

HOUSE BILL No. 5689

May 29, 2012, Introduced by Rep. Walsh and referred to the Committee on Judiciary.

A bill to amend 1978 PA 368, entitled
"Public health code,"
by amending sections 6104, 6501, and 6502 (MCL 333.6104, 333.6501,
and 333.6502), section 6104 as amended by 1990 PA 179, and by
adding section 6501a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6104. (1) "Emergency medical service" means either of the
2 following:

3 (a) An organized emergency department located in and operated
4 by a hospital licensed in accordance with article 17 and designated
5 by the administrator.

6 (b) A facility designated by the administrator and routinely
7 available for the general care of medical patients.

1 (2) "Emergency service unit" means an ambulance operation as
2 defined in section 20902.

3 (3) "Incapacitated" means that an individual, as a result of
4 the use of alcohol **OR OTHER DRUGS**, is unconscious or has his or her
5 mental or physical functioning so impaired that he or she either
6 poses an immediate and substantial danger to his or her own health
7 and safety or is endangering the health and safety of the public.

8 Sec. 6501. (1) An individual who appears to be incapacitated
9 in a public place **OR WHO IS THE SUBJECT OF A COURT ORDER FOR**
10 **INVOLUNTARY ASSESSMENT AND STABILIZATION UNDER SECTION 6501A** shall
11 be taken into protective custody by a law enforcement officer and
12 taken to an approved service program ~~—~~or to an emergency medical
13 service, or to a transfer facility pursuant to subsection (4) for
14 subsequent transportation to an approved service program or
15 emergency medical service. ~~When~~**EXCEPT AS OTHERWISE PROVIDED IN**
16 **THIS SUBSECTION, IF** requested by a law enforcement officer, an
17 emergency service unit or staff shall provide transportation for
18 the individual to an approved service program or an emergency
19 medical service. This subsection ~~shall~~**DOES** not apply to **THE**
20 **TRANSPORTATION OF** an individual ~~who~~**BY AN EMERGENCY SERVICE UNIT OR**
21 **STAFF IF** the law enforcement officer reasonably believes **THAT THE**
22 **INDIVIDUAL** will attempt escape or will be unreasonably difficult
23 for staff to control.

24 (2) A law enforcement officer may take an individual into
25 protective custody with that kind and degree of force ~~which would~~
26 ~~be~~**THAT IS** lawful ~~were~~**FOR** the officer effecting ~~an~~**TO** arrest **THAT**
27 **INDIVIDUAL** for a misdemeanor without a warrant. In taking the

1 individual, a law enforcement officer may take reasonable steps to
2 protect himself or herself. The protective steps may include a "~~pat~~
3 ~~down~~" **PAT-DOWN** search of the individual in his or her immediate
4 surroundings, but only to the extent necessary to discover and
5 seize any dangerous weapon ~~which~~ **THAT** may on that occasion be used
6 against the officer or other individuals present. ~~These~~ **THE LAW**
7 **ENFORCEMENT OFFICER SHALL TAKE THESE** protective steps ~~shall be~~
8 ~~taken by the law enforcement officer before~~ an emergency service
9 unit or staff provides transportation of an individual to an
10 approved service program or emergency medical service.

11 (3) The taking of an individual to an approved service
12 program, emergency medical service, or transfer facility under
13 subsection (1) is not an arrest, but is a taking into protective
14 custody with or without consent of the individual. The law
15 enforcement officer shall inform the individual that he or she is
16 being held in protective custody and is not under arrest. An entry
17 or other record shall not be made to indicate that the individual
18 was arrested or charged with either a crime or being incapacitated.
19 An entry shall be made indicating the date, time, and place of the
20 taking, but the entry shall not be treated for any purpose as an
21 arrest or criminal record.

22 (4) An individual taken into protective custody under
23 subsection (1) may be taken to a transfer facility for not more
24 than 8 hours, if ~~there is neither~~ an approved service program ~~nor~~
25 ~~an~~ **OR** emergency medical service **IS NOT LOCATED** in that county and
26 if, due to distance or other circumstances, a law enforcement
27 officer is unable to complete transport of the individual to an

1 approved service program or emergency medical service. The law
2 enforcement officer or agency shall immediately notify and request
3 the nearest approved service program or emergency medical service
4 to provide an emergency service unit or staff as soon as possible
5 to transport the individual to that approved service program or
6 emergency medical service. If ~~neither~~ an emergency service unit ~~nor~~
7 **OR** staff is **NOT** available for transportation, a law enforcement
8 officer may transport the individual to an approved service program
9 or emergency medical service. If an emergency service unit or staff
10 is to provide transportation, the designated representative of the
11 transfer facility shall assume custody of the individual and shall
12 take all reasonable steps to ensure the individual's health and
13 safety until custody is transferred to the emergency service unit
14 or staff of an approved service program or emergency medical
15 service.

16 (5) An individual arrested by a law enforcement officer for
17 the commission of a misdemeanor punishable by imprisonment for not
18 more than 3 months, or by a fine of not more than \$500.00, or both,
19 may be taken to an approved service program or an emergency medical
20 service for emergency treatment if the individual appears to be
21 incapacitated at the time of apprehension. This treatment is not in
22 lieu of criminal prosecution of the individual for the offense with
23 which the individual is charged, ~~nor shall~~ **AND** it **DOES NOT**
24 preclude the administration of any tests as provided for by law.

25 **SEC. 6501A. (1) AN INDIVIDUAL WHO IS INCAPACITATED, WHO IS AN**
26 **ADULT, AND WHO IS DETERMINED BY A COURT TO APPEAR TO MEET THE**
27 **CRITERIA FOR PROTECTIVE CUSTODY UNDER SUBSECTION (3) MAY BE TAKEN**

1 INTO PROTECTIVE CUSTODY FOR INVOLUNTARY ASSESSMENT AND
2 STABILIZATION OR TO A LESS RESTRICTIVE COMPONENT OF AN APPROVED
3 SERVICE PROGRAM FOR INVOLUNTARY ASSESSMENT ONLY, UPON THE ENTRY OF
4 A COURT ORDER. INVOLUNTARY ASSESSMENT AND STABILIZATION MAY BE
5 INITIATED BY THE SUBMISSION OF A PETITION TO THE COURT BY A PERSON
6 DESCRIBED IN SUBSECTION (2). THIS SECTION DOES NOT APPLY AND
7 SECTIONS 6121 TO 6126 APPLY IN THE CASE OF A MINOR.

8 (2) A PETITION FOR INVOLUNTARY ASSESSMENT AND STABILIZATION
9 MAY BE FILED BY THE RESPONDENT'S SPOUSE OR GUARDIAN, ANY RELATIVE,
10 A PRIVATE HEALTH PRACTITIONER, THE DIRECTOR OF AN APPROVED SERVICE
11 PROGRAM OR THE DIRECTOR'S DESIGNEE, OR ANY 3 ADULTS WHO HAVE
12 PERSONAL KNOWLEDGE OF THE RESPONDENT'S SUBSTANCE ABUSE. A PETITION
13 FOR INVOLUNTARY ASSESSMENT AND STABILIZATION SHALL CONTAIN THE NAME
14 OF THE RESPONDENT, THE NAME OF THE APPLICANT OR APPLICANTS, THE
15 RELATIONSHIP BETWEEN THE RESPONDENT AND THE APPLICANT, THE NAME OF
16 THE RESPONDENT'S ATTORNEY, IF KNOWN, AND A STATEMENT OF THE
17 RESPONDENT'S ABILITY TO AFFORD AN ATTORNEY AND SHALL STATE FACTS TO
18 SUPPORT THE NEED FOR INVOLUNTARY ASSESSMENT AND STABILIZATION,
19 INCLUDING ALL OF THE FOLLOWING:

20 (A) THE REASON FOR THE PETITIONER'S BELIEF THAT THE RESPONDENT
21 IS ENGAGING IN SUBSTANCE ABUSE.

22 (B) THE REASON FOR THE PETITIONER'S BELIEF THAT BECAUSE OF THE
23 SUBSTANCE ABUSE THE RESPONDENT IS INCAPACITATED AND THAT THE
24 PETITIONER BELIEVES THAT 1 OR MORE OF THE FOLLOWING ARE TRUE:

25 (i) THAT THE RESPONDENT HAS INFLICTED OR IS LIKELY TO INFLICT
26 PHYSICAL HARM ON HIMSELF OR HERSELF OR OTHERS UNLESS ADMITTED.

27 (ii) THAT THE RESPONDENT'S REFUSAL TO VOLUNTARILY RECEIVE CARE

1 IS BASED ON JUDGMENT SO IMPAIRED BY REASON OF SUBSTANCE ABUSE THAT
2 THE RESPONDENT IS INCAPABLE OF APPRECIATING HIS OR HER NEED FOR
3 CARE AND OF MAKING A RATIONAL DECISION REGARDING THAT NEED FOR
4 CARE.

5 (C) WHETHER THE RESPONDENT HAS REFUSED TO SUBMIT VOLUNTARILY
6 TO AN ASSESSMENT.

7 (3) AN INDIVIDUAL MEETS THE CRITERIA FOR INVOLUNTARY ADMISSION
8 IF THERE IS GOOD FAITH REASON TO BELIEVE THAT THE INDIVIDUAL IS
9 ENGAGING IN SUBSTANCE ABUSE, IS INCAPACITATED, AND BECAUSE OF THE
10 SUBSTANCE ABUSE HAS LOST THE POWER OF SELF-CONTROL WITH RESPECT TO
11 SUBSTANCE USE AND MEETS EITHER OF THE FOLLOWING CRITERIA:

12 (A) HAS INFLICTED, THREATENED OR ATTEMPTED TO INFLICT, OR
13 UNLESS ADMITTED IS LIKELY TO INFLICT PHYSICAL HARM ON HIMSELF OR
14 HERSELF OR ANOTHER.

15 (B) IS IN NEED OF SUBSTANCE ABUSE TREATMENT AND REHABILITATION
16 SERVICES AND, BY REASON OF SUBSTANCE ABUSE, HIS OR HER JUDGMENT HAS
17 BEEN SO IMPAIRED THAT THE INDIVIDUAL IS INCAPABLE OF APPRECIATING
18 HIS OR HER NEED FOR SUBSTANCE ABUSE TREATMENT AND REHABILITATION
19 SERVICES AND OF MAKING A RATIONAL DECISION IN REGARD TO SUBSTANCE
20 ABUSE TREATMENT AND REHABILITATION SERVICES. HOWEVER, THE MERE
21 REFUSAL TO RECEIVE SUBSTANCE ABUSE TREATMENT AND REHABILITATION
22 SERVICES DOES NOT CONSTITUTE EVIDENCE OF LACK OF JUDGMENT WITH
23 RESPECT TO HIS OR HER NEED FOR SUBSTANCE ABUSE TREATMENT AND
24 REHABILITATION SERVICES.

25 (4) UPON RECEIPT AND FILING OF A PETITION FOR THE INVOLUNTARY
26 ASSESSMENT AND STABILIZATION BY THE CLERK OF THE COURT, THE COURT
27 SHALL DO ALL OF THE FOLLOWING:

1 (A) ASCERTAIN WHETHER THE RESPONDENT IS REPRESENTED BY AN
2 ATTORNEY AND, IF NOT, WHETHER, ON THE BASIS OF THE PETITION, AN
3 ATTORNEY SHOULD BE APPOINTED. IF DETERMINED APPROPRIATE, THE COURT
4 SHALL APPOINT AN ATTORNEY TO REPRESENT THE RESPONDENT.

5 (B) PROVIDE A COPY OF THE PETITION AND NOTICE OF HEARING TO
6 ALL OF THE FOLLOWING:

7 (i) THE RESPONDENT.

8 (ii) THE RESPONDENT'S ATTORNEY, IF KNOWN.

9 (iii) THE PETITIONER.

10 (iv) THE RESPONDENT'S SPOUSE, IF APPLICABLE.

11 (v) ANY OTHER PERSON AS THE COURT MAY DIRECT.

12 (C) DO 1 OF THE FOLLOWING:

13 (i) ISSUE A SUMMONS TO THE RESPONDENT AND CONDUCT A HEARING
14 WITHIN 10 DAYS. IF AFTER A HEARING THE COURT DETERMINES IT
15 APPROPRIATE, THE COURT SHALL ENTER AN ORDER AUTHORIZING THE
16 INVOLUNTARY ASSESSMENT AND STABILIZATION OF THE RESPONDENT.

17 (ii) WITHOUT THE APPOINTMENT OF AN ATTORNEY AND RELYING SOLELY
18 ON THE CONTENTS OF THE PETITION, ENTER AN EX PARTE ORDER
19 AUTHORIZING THE INVOLUNTARY ASSESSMENT AND STABILIZATION OF THE
20 RESPONDENT.

21 (5) UPON THE COURT'S ORDER AUTHORIZING THE INVOLUNTARY
22 ASSESSMENT AND STABILIZATION OF THE RESPONDENT, THE RESPONDENT
23 SHALL BE TAKEN INTO PROTECTIVE CUSTODY AS PROVIDED IN SECTION 6501.

24 (6) AS USED IN THIS SECTION, "COURT" MEANS THE PROBATE COURT
25 FOR THE COUNTY IN WHICH THE RESPONDENT, FOR WHOM A REQUEST FOR
26 SUBSTANCE ABUSE INVOLUNTARY ASSESSMENT HAS BEEN MADE, EITHER
27 RESIDES OR IS FOUND.

1 Sec. 6502. (1) An individual who is taken to an approved
2 service program or emergency medical service pursuant to section
3 6501(1) shall continue to be in protective custody and shall be
4 examined by a licensed physician or his or her designated
5 representative as soon as possible, but not longer than 8 hours.
6 The licensed physician or designated representative may conduct a
7 chemical test to determine the amount of alcohol **OR OTHER DRUGS** in
8 the bloodstream of the individual. The physician or designated
9 representative shall inform the individual of his or her right to
10 such a test and shall conduct a test at the request of the
11 individual.

12 (2) An individual who, by medical examination, is found to be
13 incapacitated shall then receive treatment from an approved service
14 program or emergency medical service. An individual shall not be
15 denied treatment solely because the individual has withdrawn from
16 treatment against medical advice on a prior occasion or because the
17 individual has relapsed after earlier treatment. An approved
18 service program or the emergency medical service may arrange for
19 necessary transportation.

20 (3) Approved service programs shall not be expected to provide
21 treatment other than that for which they are licensed, nor shall an
22 emergency medical service be required to provide treatment other
23 than that routinely provided for other patients treated.