

JAIL DIVERSION

House Bills 4627 and 4628

Sponsor: Rep. Liz Brater

Committee: Mental Health

Complete to 5-27-97

A SUMMARY OF HOUSE BILLS 4627 and 4628 AS INTRODUCED 4-15-97

House Bill 4627 would amend the Michigan Penal Code (MCL 767.85) to create a jail diversion program, which would allow courts to "divert" certain individuals to a mental health services program rather than bringing formal criminal charges, and House Bill 4628 would amend the Mental Health Code (MCL 330.1208) to require a community mental health services program to give priority for receiving services to individuals ordered by a court to receive such services. The bills are tie-barred to each other. Specifically, the bills would do the following:

House Bill 4627 would amend Chapter VII of the Michigan Penal Code, entitled "Grand Juries, Indictments, Informations and Proceedings Before Trial", to create a jail diversion program for individuals with mental illness, emotional disturbance, developmental disability, or mental retardation. Under the bill, an individual or the court could move to have a hearing conducted in order to determine if the individual charged with committing a crime desired or required mental health treatment or services (or had previously received or applied for such treatment or services) for mental illness, emotional disturbance, developmental disability, or mental retardation. The court would have the discretion to determine whether the interests of the public and the individual would be better served by requiring the individual to receive mental health services.

In making a determination to "divert" an individual from the criminal system to the mental health system, the court would have to consider the following:

- The nature and seriousness of the crime alleged to have been committed.
- Any prior criminal record.
- The likelihood that the individual would benefit from mental health treatment or services.
- Other information considered by the court to be relevant.

A person and his or her attorney would have to be informed by the court that the program of mental health treatment could be refused, and that a refusal would allow the criminal proceeding to continue. If the person did not contact the court with a refusal to participate in a mental health treatment program, a diversion contract would have to be presented to the person and signed by both the person and the court. By signing the diversion contract, a person would be agreeing (for the term of the diversion period) to abide by the terms of a court order, to remain in substantial compliance with any court-ordered or recommended course of treatment, and not

to violate any federal, state, or local laws or ordinances. The court would be agreeing by signing the diversion contract to stay, for up to one year, further adjudication of the criminal charge and to dismiss the charge at the end of the diversion period if the person had complied with the terms of the diversion contract.

Non-compliance with the contract on the part of an individual could result in the rescission by the court of the diversion contract and the renewal of the criminal proceedings. If a court chose not to rescind the contract, it would remain in effect and would be binding on all parties. In case of a rescission of a diversion contract, the court would have to provide a written notice of the rescission to the individual and his or her attorney, and to the prosecuting attorney. At the end of the diversion period, the court would have to comply with the terms of the contract.

Statements made by the individual to a psychiatrist, psychologist, or other mental health professional who had conducted an examination of the individual under the bill's provisions would not be admissible in any subsequent criminal proceeding that involved the alleged criminal conduct on any issue other than the individual's mental illness, insanity, or diminished capacity at the time of the alleged offense.

Further, an individual who had a mental illness, emotional disturbance, developmental disability, or mental retardation could not be held in a jail or facility for criminal detention in place of mental health treatment with the exception of persons being held in protective custody as defined by the Mental Health Code (MCL 330.1100c).

House Bill 4628. Currently, the Mental Health Code requires community mental health services programs to give priority in providing services to individuals with the most severe forms of serious mental illness, serious emotional disturbance, and developmental disability, and also to these individuals who are in urgent or emergency situations. The bill would amend the Mental Health Code to add to this list individuals who had been ordered to obtain mental health services under the jail diversion program created by House Bill 4627.

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