

HOUSE BILL No. 5825

April 9, 2002, Introduced by Reps. George, Bernero, Raczkowski, Vander Veen, Van Woerkom and Lemmons and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding chapter 3A.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER 3A

ASSISTED OUTPATIENT TREATMENT

SEC. 350. AS USED IN THIS CHAPTER:

(A) "COURT" MEANS THAT TERM AS DEFINED IN SECTION 400.

(B) "MATERIAL CHANGE" MEANS AN ADDITION TO OR A DELETION
FROM A CATEGORY OF ASSISTED OUTPATIENT TREATMENT FROM A COURT
ORDER ISSUED UNDER THIS CHAPTER.

SEC. 351. EACH DIRECTOR OF A COMMUNITY MENTAL HEALTH SERV-
ICES PROGRAM SHALL OPERATE, DIRECT, AND SUPERVISE AN ASSISTED
OUTPATIENT TREATMENT PROGRAM AS PROVIDED IN THIS CHAPTER.
DIRECTORS OF COMMUNITY MENTAL HEALTH SERVICES PROGRAMS MAY

1 SATISFY THE PROVISIONS OF THIS SECTION BY OPERATING JOINT
2 ASSISTED OUTPATIENT TREATMENT PROGRAMS. THIS SECTION DOES NOT
3 PRECLUDE THE COMBINATION OR COORDINATION OF EFFORTS BETWEEN LOCAL
4 COMMUNITY MENTAL HEALTH SERVICES PROGRAMS AND HOSPITALS IN PRO-
5 VIDING AND COORDINATING ASSISTED OUTPATIENT TREATMENT. UPON
6 APPROVAL BY THE DEPARTMENT DIRECTOR, A HOSPITAL DIRECTOR MAY
7 OPERATE, DIRECT, AND SUPERVISE AN ASSISTED OUTPATIENT TREATMENT
8 PROGRAM AS PROVIDED IN THIS CHAPTER.

9 SEC. 353. (1) AN INDIVIDUAL MAY BE ORDERED TO OBTAIN
10 ASSISTED OUTPATIENT TREATMENT IF A COURT FINDS ALL OF THE
11 FOLLOWING:

12 (A) THE INDIVIDUAL IS 18 YEARS OF AGE OR OLDER.

13 (B) THE INDIVIDUAL IS SUFFERING FROM A MENTAL ILLNESS.

14 (C) THE INDIVIDUAL IS UNLIKELY TO SURVIVE SAFELY IN THE COM-
15 MUNITY WITHOUT SUPERVISION, BASED ON A CLINICAL DETERMINATION.

16 (D) THE INDIVIDUAL HAS A HISTORY OF LACK OF COMPLIANCE WITH
17 TREATMENT FOR MENTAL ILLNESS OR AS A RESULT OF HIS OR HER MENTAL
18 ILLNESS, THE INDIVIDUAL IS UNLIKELY TO VOLUNTARILY PARTICIPATE IN
19 TREATMENT RECOMMENDED IN A TREATMENT PLAN.

20 (E) IN VIEW OF THE INDIVIDUAL'S TREATMENT HISTORY AND CUR-
21 RENT BEHAVIOR, THE INDIVIDUAL NEEDS ASSISTED OUTPATIENT TREATMENT
22 IN ORDER TO PREVENT A RELAPSE OR DETERIORATION THAT IS LIKELY TO
23 RESULT IN SERIOUS HARM TO THE INDIVIDUAL OR OTHERS.

24 (F) THE INDIVIDUAL IS INCAPABLE OF MAKING AN INFORMED MEDI-
25 CAL DECISION.

26 (G) IT IS LIKELY THAT THE INDIVIDUAL WILL BENEFIT FROM
27 ASSISTED OUTPATIENT TREATMENT.

1 (2) IF THE INDIVIDUAL HAS EXECUTED A DURABLE POWER OF
2 ATTORNEY OR AN ADVANCE DIRECTIVE, ANY DIRECTIONS INCLUDED IN THE
3 DURABLE POWER OF ATTORNEY OR ADVANCE DIRECTIVE SHALL BE TAKEN
4 INTO ACCOUNT BY THE COURT IN CREATING A WRITTEN TREATMENT PLAN.

5 SEC. 355. NOTHING IN THIS CHAPTER PREVENTS AN INDIVIDUAL
6 WITH A DURABLE POWER OF ATTORNEY OR ADVANCE DIRECTIVE FROM BEING
7 SUBJECT TO A PETITION UNDER THIS CHAPTER.

8 SEC. 357. (1) A PETITION FOR AN ORDER AUTHORIZING ASSISTED
9 OUTPATIENT TREATMENT MAY BE FILED WITH THE COURT BY ANY INDIVID-
10 UAL 18 YEARS OF AGE OR OLDER.

11 (2) THE PETITION SHALL STATE, AT A MINIMUM, BOTH OF THE
12 FOLLOWING:

13 (A) EACH OF THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT
14 AS REQUIRED UNDER SECTION 353. THESE SHALL INCLUDE THE FACTS
15 THAT SUPPORT THE PETITIONER'S BELIEF THAT THE INDIVIDUAL WHO IS
16 THE SUBJECT OF THE PETITION MEETS EACH CRITERION.

17 (B) THAT THE SUBJECT OF THE PETITION IS PRESENT, OR IS REA-
18 SONABLY BELIEVED TO BE PRESENT, IN THE COUNTY IN WHICH THE PETI-
19 TION IS FILED.

20 (3) THE PETITION SHALL BE ACCOMPANIED BY AN AFFIDAVIT OF A
21 PHYSICIAN OR LICENSED PSYCHOLOGIST OTHER THAN THE PETITIONER.
22 THE AFFIDAVIT SHALL STATE THAT EITHER OF THE FOLLOWING HAS
23 OCCURRED:

24 (A) NOT MORE THAN 10 DAYS BEFORE THE PETITION IS FILED, BOTH
25 OF THE FOLLOWING OCCURRED:

26 (i) THE PHYSICIAN OR LICENSED PSYCHOLOGIST HAS PERSONALLY
27 EXAMINED THE INDIVIDUAL WHO IS THE SUBJECT OF THE PETITION.

1 (ii) THE PHYSICIAN OR LICENSED PSYCHOLOGIST RECOMMENDS
2 ASSISTED OUTPATIENT TREATMENT FOR THE SUBJECT OF THE PETITION.

3 (B) NOT MORE THAN 10 DAYS BEFORE THE PETITION IS FILED, BOTH
4 OF THE FOLLOWING OCCURRED:

5 (i) THE PHYSICIAN OR LICENSED PSYCHOLOGIST OR HIS OR HER
6 DESIGNEE HAS MADE APPROPRIATE ATTEMPTS TO ELICIT THE SUBJECT OF
7 THE PETITION'S COOPERATION BUT HAS NOT BEEN SUCCESSFUL IN PER-
8 SUADING THE SUBJECT TO SUBMIT TO AN EXAMINATION.

9 (ii) THE PHYSICIAN OR LICENSED PSYCHOLOGIST HAS REASON TO
10 SUSPECT THAT THE SUBJECT OF THE PETITION MEETS THE CRITERIA FOR
11 ASSISTED OUTPATIENT TREATMENT.

12 SEC. 359. (1) THE PETITIONER SHALL CAUSE WRITTEN NOTICE OF
13 THE PETITION TO BE GIVEN TO THE SUBJECT OF THE PETITION. NOTICE
14 SHALL ALSO BE GIVEN TO INDIVIDUALS WHO ARE REQUIRED TO RECEIVE
15 NOTICE IN A HEARING UNDER SECTION 453, THE SUBJECT OF THE
16 PETITION'S LEGAL COUNSEL, THE PATIENT ADVOCATE APPOINTED BY THE
17 SUBJECT OF THE PETITION, IF A PATIENT ADVOCATE IS KNOWN TO THE
18 PETITIONER OR THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM DIREC-
19 TOR, AND THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM DIRECTOR IN
20 THE COUNTY IN WHICH THE SUBJECT OF THE PETITIONER RESIDES, IF
21 THAT COMMUNITY MENTAL HEALTH DIRECTOR IS NOT THE PETITIONER.

22 (2) UNLESS AN APPEARANCE HAS BEEN ENTERED ON BEHALF OF THE
23 SUBJECT OF A PETITION, THE COURT SHALL, WITHIN 48 HOURS AFTER ITS
24 RECEIPT OF A PETITION TOGETHER WITH THE OTHER DOCUMENTS REQUIRED
25 BY SECTION 357, APPOINT COUNSEL TO REPRESENT THE SUBJECT OF THE
26 PETITION. THE APPOINTMENT OF COUNSEL AND THE APPOINTED COUNSEL
27 ARE SUBJECT TO THE PROVISIONS OF SECTION 454.

1 SEC. 361. (1) UPON RECEIPT BY THE COURT OF A PETITION UNDER
2 THIS CHAPTER, THE COURT SHALL PROMPTLY SET A DATE FOR A HEARING
3 AT A TIME NOT LATER THAN 7 DAYS AFTER THE DATE ON WHICH THE COURT
4 RECEIVES THE PETITION, EXCLUDING SUNDAYS AND HOLIDAYS. AN
5 ADJOURNMENT OF A HEARING UNDER THIS SECTION IS PERMITTED ONLY FOR
6 GOOD CAUSE. IN GRANTING AN ADJOURNMENT, THE COURT SHALL CONSIDER
7 THE NEED FOR FURTHER EXAMINATION BY A PHYSICIAN OR LICENSED PSY-
8 CHOLOGIST AND THE POTENTIAL NEED TO PROVIDE ASSISTED OUTPATIENT
9 TREATMENT EXPEDITIOUSLY. THE COURT SHALL CAUSE THE SUBJECT OF
10 THE PETITION, ANY OTHER INDIVIDUAL RECEIVING NOTICE, THE PETI-
11 TIONER, THE PHYSICIAN OR LICENSED PSYCHOLOGIST WHOSE AFFIDAVIT
12 ACCOMPANIED THE PETITION, THE APPROPRIATE COMMUNITY MENTAL HEALTH
13 SERVICES PROGRAM DIRECTOR, AND OTHER INDIVIDUALS AS THE COURT
14 DETERMINES NECESSARY TO BE ADVISED OF THE ADJOURNMENT AND NEW
15 HEARING DATE, IF A NEW HEARING DATE HAS BEEN SET.

16 (2) THE COURT SHALL HEAR TESTIMONY ON A PETITION UNDER THIS
17 CHAPTER. THE COURT MAY EXAMINE THE SUBJECT ALLEGED TO BE IN NEED
18 OF ASSISTED OUTPATIENT TREATMENT IN OR OUT OF COURT. IF THE
19 SUBJECT OF THE PETITION DOES NOT APPEAR AT THE HEARING AND APPRO-
20 PRIATE ATTEMPTS TO ELICIT THE SUBJECT OF THE PETITION'S
21 ATTENDANCE HAVE FAILED, THE COURT MAY CONDUCT THE HEARING IN THE
22 SUBJECT'S ABSENCE. IF THE HEARING IS CONDUCTED WITHOUT THE
23 SUBJECT OF THE PETITION PRESENT, THE COURT SHALL SET FORTH THE
24 FACTUAL BASIS FOR CONDUCTING THE HEARING WITHOUT THE PRESENCE OF
25 THE SUBJECT OF THE PETITION.

1 SEC. 363. (1) THE SUBJECT OF A PETITION UNDER THIS CHAPTER
2 HAS THE RIGHT IN A PROCEEDING UNDER THIS CHAPTER TO PRESENT
3 DOCUMENTS AND WITNESSES AND TO CROSS-EXAMINE WITNESSES.

4 (2) THE RULES OF EVIDENCE IN CIVIL ACTIONS ARE APPLICABLE,
5 EXCEPT TO THE EXTENT THAT SPECIFIC EXCEPTIONS HAVE BEEN PROVIDED
6 FOR IN THIS CHAPTER OR ELSEWHERE BY STATUTE OR COURT RULE.

7 SEC. 365. (1) THE COURT SHALL NOT ORDER ASSISTED OUTPATIENT
8 TREATMENT UNLESS AN EXAMINING PHYSICIAN OR LICENSED PSYCHOLOGIST,
9 WHO HAS PERSONALLY EXAMINED THE SUBJECT OF A PETITION UNDER THIS
10 CHAPTER WITHIN THE TIME PERIOD COMMENCING 10 DAYS BEFORE THE
11 FILING OF THE PETITION, SUBMITS AN AFFIDAVIT THAT INCLUDES, AT A
12 MINIMUM, ALL OF THE INFORMATION REQUIRED UNDER SECTION 367.

13 (2) IF THE SUBJECT OF A PETITION UNDER THIS CHAPTER REFUSES
14 TO BE EXAMINED BY A PHYSICIAN OR LICENSED PSYCHOLOGIST, THE COURT
15 MAY REQUEST THE SUBJECT TO CONSENT TO AN EXAMINATION BY A PHYSI-
16 CIAN OR LICENSED PSYCHOLOGIST APPOINTED BY THE COURT. IF THE
17 SUBJECT OF THE PETITION DOES NOT CONSENT AND THE COURT FINDS REA-
18 SONABLE CAUSE TO BELIEVE THAT THE ALLEGATIONS IN THE PETITION ARE
19 TRUE, THE COURT MAY ORDER PEACE OFFICERS TO TAKE THE SUBJECT OF
20 THE PETITION INTO CUSTODY AND TRANSPORT HIM OR HER TO A HOSPITAL
21 FOR EXAMINATION BY A PHYSICIAN OR LICENSED PSYCHOLOGIST. THE
22 SUBJECT OF THE PETITION MAY BE RETAINED UNDER A COURT ORDER
23 ISSUED UNDER THIS SUBSECTION FOR NOT MORE THAN 24 HOURS.

24 (3) THE EXAMINATION OF THE SUBJECT OF A PETITION UNDER THIS
25 CHAPTER MAY BE PERFORMED BY EITHER THE PHYSICIAN OR LICENSED PSY-
26 CHOLOGIST WHOSE AFFIDAVIT ACCOMPANIED THE PETITION OR BY ANOTHER
27 PHYSICIAN OR LICENSED PSYCHOLOGIST WHO PLANS TO SUBMIT AN

1 AFFIDAVIT AS THE EXAMINING PHYSICIAN OR LICENSED PSYCHOLOGIST AT
2 A HEARING INITIATED UNDER THIS CHAPTER, IF THAT PHYSICIAN OR
3 LICENSED PSYCHOLOGIST IS GRANTED PRIVILEGES BY THAT HOSPITAL OR
4 OTHERWISE AUTHORIZED BY THAT HOSPITAL TO DO SO.

5 SEC. 367. (1) AN AFFIDAVIT SUBMITTED BY A PHYSICIAN OR
6 LICENSED PSYCHOLOGIST UNDER SECTION 365 SHALL STATE ALL OF THE
7 FOLLOWING:

8 (A) THE FACTS THAT SUPPORT THE ALLEGATION THAT THE SUBJECT
9 MEETS EACH OF THE CRITERIA FOR ASSISTED OUTPATIENT TREATMENT.

10 (B) THE TREATMENT IS THE LEAST RESTRICTIVE ALTERNATIVE.

11 (C) A RECOMMENDED PLAN FOR ASSISTED OUTPATIENT TREATMENT.

12 (2) IF THE RECOMMENDED ASSISTED OUTPATIENT TREATMENT PLAN
13 INCLUDES MEDICATION, THE PHYSICIAN'S OR LICENSED PSYCHOLOGIST'S
14 AFFIDAVIT SHALL DESCRIBE THE TYPES OR CLASSES OF MEDICATION THAT
15 MAY BE AUTHORIZED AND THE BENEFICIAL AND POSSIBLE DETRIMENTAL
16 PHYSICAL AND MENTAL EFFECTS OF THE MEDICATION. THE PHYSICIAN'S
17 OR LICENSED PSYCHOLOGIST'S AFFIDAVIT SHALL ALSO RECOMMEND WHETHER
18 THE MEDICATION SHALL BE SELF-ADMINISTERED OR ADMINISTERED BY
19 AUTHORIZED PERSONNEL.

20 Enacting section 1. This amendatory act does not take
21 effect unless all of the following bills of the 91st Legislature
22 are enacted into law:

23 (a) Senate Bill No. _____ or House Bill No. 5827 (request
24 no. 03917'01).

25 (b) Senate Bill No. _____ or House Bill No. 5826 (request
26 no. 05114'01).