

HOUSE BILL NO. 5340

September 23, 2021, Introduced by Rep. Whiteford and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 1082 (MCL 600.1082), as amended by 2012 PA 334,
and by adding chapter 10D.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1082. (1) A state drug treatment court advisory committee
2 is created in the legislative council. The state drug treatment
3 court advisory committee consists of the following members:
4 (a) The state court administrator or his or her designee.

1 (b) ~~Seventeen~~**Eighteen** members appointed jointly by the
2 speaker of the house of representatives and the senate majority
3 leader, as follows:

4 (i) A circuit court judge who has presided for at least 2 years
5 over a drug treatment court.

6 (ii) A district court judge who has presided for at least 2
7 years over a drug treatment court.

8 (iii) A judge of the family division of circuit court who has
9 presided for at least 2 years over a juvenile drug treatment court
10 program.

11 (iv) A circuit or district court judge who has presided for at
12 least 2 years over an alcohol treatment court.

13 (v) A circuit or district court judge who has presided over a
14 veterans treatment court.

15 **(vi) A circuit court judge who has presided over a family
16 treatment court.**

17 **(vii)** ~~(vi)~~—A court administrator who has worked for at least 2
18 years with a drug or alcohol treatment court.

19 **(viii)** ~~(vii)~~—A prosecuting attorney who has worked for at least 2
20 years with a drug or alcohol treatment court.

21 **(ix)** ~~(viii)~~—An individual representing law enforcement in a
22 jurisdiction that has had a drug or alcohol treatment court for at
23 least 2 years.

24 **(x)** ~~(ix)~~—An individual representing drug treatment providers
25 who has worked at least 2 years with a drug or alcohol treatment
26 court.

27 **(xi)** ~~(x)~~—An individual representing criminal defense attorneys,
28 who has worked for at least 2 years with drug or alcohol treatment
29 courts.

1 **(xii)** ~~(xi)~~—An individual who has successfully completed a drug
2 treatment court program.

3 **(xiii)** ~~(xii)~~—An individual who has successfully completed a
4 juvenile drug treatment court program.

5 **(xiv)** ~~(xiii)~~—An individual who is an advocate for the rights of
6 crime victims.

7 **(xv)** ~~(xiv)~~—An individual representing the Michigan association
8 of drug court professionals.

9 **(xvi)** ~~(xv)~~—An individual who is a probation officer and has
10 worked for at least 2 years for a drug or alcohol treatment court.

11 **(xvii)** ~~(xvi)~~—An individual representing a substance abuse
12 coordinating agency.

13 **(xviii)** ~~(xvii)~~—An individual representing domestic violence
14 service provider programs that receive funding from the state
15 domestic violence prevention and treatment board.

16 (2) Members of the advisory committee shall serve without
17 compensation. However, members of the advisory committee may be
18 reimbursed for their actual and necessary expenses incurred in the
19 performance of their duties as members of the advisory committee.

20 (3) Members of the advisory committee shall serve for terms of
21 4 years each, except that the members first appointed shall serve
22 terms as follows:

23 (a) The members appointed under subsection (1) (b) (i) to ~~(vi)~~
24 **(vii)** shall serve terms of 4 years each.

25 (b) The members appointed under subsection ~~(1) (b) (vii)~~
26 **(1) (b) (viii)** to ~~(xi)~~ **(xii)** shall serve terms of 3 years each.

27 (c) The members appointed under subsection ~~(1) (b) (xii)~~
28 **(1) (b) (xiii)** to ~~(xvi)~~ **(xviii)** shall serve terms of 2 years each.

1 (4) If a vacancy occurs in an appointed membership on the
2 advisory committee, the appointing authority shall make an
3 appointment for the unexpired term in the same manner as the
4 original appointment.

5 (5) The appointing authority may remove an appointed member of
6 the advisory committee for incompetency, dereliction of duty,
7 malfeasance, misfeasance, or nonfeasance in office, or any other
8 good cause.

9 (6) The first meeting of the advisory committee ~~shall~~**must** be
10 called by the speaker of the house of representatives and the
11 senate majority leader. At the first meeting, the advisory
12 committee shall elect from among its members a chairperson and
13 other officers as it considers necessary or appropriate. After the
14 first meeting, the advisory committee shall meet at least
15 quarterly, or more frequently at the call of the chairperson or if
16 requested by 9 or more members.

17 (7) A majority of the members of the advisory committee
18 constitute a quorum for the transaction of business at a meeting of
19 the advisory committee. A majority of the members present and
20 serving are required for official action of the advisory committee.

21 (8) The business that the advisory committee may perform ~~shall~~
22 **must** be conducted at a public meeting of the advisory committee
23 held in compliance with the open meetings act, 1976 PA 267, MCL
24 15.261 to 15.275.

25 (9) A writing prepared, owned, used, in the possession of, or
26 retained by the advisory committee in the performance of an
27 official function is subject to the freedom of information act,
28 1976 PA 442, MCL 15.231 to 15.246.

29 (10) The advisory committee shall monitor the effectiveness of

1 drug treatment courts, **family treatment courts**, and veterans
2 treatment courts and the availability of funding for those courts
3 and shall present annual recommendations to the legislature and
4 supreme court regarding proposed statutory changes regarding those
5 courts.

6 **CHAPTER 10D**

7 **Sec. 1099aa. As used in this chapter:**

8 (a) "Department" means the department of health and human
9 services.

10 (b) "Family treatment court" means any of the following:

11 (i) A court-supervised treatment program for individuals with a
12 civil child abuse or neglect case who are diagnosed with a
13 substance use disorder.

14 (ii) A program designed to adhere to the family treatment court
15 best practice standards promulgated by the National Association of
16 Drug Court Professionals and the Center for Children and Family
17 Futures, which include all of the following:

18 (A) Early identification, screening, and assessment of
19 eligible participants with prompt placement in the program.

20 (B) Integration of timely, high-quality, and appropriate
21 substance use disorder treatment services with justice system case
22 processing.

23 (C) Access to comprehensive case management, services, and
24 supports for families.

25 (D) Valid, reliable, random, and frequent drug testing.

26 (E) Therapeutic responses to improve parent, child, and family
27 functioning, ensure children's safety, permanency, and well-being,
28 support participant behavior change, and promote participant
29 accountability.

1 (F) Ongoing close judicial interaction with each participant.

2 (G) Collecting and reviewing data to monitor participant
3 progress, engage in a process of continuous quality improvement,
4 monitor adherence to best practice standards, and evaluate outcomes
5 using scientifically reliable and valid procedures.

6 (H) Continued interdisciplinary education in order to promote
7 effective family treatment court planning, implementation, and
8 operation.

9 (I) The forging of partnerships among other family treatment
10 courts, public agencies, and community-based organizations to
11 generate local support.

12 (J) A family-centered, culturally relevant, and trauma-
13 informed approach.

14 (K) Ensuring equity and inclusion.

15 (c) "Indian child's tribe" means that term as defined in
16 section 3 of the Michigan Indian family preservation act, chapter
17 XIIB of the probate code of 1939, 1939 PA 288, MCL 712B.3.

18 (d) "Lawyer-guardian ad litem" means that term as defined in
19 section 13a of chapter XIIA of the probate code of 1939, 1939 PA
20 288, MCL 712A.13a.

21 (e) "Participant" means an individual who is admitted into a
22 family treatment court.

23 (f) "Prosecutor" means the prosecuting attorney of the county,
24 attorney general, or attorney retained by the department.

25 (g) "Termination" means removal from the family treatment
26 court due to a new offense, noncompliance, absconding, voluntary
27 withdrawal, medical discharge, or death.

28 (h) "Violent offender" means an individual who is currently
29 charged with or has pled guilty to an offense involving the death

1 of or serious bodily injury to any individual, whether or not any
2 of the circumstances are an element of the offense, or an offense
3 that is criminal sexual conduct of any degree.

4 Sec. 1099bb. (1) The circuit court in any judicial circuit may
5 adopt or institute a family treatment court, pursuant to statute or
6 court rules. The circuit court shall not adopt or institute the
7 family treatment court unless the circuit court enters into a
8 memorandum of understanding with the prosecuting attorney, a
9 representative of the bar specializing in family or juvenile law, a
10 lawyer-guardian ad litem, a representative or representatives of
11 the department, and a representative or representatives of
12 community treatment providers. The memorandum of understanding also
13 may include other parties considered necessary, such as a court
14 appointed special advocate, local law enforcement, the local
15 substance abuse coordinating agency for that circuit court, a
16 mental health treatment provider, an Indian child's tribe, or child
17 and adolescent services providers. The memorandum of understanding
18 must describe the role of each party.

19 (2) A court that is adopting a family treatment court shall
20 participate in training as required by the state court
21 administrative office.

22 (3) A family treatment court operating in this state, or a
23 circuit court in any judicial circuit seeking to adopt or institute
24 a family treatment court, must be certified by the state court
25 administrative office. The state court administrative office shall
26 establish the procedure for certification. Approval and
27 certification under this subsection of a family treatment court by
28 the state court administrative office is required to begin or to
29 continue the operation of a family treatment court under this

1 chapter. The state court administrative office shall include a
2 family treatment court certified under this subsection on the
3 statewide official list of family treatment courts. The state court
4 administrative office shall not recognize and include a family
5 treatment court that is not certified under this subsection on the
6 statewide official list of family treatment courts. A family
7 treatment court that is not certified under this subsection shall
8 not perform any of the functions of a family treatment court,
9 including, but not limited to, receiving funding under section
10 1099//.

11 Sec. 1099cc. A family treatment court may hire or contract
12 with licensed or accredited treatment providers in consultation and
13 cooperation with the local substance abuse coordinating agency, the
14 local community mental health service provider, and other such
15 appropriate persons to assist the family treatment court in
16 fulfilling its requirements under this chapter, including, but not
17 limited to, the investigation of an individual's background or
18 circumstances, the clinical evaluation of an individual for his or
19 her admission into or participation in a family treatment court,
20 providing a recommended treatment modality and level of care, and
21 providing evidence-based, family-centered treatment using an
22 integrated, comprehensive continuum of care.

23 Sec. 1099dd. (1) A family treatment court shall determine
24 whether an individual may be admitted to the family treatment
25 court. No individual has a right to be admitted into a family
26 treatment court. However, an individual is not eligible for
27 admission into a family treatment court if he or she is a violent
28 offender.

29 (2) To be admitted into a family treatment court, admission

1 must be indicated as appropriate as a result of a preadmission
2 screening, evaluation, or assessment with an evidence-based
3 screening and assessment tool. An individual shall cooperate with
4 and complete a preadmission screening, evaluation, or assessment,
5 and shall agree to cooperate with any future evaluation or
6 assessment as directed by the family treatment court. A
7 preadmission screening, evaluation, or assessment must include all
8 of the following:

9 (a) A complete review of the individual's criminal history,
10 and a review of whether or not the individual has been admitted to,
11 has participated in, or is currently participating in a problem-
12 solving court. The court may accept verifiable and reliable
13 information from the prosecution or the individual's attorney to
14 complete its review and may require the individual to submit a
15 statement as to whether or not he or she has previously been
16 admitted to a problem-solving court and the results of his or her
17 participation in the prior program or programs.

18 (b) A complete review of the individual's child protective
19 services history.

20 (c) An assessment of the family situation, including any
21 nonrespondent parent and family support.

22 (d) An assessment of the risk of danger or harm to the
23 individual, the individual's children, or the community.

24 (e) As much as practicable, a complete review of the
25 individual's history regarding the use or abuse of any controlled
26 substance or alcohol and an assessment of whether the individual
27 abuses controlled substances or alcohol or is drug or alcohol
28 dependent. As much as practicable, the assessment must be a
29 clinical assessment.

1 (f) A review of any special needs or circumstances of the
2 individual that may potentially affect the individual's ability to
3 receive substance abuse treatment and follow the court's orders.

4 (3) The information received for an assessment under
5 subsection (2) is confidential and must not be used for any purpose
6 other than treatment and case planning.

7 (4) Except as otherwise permitted in this act, any statement
8 or other information obtained as a result of participating in a
9 preadmission screening, evaluation, or assessment under subsection
10 (2) is confidential and is exempt from disclosure under the freedom
11 of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall
12 not be used in a criminal prosecution, unless it reveals criminal
13 acts other than, or inconsistent with, personal drug use.

14 (5) The court may request that the department provide to the
15 court information pertaining to an individual applicant's child
16 protective services history for the purposes of determining an
17 individual's admission into the family treatment court. The
18 department shall provide the information requested by a family
19 treatment court under this subsection and as required under section
20 7(2)(g) of the child protection law, 1975 PA 238, MCL 722.627.

21 Sec. 1099ee. Before an individual is admitted into a family
22 treatment court, the court shall find on the record, or place a
23 statement in the court file establishing all of the following:

24 (a) That the individual has a substance use disorder and is an
25 appropriate candidate for participation in the family treatment
26 court as determined by the preadmission screening, evaluation, or
27 assessment.

28 (b) That the individual understands the consequences of
29 entering the family treatment court and agrees to comply with all

1 court orders and requirements of the family treatment court and
2 treatment providers.

3 (c) That the individual is not a violent offender.

4 (d) That the individual has completed a preadmission
5 screening, evaluation, or assessment under section 1099dd and has
6 agreed to cooperate with any future evaluation assessment as
7 directed by the family treatment court.

8 (e) The terms and conditions of the agreement between the
9 parties.

10 Sec. 1099ff. If the individual being considered for admission
11 to a family treatment court is adjudicated in a civil neglect and
12 abuse case, his or her admission is subject to all of the following
13 conditions:

14 (a) The allegations contained in the petition must be related
15 to the abuse, illegal use, or possession of a controlled substance
16 or alcohol.

17 (b) The individual must make an admission of responsibility to
18 the allegations on the record.

19 (c) The individual must waive, in writing, the right to
20 representation at family treatment court review hearings by an
21 attorney. However, an individual maintains the right to an attorney
22 for any program violation where the facts are contested, a liberty
23 interest is at stake, or if the individual may be terminated from
24 the family treatment court program.

25 (d) The individual must sign a written agreement to
26 participate in the family treatment court.

27 Sec. 1099gg. (1) Upon admitting an individual into a family
28 treatment court, all of the following apply:

29 (a) For an individual who is admitted to a family treatment

1 court based on having an adjudicated child abuse or neglect case,
2 the court shall accept the admission of responsibility to the
3 allegations in section 1099ff.

4 (b) The court may place the individual under court
5 jurisdiction in the family treatment court program with terms and
6 conditions as considered necessary by the court.

7 (2) The family treatment court shall cooperate with, and act
8 in a collaborative manner with, the prosecutor, representative of
9 the bar specializing in family or juvenile law, treatment
10 providers, lawyer-guardian ad litem, local substance abuse
11 coordinating agency, department, and, to the extent possible, court
12 appointed special advocate, local law enforcement, child and
13 adolescent services providers, Indian child's tribe, and community
14 corrections agencies.

15 (3) The family treatment court may require an individual
16 admitted into the court to pay a reasonable family treatment court
17 fee that is reasonably related to the cost to the court for
18 administering the family treatment court program as provided in the
19 memorandum of understanding under section 1099bb. The clerk of the
20 circuit court shall transmit the fees collected to the treasurer of
21 the local funding unit at the end of each month.

22 (4) The family treatment court may request that the department
23 provide to the court information pertaining to an individual
24 applicant's child protective services history for the purposes of
25 determining an individual's admission into the family treatment
26 court. The department shall provide the information requested by a
27 family treatment court under this subsection and as required under
28 section 7(2)(g) of the child protection law, 1975 PA 283, MCL
29 722.627.

1 Sec. 1099hh. (1) A family treatment court shall provide a
2 family treatment court participant with all of the following:

3 (a) Consistent, continual, and close monitoring of the
4 participant and interaction among the court, treatment providers,
5 department, and participant.

6 (b) Mandatory periodic and random testing for the presence of
7 any controlled substance, alcohol, or other abused substance in a
8 participant's blood, urine, saliva, or breath, using to the extent
9 practicable the best available, accepted, and scientifically valid
10 methods.

11 (c) Periodic evaluation assessments of the participant's
12 circumstances and progress in the program.

13 (d) A regimen or strategy of appropriate and graduated but
14 immediate rewards for compliance and sanctions for noncompliance,
15 including, but not limited to, the possibility of incarceration or
16 confinement.

17 (e) Substance abuse treatment services, including, but not
18 limited to, family-centered treatment, relapse prevention services,
19 mental health treatment services, education, and vocational
20 opportunities as appropriate and practicable.

21 (2) Any statement or other information obtained as a result of
22 participating in an assessment, evaluation, treatment, or testing
23 while in a family treatment court is confidential and is exempt
24 from disclosure under the freedom of information act, 1976 PA 442,
25 MCL 15.231 to 15.246, and must not be used in a criminal
26 prosecution, unless it reveals criminal acts other than, or
27 inconsistent with, personal drug use.

28 Sec. 1099ii. (1) In order to continue to participate in and
29 successfully complete a family treatment court program, an

1 individual shall do all of the following:

2 (a) Pay the family treatment court fee allowed under section
3 1099gg, as applicable.

4 (b) Comply with all court orders and case service plans,
5 violations of which may be sanctioned according to national and
6 state recognized family treatment court best practices and
7 standards.

8 (2) The family treatment court must be notified of any new
9 neglect and abuse allegations against the participant or if the
10 participant is accused of a crime. The judge shall consider whether
11 to terminate the participant's participation in the family
12 treatment court in conformity with the memorandum of understanding
13 under section 1099bb.

14 (3) The court shall require that a participant pay the fee
15 described in subsection (1)(a). However, if the court determines
16 that the payment of the fee under this subsection would be a
17 substantial hardship for the participant or would interfere with
18 the participant's substance abuse treatment, the court may waive
19 all or part of that fee.

20 Sec. 1099jj. (1) Upon completion of or termination from a
21 family treatment court program, the court shall find on the record
22 or place a written statement in the court file as to whether the
23 participant completed the program successfully or whether the
24 individual's participation in the program was terminated and, if it
25 was terminated, the reason for the termination.

26 (2) If a participant has successfully completed family
27 treatment court, the court shall send a notice of the family
28 treatment court completion and final disposition to the department.
29 The department shall record successful participation by the

1 individual in a family treatment court.

2 (3) For a participant whose participation is terminated from
3 the family treatment court program, the court shall send a notice
4 of the termination to the department and the department shall
5 record the termination.

6 (4) All court proceedings under this section must be open to
7 the public.

8 Sec. 1099kk. (1) Each family treatment court shall collect and
9 provide data on each individual applicant and participant in the
10 program as required by the state court administrative office.

11 (2) A family treatment court shall maintain files or databases
12 on each individual applicant or referral who is denied or refused
13 admission to the program, including the reasons for the denial or
14 rejection, the criminal history of the applicant, the preadmission
15 evaluation or assessment, and other demographic information as
16 required by the state court administrative office.

17 (3) A family treatment court shall maintain files or databases
18 on each individual participant in the program for review and
19 evaluation, as directed by the state court administrative office.
20 The information collected for evaluation purposes must include a
21 minimum standard data set developed and specified by the state
22 court administrative office. This information should be maintained
23 in the court files or otherwise accessible by the courts and the
24 state court administrative office and, as much as practicable,
25 should include all of the following:

26 (a) Location and contact information for each individual
27 participant, upon admission and termination or completion of the
28 program for follow-up reviews, and third-party contact information.

29 (b) Significant transition point dates, including dates of

1 referral, enrollment, new court orders, violations, detentions,
2 changes in services or treatments provided, discharge for
3 completion or termination, any provision of after-care, and after-
4 program recidivism.

5 (c) The individual's precipitating adjudication and
6 significant factual information, source of referral, and all family
7 treatment court evaluations and assessments.

8 (d) Treatments provided, including the intensity of care or
9 dosage, and the outcome of each treatment.

10 (e) Other services or opportunities provided to the individual
11 and resulting use by the individual, such as education or
12 employment and the participation of and outcome for that
13 individual.

14 (f) Reasons for discharge, completion, or termination of the
15 program.

16 (g) Outcomes related to reunification and placement of a child
17 or children.

18 (4) As directed by the state court administrative office,
19 after an individual is discharged either upon completion of or
20 termination from the program, the family treatment court should
21 conduct, as much as practicable, follow-up contacts with and
22 reviews of participants for key outcome indicators, such as
23 substance use, custody status of children, recidivism, and
24 employment, as frequently and for a period of time determined by
25 the state court administrative office based on the nature of the
26 family treatment court and the nature of the participant. The
27 follow-up contact and review of former participants is not an
28 extension of the court's jurisdiction over the individual.

29 (5) A family treatment court shall provide to the state court

1 administrative office all information requested by the state court
2 administrative office.

3 (6) With the approval and at the discretion of the supreme
4 court, the state court administrative office is responsible for
5 evaluating and collecting data on the performance of family
6 treatment courts in this state as follows:

7 (a) Provide an annual review of the performance of family
8 treatment courts in this state to the minority and majority party
9 leaders in the senate and house of representatives, the state drug
10 treatment court advisory committee created under section 1082, the
11 governor, and the supreme court.

12 (b) Provide standards for family treatment courts in this
13 state, including, but not limited to, developing a list of approved
14 measurement instruments and indicators for data collection and
15 evaluation. These standards must provide comparability between
16 programs and their outcomes.

17 (c) Provide evaluation plans, including appropriate and
18 scientifically valid research designs that, as soon as practicable,
19 include the use of comparison and control groups.

20 (7) The information collected under this section regarding
21 individual applicants to family treatment court programs for the
22 purpose of application to that program and participants who have
23 successfully completed family treatment courts is exempt from
24 disclosure under the freedom of information act, 1976 PA 442, MCL
25 15.231 to 15.246.

26 Sec. 1099//. (1) The supreme court is responsible for the
27 expenditure of state funds for the establishment and operation of
28 family treatment courts. Federal funds provided to the state for
29 the operation of family treatment courts must be distributed by the

1 department or the appropriate state agency as otherwise provided by
2 law.

3 (2) The state treasurer may receive money or other assets from
4 any source for deposit into the appropriate state fund or funds for
5 the purposes described in subsection (1).

6 (3) Each family treatment court shall report quarterly to the
7 state court administrative office on the funds received and
8 expended by that family treatment court, in a manner prescribed by
9 the state court administrative office.