

Legislative Analysis



INVOLUNTARY SUBSTANCE USE DISORDER ASSESSMENT & TREATMENT

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House Bill 4486 as enrolled
Public Act 200 of 2014
Sponsor: Rep. John Walsh
House Committee: Judiciary
Senate Committee: Judiciary

Analysis as Enacted (10-7-14)

BRIEF SUMMARY: In general, the bill establishes criteria by which an authorized person may petition a court to order involuntary *substance use disorder assessment and treatment* for an adult presenting imminent danger to self, family, or others as a result of a substance use disorder. Among other provisions, the bill:

- Restricts who could file a petition for involuntary assessment/treatment to only a person's spouse, guardian, family member, or a health professional as defined in the bill.
- Requires a petition to include a guarantee by one of the above to pay all court costs and fees and any court-ordered treatment, unless waived by the court.
- Requires a petition to include a certified statement by a health professional (certain qualified medical and counseling professionals) who recently examined the person that supports involuntary treatment and that an imminent threat of danger to self or others exists.
- Provides an exemption to the above if the person refuses examination by a health professional prior to submitting the petition.
- Makes falsifying information on a petition a one-year misdemeanor.
- Makes failure to comply with court-ordered treatment contempt of court.
- Requires a court-ordered attorney be provided to an indigent respondent (the subject of the petition).
- Requires physical and substance use disorder examinations, and findings and recommendations by the examining practitioners, prior to a court hearing.
- Requires clear and convincing evidence as the standard of proof in determining if the petition requirements are met before ordering involuntary treatment.
- Gives a court discretion, not a mandate, to order involuntary treatment.
- Requires a court to dismiss proceedings at any time the respondent is deemed not to be eligible for involuntary treatment.
- Expands the use of protective custody by a peace officer for a person publicly incapacitated due to alcohol to include incapacitation due to "other drugs."
- Revise the criteria by which a person who remains incapacitated after the initial 72-hour hold may be held for a longer period.

FISCAL IMPACT: House Bill 4486 would have a fiscal impact on state and local governments as detailed later in the analysis.

THE APPARENT PROBLEM:

Mark and Carol Garofoli's son was addicted to heroin. Several times over several years young Mark entered treatment programs only to check himself out. According to his mother, on one occasion he was hospitalized but, despite being declared to be a danger to himself, was released. A few weeks after leaving yet another substance abuse rehabilitation program in 2011, and while he was attempting to wean himself from heroin with methadone, 22-year-old Mark used a razor blade from his father's toolbox to commit suicide. His mother found him in a pool of blood in the family's garage. (This account is derived from Carol Garofoli's testimony before the House Judiciary Committee and media descriptions.)

This tragic story underscores the pain and frustration experienced by friends and families of persons addicted to drugs or alcohol when trying to help their loved ones, and that led the Garofoli family to seek changes in Michigan law. If Mark's struggles had been due to a mental illness, his parents could have used the state's civil commitment process to petition a court to order Mark into either inpatient or outpatient mental health services, or a combination of both. However, since his struggles were solely due to a substance use disorder, in his case a heroin addiction, there was no lawful means which his parents or the courts could have used to force him into substance use disorder treatment once he turned 18 years of age.

Unless a crime is committed while under the influence of drugs or alcohol, or related to an addiction, many with substance use disorders fall through the cracks. Judgment and decision-making can be so severely impacted that not even the loss of jobs, educational opportunities, financial stability, or relationships can convince a person that the problem needs addressing. Even declining physical or dental health, onset of depression related to the substance use, and risk of causing an accident that could injure themselves or others, such as a car or work-place accident, do not act as motivators to seek treatment or comply with the demands of a rehabilitation program. For example, the Michigan Department of Community Health reports that in 2011, more than 14,000 adults checked themselves out of substance abuse treatment centers against staff advice.

In an effort to provide friends and families with an opportunity to help loved ones get needed substance use treatment, and to spare others from the tragic ending experienced by the Garofoli family, legislation was introduced to create a civil, involuntary commitment process similar to, yet with some important differences, the process in place for a person with a mental illness who poses a threat to self or others.

THE CONTENT OF THE BILL:

House Bill 4486 adds several new sections to the Mental Health Code (Sections 281a, 281b, and 281c) to establish a civil procedure by which certain persons may petition a court to order involuntary substance use disorder treatment for an adult who meets certain conditions and to provide protection of the due process rights of that person. The bill also makes numerous changes to existing provisions of the Code to comport with the new provisions and expands the use of protective custody by law enforcement officers to include persons incapacitated by drugs.

Under the Mental Health Code, if a person appears to be incapacitated by alcohol in a public place, a law enforcement officer can take the person into protective custody and then transport the person to an approved service program or emergency medical service, or to a transfer facility (jail) for subsequent transport to an approved service program or emergency medical service.

The bill amends the Code to make numerous changes to the procedures currently in place in Chapter 2a (Substance Use Disorder Services) regarding protective custody for public incapacitation to do the following:

- ❖ Replace the term "law enforcement officer" with "peace officer."
- ❖ Apply provisions pertaining to protective custody for incapacitation also to persons incapacitated from "other drugs."
- ❖ Include transport of an incapacitated person under Section 276 of the Code in the definition of "protective custody."
- ❖ If an individual who had been taken to an approved service program or emergency medical service remains incapacitated after 72 hours, require the person to be discharged to a peace officer unless the individual agrees to remain in the program longer than 72 hours; the health professional in charge of the program believes a stay longer than 72 hours is appropriate; or an order for involuntary treatment has been issued under Section 281b or 281c. (Previously, the person could be held longer than the initial 72-hour period only if both of the first two circumstances occurred. Under the bill, only one of the three circumstances needs to occur to trigger a longer hold.) "Health professional" in this context is defined to include those in the medical or counseling professions whose scope of practice includes the diagnosis and treatment of substance use disorders.

Definitions

Changes and additions to terms defined in the Code include the following:

- ❖ Add diagnosing and treating individuals with a "substance use disorder" to the definition of the term "psychologist" (currently the term describes a person licensed or authorized to engage in the practice of psychology and who devotes a substantial portion of time to the diagnosis and treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disabilities).
- ❖ Revise the definition of "service" to mean a mental health service *or a substance use disorder service*.
- ❖ Revise the definition of "substance use disorder" to specify that *substance use disorder includes substance abuse*.
- ❖ In addition to a serious mental illness or serious emotional disturbance, expand the definition of "treatment" to include care, diagnostic, and therapeutic services for the treatment of a *substance use disorder*.

- ❖ As used in Chapter 2A (Substance Use Disorder Services), define "child" to mean an individual less than 14 years of age.
- ❖ "Court" in Section 2A would be revised to mean the probate court for the county in which an *individual* (instead of "a minor") for whom a request for substance use disorder treatment and rehabilitation services has been made *or a petition for involuntary treatment has been filed*, either resides or is found.
- ❖ "Health professional" would replace the term "physician" in Chapter 2A and, as mentioned earlier, be defined to mean an individual licensed or otherwise authorized to engage in a health profession under Article 15 of the Public Health Code and whose scope of practice includes the diagnosis and treatment of individuals with a substance use disorder (for example, those in the medical and counseling professions who treat persons with substance use disorders).
- ❖ Define "petitioner" in Chapter 2A as a person that institutes a proceeding under the new Section 281a and "respondent" as an individual alleged in a petition filed under Section 281a to be an individual who has a substance use disorder and who may be ordered under Section 281b or 281c to undergo involuntary treatment.

New Section 281a: Petitioning for Involuntary Treatment

Provisions authorizing a court to order the involuntary treatment for a substance abuse disorder apply only to an adult (at least 18 years of age). Sections 264-268 of the Code apply to minors (ages 14-17) and were not amended by the bill.

In order for a court to order involuntary treatment, all of the following must apply:

- ❖ The individual has a substance use disorder verified by a health professional.
- ❖ The individual presents an imminent danger or imminent threat of danger to self, family, or others as a result of the substance use disorder, or a substantial likelihood of the threat of danger in the near future exists.
- ❖ The individual can reasonably benefit from treatment.

Petition for Involuntary Substance Use Disorder Treatment

A spouse, family member, or guardian may file a petition, as well as a health professional, can initiate proceedings for the involuntary treatment of an individual, and pay any filing fee. Certain information must be included in the petition, such as names and addresses of the petitioner and respondent (person who is the subject of the petition). In addition, the petition must include the following:

- ❖ A description of the facts leading the petitioner to believe the respondent has a substance use disorder and presents an imminent threat of danger, or a substantial likelihood of the threat of danger in the near future exists if the respondent does not receive treatment.

- ❖ Either (1) a statement that the respondent refused to undergo an examination by a health professional concerning the possible need for treatment; or (2) a certified statement of a health professional who has examined the respondent within two days before the petition is filed. The certified statement must include:
 - The findings in support of the need for involuntary treatment;
 - Whether the respondent presents the requisite imminent threat of danger;
 - Whether the respondent can reasonably benefit from treatment; and
 - An indication of the type and length of treatment required, and the treatment facilities known to the health professional able and willing to provide the recommended treatment (along with a disclosure of any ownership interest or affiliation with any of the identified facilities).
- ❖ The name and address of the person or public or private facility with which the petitioner has arranged for the treatment, along with a verification form from the person or facility agreeing to provide the treatment and the estimated cost.
- ❖ Unless waived by the court for good cause, a guarantee obligating a guarantor, such as the petitioner, to pay the costs of the physical and substance use disorder examinations, court hearings, and any court-ordered treatment for the respondent.

Penalty

Doing any of the following would result in a misdemeanor punishable by not more than one year imprisonment and/or a \$5,000 fine:

- ❖ Furnishing false information for the purpose of obtaining an order of involuntary treatment.
- ❖ Causing or securing (or conspiring with or assisting another to do the same) an involuntary treatment order without a reason to believe the respondent has a substance use disorder.
- ❖ Causing (or conspiring or assisting another to do the same) the denial of any rights accorded to an individual under Chapter 2A of the Code.

New Section 281b: Court Proceedings

A court must examine a petitioner under oath as to the contents of the petition for involuntary substance use disorder treatment. (The bill does not specify how soon after receiving the petition and filing fee this examination must be held.) If there is probable cause to believe the respondent may reasonably benefit from treatment, the court must do all of the following:

- ❖ Schedule a hearing within seven days of examining the petitioner to determine if there is clear and convincing evidence the respondent may reasonably benefit from treatment.
- ❖ Notify the respondent and the respondent's parents, spouse, adult children, guardian and person having custody over the respondent (if any and if known) of

the hearing concerning the allegations and the contents of the petition and the date and purpose of the hearing.

- ❖ Notify the respondent that the respondent may retain counsel and if indigent, court-appointed counsel will be provided (with the counsel's contact information provided at the time of appointment).
- ❖ Notify the respondent that the court will cause the respondent to have both a physical examination by a physician and a substance use disorder assessment and diagnosis by an independent health professional not later than 24 hours before the hearing date. The respondent may have an independent expert evaluation of his or her physical and mental condition conducted at his or her own expense.
- ❖ Not later than 24 hours before the hearing date, cause the physical examination of the respondent to be conducted by a physician and the substance use disorder examination by an independent health professional.
- ❖ Conduct the hearing.

Examination findings must be certified by the practitioner conducting the examination within 24 hours after the examination; (therefore, the court would have the results in time for the hearing). The findings must include a recommendation for treatment if the physician, health professional, or individual conducting the independent examination(s) at the respondent's own expense determines that treatment is necessary (rather than being reasonably beneficial as is specified in other provisions).

If, when the hearing is completed, the court finds by clear and convincing evidence that the requirements of Section 281a are met (respondent has a verified substance use disorder, presents an imminent threat to self or others, and may reasonably benefit from treatment), and after considering the treatment recommendations as described above, the court may order involuntary treatment. Court-ordered involuntary treatment must be provided by an approved service program or by a health professional qualified by education and training to provide the treatment.

Failure to undergo and complete court-ordered treatment would constitute contempt of court. The program or professional providing the treatment must notify the court if a respondent fails to undergo or complete the ordered treatment.

Proceedings must be dismissed at any time the court finds that there is not probable cause to order or continue treatment or the petitioner withdraws the petition.

As used in Section 281b, "substance use disorder assessment and diagnosis" includes an evaluation of all of the following: (1) whether the individual has a substance use disorder; (2) whether the individual presents an imminent danger or imminent threat of danger to self, family, or others as a result of the substance use disorder, or whether a substantial likelihood of the threat of danger in the near future exists; and (3) whether the individual can reasonably benefit from treatment.

New Section 281c: Involuntary Treatment

Following the examination under Section 281b and a certification by that health professional that the requirements of Section 281a are met (respondent has a verified substance use disorder, presents an imminent threat to self or others, and may reasonably benefit from treatment), a court could order the respondent held for treatment for a period not to exceed 72 hours if it finds by clear and convincing evidence that the person presents an imminent danger or imminent threat of danger to self, family, or others as a result of a substance use disorder. (Presumably, this 72-hour hold would be instituted before the required hearing was held.)

If the hearing does not fall within the 72-hour hold period, the court could order the respondent held for treatment until the hearing. The respondent must be informed by the court that he or she may immediately make a reasonable number of telephone calls or use other reasonable means to contact an attorney, physician, or health professional; contact any other person to secure representation by counsel; or to obtain medical or psychological assistance. The respondent must also be informed that assistance in making calls would be provided if needed and requested.

A program in which a respondent is being held as describe above must release the person from the program immediately when the time period established by the court for the treatment expires. A respondent may be transferred from a more-restrictive program setting to a less-restrictive setting to receive treatment if determined appropriate by the court with the assistance of health professionals.

A respondent held under Section 281c could not be held in jail pending transportation to the program or evaluation unless the court previously has found the respondent to be in contempt of court for either failure to undergo treatment or failure to appear at the examination ordered under Section 218b.

The court may issue a summons if it is authorized to issue an order to transport a respondent to a program. A summons must be issued if the respondent fails to attend an examination scheduled before the hearing under Section 281b. The summons would command the respondent to appear at a specified time and place. If the respondent fails to respond to the summons, and does not appear at the program or examination, the court could order a peace officer to transport the respondent to a program on the list provided under Section 281c(5), as described below, for treatment. The transportation costs of the peace officer must be included in the costs of treatment to be paid as provided in Section 281a(4) – the agreement in the petition process naming a party who agrees to accept responsibility for court and treatment costs.

Section 281c(5) requires a Department of Community Health-designated community mental health entity to at least annually submit each of the following lists to the clerk of the court in each county served by that entity:

- ❖ A list of all programs in the counties served by the entity able and willing to take respondents ordered held for treatment under Section 281c(1) as described above.

- ❖ A list of programs and health professionals in the counties served by the entity able and willing to provide treatment for a substance use disorder that is ordered under Section 281b.

Miscellaneous Provisions

The possessions of a respondent under a court order issued under either 281b or 281c must be inventoried and held in a secure place, and returned upon release (except for contraband discovered in the inventory). Currently, this provision applies only to individuals taken to or seeking voluntary admission to an emergency medical service or a transfer facility.

The bill also clarifies that Section 464a (pertaining to court orders for involuntary hospitalization and/or an alternative treatment program) applies only to orders issued under Chapter 4 (Civil Admission and Discharge Procedures: Mental Illness) and not to an order of involuntary treatment for substance use disorder under Chapter 2a (Substance Use Disorder Services).

MCL 330.1100b et al.

FISCAL INFORMATION:

Public substance abuse treatment costs

This legislation will result in additional costs for community mental health service programs (CMHSPs) and prepaid inpatient health plans (PIHPs) for those individuals not eligible to receive substance use disorder treatment services through the Healthy Michigan Plan, if those costs have been waived for "good cause" by the Probate Court. The legislation allows the Court to waive an individual's examination (substance use disorder assessment and diagnosis by a physician or health professional) and treatment costs for substance use disorder that otherwise would be paid by the petitioner or another individual when ordering the involuntary treatment of an individual who has a substance use disorder.

Data from FY 2011-12 on reports on substance abuse prevention, treatment, and treatment programs indicates statewide expenditures by agency and fund sources of \$145.8 million. (This includes federal revenue such as Medicaid and block grant for prevention and treatment of substance abuse, local funds, substance abuse licensing fees and fines, and GF/GP).

Reports also indicate the following average statewide expenditures per client: \$1,653 per client served in intensive outpatient service category; \$719 per client in outpatient service category; \$646 per client serviced in detoxification service category; and \$2,592 per client served in residential service category.

Impact on local corrections and the judiciary

The bill would have an indeterminate fiscal impact on the judiciary, local courts, and local correctional systems. The fiscal impact on the judiciary and local courts would depend on the number of petitions brought before the local courts and the related administrative costs. Because the bill creates a misdemeanor, to the extent the bill results

in a greater number of convictions, it would increase costs on local correctional systems. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

House Bill 4486 establishes criteria by which certain persons may petition a court to order the involuntary assessment and treatment of an individual with a serious substance use disorder who poses a danger to self or others. This new process contains similarities to the civil commitment process currently in place for persons with a mental illness (although with differences). The legislation represents a multi-year process that involved many stakeholders, including substance use disorder professionals, state agencies, judges, the ACLU, and others. As enacted, the bill contains important due process rights for the subject of the petition, such as immediate notification of the petition, its contents, the process that will follow regarding examinations and hearings, and the right to counsel and appointed counsel if indigent. At this time, the bill puts the burden to pay for the court-ordered treatment on the person who requests the court-ordered treatment. However, a court could waive that requirement; for instance, Medicaid or private insurance may cover all or part of the ordered treatment.

The hope of the legislation is that friends and families of persons with serious substance use disorders can force their loved ones into treatment before they hurt or kill themselves or others. Testimony demonstrated how hard it is to watch the effects of addictions tear families apart, ruin finances, or lead to job loss or dropping out of school. However, at the very least, for the sake of the person with the addiction, and to protect the public, there must be a way to remove these people from the streets when they appear to be in danger of harming themselves or others. This is considered especially vital because by time people reach this state, their judgment is so impaired and withdrawal from drugs or alcohol so painful and daunting that they are often uncooperative regarding treatment. Thus, the bill will provide a way previously unavailable.

Another important aspect of the legislation is that health professionals other than just physicians would do the required examinations and evaluations to determine the appropriateness of ordering involuntary treatment for the subject of a petition. Many social workers, psychologists, and others in the counseling professions, besides psychiatrists, have extensive training in diagnosing and treating substance use disorders. (Only physicians could do the physical examinations.)

Moreover, breaking the cycle of addiction has societal benefits as well. Reportedly, at least some states have seen reductions in crimes associated with substance use and related savings in law enforcement, courts, and corrections. The bill may even have the potential to reduce drunk and/or drugged driving accidents and associated costs and implications. At the very least, it may enable some families to get loved ones into treatment in time to

spare them the heartbreak experienced by the Garofoli family (as described in the **Problem** section, earlier in the analysis).

Response:

To maximize public safety and public savings, the new involuntary substance use treatment process should be publicly funded. If a person is indeed posing an imminent threat of danger to self or others, family members and health professionals aware of the danger should not be deterred from filing a petition because they are unable to guarantee payment of any court-ordered treatment. Is it fair to expect an individual to promise to pay an amount that may result in financial ruin rather than turn a blind eye to the danger of not doing so? Data show that society as a whole (including taxpayers) bear a high cost for the effects of drug and alcohol addiction on the greater community; these include the impact on the health, criminal justice, court, and mental health systems. Unemployment, homelessness, bankruptcies, foreclosures, and divorces/failed relationships all negatively impact society. If Michigan experiences cost savings in corrections and law enforcement as other states reportedly have, then over time the civil commitment process could pay for itself.

For:

At least a dozen states have addressed this issue by adopting a law authorizing some type of involuntary assessment and treatment for substance use disorders. Florida, under its Marchman Act, has authorized involuntary assessment and stabilization for substance abuse since the 1990s. One measurable benefit of that program, according to the manager of a county human services program, is a savings in local corrections costs and other law enforcement-related costs, such as reduced court dockets ("Would Florida county's approach to drug treatment work in Michigan?", *Cadillac News*, September 13, 2013.) This is likely due to the correlation between alcohol and/or drug use and the commission of crimes. The Missaukee County sheriff was referenced in the same article as saying that "about 75 percent of the population of the jail at any given time is comprised of people with substance abuse problems." (Missaukee County is located in the lower peninsula of Michigan just west of Houghton Lake.)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.