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BILL ANALYSIS



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Senate Bills 915 through 918 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Kevin Hertel (S.B. 915)
Senator Sylvia Santana (S.B. 916)
Senator Jeff Irwin (S.B. 917)
Senator Paul Wojno (S.B. 918)

Committee: Health Policy

Date Completed: 12-30-24

CONTENT

Senate Bill 915 (S-1) would amend Chapter 4 (Civil Admission and Discharge Procedures: Mental Illness) of the Mental Health Code to do the following:

- Require a patient to be referred to a community mental health services program if a psychiatrist certified that the patient required assisted outpatient treatment (AOT).
- Modify the type of health professional that could testify to a patient's need for AOT.
- Modify the duration of second and third consecutive court orders for involuntary mental health treatment.
- Allow a court, without a hearing, to convene a conference with an individual who was out of compliance with a court order for AOT and the individual's supervising agency to review compliance with the order.
- Allow a peace officer to take an individual into protective custody for examination for mental health intervention if the officer had reasonable cause to believe the individual required treatment, instead of if the officer observed conduct that caused the officer to believe such.

Senate Bill 916 (S-1) would amend the Mental Health Code to do the following:

- Allow a prosecuting attorney, defendant, or defense counsel to bring a motion for an assessment to determine if a defendant met the criteria for misdemeanor diversion to AOT at the time a misdemeanor was charged, or any later time before trial.
- Require a petition for diversion to AOT to be dismissed upon objection by a prosecuting attorney or defendant.
- Allow a court to enter an order for diversion to AOT for up to 180 days.
- Allow a court to modify a diversion to AOT, such as by diverting to inpatient hospitalization, if a defendant failed to comply with the AOT.
- Require misdemeanor charges to remain pending upon diversion to AOT and to be dismissed as a condition of release from AOT.

Senate Bill 917 (S-1) would amend the Mental Health Code to allow an individual permitted to file a petition asserting that another individual required mental health treatment to request and access mediation to resolve a dispute between the individual requiring treatment and the appropriate community mental health services program related to planning and providing services or support to the individual requiring treatment. In addition, if an individual were required by a court

order to receive mental health services due to a petition, the bill would require a hospital to detain that individual for up to 24 hours.

Senate Bill 918 (S-1) would amend the Mental Health Code to allow a hospital director, agency, physician, psychologist, qualified mental health professional, or individual to file a petition for a second or continuing order of involuntary mental health treatment at least 14 days before the expiration of a current order of AOT if the individual receiving treatment were likely to refuse voluntary treatment and needed continued treatment.

Senate Bill 916 is tie-barred to Senate Bill 915.

Senate Bill 915 (S-1)

Referring Patients to Assisted Outpatient Treatment

Section 423 of the Code requires a hospital to admit an individual who is presented to the hospital if a petition or clinical certificate had been executed, pending the receipt of a psychiatrist stating that the individual requires treatment. Section 430 requires the psychiatrist to examine the individual within 24 hours of hospitalization, excluding legal holidays. If a psychiatrist certifies a patient's need for treatment, the patient's hospitalization may continue pending hearings.

Under the bill, if the psychiatrist certified that the patient was a person requiring treatment in the form of AOT, a referral would have to be made to the community mental health services program serving the community where the patient resided and hearings could be convened under Sections 451 to 465, which govern court hearings in Chapter 4 of the Code.¹

Petitions Requesting Assisted Outpatient Treatment

Currently, Section 461 of the Code prohibits an individual from being found to need treatment unless at least one physician or licensed psychologist who has personally examined that individual testifies in person or by written deposition at the hearing. Under the bill, this requirement would apply specifically to a petition that asserted a patient required treatment.

For a petition that does not seek hospitalization but only assisted outpatient treatment, the Code specifies that an individual may not be found to require treatment unless a psychiatrist who has personally examined that individual testifies. A psychiatrist's testimony is not necessary if a psychiatrist signs the petition. If a psychiatrist signs the petition, at least one physician or licensed psychologist who has personally examined that individual must testify. The bill would delete this language, and instead, for a petition that did not seek hospitalization but only AOT, an individual could be found to require treatment if the following were met:

- Except as otherwise provided, a physician, psychologist, or qualified health professional had personally examined the individual and testified that the individual required treatment, unless this requirement was waived by the subject of the petition.
- Except as otherwise provided, evidence was presented that the physician, psychologist, or qualified health professional who examined the individual discussed their findings and

¹ "Assisted outpatient treatment" means the categories of outpatient services ordered by a court. Outpatient services are generally understood to be any medical services that do not require an overnight visit at a hospital. The court can order any number of categories of outpatient services, such as medication, supervision of living arrangements, or individual or group therapy.

the plan for treatment for the individual with a psychiatrist during or immediately after the examination.

"Psychiatric nurse practitioner" would mean an individual who is licensed as a registered professional nurse under Part 172 (Nursing) of the Public Health Code who has been granted a specialty certification as a nurse practitioner by the Michigan Board of Nursing under Section 17210 (the section that authorizes the Board to grant specialty certifications to a registered professional nurse) and who has training in the area of mental health.

"Qualified health professional" would mean a psychiatric nurse practitioner who is acting under the delegation of a psychiatrist under Section 16215 (the section that regulates the delegation of tasks or functions to licensed or unlicensed individuals) of the Code, or a physician's assistant who is acting pursuant to a practice agreement with a psychiatrist under Article 15 (Occupations) of the Code.

Duration of Court Orders for Treatment

Section 472a requires that once a petition has been filed and it has been found that an individual requires treatment, the court must issue an initial order of involuntary mental health treatment. The hospital director, agency, or mental health professional supervising the patient's mental health treatment may continue to file for petitions for continuing orders of involuntary mental health treatment if they believe the individual requires treatment and that the individual will refuse treatment otherwise.

Currently, the second order of involuntary mental health treatment must not exceed 90 days and the third order of involuntary mental health treatment must not exceed one year. Instead, under the bill, the second order for involuntary mental health treatment would have to be limited in duration as follows:

- A second order of hospitalization could not exceed 90 days.
- A second order of AOT could not exceed one year.
- A second order of combined hospitalization and AOT could not exceed one year, and the hospitalization portion of the second order could not exceed 90 days.

Under the bill, the third order for involuntary mental health treatment would have to be limited in duration as follows:

- A continuing order of hospitalization could not exceed one year.
- A continuing order of AOT could not exceed one year.
- A continuing order of combined hospitalization and AOT could not exceed one year, and the hospitalization portion of a continuing order for combined hospitalization and assisted outpatient treatment could not exceed 90 days.

Allow Courts to Convene Conference if Non-Compliant with Court Order

If an individual subject to an order of assisted outpatient treatment or combined hospitalization and assisted outpatient treatment did not comply with the order, the bill would allow the court, without a hearing and based upon the record and other available information, to convene a status conference with the supervising agency and the individual to review the individual's compliance with the order.

Senate Bill 916 (S-1)

Testimony Determining a Need for Treatment

Generally, any person over the age of 18 may file a petition in court to assert that an individual requires mental health treatment.

(A "person requiring treatment" means, among other things, an individual who has mental illness, and who because 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. The term also means 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. Additionally, the term includes an individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.)

Under the bill, for a petition that did not seek hospitalization but only requested that the individual subject to the petition receive AOT, an individual could be found to require treatment if a physician, psychologist, or psychiatric nurse practitioner or physician working under the supervision of a psychiatrist had personally examined that individual and testified that the individual required treatment. The subject of the petition could waive the requirement for the testimony.

Misdemeanor Diversion to AOT

Generally, under the Code, each community mental health service provider must provide services designated to divert individuals with serious mental illness, serious emotional disturbance, or developmental disability from possible incarceration when appropriate.

The bill would allow a prosecuting attorney, the defendant, or defense counsel to bring a motion that sought an assessment by a physician, psychologist, or qualified health professional to determine if the defendant met the criteria for diversion to AOT at the time a misdemeanor was charged or any later time before trial. Except for a physician who was a psychiatrist, the physician, psychologist, or qualified health professional would have to discuss the findings and plan for care with a psychiatrist during or immediately after the examination.

The defendant or defense counsel could oppose a motion made by the prosecuting attorney and a prosecuting attorney could oppose a motion made by the defendant or defense counsel. If a motion were opposed by the prosecuting attorney, defendant, or defense counsel, the defendant could not be diverted into AOT and the competency provisions of Chapter 10 (Criminal Provisions) would have to be followed, as applicable.²

² Under Chapter 10, a defendant of a criminal charge is presumed competent unless that individual is incapable due to a mental health condition affecting that individual's understanding of the nature and object of the proceeding, among other things. Defendants determined incompetent must not be proceeded against until that person has been restored to competency. Chapter 10 requires these individuals to undergo certain examinations and prescribes a process for hearings, determinations, and dispositions of individuals found not guilty by reasons of insanity.

If it were determined that the defendant met the criteria for AOT, the prosecuting attorney would have to file a petition that did not seek hospitalization but only requested AOT. Following that petition, the judge of the district court could request assignment from the State Court Administrative Office as a probate judge to hear and determine the petition or direct the prosecuting attorney to file the petition in the probate court in the defendant's county of residence. If the petition were filed in the probate court, the probate court would have to hear and determine the petition.

If, at the hearing on the petition for AOT, the prosecuting attorney or the defendant objected to entry of the order for AOT, the petition would have to be dismissed and the procedures under Section 1022 to Section 1044 would apply to the case.³

If, at the hearing on the petition for AOT, there were no objection to entry of the order for AOT, the court would have to enter the order.

Diversion from Criminal Prosecution

If diversion from criminal prosecution and into AOT were ordered after a hearing on such a petition, the court that heard the petition would have to enter an order providing for AOT for up to 180 days.

If a defendant failed to comply with the terms of the AOT order, the provisions under Section 475 would apply to the case.⁴ If a criminal prosecution continued during the 180-day period provided for above, there could be no bond conditions other than that the defendant would not violate any no contact order, would appear as required, would not leave Michigan without permission from the court, and would not commit any crime while released. Any bond or bond conditions would be separate from and not be included in the determination of whether the defendant had complied with the AOT order.

The community treatment program would have the sole discretion to make decisions related to the assessment of, treatment planning for, type, scope, frequency, intensity, and duration of treatment for, and discharge from treatment of a defendant under an AOT order. If the designated community treatment program did not communicate with the court as to the treatment of the defendant under the AOT order, the court could conduct a hearing relative to the treatment being provided by the community treatment program.

Release to AOT with Pending Charges

The misdemeanor charges against a defendant who received AOT would have to remain pending until dismissed by the district court for purposes of enforcing conditions of release. The conditions of release for a defendant who received AOT would have to be separate from compliance with the treatment plan. Compliance with the AOT could not be a condition of release. All matters that concerned noncompliance with the AOT plan would have to be addressed in a civil proceeding under Section 475.

Except as otherwise provided, a pending misdemeanor charge would have to be dismissed by the district court 90 days after the entry of the AOT order. If the defendant were charged with

³ Section 1022 through Section 1044 prescribe the standards for determining whether an individual is mentally capable to stand trial, the procedures of a competency hearing, and a potential restoration of competency.

⁴ Under Section 475, upon noncompliance with a court order or determination of AOT being not appropriate, a court may consider, without a hearing, alternatives to hospitalization and modify the order to direct hospitalization or combined hospitalization and AOT, among other things.

a serious misdemeanor, the misdemeanor charge would have to be dismissed 180 days after the entry of the AOT order.

Generally, "serious misdemeanor" would mean assault, breaking and entering, fourth degree child abuse, neglect of a minor, illegal use of a firearm, indecent exposure, stalking, injuring a worker in a work zone, leaving the scene of an accident, operating a vehicle while intoxicated, providing alcohol to a minor, threatening a Department of Health and Human Services (DHHS) employee with physical harm, embezzlement from a vulnerable adult, or a moving violation causing serious impairment of a bodily function or death.

Termination of AOT

Upon the termination of the AOT, the provider of the AOT would have to notify the prosecutor, district court, and probate court, as applicable, of the termination.

Exemptions

The bill would specify that Sections 1022 to 1044 would not apply to an individual charged with a misdemeanor offense who had been diverted to AOT under the bill's provisions.

Senate Bill 917 (S-1)

Generally, Section 206a of the Code requires that the recipient of mental health services from a community mental health services program or other service provider under contract with the program or the recipient's representative be allowed to request and access mediation to resolve a dispute between the recipient and the program or provider related to planning and providing services or supports to the recipient. Under the bill, an individual permitted to file a petition under Section 434 of the Code also could request and access mediation for this purpose. The bill would apply current rights and requirements of a recipient in the mediation process to an individual permitted to file a petition under Section 434.

(Section 434 of the Code allows an adult individual to file with a court a petition that asserts that another individual is a person requiring treatment. From there, a court may issue an order based off the petition which requires the individual to receive mental health treatment.)

Finally, Section 429 of the Code requires a hospital to receive and detain certain individuals presented for examination for up to 24 hours. The bill also would require a hospital to receive and detain an individual presented for examination by an order of the court under Section 434 for up to 24 hours.

Senate Bill 918 (S-1)

Under the Code, upon filing a petition and a finding that an individual is a person requiring treatment, the court must issue an initial order of involuntary mental health treatment with an order of hospitalization of no more than 60 days, an order of assisted outpatient treatment of no more than 180 days, or a combination of those treatments not exceeding 180 days.

If a hospital director, agency, or a mental health professional supervising an individual's assisted outpatient treatment believes that individual continues to be an individual needing treatment and is likely to refuse treatment on a voluntary basis when the order expires the director, agency, or professional must file a petition at least 14 days before expiration of the current order for a second or continuing order of involuntary mental health treatment. The petition must contain the reasons for that determination, a statement describing the treatment that was provided, the results of that treatment, and a clinical estimate of the time

further treatment will be required. The bill would replace "mental health professional" with a "physician, psychologist, or qualified health professional".

The petition must be accompanied by a clinical certificate executed by a psychiatrist. Instead, the bill would modify this provision to require the petition to be accompanied by the following:

- A clinical certificate executed by a physician, a psychologist, or qualified health professional.
- Except as otherwise provided, evidence that the physician, psychologist, or qualified health professional who executed the clinical certificate above discussed their findings and the plan for treatment for the individual subject to the petition with a psychiatrist during or immediately after the examination.

Under the bill, if a hospital director, agency, a physician, a psychologist, or qualified health professional supervising an individual's treatment, or an individual over the age of 18, believed that an individual under an initial, second, or continuing order of AOT continued to be an individual needing treatment and was likely to refuse treatment on a voluntary basis when a current order expired, that director, agency, professional, or individual could file a petition for secondary or continuing involuntary mental health treatment at least 14 days before expiration of the current order. The petition would have to contain the reasons for that determination, a statement describing the treatment that was provided, the results of that treatment, and a clinical estimate of the time further treatment would be required. The petition would have to be accompanied by the following, as applicable:

- A clinical certificate executed by a physician, a psychologist, or qualified health professional.
- Except as otherwise provided, evidence that the physician, psychologist, or qualified health professional who executed the clinical certificate above discussed their findings and the plan for treatment for the individual subject to the petition with a psychiatrist during or immediately after the examination.

(A "person requiring treatment" means, among other things, an individual who has mental illness, and who because 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. The term also means 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. Additionally, the term includes an individual who has mental illness, whose judgment is so impaired by that mental illness, and whose lack of understanding of the need for treatment has caused him or her to demonstrate an unwillingness to voluntarily participate in or adhere to treatment that is necessary, on the basis of competent clinical opinion, to prevent a relapse or harmful deterioration of his or her condition, and presents a substantial risk of significant physical or mental harm to the individual or others.)

MCL 330.1401 et al. (S.B. 915)
Proposed MCL 330.1021 et al. (S.B. 916)
MCL 330.1206a & 330.1429 (S.B. 917)
330.1473 (S.B. 918)

BRIEF RATIONALE

In 2004, the Michigan Mental Health Commission reported that the Mental Health Code needed to be amended because it only responded to mental health crises as opposed to working to prevent them. In response, the Legislature enacted Kevin's Law, which authorizes courts and community mental health agencies to develop AOT programs and individuals to petition a court to assert that another individual needs AOT. The bills should be passed because they would expand access to AOT so more individuals could use AOT services before the need to be hospitalized.

Legislative Analyst: Alex Krabill

FISCAL IMPACT

Senate Bill 915 (S-1)

The bill would have an indeterminate, likely minor, negative fiscal impact on the DHHS and local units of government. Under the bill, a peace officer would be allowed to take an individual into protective custody if the officer had "reasonable cause" to believe the individual was a person requiring treatment, whereas current law requires the peace officer to observe an individual acting in a manner that causes the peace officer to believe the individual is a person requiring treatment. This could increase the number of individuals transported to a preadmission screening unit and, ultimately, ordered to receive AOT through the individual's local Community Mental Health Service Provider (CMHSP).

Because the bill would allow, but not require, CMHSPs to recommend and probate courts to order the use of AOT as an alternative to hospitalization, it would be left to the individual CMHSP to determine its level of investment in AOT. Under current law, the Code requires the State to pay 90% of the annual net cost of a CMHSP, subject to appropriation by the Legislature (MCL 330.1308); however, counties can provide funding to their local CMHSP using millages or county general fund. Therefore, a CMHSP choice to provide AOT could result in increased costs for local units of government depending on if the investment were financed by reprioritizing current funding or levying additional local resources. Costs to the State would increase if the increase in AOT were accompanied by an increase in the appropriation level by the Legislature. To the extent that the bill would result in an increase in CMHSPs choosing to provide AOT, it could present an increased cost to the State and would present an increased cost to local units of government.

Senate Bill 916 (S-1)

The bill would have an indeterminate negative fiscal impact on the DHHS and local units of government. Under the bill, a prosecuting attorney, the defendant, or defense counsel could bring a motion seeking an assessment to determine if a defendant were eligible for diversion to AOT, which could increase the population of individuals receiving AOT.

Under current law, the Mental Health Code requires the State to pay 90% of the annual net cost of a CMHSP, subject to appropriation by the Legislature (MCL 330.1308); however, counties can provide funding to their local CMHSPs through the use of millages or county general fund. Therefore, a CMHSP's choice to provide AOT could result in increased costs for local units of government depending on if the investment were financed by reprioritizing current funding or levying additional local resources. Costs to the State would increase if the increase in AOT were accompanied by an increase in the appropriation level by the Legislature. To the extent that the bill would result in an increase in CMHSPs choosing to provide AOT, it

could present an increased cost to the State and would present an increased cost to local units of government.

The bill likely would increase costs for local courts to a minimal degree in the form of additional hearings for patients potentially requiring involuntary or outpatient mental health treatment. These costs are expected to be absorbed by local court systems.

Senate Bill 917 (S-1)

The bill would have an indeterminate fiscal impact on the DHHS and local units of government. The bill would expand the definition of individuals who could request mediation to include an individual permitted to file a petition for treatment under Section 434 of the Mental Health Code (MCL 330.1434). While current statute requires DHHS to contract directly with mediation organizations, it does not require a specific level of funding by the State and does not require CMHSPs to use the State-contracted mediation organizations. If the bill resulted in an increase in the number of individuals seeking mediation, CMHSPs could experience an increase in administrative costs if the CMHSP does not use the State-contracted mediation organizations. If the bill resulted in an increase in the number of individuals seeking mediation and the CMHSP uses the State-contracted mediation organizations, the State could see an increase in costs if the increase in mediations could not be absorbed within current State contracts and if the definition change were accompanied by an increase in the appropriation level by the Legislature.

The bill would have no fiscal impact on local courts.

Senate Bill 918 (S-1)

The bill likely would have no fiscal impact on the DHHS and local units of government. The bill would allow "an individual 18 years of age or older to file a petition for a second or continuing order of involuntary mental health treatment" not less than 14 days before the expiration of an initial, second, or continuing order of AOT. Under MCL 330.1434, an individual 18 years of age or older is allowed to file an initial petition with a court asserting that an individual is a person requiring treatment, meaning that the bill would remove the need for an individual 18 years of age or older to wait for the expiration of a current petition before having the ability to file a new petition with a court. This change in timing would be unlikely to create an expansion of the population receiving services and would, therefore, not result in an increase in costs.

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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.