

CONFIDENTIALITY OF CERTAIN INVOLUNTARY HOSPITALIZATION PETITIONS

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House Bill 4793 as enacted
Public Act 113 of 2016
Sponsor: Rep. Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 7-20-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The new act requires that if a person is found not to be in need of involuntary mental health treatment, then information (including a clinical certificate by a physician or psychologist) contained in a petition for involuntary hospitalization of a person requiring mental health treatment is confidential and cannot be disclosed except to persons authorized under the Mental Health Code.

FISCAL IMPACT: The act would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affect probate court caseloads and the related administrative costs. Currently, about half of the probate courts maintain mental illness files publicly and the other half maintain mental illness files confidentially. Maintaining certain mental illness files confidentially would require some of the courts to separate the files into public files and confidential files. Financial costs would likely be minimal, but would depend on existing caseload and staffing levels.

THE APPARENT PROBLEM:

Currently, under Section 434 of the Mental Health Code, anyone at least 18 years old, including a law enforcement officer, may file a petition with the probate court asserting that another individual is a person requiring treatment. The petition must contain the facts that are the basis for the assertion as well as names and addresses, if known, of any witnesses to the facts and of the nearest relative or guardian or, if none, a friend of the individual. The petition must also be accompanied by the clinical certificate of a physician or licensed psychologist, unless after reasonable effort the petitioner could not secure an examination. In that case, an affidavit setting forth the reasons an examination could not be secured also must be filed. If a person is ordered to receive treatment, the code establishes the processes and protections for that treatment (e.g., scheduled re-evaluations).

The information contained in the petition is often of a highly personal nature and may or may not be factually accurate. Yet, the petition, along with the certificate signed by the health professional, is treated as public information and available to anyone to see. Reportedly, some individuals have been haunted by petitions filed by relatives, acquaintances, or police officers years and even decades later and been denied jobs or passed over for promotions based wholly or in part on information contained in these documents. This is true even for individuals who were not ordered into treatment.

Some courts in the state treat the involuntary hospitalization, or commitment, petitions and accompanying clinical certificate as confidential information and do not allow access by the general public. Other courts, however, do allow anyone to access the documents. It has been suggested that when a court finds that the person who is the subject of the petition does not need to be ordered into treatment, the petitions and clinical certificates not be accessible by the general public.

THE CONTENT OF THE BILL:

House Bill 4793 amends Chapter 4 of the Code, entitled "Civil Admission and Discharge Procedures: Mental Illness" (MCL 330.1434). The enacted bill specifies that *if the individual is found not to be a person requiring treatment under Section 434* (involuntary hospitalization or commitment), a petition and any clinical certificate must be maintained by the court as a confidential record to prevent disclosure to any person not specifically authorized under Chapter 4 to receive notice of the petition or clinical certificate. The act takes effect on August 8, 2016.

BACKGROUND INFORMATION:

"Person requiring treatment" is defined in the Mental Health Code to mean:

- (a) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
- (b) An individual who has mental illness, and who as a result of that mental illness is unable to attend to basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
- (c) An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand the need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself, herself, or others. This individual shall receive involuntary mental health treatment initially only under the provisions of Sections 434 through 438.

—Or—

- (d) An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily, who is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of his or her condition and whose noncompliance with

treatment has been a factor in the individual's placement in a psychiatric hospital, prison, or jail at least two times within the last 48 months or whose noncompliance with treatment has been a factor in the individual's committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months. An individual under this subdivision is only eligible to receive assisted outpatient treatment under Section 433 or 469a.]

ARGUMENTS:

For:

A petition for involuntary mental health treatment may have been filed by a well-meaning relative, friend, or even police officer for a person who was momentarily despondent over a death, job loss, or divorce, and when the petition filer was concerned the person was suicidal. Thus, the person may not even have had a serious mental illness, but been reacting to a specific, and overwhelming, sudden change in circumstance. Even court employees admit that the petitions for involuntary treatment can be filled with hearsay (rumors and allegations that cannot be substantiated, like secondhand statements). Regardless of the reason a petition was filed, if a court determines that the person does not fit the statutory criteria to be forced into mental health treatment, the information contained in the petition, and in the clinical certificate that accompanies it, should be treated as confidential health information.

Currently, the Michigan Court Rules do not suppress a petition alleging a person to be in need of mental health treatment, although it is estimated that about half the courts in the state do not make the petitions for involuntary hospitalization, or the clinical certificates that accompany the petition, accessible to the general public. But in the other half of the courts, the public can gain access even to petitions that were denied or thrown out.

The bill addresses the issue of public access to petitions that are not granted by restricting access to those documents to only those specifically authorized under the Mental Health Code.

The unfortunate stigma of mental illness is well known. Even with successful treatments available that can restore many individuals to full mental health or enable them to successfully manage a mental illness, many struggle to find appropriate employment, housing, or to be accepted by society and be accorded the same rights and opportunities as anyone else. The bill does not apply to all persons who are or have been the subject of a petition for involuntary treatment, but instead provides some relief from potential discrimination for those individuals when petitions were denied. For them, the petition will not be accessible by the general public.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.