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## BILL ANALYSIS



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Senate Bill 435 through 438 (as enacted)  
Sponsor: Senator Tonya Schuitmaker  
Senate Committee: Judiciary  
House Committee: Law and Justice

**PUBLIC ACTS 161-164 of 2017**

Date Completed: 11-20-17

**RATIONALE**

The Revised Judicature Act allows trial courts in Michigan to adopt or institute what are called problem-solving courts, including drug treatment courts, DWI/sobriety courts, mental health courts, and veterans treatment courts. The focus of these courts is to address an offender's underlying substance abuse or mental health issues through coordination of services to reduce recidivism (the tendency of a convicted criminal to reoffend). Reportedly, "graduates" of these problem-solving courts are less likely to reoffend and are more likely to have better outcomes than nonparticipants.

The State Court Administrative Office (SCAO) publishes manuals and other guidance to assist the specialty courts in adhering to the Act's requirements for the courts, as well as research and components promulgated by other entities. Adoption of the SCAO's recommendations is not mandatory, however. Some contend that requiring specialty courts to adopt those standards will create a more consistent approach for the courts and help their participants succeed, and that a certification process might be one way to implement the standards. Accordingly, it was suggested that problem-solving courts be required to undergo an approval and certification process administered by the SCAO.

**CONTENT**

**Senate Bills 435, 437, and 438 amend the Revised Judicature Act to require drug treatment and DWI/sobriety courts, mental health courts, and veterans treatment courts, respectively, and circuit or district courts that seek to adopt those types of specialty courts, to be certified by the SCAO; and prohibit those courts from performing certain functions or receiving funding unless they are certified.**

**Senate Bill 435 also does the following:**

- **Allows a case to be transferred from one court to another for the defendant's participation in a State-certified treatment court.**
- **Prohibits the consummation of a transfer until a memorandum of understanding (MOU) is executed, and requires the MOU to include certain statements, including how funds assessed to the defendant will be accounted for.**
- **Amends the definition of "violent offender" as used in Chapter 10A of the Act (Drug Treatment Courts).**

**Senate Bill 436 amends the Michigan Vehicle Code to do the following:**

- **Modify the definition of "DWI/sobriety court" to specify that the term includes only a DWI/sobriety court that is certified by the SCAO as provided in the Revised Judicature Act.**

- **Allow, at the discretion of a judge, the custodian of a minor child to drive to and from the facilities of a day care services provider or an educational institution at which the child is enrolled, for specific purposes.**

The bills will take effect on February 11, 2018.

### **Senate Bill 435**

#### Drug Treatment Courts; Certification

The Revised Judicature Act (RJA) allows a circuit court or district court to adopt or institute a drug treatment court. "Drug treatment court" is defined as a court supervised treatment program for individuals who abuse or are dependent upon any controlled substance or alcohol. A drug treatment court must comply with the 10 components promulgated by the National Association of Drug Court Professionals. (Please see **BACKGROUND** for information on those components.)

The bill requires a drug treatment court operating in Michigan, or a circuit court in any judicial circuit or a district court in any judicial district that seeks to adopt or institute a drug treatment court, to be certified by the SCAO. The State Court Administrative Office must establish the procedures for certification. Approval and certification of a drug court by the SCAO will be required to begin or continue the operation of a drug treatment court. The SCAO must include a certified drug treatment court on the statewide official list of drug treatment courts, and may not include an uncertified court on the list.

A drug treatment court that is not certified may not perform any of the functions of a drug treatment court, including any of the following:

- Charging a fee under Section 1070 (which allows a drug treatment court to charge a fee reasonably related to the cost of administering the drug treatment court program).
- Discharging and dismissing a case under Section 1076.
- Receiving State funding.
- Certifying to the Secretary of State that an individual is eligible to receive a restricted license under Section 1084 of the RJA (described below) and Section 304 of the Michigan Vehicle Code (the section Senate Bill 436 amends).

(Section 1076 of the RJA allows a court to discharge or dismiss the proceedings against a person who successfully completes the drug treatment court program and meets other conditions.)

#### Case Transfer, Memorandum of Understanding

The bill enacts Section 1088 of the Act, to allow a case to be transferred totally from one court to another for the defendant's participation in a State-certified treatment court. A total transfer may occur before or after adjudication, but may not be consummated until an MOU has been completed and executed. The MOU must include all of the following:

- A detailed statement of how all money assessed to the defendant will be accounted for, including the need for a receiving State-certified treatment court to collect money and remit it to the court of original jurisdiction.
- A statement of which court is responsible for providing information to the Department of State Police and forwarding an abstract to the Secretary of State for inclusion on the defendant's driving record.
- A statement of where jail sanctions or incarceration sentences will be served, as applicable.
- A statement that the defendant has been determined eligible by and will be accepted into the State-certified treatment court upon request.
- The approval of all of the following: a) the chief judge and assigned judge of the treatment court and the court of original jurisdiction, b) a prosecuting attorney from the treatment court and the court of original jurisdiction, and c) the defendant.

"State-certified treatment court" includes the treatment courts certified by the SCAO.

The Act requires the circuit or district court to maintain jurisdiction over the drug treatment court, mental health court, or veterans treatment court participant until final disposition of the case, but not longer than the probation period fixed under Chapter XI (Probation) of the Code of Criminal Procedure. Under the bill, this will apply unless an MOU executed under Section 1088 between a receiving treatment court and the court of original jurisdiction provides otherwise.

#### DWI/Sobriety Courts; Certification

Section 1084 includes provisions pertaining to the DWI/sobriety court interlock pilot project, which was required to begin January 1, 2011, and continue for four years. Section 1084 also created the DWI/sobriety court interlock program beginning January 1, 2015. The bill eliminates language pertaining to the pilot project. "DWI/sobriety court" means the specialized court docket and programs established within judicial circuits and districts throughout the State that are designed to reduce recidivism among alcohol offenders and that comply with the 10 guiding principles of DWI courts as promulgated by the National Center for DWI Courts. (Please see **BACKGROUND** for information on DWI/sobriety court interlock pilot project and the guiding principles of DWI courts.)

The bill requires a DWI/sobriety court operating in Michigan, or a circuit court in any judicial circuit or a district court in any judicial district that seeks to adopt or institute a DWI/sobriety court, to be certified by the SCAO in the same manner as required for a drug treatment court. A DWI/sobriety court may not perform any of those functions, including the functions of a drug treatment court described above, after that date unless the court has been certified by the SCAO.

#### "Violent Offender"

Under Chapter 10A of the Revised Judicature Act, a violent offender may not be admitted to a drug treatment court. "Violent offender" means an individual who meets either of the following: a) is currently charged with or has pleaded guilty to, or, if a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense that involves the death of or a serious bodily injury to any individual, or the carrying, possession, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or that is criminal sexual conduct of any degree; or b) has one or more prior convictions for, or, if a juvenile, has one or more prior findings of responsibility for, a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

Under the bill, "violent offender" will mean an individual who is currently charged with or has pleaded guilty to, or, if a juvenile, is currently alleged to have committed or has admitted responsibility for, an offense involving the death of or a serious bodily injury to any individual, whether or not any of these circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree.

#### **Senate Bill 436**

The Michigan Vehicle Code requires the Secretary of State (SOS), except as otherwise provided, to issue a restricted license to an individual whose license was suspended or restricted, or revoked or denied based on two or more convictions for violations related to the operation of a vehicle on a highway or open to the general public while intoxicated. A restricted license may not be issued until after the person's operator's or chauffeur's license has been suspended or revoked for 45 days and the judge assigned to a DWI/sobriety court certifies to the SOS that both of the following conditions have been met: a) the person has been admitted into a DWI/sobriety court program, and b) an ignition interlock device has been installed on each motor vehicle owned or operated, or both, by the individual.

The bill amends the definition of "DWI/sobriety court" to specify that the term includes only a DWI/sobriety court that is certified by the SCAO as provided in the Revised Judicature Act (as amended by Senate Bill 435).

The Code specifies that a restricted license allows the individual to whom it is issued to operate only the vehicle equipped with an ignition interlock device, to take any driving skills test required by the Secretary of State, and to drive to and from any combination of the following locations or events: a) in the course of the individual's employment if it does not require a commercial driver license; or b) to and from any combination of the individual's residence, work location, an alcohol or drug treatment program, court-ordered self-help programs (such as Alcoholics Anonymous), court hearings, court-ordered community service, an educational institution at which the individual is a student, medical treatment, alcohol or drug testing, or an ignition interlock service provider.

The bill also allows, at the discretion of a judge, the custodian of a minor child (an individual under 18) to drive to and from the facilities of a day care services provider at which his or her child is enrolled, or an educational institution at which the custodian's minor child is enrolled as a student for the purposes of classes, academic meetings, or conferences, and athletic or other extracurricular activities sanctioned by the educational institution in which the child is a participant.

### **Senate Bill 437**

Under the Revised Judicature Act, the circuit court or the district court in any judicial circuit or a district court in any judicial district may institute a mental health court. A mental health court is a court-supervised treatment program for individuals who are diagnosed by a mental health professional with having a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability; or programs designed to adhere to the 10 elements of a mental health court promulgated by the Bureau of Justice Assistance that include specified characteristics. (Please see **BACKGROUND** for information on the 10 elements of a mental health court).

The bill requires a mental health court operating in Michigan, or a circuit court in any judicial circuit or a district court in any judicial district that seeks to adopt or institute a mental health court, to be certified by the SCAO. The State Court Administrative Office must establish the procedures for certification. Approval and certification of a mental health court by the SCAO will be required to begin or continue operation of mental health court. The SCAO must include a certified mental health court on the statewide official list of mental health courts, and may not include an uncertified court on the list.

A mental health court that is not certified will not be allowed to perform any of the functions of a mental health court, including any of the following:

- Charging a fee under Section 1095 (which allows a mental health court to charge an individual admitted into the court a fee that is reasonably related to the cost of administering the program).
- Discharging and dismissing a case as provided in Section 1098.
- Receiving State funding.

(Section 1098 allows a court to discharge or dismiss the proceedings against a person who successfully completes the mental health court program and meets other conditions.)

### **Senate Bill 438**

Chapter 12 of the Revised Judicature Act allows the circuit court in any judicial circuit or the district court in any judicial district to adopt or institute a veterans treatment court by statute or court rule. A veterans treatment court is a court that provides a supervised treatment program for individuals who are veterans and who abuse or are dependent upon any controlled substance or alcohol or suffer from a mental illness.

The bill requires a veterans treatment court operating in Michigan, or a circuit court in any judicial circuit or a district court in any judicial district that seeks to adopt or institute a veterans treatment court, to be certified by the SCAO. Approval and certification will be required to begin or to continue the operation of a veterans treatment court under Chapter 12. The SCAO may not recognize and include a veterans treatment court that is not certified on the statewide official list of such courts. The SCAO must include a certified veterans treatment court on that list. A veterans treatment court that is not certified will not be allowed to perform any of the functions of such a court (which are virtually the same as those of a drug treatment court).

MCL 600.1060 et al. (S.B. 435)  
257.304 (S.B. 436)  
600.1091 (S.B. 437)  
600.1201 (S.B. 438)

## **BACKGROUND**

### Drug Treatment Courts

A drug treatment court must comply with 10 components promulgated by the National Association of Drug Court Professionals, which include all of the following characteristics:

- Integration of alcohol and other drug treatment services with justice system case processing.
- Use of a nonadversarial approach by prosecution and defense that promotes public safety while protecting any participant's due process rights.
- Identification of eligible participants early with prompt placement in the program.
- Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.
- Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance.
- Ongoing close judicial interaction with each participant and supervision of progress for each participant.
- Monitoring and evaluation of the achievement of program goals and the program's effectiveness.
- Continued interdisciplinary education in order to promote effective drug court planning, implementation, and operation.
- The forging of partnerships among other drug courts, public agencies, and community-based organizations to generate local support.

### DWI/Sobriety Courts

Public Act 154 of 2010 amended the Revised Judicature Act to create the DWI/sobriety court interlock pilot project. The pilot project allowed an individual whose driver license was suspended or revoked for repeated convictions of operating a vehicle while intoxicated or visibly impaired to receive a restricted license if he or she met certain conditions. These included admittance into a sobriety court program and installation of an ignition interlock device (an alcohol concentration measuring device that prevents a motor vehicle from being started without determining the operator's alcohol level) in the individual's vehicle. The pilot project began on January 1, 2011, and was initially required to continue for three years. Public Act 227 of 2013 extended the duration of the pilot project one year, and, beginning January 1, 2015, created the permanent DWI/sobriety court interlock program. The program continued with the same requirements, eligibility criteria, and limitations as those provided for the pilot project.

According to the National Center for DWI Courts website, the 10 Guiding Principles of DWI Courts are as follows:

#1: Determine the Population

- #2: Perform a Clinical Assessment
- #3: Develop the Treatment Plan
- #4: Supervise the Offender
- #5: Forge Agency, Organization, and Community Partnerships
- #6: Take a Judicial Leadership Role
- #7: Develop Case Management Strategies
- #8: Address Transportation Issues
- #9: Evaluate the Program
- #10: Ensure a Sustainable Program

### Mental Health Courts

The Bureau of Justice Assistance in the U.S. Department of Justice, has promulgated 10 elements of a mental health court, as follows:

1. Planning and Administration: A broad-based group of stakeholders representing the criminal justice system, mental health system, substance abuse treatment system, any related systems, and the community guide the planning and administration of the court.
2. Target Population: Eligibility criteria address public safety and a community's treatment capacity, in addition to the availability of alternatives to pretrial detention for defendants with mental illnesses.
3. Timely Participant Identification and Linkage to Services: Participants are identified, referred, and accepted into mental health courts, and then linked to community-based service providers as quickly as possible.
4. Terms of Participation: Terms of participation are clear, promote public safety, facilitate the defendant's engagement in treatment, are individualized to correspond to the level of risk that each defendant presents to the community, and provide for positive legal outcomes for those individuals who successfully complete the program.
5. Informed Choice: Defendants fully understand the program requirements before agreeing to participate, and are provided legal counsel to inform this decision and subsequent decisions about program involvement.<sup>1</sup>
6. Treatment Supports and Services: Mental health courts connect participants to comprehensive and individualized treatment supports and services in the community.
7. Confidentiality: Health and legal information should be shared in a manner that protects potential participants' confidentiality rights as mental health consumers and their constitutional rights as defendants.
8. Court Team: A team of criminal justice and mental health staff and treatment providers receives special, ongoing training and assists mental health court participants achieve treatment and criminal justice goals by regularly reviewing and revising the court process.
9. Monitoring Adherence to Court Requirements: Criminal justice and mental health staff collaboratively monitor participants' adherence to court conditions, offer individualized graduated incentives and sanctions, and modify treatment as necessary to promote public safety and participants' recovery.
10. Sustainability: Data are collected and analyzed to demonstrate the impact of the mental health court, its performance is assessed periodically (and procedures are modified accordingly), court processes are institutionalized, and support for the court in the community is cultivated and expanded.

### Veterans Treatment Courts

The RJA requires a veterans treatment court to comply with "the modified version of the 10 key components of drug treatment courts as promulgated by the Buffalo veterans treatment court, which include all of the following essential characteristics":

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<sup>1</sup> According to the Revised Judicature Act, under this element, mental health courts provide legal counsel to indigent defendants to explain program requirements and guide defendants in decisions about program involvement, in accordance with the Michigan Indigent Defense Commission Act.

- Integration of alcohol, drug treatment, and mental health services with justice system case processing.
- Use of a nonadversarial approach.
- Early and prompt identification and placement of eligible participants in the veterans treatment court program.
- Provision of access to a continuum of alcohol, drug, mental health, and related treatment and rehabilitation services.
- Monitoring of abstinence by frequent alcohol and other drug testing.
- A coordinated strategy that governs veterans treatment court responses to participants' compliance.
- Ongoing judicial interaction with each veteran.
- Monitoring and evaluation to measure the achievement of program goals and gauge effectiveness.
- Continuing interdisciplinary education promotes effective veterans treatment court planning, implementation, and operations.
- Forging of partnerships among veterans treatment court, veterans administration, public agencies, and community-based organizations generates local support and enhances veteran treatment court effectiveness.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The State Court Administrative Office publishes manuals and recommends a variety of evidence-based best practices for specialty courts. According to the SCAO, most courts implement at least the majority of those recommendations; however, there is no direct incentive for them to do so because adoption of the recommendations is not mandatory. Under the bills, as a condition of acquiring its certification, a specialty court will be required to implement, among other things, evidence-based practices. If a specialty court fails to comply with the SCAO procedures for certification, it will be prohibited from performing any of its functions, including receiving State funding, until it complies. Certification by the SCAO will ensure that Michigan's specialty courts follow the best known approaches, as well as comply with statutory requirements. The bills will help to ensure that specialty courts provide a consistent experience for participants, and may help reduce recidivism rates, increase the effectiveness of these courts, and set participants on the best path for success.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

### **Senate Bills 435, 437, and 438**

The bills will have no significant fiscal impact on State or local government. Specialty court certification will require some additional administrative costs, including increased travel and staff time. The State Court Administrative Office estimates the additional cost at approximately \$60,000 per year, which will be provided for within existing appropriations.

### **Senate Bill 436**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.