

HOUSE BILL NO. 4746

June 14, 2023, Introduced by Reps. Steele, Harris, Tisdell, Kuhn and BeGole and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending section 461 (MCL 330.1461), as amended by 2018 PA 593, and by adding section 1021 and chapter 10A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 461. (1) ~~An~~ **For a petition filed under section 434(1) to**
2 **(6), an** individual may not be found to require treatment unless at
3 least 1 physician or licensed psychologist who has personally
4 examined that individual testifies in person or by written
5 deposition at the hearing.

1 (2) For a petition filed under section 434(7), ~~that does not~~
2 ~~seek hospitalization before the hearing,~~ an individual may ~~not~~ be
3 found to require treatment ~~unless a psychiatrist who has personally~~
4 ~~examined that individual testifies. A psychiatrist's testimony is~~
5 ~~not necessary if a psychiatrist signs the petition. If a~~
6 ~~psychiatrist signs the petition, at least 1 physician or licensed~~
7 ~~psychologist who has personally examined that individual must~~
8 ~~testify.~~ **if a physician, psychologist, or a psychiatric nurse**
9 **practitioner or physician assistant working under the supervision**
10 **of a psychiatrist has personally examined the individual and**
11 **testifies that the individual requires treatment.** The requirement
12 for testimony may be waived by the subject of the petition. ~~If the~~
13 ~~testimony given in person is waived, a clinical certificate~~
14 ~~completed by a physician, licensed psychologist, or psychiatrist~~
15 ~~must be presented to the court before or at the initial hearing.~~

16 (3) The examinations required under this section for a
17 petition filed under section 434(7) ~~shall~~ **must** be arranged by the
18 court and the local community mental health services program or
19 other entity as designated by the department.

20 (4) A written deposition may be introduced as evidence at the
21 hearing only if the attorney for the subject of the petition was
22 given the opportunity to be present during the taking of the
23 deposition and to cross-examine the deponent. This testimony or
24 deposition may be waived by the subject of a petition. An
25 individual may be found to require treatment even if the petitioner
26 does not testify, as long as there is competent evidence from which
27 the relevant criteria in section 401 can be established.

28 **Sec. 1021. Sections 1022 to 1044 do not apply to an individual**
29 **charged with a misdemeanor offense who has been diverted to**

1 assisted outpatient treatment under chapter 10A.

2 CHAPTER 10A

3 Sec. 1075. (1) At the time a misdemeanor offense is charged,
4 or at any later time before trial, the prosecuting attorney, the
5 defendant, or defense counsel may bring a motion seeking an
6 assessment by a physician, psychologist, or, if working under the
7 supervision of a psychiatrist, a psychiatric nurse practitioner or
8 physician assistant to determine if the defendant meets the
9 criteria for diversion to assisted outpatient treatment under this
10 chapter.

11 (2) The defendant or defense counsel may oppose a motion made
12 by the prosecuting attorney under subsection (1). The prosecuting
13 attorney may oppose a motion made by the defendant or defense
14 counsel under subsection (1).

15 (3) If a motion under subsection (1) is opposed by the
16 prosecuting attorney, defendant, or defense counsel, the defendant
17 must not be diverted into assisted outpatient treatment and the
18 competency provisions of chapter 10 must be followed, as
19 applicable.

20 (4) If, upon assessment under subsection (1), it is determined
21 that the defendant meets the criteria for assisted outpatient
22 treatment, the prosecuting attorney shall file a petition as
23 provided for a person requiring treatment under section 434(7).

24 (5) If a petition is filed under subsection (4), the judge of
25 the district court may request assignment from the state court
26 administrative office as a probate judge to hear and determine the
27 petition or direct the prosecuting attorney to file the petition in
28 the probate court in the defendant's county of residence. If the
29 petition is filed in the probate court as provided under this

1 subsection, the probate court shall hear and determine the
2 petition.

3 (6) If, at the hearing on the petition for assisted outpatient
4 treatment, the prosecuting attorney or the defendant objects to
5 entry of the order for assisted outpatient treatment, the petition
6 must be dismissed and the procedures under sections 1022 to 1044
7 apply to the case.

8 (7) If, at the hearing on the petition for assisted outpatient
9 treatment, there is no objection to entry of the order for assisted
10 outpatient treatment, the court shall enter the order.

11 (8) As used in this section, "person requiring treatment"
12 means that term as defined in section 401.

13 Sec. 1076. (1) If diversion from criminal prosecution and into
14 assisted outpatient treatment is ordered after a hearing on a
15 petition under section 1075, the court that heard the petition
16 shall enter an order providing for assisted outpatient treatment
17 for not more than 180 days.

18 (2) If a defendant fails to comply with the terms of the
19 assisted outpatient treatment order, the provisions under section
20 475 apply to the case. Any bond or bond conditions are separate
21 from and not to be included in the determination of whether the
22 defendant has complied with the assisted outpatient treatment
23 order.

24 (3) If a designated community treatment program is not in
25 compliance with delivery of services required by the assisted
26 outpatient treatment order, the court shall conduct a hearing and
27 determine whether to order the program to deliver services.

28 Sec. 1077. (1) The misdemeanor charges against a defendant
29 receiving assisted outpatient treatment must remain pending until

1 dismissed by the district court for purposes of enforcing
2 conditions of release. The conditions of release for a defendant
3 receiving assisted outpatient treatment must be separate from
4 compliance with the treatment plan. Compliance with the assisted
5 outpatient treatment must not be a condition of release.

6 (2) All matters that concern noncompliance with the assisted
7 outpatient treatment plan must be addressed in a civil proceeding
8 under section 475.

9 (3) Except as otherwise provided in this subsection, a pending
10 misdemeanor charge must be dismissed by the district court 90 days
11 after the entry of the assisted outpatient treatment order. If the
12 defendant was charged with a serious misdemeanor, the misdemeanor
13 charge must be dismissed 180 days after the entry of the assisted
14 outpatient treatment order.

15 (4) As used in this section, "serious misdemeanor" means that
16 term as defined in section 61 of the William Van Regenmorter crime
17 victim's rights act, 1985 PA 87, MCL 780.811.

18 Sec. 1078. Upon the termination of the assisted outpatient
19 treatment, the provider of the assisted outpatient treatment shall
20 notify the prosecutor, district court, and probate court, as
21 applicable, that the assisted outpatient treatment has been
22 terminated.