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Senate Bill 916 (as introduced 6-12-24)
Sponsor: Senator Sylvia Santana
Committee: Health Policy

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INTRODUCTION

The bill would create a process for misdemeanor offenders determined to be in need of treatment by a mental health professional to be diverted into an assisted outpatient treatment (AOT). A court could order up to 180 days of AOT, while keeping any charges pending to ensure treatment compliance. The charges could be dropped within 90 days for a misdemeanor or within 180 days for a serious misdemeanor. The bill would prescribe the court procedure and procedures for determining whether an individual was fit to stand trial or was noncompliant. Additionally, the bill would expand the scope of mental health professionals that could determine upon a petition that an individual needed treatment to include psychiatric nurse practitioners or physician assistants. The bill also would allow certain testimony of mental health professionals to be waived for a petition that was not seeking hospitalization.

FISCAL IMPACT

The bill would have an indeterminate negative fiscal impact on the Department of Health and Human Services (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 Community Mental Health Services Programs (CMHSP), subject to appropriation by the Legislature (MCL 330.1308); however, counties can provide funding to their local CMHSP 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.

MCL 330.1461 et al.

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CONTENT

The bill would amend the Mental Health Code to do the following:

- **Allow a physician, psychologist, or psychiatric nurse practitioner or physician working under the supervision of a psychiatrist who had personally examined an individual to testify that that individual needed AOT.**
- **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 an 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.**

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.)

Currently, the Code provides that an individual may not be found to require treatment unless at least one physician or licensed psychologist who had personally examined that individual testified to that effect by deposition at a hearing. Under the bill, this provision would apply to an individual for whom a petition asserting that that individual was a person requiring treatment was filed.

Additionally, for a petition that does not seek hospitalization but only requests that the individual subject to the petition receive AOT, before a hearing, the individual may not be found to require treatment unless a psychiatrist who has personally examined the individual testifies to that effect or signs the petition. If the psychiatrist signs the petition, at least one physician or licensed psychologist who has personally examined the individual must testify in person unless the individual subject to the petition waves that requirement. If in person testimony is waved, a clinical certificate completed by a physician, licensed psychologist, or psychiatrist, must be presented before or at the initial hearing. The bill would delete these provisions.

Instead, 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.

"Assisted outpatient treatment" means the categories of outpatient services ordered by a court under the Code. Assisted outpatient treatment may include, among other things, case management services to provide care coordination or a case management plan or certain services to assist in mental health treatment.

Misdemeanor Diversion to AOT

Generally, under the Code, each CMHSP 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, if working under the supervision of a psychiatrist, a psychiatric nurse practitioner or physician assistant 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.

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.¹

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.²

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

¹ 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.

² 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.

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.³ 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.

If a designated community treatment program were not in compliance with delivery of services required by the AOT order, the court would have to conduct a hearing and determine whether to order the program to deliver services.

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 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 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.

³ 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.

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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.