

# HOUSE BILL No. 4486

March 20, 2013, Introduced by Rep. Walsh and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending sections 100b, 276, 277, 281, and 286 (MCL 330.1100b,  
330.1276, 330.1277, 330.1281, and 330.1286), section 100b as  
amended and sections 276, 277, 281, and 286 as added by 2012 PA  
500, and by adding section 276a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 100b. (1) "Facility" means a residential facility for the  
2       care or treatment of individuals with serious mental illness,  
3       serious emotional disturbance, or developmental disability that is  
4       either a state facility or a licensed facility.

5       (2) "Family" as used in sections 156 to 161 means an eligible  
6       minor and his or her parent or legal guardian.

1           (3) "Family member" means a parent, stepparent, spouse,  
2 sibling, child, or grandparent of a primary consumer, or an  
3 individual upon whom a primary consumer is dependent for at least  
4 50% of his or her financial support.

5           (4) "Federal funds" means funds received from the federal  
6 government under a categorical grant or similar program and does  
7 not include federal funds received under a revenue sharing  
8 arrangement.

9           (5) "Functional impairment" means both of the following:

10           (a) With regard to serious emotional disturbance, substantial  
11 interference with or limitation of a minor's achievement or  
12 maintenance of 1 or more developmentally appropriate social,  
13 behavioral, cognitive, communicative, or adaptive skills.

14           (b) With regard to serious mental illness, substantial  
15 interference or limitation of role functioning in 1 or more major  
16 life activities including basic living skills such as eating,  
17 bathing, and dressing; instrumental living skills such as  
18 maintaining a household, managing money, getting around the  
19 community, and taking prescribed medication; and functioning in  
20 social, vocational, and educational contexts.

21           (6) "Guardian" means a person appointed by the court to  
22 exercise specific powers over an individual who is a minor, legally  
23 incapacitated, or developmentally disabled.

24           (7) "Hospital" or "psychiatric hospital" means an inpatient  
25 program operated by the department for the treatment of individuals  
26 with serious mental illness or serious emotional disturbance or a  
27 psychiatric hospital or psychiatric unit licensed under section

1 137.

2 (8) "Hospital director" means the chief administrative officer  
3 of a hospital or his or her designee.

4 (9) "Hospitalization" or "hospitalize" means to provide  
5 treatment for an individual as an inpatient in a hospital.

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

11 (11) "Individual plan of services" or "plan of services" means  
12 a written individual plan of services developed with a recipient as  
13 required by section 712.

14 (12) "Licensed facility" means a facility licensed by the  
15 department under section 137 or an adult foster care facility.

16 (13) "Licensed psychologist" means a doctoral level  
17 psychologist licensed under section 18223(1) of the public health  
18 code, 1978 PA 368, MCL 333.18223.

19 (14) "Medical director" means a psychiatrist appointed under  
20 section 231 to advise the executive director of a community mental  
21 health services program.

22 (15) "Mental health professional" means an individual who is  
23 trained and experienced in the area of mental illness or  
24 developmental disabilities and who is 1 of the following:

25 (a) A physician.

26 (b) A psychologist licensed to practice in this state under  
27 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to

1 333.18838.

2 (c) A registered professional nurse licensed to practice in  
3 this state under article 15 of the public health code, 1978 PA 368,  
4 MCL 333.16101 to 333.18838.

5 (d) A licensed master's social worker licensed under article  
6 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
7 333.18838.

8 (e) A licensed professional counselor licensed to practice in  
9 this state under article 15 of the public health code, 1978 PA 368,  
10 MCL 333.16101 to 333.18838.

11 (f) A marriage and family therapist licensed under article 15  
12 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

13 (16) "Mental retardation" means a condition manifesting before  
14 the age of 18 years that is characterized by significantly  
15 subaverage intellectual functioning and related limitations in 2 or  
16 more adaptive skills and that is diagnosed based on the following  
17 assumptions:

18 (a) Valid assessment considers cultural and linguistic  
19 diversity, as well as differences in communication and behavioral  
20 factors.

21 (b) The existence of limitation in adaptive skills occurs  
22 within the context of community environments typical of the  
23 individual's age peers and is indexed to the individual's  
24 particular needs for support.

25 (c) Specific adaptive skill limitations often coexist with  
26 strengths in other adaptive skills or other personal capabilities.

27 (d) With appropriate supports over a sustained period, the

1 life functioning of the individual with mental retardation will  
2 generally improve.

3 (17) "Minor" means an individual under the age of 18 years.

4 (18) "Multicultural services" means specialized mental health  
5 services for multicultural populations such as African-Americans,  
6 Hispanics, Native Americans, Asian and Pacific Islanders, and  
7 Arab/Chaldean-Americans.

8 (19) "Neglect" means an act or failure to act committed by an  
9 employee or volunteer of the department, a community mental health  
10 services program, or a licensed hospital; a service provider under  
11 contract with the department, a community mental health services  
12 program, or a licensed hospital; or an employee or volunteer of a  
13 service provider under contract with the department, a community  
14 mental health services program, or a licensed hospital, that denies  
15 a recipient the standard of care or treatment to which he or she is  
16 entitled under this act.

17 Sec. 276. (1) An individual who appears to be incapacitated in  
18 a public place **OR WHO IS THE SUBJECT OF A COURT ORDER FOR**  
19 **INVOLUNTARY ASSESSMENT AND STABILIZATION UNDER SECTION 276A** shall  
20 be taken into protective custody by a law enforcement officer and  
21 taken to an approved service program ~~—~~or to an emergency medical  
22 service, or to a transfer facility according to subsection (4) for  
23 subsequent transportation to an approved service program or  
24 emergency medical service. ~~When~~ **EXCEPT AS OTHERWISE PROVIDED IN**  
25 **THIS SUBSECTION, IF** requested by a law enforcement officer, an  
26 emergency service unit or staff shall provide transportation for  
27 the individual to an approved service program or an emergency

1 medical service. This subsection does not apply to **THE**  
2 **TRANSPORTATION OF** an individual ~~who~~ **BY AN EMERGENCY SERVICE UNIT OR**  
3 **STAFF IF** the law enforcement officer reasonably believes **THAT THE**  
4 **INDIVIDUAL** will attempt escape or will be unreasonably difficult  
5 for staff to control.

6 (2) A law enforcement officer may take an individual into  
7 protective custody with that kind and degree of force that ~~would be~~  
8 **IS** lawful ~~were~~ **FOR** the officer ~~effecting an~~ **TO** arrest **THAT**  
9 **INDIVIDUAL** for a misdemeanor without a warrant. In taking the  
10 individual, a law enforcement officer may take reasonable steps to  
11 protect himself or herself. The protective steps may include a ~~"pat~~  
12 ~~down"~~ **PAT-DOWN** search of the individual in his or her immediate  
13 surroundings, but only to the extent necessary to discover and  
14 seize any dangerous weapon that may on that occasion be used  
15 against the officer or other individuals present. ~~These~~ **THE LAW**  
16 **ENFORCEMENT OFFICER SHALL TAKE THESE** protective steps ~~shall be~~  
17 ~~taken by the law enforcement officer before~~ an emergency service  
18 unit or staff provides transportation of an individual to an  
19 approved service program or emergency medical service.

20 (3) The taking of an individual to an approved service  
21 program, emergency medical service, or transfer facility under  
22 subsection (1) is not an arrest, but is a taking into protective  
23 custody with or without consent of the individual. The law  
24 enforcement officer shall inform the individual that he or she is  
25 being held in protective custody and is not under arrest. An entry  
26 or other record shall not be made to indicate that the individual  
27 was arrested or charged with either a crime or being incapacitated.

1 An entry shall be made indicating the date, time, and place of the  
2 taking, but the entry shall not be treated for any purpose as an  
3 arrest or criminal record.

4 (4) An individual taken into protective custody under  
5 subsection (1) may be taken to a transfer facility for not more  
6 than 8 hours, if ~~there is neither an approved service program nor~~  
7 **OR** an emergency medical service **IS NOT LOCATED** in that county and  
8 if, due to distance or other circumstances, a law enforcement  
9 officer is unable to complete transport of the individual to an  
10 approved service program or emergency medical service. The law  
11 enforcement officer or agency shall immediately notify and request  
12 the nearest approved service program or emergency medical service  
13 to provide an emergency service unit or staff as soon as possible  
14 to transport the individual to that approved service program or  
15 emergency medical service. If ~~neither an emergency service unit nor~~  
16 **OR** staff is **NOT** available for transportation, a law enforcement  
17 officer may transport the individual to an approved service program  
18 or emergency medical service. If an emergency service unit or staff  
19 is to provide transportation, the designated representative of the  
20 transfer facility shall assume custody of the individual and shall  
21 take all reasonable steps to ensure the individual's health and  
22 safety until custody is transferred to the emergency service unit  
23 or staff of an approved service program or emergency medical  
24 service.

25 (5) An individual arrested by a law enforcement officer for  
26 the commission of a misdemeanor punishable by imprisonment for not  
27 more than 3 months, or by a fine of not more than \$500.00, or both,

1 may be taken to an approved service program or an emergency medical  
2 service for emergency treatment if the individual appears to be  
3 incapacitated at the time of apprehension. This treatment is not in  
4 lieu of criminal prosecution of the individual for the offense with  
5 which the individual is charged ~~, nor shall~~ **AND it DOES NOT**  
6 preclude the administration of any tests as provided for by law.

7       **SEC. 276A. (1) AN INDIVIDUAL WHO IS INCAPACITATED, WHO IS AN**  
8 **ADULT, AND WHO IS DETERMINED BY A COURT TO APPEAR TO MEET THE**  
9 **CRITERIA FOR INVOLUNTARY ASSESSMENT UNDER SUBSECTION (3) MAY BE**  
10 **TAKEN INTO PROTECTIVE CUSTODY FOR INVOLUNTARY ASSESSMENT AND**  
11 **STABILIZATION OR TO A LESS RESTRICTIVE COMPONENT OF AN APPROVED**  
12 **SERVICE PROGRAM FOR INVOLUNTARY ASSESSMENT ONLY, UPON THE ENTRY OF**  
13 **A COURT ORDER. INVOLUNTARY ASSESSMENT AND STABILIZATION MAY BE**  
14 **INITIATED BY THE SUBMISSION OF A PETITION TO THE COURT BY A PERSON**  
15 **DESCRIBED IN SUBSECTION (2). THIS SECTION DOES NOT APPLY AND**  
16 **SECTIONS 264 TO 268 APPLY IN THE CASE OF A MINOR.**

17       **(2) A PETITION FOR INVOLUNTARY ASSESSMENT AND STABILIZATION**  
18 **MAY BE FILED BY THE RESPONDENT'S SPOUSE OR GUARDIAN, ANY RELATIVE,**  
19 **A PRIVATE HEALTH PRACTITIONER, THE DIRECTOR OF AN APPROVED SERVICE**  
20 **PROGRAM OR THE DIRECTOR'S DESIGNEE, OR ANY 3 ADULTS WHO HAVE**  
21 **PERSONAL KNOWLEDGE OF THE RESPONDENT'S SUBSTANCE ABUSE. A PETITION**  
22 **FOR INVOLUNTARY ASSESSMENT AND STABILIZATION SHALL CONTAIN THE NAME**  
23 **OF THE RESPONDENT, THE NAME OF THE APPLICANT OR APPLICANTS, THE**  
24 **RELATIONSHIP BETWEEN THE RESPONDENT AND THE APPLICANT, THE NAME OF**  
25 **THE RESPONDENT'S ATTORNEY, IF KNOWN, AND A STATEMENT OF THE**  
26 **RESPONDENT'S ABILITY TO AFFORD AN ATTORNEY AND SHALL STATE FACTS TO**  
27 **SUPPORT THE NEED FOR INVOLUNTARY ASSESSMENT AND STABILIZATION,**



1 INCLUDING ALL OF THE FOLLOWING:

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

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

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

9 (ii) THAT THE RESPONDENT'S REFUSAL TO VOLUNTARILY RECEIVE CARE  
10 IS BASED ON JUDGMENT SO IMPAIRED BY REASON OF SUBSTANCE ABUSE THAT  
11 THE RESPONDENT IS INCAPABLE OF APPRECIATING HIS OR HER NEED FOR  
12 CARE AND OF MAKING A RATIONAL DECISION REGARDING THAT NEED FOR  
13 CARE.

14 (C) WHETHER THE RESPONDENT HAS REFUSED TO SUBMIT VOLUNTARILY  
15 TO AN ASSESSMENT.

16 (3) AN INDIVIDUAL MEETS THE CRITERIA FOR INVOLUNTARY  
17 ASSESSMENT IF THERE IS GOOD FAITH REASON TO BELIEVE THAT THE  
18 INDIVIDUAL IS ENGAGING IN SUBSTANCE ABUSE, IS INCAPACITATED, AND  
19 BECAUSE OF THE SUBSTANCE ABUSE HAS LOST THE POWER OF SELF-CONTROL  
20 WITH RESPECT TO SUBSTANCE USE AND MEETS EITHER OF THE FOLLOWING  
21 CRITERIA:

22 (A) HAS INFLICTED, THREATENED OR ATTEMPTED TO INFLICT, OR  
23 UNLESS ADMITTED IS LIKELY TO INFLICT PHYSICAL HARM ON HIMSELF OR  
24 HERSELF OR ANOTHER.

25 (B) IS IN NEED OF SUBSTANCE USE DISORDER TREATMENT AND  
26 REHABILITATION SERVICES AND, BY REASON OF SUBSTANCE ABUSE, HIS OR  
27 HER JUDGMENT HAS BEEN SO IMPAIRED THAT THE INDIVIDUAL IS INCAPABLE

1 OF APPRECIATING HIS OR HER NEED FOR SUBSTANCE USE DISORDER  
2 TREATMENT AND REHABILITATION SERVICES AND OF MAKING A RATIONAL  
3 DECISION IN REGARD TO SUBSTANCE USE DISORDER TREATMENT AND  
4 REHABILITATION SERVICES. HOWEVER, THE MERE REFUSAL TO RECEIVE  
5 SUBSTANCE USE DISORDER TREATMENT AND REHABILITATION SERVICES DOES  
6 NOT CONSTITUTE EVIDENCE OF LACK OF JUDGMENT WITH RESPECT TO HIS OR  
7 HER NEED FOR SUBSTANCE USE DISORDER TREATMENT AND REHABILITATION  
8 SERVICES.

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

12 (A) ASCERTAIN WHETHER THE RESPONDENT IS REPRESENTED BY AN  
13 ATTORNEY AND, IF NOT, WHETHER, ON THE BASIS OF THE PETITION, AN  
14 ATTORNEY SHOULD BE APPOINTED. IF DETERMINED APPROPRIATE, THE COURT  
15 SHALL APPOINT AN ATTORNEY TO REPRESENT THE RESPONDENT.

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

18 (i) THE RESPONDENT.

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

20 (iii) THE PETITIONER.

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

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

23 (C) DO 1 OF THE FOLLOWING:

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

1           (ii) WITHOUT THE APPOINTMENT OF AN ATTORNEY AND RELYING SOLELY  
2 ON THE CONTENTS OF THE PETITION, ENTER AN EX PARTE ORDER  
3 AUTHORIZING THE INVOLUNTARY ASSESSMENT AND STABILIZATION OF THE  
4 RESPONDENT.

5           (5) UPON THE COURT'S ORDER AUTHORIZING THE INVOLUNTARY  
6 ASSESSMENT AND STABILIZATION OF THE RESPONDENT, THE RESPONDENT  
7 SHALL BE TAKEN INTO PROTECTIVE CUSTODY AS PROVIDED IN SECTION 276.

8           (6) AS USED IN THIS SECTION, "COURT" MEANS THE PROBATE COURT  
9 FOR THE COUNTY IN WHICH THE RESPONDENT, FOR WHOM A REQUEST FOR  
10 INVOLUNTARY ASSESSMENT HAS BEEN MADE, EITHER RESIDES OR IS FOUND.

11           Sec. 277. (1) An individual who is taken to an approved  
12 service program or emergency medical service under section 276(1)  
13 shall continue to be in protective custody and shall be examined by  
14 a physician or his or her designated representative as soon as  
15 possible, but not longer than 8 hours. The physician or designated  
16 representative may conduct a chemical test to determine the amount  
17 of alcohol **OR OTHER DRUGS** in the bloodstream of the individual. The  
18 physician or designated representative shall inform the individual  
19 of his or her right to that test and shall conduct a test at the  
20 request of the individual.

21           (2) An individual who, by medical examination, is found to be  
22 incapacitated shall then receive treatment from an approved service  
23 program or emergency medical service. An individual shall not be  
24 denied treatment solely because the individual has withdrawn from  
25 treatment against medical advice on a prior occasion or because the  
26 individual has relapsed after earlier treatment. An approved  
27 service program or the emergency medical service may arrange for

1 necessary transportation.

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

6 Sec. 281. (1) An individual may voluntarily seek admission at  
7 an approved service program or emergency medical service.

8 (2) The individual shall be examined by a physician or his or  
9 her designated representative. The physician at the request of the  
10 individual may order a chemical test to determine the amount of  
11 alcohol **OR OTHER DRUGS** in the bloodstream of the individual.

12 (3) An individual who by medical examination is found to be  
13 incapacitated shall then be admitted or referred for treatment.  
14 Transportation may be provided to an individual admitted or  
15 referred for treatment through the approved service program or the  
16 emergency medical service.

17 (4) The voluntarily admitted individual may leave at any time  
18 or may consent to remain as long as the physician believes  
19 appropriate.

20 (5) If a voluntarily admitted individual is admitted to an  
21 approved service program or emergency medical service, the family,  
22 next of kin, or someone whom the individual designates, shall be  
23 notified as promptly as possible. If an adult requests that there  
24 be no notification, the request shall be respected.

25 Sec. 286. (1) After January 15, 1978, a city, county,  
26 township, or village ~~may~~ **SHALL** not adopt or enforce a local law,  
27 ordinance, resolution, rule, or portion thereof ~~having~~ **OF A LOCAL**

1   **LAW, ORDINANCE, RESOLUTION, OR RULE THAT HAS** the force of law **AND**  
2   that imposes a civil or criminal penalty for public intoxication,  
3   being a common drunkard, or being incapacitated, except as provided  
4   in subsection (3) or (4).

5       (2) A local unit of government ~~may~~**SHALL** not interpret or  
6   apply any law of general application to circumvent subsection (1).

7       (3) This section and sections 276 to 285 do not affect a law,  
8   ordinance, resolution, or rule against drunken driving, driving  
9   under the influence of alcohol **OR OTHER DRUGS**, or other similar  
10   offense involving the operation of a vehicle, snowmobile, aircraft,  
11   vessel, machinery, or other equipment, or motorized conveyance, or  
12   regarding the sale, purchase, dispensing, possession,  
13   transportation, consumption, or use of alcoholic beverages **OR OTHER**  
14   **DRUGS** at stated times and places, or by a particular class of  
15   individuals.

16       (4) This section and sections 276 to 285 do not prohibit a  
17   local unit of government from adopting an ordinance consistent with  
18   section 167 of the Michigan penal code, 1931 PA 328, MCL 750.167.