of information act, 1976 PA 442, MCL 15.231 to
25 15.246, and ~~shall~~ **MUST** not be used in a criminal prosecution,
26 unless it reveals criminal acts other than, or inconsistent with,
27 personal drug use.

1 (5) The court may request that the department of state police
2 provide to the court information contained in the law enforcement
3 information network pertaining to an individual applicant's
4 criminal history for the purposes of determining an individual's
5 eligibility for admission into the mental health court and general
6 criminal history review.

7 Sec. 1094. (1) If the individual is charged in a criminal case
8 ~~or, in the case of a juvenile, is alleged to have engaged in~~
9 ~~activity that would constitute a criminal act if committed by an~~
10 ~~adult,~~ his or her admission to mental health court is subject to
11 all of the following conditions:

12 (a) The individual ~~, if an adult,~~ pleads guilty, no contest,
13 or be convicted of any criminal charge on the record. ~~The~~
14 ~~individual, if a juvenile, admits responsibility for the violation~~
15 ~~or violations that he or she is accused of having committed.~~

16 (b) The individual waives, in writing, the right to a speedy
17 trial and, with the agreement of the prosecutor, the right to a
18 preliminary examination.

19 (c) The individual signs a written agreement to participate in
20 the mental health court. If the individual is ~~a juvenile or an~~
21 individual who has been assigned a guardian, the ~~parent or legal~~
22 guardian is required to sign all documents for the individual's
23 admission in the mental health court.

24 (2) Nothing in this chapter shall be construed to preclude a
25 court from providing mental health services to an individual before
26 he or she enters a plea and is accepted into the mental health
27 court.

1 (3) An individual who has waived his or her right to a
2 preliminary examination, who has pled guilty or no contest ~~or, in~~
3 ~~the case of a juvenile, has admitted responsibility, as part of his~~
4 ~~or her referral process to a mental health court, and who is~~
5 subsequently not admitted to a mental health court may withdraw his
6 or her plea and is entitled to a preliminary examination. ~~or, in~~
7 ~~the case of a juvenile, may withdraw his or her admission of~~
8 ~~responsibility.~~

9 (4) In addition to rights accorded a victim under the William
10 Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751
11 to 780.834, the mental health court shall permit any victim of the
12 offense or offenses of which the individual is charged ~~or, in the~~
13 ~~case of a juvenile, any victim of the activity that the individual~~
14 ~~is alleged to have committed and that would constitute a criminal~~
15 ~~act if committed by an adult, as well as any victim of a prior~~
16 offense of which that individual was convicted ~~or, in the case of a~~
17 ~~juvenile, a prior offense for which the individual has been found~~
18 ~~responsible,~~ to submit a written statement to the court regarding
19 the advisability of admitting the individual into the mental health
20 court.

21 Sec. 1095. (1) Upon admitting an individual into a mental
22 health court, all of the following apply:

23 (a) For an individual who is admitted to a mental health court
24 based upon having criminal charges currently filed against him or
25 her and who has not already pled guilty or no contest ~~or, in the~~
26 ~~case of a juvenile, has not admitted responsibility,~~ the court
27 shall accept the plea of guilty or no contest. ~~or, in the case of a~~

1 ~~juvenile, the admission of responsibility.~~

2 (b) For an individual who pled guilty or no contest to ~~, or~~
3 ~~admitted responsibility for,~~ criminal charges for which he or she
4 was admitted into the mental health court, the court shall do
5 either of the following:

6 (i) In the case of an individual who pled guilty or no contest
7 to criminal offenses that are not traffic offenses and who may be
8 eligible for discharge and dismissal under the agreement for which
9 he or she was admitted into mental health court upon successful
10 completion of the mental health court program, the court shall not
11 enter a judgment of guilt. ~~or, in the case of a juvenile, shall not~~
12 ~~enter an adjudication of responsibility.~~

13 (ii) In the case of an individual who pled guilty to a traffic
14 offense or who pled guilty to an offense but may not be eligible
15 for discharge and dismissal pursuant to the agreement with the
16 court and prosecutor upon successful completion of the mental
17 health court program, the court shall enter a judgment of guilt.
18 ~~or, in the case of a juvenile, shall enter an adjudication of~~
19 ~~responsibility.~~

20 (iii) Pursuant to the agreement with the individual and the
21 prosecutor, the court may either delay further proceedings as
22 provided in section 1 of chapter XI of the code of criminal
23 procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as
24 applicable, and place the individual on probation or other court
25 supervision in the mental health court program with terms and
26 conditions according to the agreement and as considered necessary
27 by the court.

1 (2) Unless a memorandum of understanding made pursuant to
2 section 1088 between a receiving mental health court and the court
3 of original jurisdiction provides otherwise, the original court of
4 jurisdiction maintains jurisdiction over the mental health court
5 participant as provided in this chapter until final disposition of
6 the case, but not longer than the probation period fixed under
7 section 2 of chapter XI of the code of criminal procedure, 1927 PA
8 175, MCL 771.2. ~~In the case of a juvenile participant, the court~~
9 ~~may obtain jurisdiction over the juvenile's parents or guardians in~~
10 ~~order to assist in ensuring the juvenile's continued participation~~
11 ~~and successful completion of the mental health court and may issue~~
12 ~~and enforce any appropriate and necessary order regarding the~~
13 ~~parent or guardian.~~

14 (3) The mental health court may require an individual admitted
15 into the court to pay a reasonable mental health court fee that is
16 reasonably related to the cost to the court for administering the
17 mental health court program as provided in the memorandum of
18 understanding. The clerk of the mental health court shall transmit
19 the fees collected to the treasurer of the local funding unit at
20 the end of each month.

21 Sec. 1098. (1) Upon completion or termination of the mental
22 health court program, the court shall find on the record or place a
23 written statement in the court file indicating whether the
24 participant completed the program successfully or whether the
25 individual's participation in the program was terminated and, if it
26 was terminated, the reason for the termination.

27 (2) If an individual is participating in a mental health court

1 under section 11 of chapter II of the code of criminal procedure,
2 1927 PA 175, MCL 762.11, section 7411 of the public health code,
3 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of
4 criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430
5 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430,
6 the court shall proceed under the applicable section of law. There
7 may only be 1 discharge or dismissal under this subsection.

8 (3) Except as provided in subsection (4), the court, with the
9 agreement of the prosecutor and in conformity with the terms and
10 conditions of the memorandum of understanding under section 1091,
11 may discharge and dismiss the proceedings against an individual who
12 meets all of the following criteria:

13 (a) The individual has participated in a mental health court
14 for the first time.

15 (b) The individual has successfully completed the terms and
16 conditions of the mental health court program.

17 (c) The individual is not required by law to be sentenced to a
18 correctional facility for the crimes to which he or she has pled
19 guilty.

20 (d) The individual has not previously been subject to more
21 than 1 of the following:

22 (i) Assignment to the status of youthful trainee under section
23 11 of chapter II of the code of criminal procedure, 1927 PA 175,
24 MCL 762.11.

25 (ii) The dismissal of criminal proceedings against the
26 individual under section 7411 of the public health code, 1978 PA
27 368, MCL 333.7411, section 4a of chapter IX of the code of criminal

1 procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the
2 Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

3 (4) The court may order a discharge and dismissal of a
4 domestic violence offense only if all of the following
5 circumstances apply:

6 (a) The individual has not previously had proceedings
7 dismissed under section 4a of chapter IX of the code of criminal
8 procedure, 1927 PA 175, MCL 769.4a.

9 (b) The domestic violence offense is eligible to be dismissed
10 under section 4a of chapter IX of the code of criminal procedure,
11 1927 PA 175, MCL 769.4a.

12 (c) The individual fulfills the terms and conditions imposed
13 under section 4a of chapter IX of the code of criminal procedure,
14 1927 PA 175, MCL 769.4a, and the discharge and dismissal of
15 proceedings are processed and reported under section 4a of chapter
16 IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

17 (5) A discharge and dismissal under subsection (3) ~~shall be~~ **IS**
18 without adjudication of guilt ~~or, for a juvenile, without~~
19 ~~adjudication of responsibility and are~~ **AND IS** not a conviction ~~or a~~
20 ~~finding of responsibility~~ for purposes of this section or for
21 purposes of disqualifications or disabilities imposed by law upon
22 conviction of a crime. ~~or, for a juvenile, a finding of~~
23 ~~responsibility.~~ There may only be 1 discharge and dismissal under
24 subsection (3) for an individual. The court shall send a record of
25 the discharge and dismissal to the criminal justice information
26 center of the department of state police, and the department of
27 state police shall enter that information into the law enforcement

1 information network with an indication of participation by the
2 individual in a mental health court. All records of the proceedings
3 regarding the participation of the individual in the mental health
4 court under subsection (3) are closed to public inspection from the
5 date of deferral and are exempt from public disclosure under the
6 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but
7 ~~shall~~ **MUST** be open to the courts of this state, another state, or
8 the United States, the department of corrections, law enforcement
9 personnel, and prosecutors only for use in the performance of their
10 duties or to determine whether an employee of the court,
11 department, law enforcement agency, or prosecutor's office has
12 violated his or her conditions of employment or whether an
13 applicant meets criteria for employment with the court, department,
14 law enforcement agency, or prosecutor's office. The records and
15 identifications division of the department of state police shall
16 retain a nonpublic record of an arrest, court proceedings, and the
17 discharge and dismissal under this subsection.

18 (6) Except as provided in subsection (2), (3), or (4), if an
19 individual has successfully completed probation or other court
20 supervision, the court shall do the following:

21 (a) If the court has not already entered an adjudication of
22 guilt, ~~or responsibility, enter an adjudication of guilt. or, in~~
23 ~~the case of a juvenile, enter a finding or adjudication of~~
24 ~~responsibility.~~

25 (b) If the court has not already sentenced the individual,
26 proceed to sentencing ~~or, in the case of a juvenile, disposition~~
27 pursuant to the agreement **UNDER WHICH THE INDIVIDUAL WAS ADMITTED**

1 **INTO THE MENTAL HEALTH COURT.**

2 (c) Send a record of the conviction, ~~and sentence, or the~~
3 ~~finding or adjudication of responsibility~~ and disposition to the
4 criminal justice information center of the department of state
5 police.

6 (7) For a participant whose participation is terminated or who
7 fails to successfully complete the mental health court program, the
8 court shall enter an adjudication of guilt, ~~or, in the case of a~~
9 ~~juvenile, a finding of responsibility,~~ if the entry of guilt ~~or~~
10 ~~adjudication of responsibility~~ was delayed or deferred under
11 section 1094, and shall then proceed to sentencing ~~or disposition~~
12 of the individual for the original charges to which the individual
13 pled guilty ~~or, in the case of a juvenile, to which the juvenile~~
14 ~~admitted responsibility~~ prior to admission to the mental health
15 court. Except for program termination due to the commission of a
16 new crime, failure to complete a mental health court program ~~shall~~
17 **MUST** not be a prejudicial factor in sentencing. All records of the
18 proceedings regarding the participation of the individual in the
19 mental health court ~~shall~~ **MUST** remain closed to public inspection
20 and exempt from public disclosure as provided in subsection (5).

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.

23 Enacting section 2. This amendatory act does not take effect
24 unless Senate Bill No. ____ or House Bill No. 5806 (request no.
25 05303'18) of the 99th Legislature is enacted into law.