



Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4522 (Substitute H-2 as passed by the House)
Sponsor: Representative Kelly Breen
House Committee: Judiciary
Senate Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 1-30-24

INTRODUCTION

The bill would allow a circuit court to establish a family treatment court, which would provide a court-supervised treatment program for an individual who had a civil child abuse or neglect case and who was diagnosed with a substance abuse disorder. A court adopting a family treatment court would have to participate in training and be certified by the State Court Administrative Office (SCAO). The bill would require participants to complete a preadmission evaluation, prescribe requirements of participants, and specify the duties of a family treatment court to a participant. A violent offender would be prohibited from participating in a family treatment court except in specified circumstances.

The bill would require a family treatment court to notify the Department of Health and Human Services (DHHS) of family treatment court participation or termination. It also would require the SCAO to collect participant data and use that data to annually review family treatment courts in a report provided to specified entities, including the Legislature, the Supreme Court, and the Governor.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a reintroduction of House Bill 5340 of the 2021-2022 Legislative Session.

BRIEF FISCAL IMPACT

The bill would have costs associated with the establishment of new treatment courts. The cost would likely be about \$100,000 per treatment court established, per year. The chief judge of each circuit court would determine whether a new treatment court was established. The DHHS would have a minor increase in administrative costs related to additional requests for information on an individual's child protective services history. The total impact would depend on the number of additional requests.

MCL 600.1082 et al.

Legislative Analyst: Eleni Lionas
Fiscal Analyst: Humphrey Akujobi
Joe Carrasco, Jr.
Elizabeth Raczkowski
Cory Savino, PhD
Michael Siracuse

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- Allow a circuit court in any judicial circuit to adopt or institute a family treatment court upon entering a memorandum of understanding with the prosecuting attorney and other individuals.**
- Require a family treatment court to participate in training required by the SCAO and receive certification by the SCAO.**
- Require the Supreme Court to spend State funds for the establishment and operation of family treatment courts and require the distribution of Federal funds provided to the State for the operation of such courts.**
- Require eligible participants to complete a preadmission evaluation and prescribe family treatment court participation requirements, including compliance with all court orders and payment of a reasonable treatment court fee, unless the fee presented a substantial hardship for a participant.**
- Prohibit a violent offender from participating in a family treatment court unless the family treatment court judge, the lawyer-guardian ad litem, and the prosecuting attorney, in consultation with any victim, consented to the violent offender being admitted to the family treatment court.**
- Provide for the confidentiality of a statement or other admission obtained because of preadmission evaluation or participation in the court unless the statement concerned criminal activity other than drug use.**
- Require a family treatment court to maintain and keep on record certain participant information.**
- Prescribe the duties the court would owe to the participant during a treatment program, including substance abuse treatment services and a strategy for compliance with a treatment plan.**
- Require certain data reporting to the DHHS, the SCAO, and the Legislature.**
- Add a circuit court judge who had presided over a family treatment court to the State Drug Court Advisory Committee.**
- Require the Committee to monitor the effectiveness of family treatment courts.**

State Drug Court Advisory Committee

The State Drug Treatment Court Advisory Committee monitors the effectiveness of drug and veterans treatment courts and the availability of funding for those courts. The Committee must annually present recommendations to the Legislature and Supreme Court regarding proposed statutory changes.

The bill also would require the Committee to monitor and report on family treatment courts. Additionally, the bill would add to the Committee a member who was a circuit court judge that had presided over a family treatment court. This member would have to be appointed jointly by the Speaker of the House of Representatives and the Senate Majority Leader and would serve a three-year term.

"Family treatment court" would mean either a court-supervised treatment program for individuals with a civil child abuse or neglect case and who are diagnosed with a substance use disorder or a program designed to adhere to the family treatment court best practice standards promulgated by a national organization representing the interest of drug and specialty court treatment programs and the Center for Children and Family Futures, which include all the following:

- Early identification, screening, and assessment of eligible participants, with prompt placement in the program.
- Integration of timely, high-quality, and appropriate substance use disorder treatment services with justice system case processing.
- Access to comprehensive case management, services, and supports for families.
- Valid, reliable, random, and frequent drug testing.
- Therapeutic responses to improve parent, child, and family functioning, ensure children's safety, permanency, and well-being, support participant behavior change, and promote participant accountability.
- Ongoing close judicial interaction with each participant.
- Collecting and reviewing data to monitor participant progress, engage in a process of continuous quality improvement, monitor adherence to best practice standards, and evaluate outcomes using scientifically reliable and valid procedures.
- Continued interdisciplinary education to promote effective family treatment court planning, implementation, and operation.
- The forging of partnerships among other family treatment courts, public agencies, and community-based organizations to generate local support.
- A family-centered, culturally relevant, and trauma-informed approach.
- Ensuring equity and inclusion.

"Family-centered" would mean a treatment approach that is designed to meet the needs of each member of a family, not just the individual diagnosed with a substance abuse disorder, and recognizes that families are diverse and can be made up of nuclear family members, extended family members, fictive kin, and nonblood relations. "Family" would mean all individuals whom the child and parent define as family.

Establishment of Family Treatment Courts

The bill would add Chapter 10D to the Act to allow a circuit court in any judicial circuit to adopt or institute a family treatment court, according to statute or court rules. The circuit court could not adopt or institute the family treatment court unless the circuit court entered a memorandum of understanding with the prosecuting attorney, a representative of the bar specializing in family or juvenile law, a lawyer-guardian ad litem, a representative or representatives of the DHHS, and a representative or representatives of community treatment providers. The memorandum of understanding also could include other parties considered necessary, such as a court appointed special advocate, local law enforcement, the local substance abuse coordinating agency for that circuit court, a mental health treatment provider, a domestic violence services provider, an Indian child's tribe, or child and adolescent services providers. The memorandum of understanding would have to describe the role of each party.

"Lawyer-guardian ad litem" would mean an attorney appointed under Section 17c of Chapter XIIA (Jurisdiction, Procedure, And Disposition Involving Minors) of the juvenile Code. (Section 17c of the Code governs the procedure for advising a minor of the right to an attorney and appointing such an attorney.)

"Indian child's tribe" would mean the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian child's tribe is the tribe with which the Indian child has the most significant contacts.

A court adopting a family treatment court would have to participate in training as required by the SCAO.

A family treatment court operating in the State, or a circuit court in any judicial circuit seeking to adopt or institute a family treatment court, would have to be certified by the SCAO. The SCAO, under the direction and supervision of the Supreme Court, would have to establish the procedure for certification. The approval and certification of a family treatment court by the SCAO would be required to begin or to continue the operation of a family treatment court under Chapter 10D.

In addition, the SCAO, under the direction and supervision of the Supreme Court, would have to include a certified family treatment court on the statewide official list of family treatment courts. The SCAO could not recognize and include a family treatment court that was not certified on the statewide official list of family treatment courts. A family treatment court that was not certified could not perform any of the functions of a family treatment court, including receiving funding under Chapter 10D.

Funding

The Supreme Court would be responsible for the spending of State funds for the establishment and operation of family treatment courts. Federal funds provided to the State for the operation of family treatment courts would have to be distributed by the DHHS or the applicable State agency. The State Treasurer could receive money or other assets from any source for deposit into the appropriate State fund or funds for the purposes described above.

Each family treatment court would have to report quarterly to the SCAO on the funds received and spent by that family treatment court, in a manner prescribed by the SCAO.

Admission

Under the bill, a family treatment court could hire or contract with licensed or accredited treatment providers in consultation and cooperation with the local substance abuse coordinating agency, the local community mental health service provider, and other such appropriate persons to assist the family treatment court in fulfilling its requirements, including the following:

- The investigation of an individual's background or circumstances.
- The clinical evaluation of an individual for the individual's admission into or participation in a family treatment court.
- Providing a recommended treatment modality and level of care.
- Providing evidence-based, family-centered treatment using an integrated, comprehensive continuum of care.

A family treatment court would have to determine whether an individual could be admitted to the family treatment court. An individual would not have a right to be admitted into a family treatment court. Unless the family treatment court judge and the prosecuting attorney consent, in consultation with any known victim in the instant case, a violent offender could not be admitted into a family treatment court. An individual could not be admitted to a family treatment court if either of the following applied:

- The individual was currently charged with first degree murder in violation of Section 316 of the Michigan Penal Code, or criminal sexual conduct in the first-, second-, or third-degree in violation of Section 520b, 520c, or 520d of the Code.
- The individual had been convicted of first-degree murder in violation of Section 316 of the Code, criminal sexual conduct in the first degree in violation of Section 520b of the Code, or child sexually abusive activity in violation of Section 145c of the Code.

"Violent offender" would mean an individual who is currently charged with or has pled guilty to an offense involving the death of or serious bodily injury to any individual, whether or not death or serious bodily injury is an element of the offense, or an offense that is criminal sexual conduct of any degree.

Preadmission Evaluation

To be admitted into a family treatment court, admission would have to be indicated as appropriate due to a preadmission screening, evaluation, or assessment with an evidence-based screening and assessment tool. An individual would have to cooperate with and complete a preadmission screening, evaluation, or assessment, and would have to agree to cooperate with any future evaluation or assessment as directed by the family treatment court. A preadmission screening, evaluation, or assessment would have to include all the following:

- A complete review of the individual's child protective services history.
- As much as practicable, a complete review of the individual's civil record, including any records pertaining to divorce, custody, personal protection order, and extreme risk protection order proceedings.
- An assessment of the family situation, including any nonrespondent parent and family support.
- An assessment of the risk of danger or harm to the individual, the individual's children, or the community.
- As much as practicable and if possible, by clinical assessment, a complete review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or was drug or alcohol dependent.
- A review of any special needs or circumstances of the individual that could potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

Additionally, the preadmission screening, evaluation, or assessment would have to include a complete review of the individual's criminal history and a review of whether the individual had been admitted to, had participated in, or was currently participating in a problem-solving court. The court could accept verifiable and reliable information from the prosecutor or the individual's attorney to complete its review and could require the individual to submit a statement as to whether the individual had previously been admitted to a problem-solving court and the results of the individual's participation in the prior program or programs.

The information received for a preadmission assessment would have to be confidential and could not be used for any purpose other than treatment and case planning. Except as otherwise permitted, any statement or other information obtained while participating in a preadmission screening, evaluation, or assessment would be confidential and would be exempt from disclosure under the Freedom of Information Act (FOIA) and could not be used in a criminal prosecution, unless it revealed criminal acts other than, or inconsistent with, personal drug use.

The court could request that the DHHS provide to the court information about an individual applicant's child protective services history to determine an individual's admission into the family treatment court. The DHHS would have to provide the information requested by a family treatment court and as required under Section 7(1)(g) of the Child Protection Law (CPL). (Generally, Section 7(1)(g) of the CPL allows a court access to otherwise confidential information for the purpose of determining the suitability of a person as a minor's guardian.)

Court Filing Requirements

Before an individual was admitted into a family treatment court, the court would have to find on the record, or place a statement in the court file establishing all the following:

- That the individual had a substance use disorder and was an appropriate candidate for participation in the family treatment court as determined by the preadmission screening, evaluation, or assessment.
- That the individual understood the consequences of entering the family treatment court and agreed to comply with all court orders and requirements of the family treatment court and treatment providers.
- That an individual had completed a preadmission screening, evaluation, or assessment and agreed to cooperate with any future evaluation or assessment as directed by the family treatment court.
- The terms and conditions of the agreement between the parties.
- Either the individual was not a violent offender or, as described below, the family treatment court judge, the lawyer-guardian ad litem, and the prosecuting attorney, in consultation with any known victim in the instant case, consented to the violent offender being admitted to the family treatment court.
- The individual was not currently charged with first-degree murder or criminal sexual conduct in the first-, second-, or third-degree.
- The individual had never been convicted of first-degree murder, criminal sexual conduct in the first degree, or child sexually abusive activity.

Admission with Child Abuse or Neglect Case

If the individual being considered for admission to a family treatment court was adjudicated in a civil child neglect and abuse case, the individual's admission would have to be subject to all the following conditions:

- The allegations contained in the petition would have to be related to the abuse, illegal use, or possession of a controlled substance or alcohol.
- The individual would have to make an admission of responsibility to the allegations on the record.
- The individual would have to sign a written agreement to participate in the family treatment court.

Court Admittance and Participation Duties

On admitting an individual into a family treatment court, the following would apply:

- For an individual who was admitted to a family treatment court based on having an adjudicated child neglect or abuse case, the court would have to accept the admission of responsibility to the allegations described above.
- The court could place the individual under court jurisdiction in the family treatment court program with terms and conditions as considered necessary by the court.

The family treatment court would have to cooperate with, and act in a collaborative manner with, the prosecutor, representative of the bar specializing in family or juvenile law, treatment providers, lawyer-guardian ad litem, local substance abuse coordinating agency, DHHS, and, to the extent possible, court appointed special advocate, local law enforcement, child and adolescent services providers, domestic violence services providers, Indian child's tribe, and community corrections agencies.

The family treatment court could require an individual admitted into the court to pay a reasonable family treatment court fee that was reasonably related to the cost to the court of administering the family treatment court program as provided in the memorandum of understanding. The clerk of the circuit court would have to transmit the fees collected to the treasurer of the local funding unit at the end of each month.

The family treatment court could request that the DHHS provide the court with information about an admitted individual's child protective services history and updates on the individual's compliance with child protective services for the purpose of determining an individual's progress in and compliance with the family treatment court. The DHHS would have to provide the information requested by a family treatment court as required under Section 7(1)(g) of the CPL.

A family treatment court would have to provide a family treatment court participant with all the following:

- Consistent, continual, and close monitoring of the participant and interaction among the court, treatment providers, the DHHS, and participant.
- Mandatory periodic and random testing for the presence of any controlled substance, alcohol, or other abused substance in a participant's blood, urine, saliva, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.
- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Substance abuse treatment services, including, family-centered treatment, relapse prevention services, mental health treatment services, education, and vocational opportunities as appropriate and practicable.

Any statement or other information obtained while participating in an assessment, evaluation, treatment, or testing while in a family treatment court would be confidential and would be exempt from disclosure under FOIA and could not be used in a criminal prosecution, unless it revealed criminal acts other than, or inconsistent with, personal drug use.

To continue to participate in and successfully complete a family treatment court program, an individual would have to do the following:

- Pay the family treatment court fee, as applicable.
- Comply with all court orders and case service plans, violations of which could be sanctioned according to national and State recognized family treatment court best practices and standards.

The family treatment court would have to be notified of any new neglect and abuse allegations against the participant or if the participant were accused of a crime. The judge would have to consider whether to terminate the participant's participation in the family treatment court in conformity with the memorandum of understanding.

The court would have to require that a participant pay the treatment court fee; however, if the court determined that the payment of the fee would be a substantial hardship for the participant or would interfere with the participant's substance abuse treatment, the court could waive all or part of the fee.

On completion of or termination from a family treatment court program, the court would have to find on the record or place a written statement in the court file as to whether the participant

completed the program successfully or whether the individual's participation in the program was terminated and, if it were terminated, the reason for the termination. "Termination" would mean removal from the family treatment court due to a new offense, noncompliance, absconding, voluntary withdrawal, medical discharge, or death.

If a participant *successfully completed* family treatment court, the court would have to send a notice of the family treatment court completion and final disposition to the DHHS. The DHHS would have to record successful participation by the individual in a family treatment court.

If a participant were *terminated* from the family treatment court, the court would have to send a notice of the family treatment court termination to the DHHS. The DHHS would have to record the termination of the individual from family treatment court.

All court proceedings described above would have to be open to the public.

Data Reporting

Each family treatment court would have to collect and provide data on each individual applicant and participant in the program as required by the SCAO.

A family treatment court would have to maintain files or databases on each individual applicant or referral who was denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation or assessment, and other demographic information as required by the SCAO.

A family treatment court would have to maintain files or databases on each individual participant in the program for review and evaluation, 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 bill specifies that the information should be maintained in the court files or otherwise accessible by the courts and the SCAO and, as much as practicable, should include all the following:

- Location and contact information for each individual participant, on admission and termination or completion of the program for follow-up reviews, and third-party contact information.
- Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.
- The individual's precipitating adjudication and significant factual information, source of referral, and all family treatment court evaluations and assessments.
- Treatments provided, including the intensity of care or dosage, and the outcome of each treatment.
- Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual.
- Reasons for discharge, completion, or termination of the program.
- Outcomes related to reunification and placement of a child or children.

As directed by the SCAO, after an individual was discharged either on completion of or termination from the program, the bill would specify that a family treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as substance use, custody status of children, recidivism, and employment, as frequently and for a period of time determined by the SCAO based on the nature of the family treatment court and the nature of the participant. The follow-up contact and review of former participants would not be an extension of the court's jurisdiction over the individual.

A family treatment court would have to provide to the SCAO all information requested by the SCAO.

The SCAO, under the direction and supervision of the Supreme Court, would be responsible for evaluating and collecting data on the performance of family treatment courts in the State as follows:

- Provide an annual review of the performance of family treatment courts in the State to the minority and majority party leaders in the Senate and House of Representatives, the State Drug Treatment Court Advisory Committee, the Governor, and the Supreme Court.
- Provide standards for family treatment courts in the State, including developing a list of approved measurement instruments and indicators for data collection and evaluation which would have to provide comparability between programs and their outcomes.
- Provide evaluation plans, including appropriate and scientifically valid research designs that, as soon as practicable, include the use of comparison and control groups.

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

FISCAL IMPACT

The SCAO could have some minor initial costs to set up the certification process for the new specialty courts, but additional appropriations could be unnecessary until circuit courts began to adopt the new specialty courts. Nothing in the bill would require the new courts to be created; it would be at the election of the judges (chief judge) within each circuit court. This would be the same certification and funding process for other specialty courts, so a rough comparison is appropriate.

As of November 2023, there were 138 drug/sobriety courts in the State at a cost of just under \$93,000 General Fund (GF) per court; there were 43 mental health courts in the State at a cost of slightly more than \$120,000 per court. Because the family treatment courts could only operate in circuit courts, 57 family treatment courts are the maximum number of new treatment courts that could be formed, though it is likely the number of new treatment courts actually formed would be significantly less than that number. Based on this information, the most funding these new courts possibly could need would be around \$6.0 million in GF appropriations within the Judiciary budget in 2023 dollars; it's more likely that only a handful of new treatment courts are formed each year, in which case the cost would be a few hundred thousand dollars per year.

Although there are costs to the State to set up and maintain specialty courts, like the new treatment court proposed in the bill, reports have demonstrated that specialty courts drastically reduce recidivism rates. Estimates on statewide cost savings on incarceration expenses (jail and prison) range within the tens of millions of dollars since the inception of Michigan's first specialty court, started in 1993.

Long-term savings are difficult to quantify; however, based on 2022 data, the average cost to State government for felony probation supervision is approximately \$4,800 per probationer per year. For any increase in prison intakes the average annual cost of housing a prisoner in a State correctional facility is an estimated \$45,700. Per diem rates for housing a prisoner in a State correctional facility range from \$98 to \$192 per day, depending on the security level of the facility.

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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.