

# Legislative Analysis

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## JAIL DIVERSION PROGRAM FOR INDIVIDUALS WITH A MENTAL ILLNESS

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**House Bill 6305**

**Sponsor: Rep. Andy Meisner**

**Committee: Judiciary**

**Complete to 9-16-08**

### A SUMMARY OF HOUSE BILL 6305 AS INTRODUCED 6-28-08

The bill would amend the Mental Health Code (MCL 330.1401 et al.) to:

\*\* Repeal the current mandate for a community mental health services program (CMHSP) to provide programs designed to divert persons with a mental illness from jail incarceration.

\*\* Replace the repealed section with a requirement that designated stakeholders develop programs to divert individuals with mental illness, emotional disturbances, and development disabilities from criminal prosecution or jail incarceration and into appropriate treatment.

\*\* Require a contract between a program participant and CMHSP and provide consequences for noncompliance by either party.

\*\* Establish reporting requirements.

\*\* Delete from the definition of a "person requiring treatment" a person who posed a threat to himself, herself, or to others and instead refer to a person lacking capacity to make informed decisions about his or her mental illness and treatment for that mental illness.

The bill would take effect January 1, 2009.

#### **DETAILED SUMMARY:**

Currently, Section 207 of the Mental Health Code requires each community mental health services program (CMHSP) to provide services designed to divert persons with serious mental illness, serious emotional disturbances or developmental disability from possible jail incarceration when appropriate. House Bill 6305 would repeal Section 207 and replace it with the following provisions:

- Specify that all individuals would be eligible for diversion from criminal prosecution and possible incarceration unless the individual allegedly committed a crime of violence.

- Define numerous terms, including "participant," "protective custody," "protective environment," and "successfully complete."
- Require each primary jail diversion stakeholder to have a prebooking and postbooking jail diversion program in place. "Primary jail diversion stakeholders" would include judges; prosecutors; defense counsel; probation staff; court and jail administrators; jail medical and mental health staff; pretrial services staff; CMH treatment providers; community substance abuse treatment providers; law enforcement officials; and family members, guardians, and conservators of individuals with mental illness.
- Require primary jail diversion stakeholders (except for family, guardians, and conservators) to divert individuals with serious mental illness, serious emotional disturbance or developmental disability brought to a CMHSP or assessing agency from criminal prosecution or jail incarceration and into a treatment program as specified with a special focus on providing a comprehensive array of mental health services, regardless of the individual's ability to pay and a 24/7 crisis emergency service prepared to respond to individuals experiencing acute emotional, behavioral, or social dysfunction with an inpatient or other protective environment for treatment.
- Require collaborative programs at both the prebooking and postbooking stage to divert individuals with serious mental illness, serious emotional disturbance, or developmental disability. "Prebooking jail diversion" would apply to those who had allegedly committed a misdemeanor or nonviolent felony and would divert them from criminal prosecution to the appropriate mental health services as an alternative to being charged and incarcerated in a county jail or municipal detention facility. "Postbooking jail diversion" would apply to those who had been arrested, clerically processed for formal admission to jail, or incarcerated.
- Require all primary jail diversion stakeholders (except for family members, guardians, and conservators) to enter into a binding interagency agreement that would effectuate the prebooking and postbooking diversion of all eligible individuals from jail incarceration.
- Require primary jail diversion stakeholders (except for family members, guardians, and conservators) to confer with secondary jail diversion stakeholders, family members and guardians and conservator, on jail diversion issues including, but not limited to, the protection of consumer rights during the jail diversion process. "Secondary jail diversion stakeholders" would include consumers, crime victims and advocates, mental health advocates, housing providers and housing shelters, emergency room psychological and medical administrators, and adult protective services staff.
- List services that at a minimum would have to be included in a prebooking program.
- List the points at which postbooking services could be made available; for example, at or immediately after booking into jail, before formal charges were

filed. (The bill does not specifically list the types of services to be included in a postbooking program.)

- Require a report be provided to the CMHSP and Governor within 48 hours and the Legislature within six months if a crisis emergency service was not able to accommodate an individual brought by a law enforcement officer for assessment and possible diversion. Each lapse of crisis emergency services could subject a primary jail diversion stakeholder (except family members, etc.) to a one percent penalty at the discretion of the director of the Department of Community Health.
- Require a CMHSP to hire or designate a Jail Diversion Coordinator and specify that person's responsibilities. The CMHSP director would have to review local, state, and national sources for funding the coordinator position; if a current employee was designated as coordinator, his or her other job duties could not occupy more than 50 percent of his or her time.
- Require CMHSPs to submit an annual report to the Governor and Legislature regarding the progress of jail diversion programs, including the number of individuals successfully diverted from criminal prosecution and incarceration.
- Require a jail diversion coordinator to develop and implement a system of graduated sanctions and incentives to compel a jail diversion program participant's successful participation in treatment.
- Require a jail diversion program participant to sign a contract with the local law enforcement agency and CMHSP outlining his or her duties and obligations of all parties to the program.
- Failure on the part of a CMHSP to comply with the contract would give the right to the participant to pursue a complaint through the Office of Recipient Rights.
- A program participant would have to comply with the terms of his or her treatment plan; failure on the part of participant to comply with the contract could result in expulsion from the program at the discretion of local law enforcement, the courts, and the jail diversion coordinator.

In addition, the bill would revise the definition of a "person requiring treatment". Currently, the term is defined as an individual who has mental illness and who meets one set of four specified scenarios. The bill would revise the first scenario. Currently, that scenario refers to an individual who has mental illness, and who as a result 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. Instead, the bill would refer to an individual who has mental illness, and lacks the capacity to make informed decisions about his or her mental illness and treatment for that mental illness.

Further, the bill would revise a provision requiring a hospital to offer an individual asserted to be a person requiring treatment considered by the hospital to be suitable for informal or formal voluntary hospitalization to offer that individual the opportunity to request or make application for hospitalization as an informal or formal voluntary patient.

The bill would revise the provision to instead specify that if an individual asserted to be a person requiring treatment is considered to be suitable for appropriate mental health services, the mental health professional shall offer the individual or his or her guardian the opportunity to request or make application for that treatment.

## **FISCAL IMPACT:**

Department of Community Health. Based on a report prepared by the Department of Community Health, CMHSPs expended \$1.9 billion to serve 40,155 children with mental illness, 143,398 adults with mental illness, and 36,622 persons with developmental disabilities in FY 2006-07. This expenditure data translates to \$3,425 annual average cost per child with mental illness, \$5,485 annual average cost per adult with mental illness, and \$26,520 annual average cost per person with developmental disability. Information is not yet available, but requested, on the costs for jail diversion programs currently operated by CMHSPs as mandated by Section 207 of the Mental Health Code.

Judiciary. To the extent that fewer individuals with mental illness, emotional disorders, or developmental disabilities were going through the traditional adversary system, there would be a positive fiscal impact to the judiciary through reduced administrative and court costs. With the precise role that judges and prosecutors will play in the new program not detailed, the fiscal impact on them is indeterminate, although likely negligible with respect to any increased costs.

Corrections. To the extent that fewer individuals with mental illness, emotional disorders, or developmental disabilities were held in jails or convicted of misdemeanors, local units of government could experience reduced costs; costs of jail incarceration and misdemeanor probation supervision vary by jurisdiction. Depending on the numbers and locations of individuals involved, some counties could experience an easing of local problems with jail overcrowding.

If the bill resulted in fewer felony convictions, the state could experience savings in the cost of prison incarceration or felony probation supervision. The annual appropriated cost of prison incarceration currently averages about \$32,000 per prisoner, a figure that includes various fixed administrative and operational costs. The cost of felony parole and probation supervision averages about \$2,100 per supervised offender per year.

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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.