

HOUSE BILL No. 4136

February 4, 2009, Introduced by Reps. Constan and Polidori and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 401 and 406 (MCL 330.1401 and 330.1406),
section 401 as amended by 2004 PA 496 and section 406 as amended by
1995 PA 290, and by adding sections 207a, 207b, 207c, 207d, 207e,
and 207f; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 207A. AS USED IN SECTIONS 207A TO 207F:

2 (A) "JAIL DIVERSION COORDINATOR" MEANS AN INDIVIDUAL
3 DESIGNATED UNDER SECTION 207D TO COORDINATE A JAIL DIVERSION
4 PROGRAM.

5 (B) "MENTAL HEALTH COURT" MEANS A COURT-SUPERVISED TREATMENT
6 PROGRAM FOR INDIVIDUALS WITH SERIOUS MENTAL ILLNESS, SERIOUS
7 EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL DISABILITY WHO HAVE

1 ALLEGEDLY COMMITTED A MISDEMEANOR OR NONVIOLENT FELONY.

2 (C) "PARTICIPANT" MEANS AN INDIVIDUAL ELIGIBLE FOR AND
3 PARTICIPATING IN A PREBOOKING OR POSTBOOKING JAIL DIVERSION OR
4 MENTAL HEALTH COURT PROGRAM.

5 (D) "PERFORMANCE MEASURES" MEANS WRITTEN, PREESTABLISHED
6 OBJECTIVE INDICATORS AND OUTCOME CRITERIA THAT A JAIL DIVERSION
7 PROGRAM SHALL USE TO ASSESS ITS EFFECTIVENESS.

8 (E) "POSTBOOKING JAIL DIVERSION" MEANS A COLLABORATIVE PROGRAM
9 TO DIVERT INDIVIDUALS WITH SERIOUS MENTAL ILLNESS, SERIOUS
10 EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL DISABILITY WHO HAVE BEEN
11 ARRESTED, CLERICALLY PROCESSED FOR FORMAL ADMISSION TO JAIL, OR
12 INCARCERATED.

13 (F) "PREBOOKING JAIL DIVERSION" MEANS A COLLABORATIVE PROGRAM
14 TO DIVERT INDIVIDUALS WITH SERIOUS MENTAL ILLNESS, SERIOUS
15 EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL DISABILITY WHO HAVE
16 ALLEGEDLY COMMITTED A MISDEMEANOR OR NONVIOLENT FELONY FROM
17 CRIMINAL PROSECUTION TO THE APPROPRIATE MENTAL HEALTH SERVICES AS
18 AN ALTERNATIVE TO BEING CHARGED AND INCARCERATED IN A COUNTY JAIL
19 OR MUNICIPAL DETENTION FACILITY.

20 (G) "PRIMARY JAIL DIVERSION STAKEHOLDERS" MEANS JUDGES,
21 PROSECUTORS, DEFENSE COUNSEL, PROBATION STAFF, COURT
22 ADMINISTRATORS, JAIL ADMINISTRATORS, JAIL MEDICAL AND MENTAL HEALTH
23 STAFF, PRETRIAL SERVICES STAFF, COMMUNITY MENTAL HEALTH TREATMENT
24 PROVIDERS, COMMUNITY SUBSTANCE ABUSE TREATMENT PROVIDERS, LAW
25 ENFORCEMENT OFFICIALS, FAMILY MEMBERS OF INDIVIDUALS WITH MENTAL
26 ILLNESS, AND GUARDIANS AND CONSERVATORS.

27 (H) "PROTECTIVE CUSTODY" MEANS TEMPORARY CUSTODY OF AN

1 INDIVIDUAL BY A PEACE OFFICER WITH OR WITHOUT THE INDIVIDUAL'S
2 CONSENT FOR THE PURPOSE OF PROTECTING THAT INDIVIDUAL'S HEALTH AND
3 SAFETY, OR THE HEALTH AND SAFETY OF THE PUBLIC, AND FOR THE PURPOSE
4 OF TRANSPORTING THE INDIVIDUAL IF THE INDIVIDUAL APPEARS, IN THE
5 JUDGMENT OF THE PEACE OFFICER, TO BE A PERSON REQUIRING TREATMENT.
6 PROTECTIVE CUSTODY IS CIVIL IN NATURE AND IS NOT AN ARREST.

7 (I) "PROTECTIVE ENVIRONMENT" MEANS A STRUCTURAL SETTING IN
8 WHICH PSYCHOTHERAPEUTIC SERVICES ARE PROVIDED ON-SITE, TO WHICH
9 OTHER MEDICAL SERVICES CAN BE LINKED AS NECESSARY, AND FOR WHICH
10 ENTRANCE AND EGRESS BY RECIPIENTS OF PSYCHOTHERAPEUTIC SERVICES AND
11 VISITORS ARE CONTROLLED BY THE SETTING'S STAFF.

12 (J) "SECONDARY JAIL DIVERSION STAKEHOLDERS" MEANS CONSUMERS,
13 CRIME VICTIMS AND ADVOCATES, ADVOCATES FOR INDIVIDUALS WITH MENTAL
14 ILLNESS, HOUSING PROVIDERS AND HOUSING SHELTERS, EMERGENCY ROOM
15 PSYCHOLOGICAL AND MEDICAL ADMINISTRATORS, AND ADULT PROTECTIVE
16 SERVICES STAFF.

17 (K) "SUCCESSFULLY COMPLETE" MEANS MEETING WRITTEN,
18 PREESTABLISHED TREATMENT COMPLIANCE CRITERIA DEVELOPED BY A JAIL
19 DIVERSION PROGRAM AS A CONDITION FOR A PROGRAM PARTICIPANT'S
20 AVOIDANCE OF POSSIBLE JAIL INCARCERATION.

21 SEC. 207B. (1) ALL PRIMARY JAIL DIVERSION STAKEHOLDERS, WITH
22 THE EXCEPTION OF FAMILY MEMBERS OF INDIVIDUALS WITH MENTAL ILLNESS
23 AND GUARDIANS AND CONSERVATORS, SHALL ENTER INTO A BINDING
24 INTERAGENCY AGREEMENT THAT EFFECTUATES THE PREBOOKING AND
25 POSTBOOKING DIVERSION OF ALL ELIGIBLE INDIVIDUALS FROM JAIL
26 INCARCERATION.

27 (2) THE PRIMARY JAIL DIVERSION STAKEHOLDERS DESCRIBED IN

1 SUBSECTION (1) SHALL CONFER WITH SECONDARY JAIL DIVERSION
2 STAKEHOLDERS, FAMILY MEMBERS OF INDIVIDUALS WITH MENTAL ILLNESS,
3 AND GUARDIANS AND CONSERVATORS ON JAIL DIVERSION ISSUES INCLUDING,
4 BUT NOT LIMITED TO, ENSURING THE SUCCESS OF THE JAIL DIVERSION
5 PROGRAMS AND THE PROTECTION OF CONSUMER RIGHTS DURING THE JAIL
6 DIVERSION PROCESS AND ENSURING THAT INDIVIDUALS WHO ARE ELIGIBLE
7 FOR JAIL DIVERSION ARE DIVERTED.

8 SEC. 207C. (1) EACH PRIMARY JAIL DIVERSION STAKEHOLDER SHALL
9 HAVE A PREBOOKING AND POSTBOOKING JAIL DIVERSION PROGRAM IN PLACE.

10 (2) THE PREBOOKING PROGRAM SHALL TARGET INDIVIDUALS WHO ARE
11 SUSPECTED OF HAVING COMMITTED A CRIME BY LOCAL, COUNTY, OR STATE
12 LAW ENFORCEMENT AND WHO ARE PLACED IN PROTECTIVE CUSTODY AND
13 TRANSPORTED TO THE CRISIS EMERGENCY SERVICE OF THE COMMUNITY MENTAL
14 HEALTH SERVICES PROGRAM FOR IMMEDIATE PLACEMENT IN THE APPROPRIATE
15 TREATMENT PROGRAM. PREBOOKING SERVICES INCLUDE, BUT ARE NOT LIMITED
16 TO, ALL OF THE FOLLOWING:

17 (A) CRISIS STABILIZATION AND CRISIS RESIDENTIAL CARE.

18 (B) HOSPITALIZATION.

19 (C) HOUSING.

20 (D) MEDICAL ATTENTION.

21 (E) VARIOUS SERVICES PROVIDED BY THE COMMUNITY MENTAL HEALTH
22 SERVICES PROGRAM.

23 (F) OTHER NATURAL SUPPORTS, INCLUDING FAMILY AND FRIENDS.

24 (3) THE POSTBOOKING PROGRAM SHALL TARGET INDIVIDUALS WHO HAVE
25 BEEN ARRESTED, CLERICALLY PROCESSED FOR FORMAL ADMISSION TO JAIL,
26 OR INCARCERATION. POINTS AT WHICH POSTBOOKING SERVICES MAY BE MADE
27 AVAILABLE INCLUDE, BUT ARE NOT LIMITED TO, ALL OF THE FOLLOWING:

1 (A) AT OR IMMEDIATELY AFTER BOOKING INTO JAIL, BEFORE FORMAL
2 CHARGES ARE FILED.

3 (B) UPON RELEASE FROM PRETRIAL DETENTION WITH THE CONDITION OF
4 PARTICIPATION IN TREATMENT.

5 (C) BEFORE DISPOSITION, INCLUDING, BUT NOT LIMITED TO, UPON
6 THE PROSECUTOR'S OFFER OF DEFERRED PROSECUTION.

7 (D) AT DISPOSITION OR SENTENCING THAT MAY INCLUDE DEFERRED
8 SENTENCING OR RELEASE ON PROBATION WITH CONDITIONS THAT INCLUDE
9 PARTICIPATION IN TREATMENT.

10 (E) WHEN AT RISK OF, OR FOLLOWING, A VIOLATION OF PROBATION
11 RELATED TO A PRIOR CONVICTION.

12 (4) WORKING COLLABORATIVELY, PRIMARY JAIL DIVERSION
13 STAKEHOLDERS EXCEPT FAMILY MEMBERS OF INDIVIDUALS WITH MENTAL
14 ILLNESS, GUARDIANS, AND CONSERVATORS SHALL DIVERT INDIVIDUALS WITH
15 SERIOUS MENTAL ILLNESS, SERIOUS EMOTIONAL DISTURBANCE, OR
16 DEVELOPMENTAL DISABILITY BROUGHT TO THE COMMUNITY MENTAL HEALTH
17 SERVICES PROGRAM OR ASSESSING AGENCY FROM CRIMINAL PROSECUTION OR
18 JAIL INCARCERATION AND INTO A TREATMENT PROGRAM ACCORDING TO THE
19 PROVISIONS OF SECTION 206 WITH SPECIAL FOCUS ON PROVIDING BOTH OF
20 THE FOLLOWING:

21 (A) A COMPREHENSIVE ARRAY OF MENTAL HEALTH SERVICES,
22 REGARDLESS OF THE INDIVIDUAL'S ABILITY TO PAY.

23 (B) A 24-HOUR, 7-DAY A WEEK CRISIS EMERGENCY SERVICE THAT IS
24 PREPARED TO RESPOND TO INDIVIDUALS EXPERIENCING ACUTE EMOTIONAL,
25 BEHAVIORAL, OR SOCIAL DYSFUNCTION, AND PROVIDE AN INPATIENT OR
26 OTHER PROTECTIVE ENVIRONMENT FOR TREATMENT.

27 (5) IF A LAW ENFORCEMENT OFFICER CONTACTS THE CRISIS EMERGENCY

SERVICE FOR PURPOSES OF DELIVERING AN INDIVIDUAL IN PROTECTIVE CUSTODY FOR ASSESSMENT AND POSSIBLE DIVERSION FROM CRIMINAL PROSECUTION AND JAIL INCARCERATION, AND THE CRISIS EMERGENCY SERVICE IS NOT ABLE TO ACCOMMODATE AN INDIVIDUAL IN NEED OF SERVICE, A FULL REPORT AS TO WHY THE CRISIS EMERGENCY SERVICE WAS NOT ABLE TO ACCOMMODATE THE INDIVIDUAL IN NEED OF SERVICE SHALL BE MADE AND DELIVERED WITHIN 48 HOURS TO THE DIRECTOR OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND TO THE GOVERNOR, AND TO ALL MEMBERS OF THE LEGISLATURE WITHIN 6 MONTHS. EACH PRIMARY JAIL DIVERSION STAKEHOLDER EXCEPT FAMILY MEMBERS OF INDIVIDUALS WITH MENTAL ILLNESS, GUARDIANS, AND CONSERVATORS MAY BE SUBJECT TO A 1% PENALTY FOR EACH LAPSE OF CRISIS EMERGENCY SERVICES AT THE DISCRETION OF THE DEPARTMENT DIRECTOR.

(6) ALL INDIVIDUALS ARE ELIGIBLE FOR DIVERSION FROM CRIMINAL PROSECUTION AND POSSIBLE INCARCERATION, UNLESS THE INDIVIDUAL HAS ALLEGEDLY COMMITTED A CRIME OF VIOLENCE.

SEC. 207D. (1) EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM SHALL HIRE OR DESIGNATE AN INDIVIDUAL TO SERVE AS THE JAIL DIVERSION COORDINATOR. THE JAIL DIVERSION COORDINATOR HAS THE FOLLOWING RESPONSIBILITIES:

(A) COLLABORATING WITH LOCAL JAIL DIVERSION STAKEHOLDERS TO ENSURE THAT ALL ELIGIBLE INDIVIDUALS PARTICIPATE IN THE JAIL DIVERSION PROGRAM.

(B) ENSURING THAT ALL MATERIAL DATA RECORDS ARE MAINTAINED AND RECORDED FOR QUARTERLY AND ANNUAL REVIEW. MATERIAL DATA INCLUDES, BUT IS NOT LIMITED TO, THE FOLLOWING:

(i) THE NUMBER OF INDIVIDUALS WHO COME INTO CONTACT WITH LAW

1 ENFORCEMENT AGENCIES OR THE COMMUNITY MENTAL HEALTH SERVICES
2 PROGRAM OR CRISIS EMERGENCY SERVICE EXHIBITING SIGNS OF SERIOUS
3 MENTAL ILLNESS, SERIOUS EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL
4 DISABILITY.

5 (ii) THE NUMBER OF INDIVIDUALS DIAGNOSED WITH A SERIOUS MENTAL
6 ILLNESS, SERIOUS EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL
7 DISABILITY.

8 (iii) THE NUMBER OF INDIVIDUALS DIAGNOSED WITH A SERIOUS MENTAL
9 ILLNESS, SERIOUS EMOTIONAL DISTURBANCE, OR DEVELOPMENTAL DISABILITY
10 AND A COEXISTING SUBSTANCE ABUSE DISORDER.

11 (iv) THE NUMBER OF INDIVIDUALS DIAGNOSED WITH A SUBSTANCE ABUSE
12 DISORDER ONLY.

13 (v) THE NUMBER OF INDIVIDUALS ASSESSED TO HAVE NO SERIOUS
14 MENTAL ILLNESS, SERIOUS EMOTIONAL DISORDER, OR DEVELOPMENTAL
15 DISABILITY.

16 (vi) THE NUMBER OF INDIVIDUALS WHO PARTICIPATE IN THE JAIL
17 DIVERSION PROGRAM.

18 (vii) THE NUMBER OF INDIVIDUALS WHO SUCCESSFULLY COMPLETE THE
19 JAIL DIVERSION PROGRAM.

20 (viii) THE RECIDIVISM RATE OF INDIVIDUALS WHO HAVE PARTICIPATED
21 IN A JAIL DIVERSION PROGRAM.

22 (C) IN COLLABORATION WITH THE DIRECTOR OF THE COMMUNITY MENTAL
23 HEALTH SERVICES PROGRAM AND LOCAL AND COUNTY LAW ENFORCEMENT
24 AGENCIES, PUTTING IN PLACE PERFORMANCE MEASURES.

25 (D) DEVISING AND IMPLEMENTING A SYSTEM FOR REVIEW OF ALL
26 ELIGIBLE JAIL INMATES FOR POTENTIAL PARTICIPATION IN THE JAIL
27 DIVERSION PROGRAM.

1 (2) THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM DIRECTOR
2 SHALL REVIEW AND PURSUE ALL LOCAL, COUNTY, STATE, AND NATIONAL
3 POTENTIAL SOURCES OF FUNDING FOR THE POSITION OF JAIL DIVERSION
4 COORDINATOR. IF A CURRENT EMPLOYEE IS DESIGNATED AS JAIL DIVERSION
5 COORDINATOR, HIS OR HER OTHER JOB DUTIES MAY NOT OCCUPY MORE THAN
6 50% OF HIS OR HER TIME.

7 SEC. 207E. EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM SHALL
8 SUBMIT AN ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE ON THE
9 PROGRESS OF JAIL DIVERSION PROGRAMS, INCLUDING NUMBER OF
10 INDIVIDUALS SUCCESSFULLY DIVERTED FROM CRIMINAL PROSECUTION AND
11 INCARCERATION.

12 SEC. 207F. EACH JAIL DIVERSION PROGRAM PARTICIPANT SHALL SIGN
13 A WRITTEN CONTRACT WITH THE LOCAL LAW ENFORCEMENT AGENCY AND
14 COMMUNITY MENTAL HEALTH SERVICES PROGRAM THAT OUTLINES THE DUTIES
15 AND OBLIGATIONS OF ALL PARTIES TO THE JAIL DIVERSION PROGRAM. A
16 JAIL DIVERSION PROGRAM PARTICIPANT MUST COMPLY WITH THE TERMS OF
17 THE TREATMENT PLAN DEVELOPED IN CONJUNCTION WITH THE MENTAL HEALTH
18 PROFESSIONAL PROVIDED BY THE COMMUNITY MENTAL HEALTH SERVICES
19 PROGRAM. FAILURE ON THE PART OF THE COMMUNITY MENTAL HEALTH
20 SERVICES PROGRAM TO COMPLY WITH THE TERMS OF THE CONTRACT PROVIDES
21 THE JAIL DIVERSION PROGRAM PARTICIPANT A RIGHT TO PURSUE A
22 COMPLAINT THROUGH THE OFFICE OF RECIPIENT RIGHTS AS SET FORTH IN
23 CHAPTER 7. FAILURE ON THE PART OF THE JAIL DIVERSION PROGRAM
24 PARTICIPANT TO COMPLY WITH ALL TERMS OF THE CONTRACT MAY RESULT IN
25 EXPULSION FROM THE JAIL DIVERSION PROGRAM AT THE DISCRETION OF
26 LOCAL LAW ENFORCEMENT, THE COURTS, AND THE JAIL DIVERSION
27 COORDINATOR. THE JAIL DIVERSION COORDINATOR SHALL DEVELOP AND

1 **IMPLEMENT A SYSTEM OF GRADUATED SANCTIONS AND INCENTIVES TO COMPEL**
2 **THE JAIL DIVERSION PROGRAM PARTICIPANT'S SUCCESSFUL PARTICIPATION**
3 **IN TREATMENT.**

4 Sec. 401. (1) As used in this chapter, "person requiring
5 treatment" means (a), (b), (c), or (d):

6 (a) ~~An individual who has mental illness, and who as a result~~
7 ~~of that mental illness can reasonably be expected within the near~~
8 ~~future to intentionally or unintentionally seriously physically~~
9 ~~injure himself, herself, or another individual, and who has engaged~~
10 ~~in an act or acts or made significant threats that are~~
11 ~~substantially supportive of the expectation~~ **LACKS THE CAPACITY TO**
12 **MAKE INFORMED DECISIONS ABOUT HIS OR HER MENTAL ILLNESS AND**
13 **TREATMENT FOR THAT MENTAL ILLNESS.**

14 (b) An individual who has mental illness, and who as a result
15 of that mental illness is unable to attend to those of his or her
16 basic physical needs such as food, clothing, or shelter that must
17 be attended to in order for the individual to avoid serious harm in
18 the near future, and who has demonstrated that inability by failing
19 to attend to those basic physical needs.

20 (c) An individual who has mental illness, whose judgment is so
21 impaired that he or she is unable to understand his or her need for
22 treatment and whose continued behavior as the result of this mental
23 illness can reasonably be expected, on the basis of competent
24 clinical opinion, to result in significant physical harm to
25 himself, herself, or others. This individual shall receive
26 involuntary mental health treatment initially only under the
27 provisions of sections 434 through 438.

1 (d) An individual who has mental illness, whose understanding
2 of the need for treatment is impaired to the point that he or she
3 is unlikely to participate in treatment voluntarily, who is
4 currently noncompliant with treatment that has been recommended by
5 a mental health ~~—~~professional and that has been determined to be
6 necessary to prevent a relapse or harmful deterioration of his or
7 her condition and whose noncompliance with treatment has been a
8 factor in the individual's placement in a psychiatric hospital,
9 prison, or jail at least 2 times within the last 48 months or whose
10 noncompliance with treatment has been a factor in the individual's
11 committing 1 or more acts, attempts, or threats of serious violent
12 behavior within the last 48 months. An individual under this
13 subdivision is only eligible to receive assisted outpatient
14 treatment under section 433 or 469a.

15 (2) An individual whose mental processes have been weakened or
16 impaired by a dementia, an individual with a primary diagnosis of
17 epilepsy, or an individual with alcoholism or other drug dependence
18 is not a person requiring treatment under this chapter unless the
19 individual also meets the criteria specified in subsection (1). An
20 individual described in this subsection may be hospitalized under
21 the informal or formal voluntary hospitalization provisions of this
22 chapter if he or she is considered clinically suitable for
23 hospitalization by the hospital director.

24 Sec. 406. If an individual asserted to be a person requiring
25 treatment is considered ~~by a hospital~~ to be suitable for ~~informal~~
26 ~~or formal voluntary hospitalization~~ **APPROPRIATE MENTAL HEALTH**
27 **SERVICES**, the ~~hospital~~ **MENTAL HEALTH PROFESSIONAL** shall offer the

1 individual **OR HIS OR HER GUARDIAN** the opportunity to request or
2 make application for ~~hospitalization as an informal or formal~~
3 ~~voluntary patient~~ **THAT TREATMENT**. If the individual is voluntarily
4 hospitalized, the hospital director shall inform the court, and the
5 court shall dismiss any pending proceeding for admission unless it
6 finds that dismissal would not be in the best interest of the
7 individual or the public.

8 Enacting section 1. Section 207 of the mental health code,
9 1974 PA 258, MCL 330.1207, is repealed.

10 Enacting section 2. This amendatory act takes effect January
11 1, 2011.