

## FAMILY TREATMENT COURTS

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**House Bill 5340 as introduced**  
**Sponsor: Rep. Mary Whiteford**  
**Committee: Judiciary**  
**Complete to 5-9-22**

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

### SUMMARY:

House Bill 5340 would add Chapter 10D to the Revised Judicature Act (RJA) to authorize circuit courts to adopt or institute family treatment courts and to provide procedures and other requirements for admission to, and participation in, family treatment court programs.

#### Family treatment courts

The bill would allow the circuit court in any judicial circuit to adopt or institute a *family treatment court* under statute or court rules.

*Family treatment court* would mean any of the following:

- A court-supervised treatment program for individuals with a civil child abuse or neglect case who are diagnosed with a substance use disorder.
- A program designed to adhere to the family treatment court best practice standards promulgated by the National Association of Drug Court Professionals and the Center for Children and Family Futures,<sup>1</sup> which include all of the following:
  - Early identification, screening, and assessment of eligible *participants* (individuals admitted into a family treatment court) with prompt placement in the program.
  - Integration of timely, high-quality, and appropriate substance use disorder treatment services with justice system case processing.
  - Access to comprehensive case management, services, and supports for families.
  - Valid, reliable, random, and frequent drug testing.
  - Therapeutic responses to do all of the following:
    - Improve parent, child, and family functioning.
    - Ensure children's safety, permanency, and well-being.
    - Support participant behavior change.
    - Promote participant accountability.
  - Ongoing close judicial interaction with each participant.
  - Collection and review of data to do all of the following:
    - Monitor participant progress.
    - Engage in a process of continuous quality improvement.
    - Monitor adherence to best practice standards.
    - Evaluate outcomes using scientifically reliable and valid procedures.

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<sup>1</sup> [https://www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards\\_Final2.pdf](https://www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards_Final2.pdf)

- Continued interdisciplinary education to promote effective family treatment court planning, implementation, and operation.
- The forging of partnerships among other family treatment courts, public agencies, and community-based organizations to generate local support.
- A family-centered, culturally relevant, and trauma-informed approach.
- Ensuring equity and inclusion.

**Memorandum of understanding**

To adopt or institute a family treatment court, the circuit court would have to enter into a memorandum of understanding with all of the following:

- The prosecuting attorney.
- A representative of the bar specializing in family or juvenile law.
- A *lawyer-guardian ad litem* (an attorney appointed under section 17c of the juvenile code (Chapter XIIA of the Probate Code) to represent the child in certain proceedings, with the powers and duties listed in section 17d of the juvenile code).
- One or more representatives of the Department of Health and Human Services (DHHS).
- One or more representatives of community treatment providers.

The memorandum of understanding also could include other parties considered necessary, such as any of the following:

- A court-appointed special advocate.
- Local law enforcement.
- The local substance abuse coordinating agency for the circuit court.
- A mental health treatment provider.
- An *Indian child’s tribe* (defined by the Michigan Indian Family Preservation Act (Chapter XIIB of the Probate Code) as the Indian tribe that an Indian child is a member of or eligible for membership in or, if an Indian child is a member of or eligible for membership in more than one tribe, the tribe with which the Indian child has the most significant contacts).
- Child and adolescent services providers.

The memorandum of understanding would have to describe the role of each party to it.

**Training and certification**

A court that is adopting a family treatment court would have to participate in training as required by the State Court Administrative Office (SCAO). Additionally, a treatment court operating in Michigan, or a circuit court seeking to adopt or institute a treatment court, would have to be certified by SCAO under procedures established by SCAO. This approval and certification would be necessary to begin or continue the operation of a family treatment court, and a family treatment court that was not certified could not perform any of the functions of a family treatment court (including receiving funding under the bill). SCAO would have to include a certified family treatment court on the statewide official list of family treatment courts and could not recognize and include on the list a family treatment court that was not certified.

### **Admission to family treatment court**

A family treatment court would determine whether an individual could be admitted into the family treatment court. (No one would have a right to be admitted.) An individual who is a *violent offender* would not be eligible for admission into a family treatment court.

*Violent offender* would mean an individual who is currently charged with or has pled guilty to an offense involving the death of or serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree.

For an individual to be admitted into a family treatment court, admission would have to be indicated as appropriate as a result of a preadmission screening, evaluation, or assessment with an evidence-based screening and assessment tool. An individual would have to cooperate with and complete a preadmission screening, evaluation, or assessment, and would have to agree to cooperate with any future evaluation or assessment as directed by the family treatment court. A preadmission screening, evaluation, or assessment would have to include all of the following:

- A complete review of the individual's criminal history, and a review of whether or not the individual has been admitted to, has participated in, or is currently participating in a problem-solving court. The court could accept verifiable and reliable information from the prosecution or the individual's attorney to complete its review and could require the individual to submit a statement as to whether the individual has previously been admitted to a problem-solving court and the results of the individual's participation in any prior program.
- A complete review of the individual's Child Protective Services history.
- An assessment of the family situation, including any nonrespondent parent and family support.
- An assessment of the risk of danger or harm to the individual, the individual's children, or the community.
- As much as is practicable, a complete review of the individual's history regarding the use or abuse of any controlled substance or alcohol and an assessment of whether the individual abuses controlled substances or alcohol or is drug or alcohol dependent. As much as is practicable, the assessment would have to be a clinical assessment.
- A review of any special needs or circumstances of the individual that could potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

The information received for an assessment described above would be confidential and could be used only for treatment and case planning. Additionally, except as otherwise allowed in the RJA, any statement or other information obtained as a result of participating in a preadmission screening, evaluation, or assessment would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA) and could not be used in a criminal prosecution, unless it revealed criminal acts other than, or inconsistent with, personal drug use.

The court could request that DHHS provide it with information pertaining to an individual applicant's Child Protective Services history for the purposes of determining the individual's admission into the family treatment court. DHHS would have to provide the information

requested by a family treatment court under the new chapter and as required under section 7(2)(g) of the Child Protection Law.

The court would have to find all of the following on the record, or place a statement in the court file establishing all of the following, before an individual could be admitted into a family treatment court:

- That the individual has a substance use disorder and is an appropriate candidate for participation in the family treatment court as determined by the preadmission screening, evaluation, or assessment.
- That the individual understands the consequences of entering the family treatment court and agrees to comply with all court orders and requirements of the family treatment court and treatment providers.
- That the individual is not a violent offender.
- That the individual has completed a preadmission screening, evaluation, or assessment and has agreed to cooperate with any future evaluation assessment as directed by the family treatment court.
- The terms and conditions of the agreement between the parties.

If the individual being considered for admission to a family treatment court is adjudicated in a civil neglect and abuse case, the individual's admission would be subject to all of the following conditions:

- The allegations contained in the petition would have to be related to the abuse, illegal use, or possession of a controlled substance or alcohol.
- The individual would have to make an admission of responsibility to the allegations on the record.
- The individual would have to waive, in writing, the right to representation by an attorney at family treatment court review hearings. However, an individual would maintain the right to an attorney for any program violation if the facts are contested, a liberty interest is at stake, or the individual could be terminated from the family treatment court program.
- The individual would have to sign a written agreement to participate in the family treatment court.

### **Treatment providers**

A family treatment court could hire or contract with licensed or accredited treatment providers in consultation and cooperation with the local substance abuse coordinating agency, the local community mental health service provider, and other appropriate persons to assist the family treatment court in fulfilling its requirements under the bill, including the following:

- Investigation of an individual's background or circumstances.
- Clinical evaluation of an individual for admission into or participation in a family treatment court.
- Providing a recommended treatment modality and level of care.
- Providing evidence-based, family-centered treatment using an integrated, comprehensive continuum of care.

### **Participation in a family treatment court**

All of the following would apply upon the admission of an individual into a family treatment court:

- For an individual who is admitted based on having an adjudicated child abuse or neglect case, the court would have to accept the admission of responsibility to the allegations as described above.
- The court could place the individual under court jurisdiction in the family treatment court program with terms and conditions as considered necessary by the court.

The family treatment court would have to cooperate and collaborate with the prosecutor, the representative of the bar specializing in family or juvenile law, treatment providers, the lawyer-guardian ad litem, the local substance abuse coordinating agency, DHHS, and, to the extent possible, the court-appointed special advocate, local law enforcement, child and adolescent services providers, the Indian child's tribe, and community corrections agencies.

The family treatment court could require an individual admitted into the court to pay a reasonable family treatment court fee that is reasonably related to the cost to the court for administering the family treatment court program as provided in the memorandum of understanding. At the end of each month, the clerk of the circuit court would have to transmit the fees collected to the treasurer of the local funding unit.

In order to continue to participate in and successfully complete a family treatment court program, an individual would have to pay the fee and comply with all court orders and case service plans, violations of which could be sanctioned according to national and state recognized family treatment court best practices and standards. However, the court could waive all or part of the fee if it determined that payment would be a substantial hardship for the participant or would interfere with the participant's substance abuse treatment.

A family treatment court would have to provide a participant with all of the following:

- Consistent, continual, and close monitoring of the participant and interaction among the court, treatment providers, DHHS, and participant.
- Mandatory periodic and random testing for the presence of any controlled substance, alcohol, or other abused substance in a participant's blood, urine, saliva, or breath, using the best available, accepted, and scientifically valid methods to the extent practicable.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.
- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Substance abuse treatment services, including family-centered treatment, relapse prevention services, mental health treatment services, education, and vocational opportunities as appropriate and practicable.

Any statement or other information obtained as a result of participating in an assessment, evaluation, treatment, or testing while in a family treatment court would be confidential and exempt from disclosure under FOIA and could not be used in a criminal prosecution, unless it revealed criminal acts other than, or inconsistent with, personal drug use.

The family treatment court would have to be notified of any new neglect and abuse allegations against a participant or if the participant is accused of a crime. The judge would have to consider whether to terminate the participant's participation in the family treatment court in conformity with the memorandum of understanding.

### **Completion of or termination from family treatment court**

Upon completion of or *termination* from a family treatment court program, the court would have to find on the record, or place a written statement in the court file as to, whether the participant completed the program successfully or the individual's participation in the program was terminated and, if terminated, the reason for the termination.

*Termination* would mean the removal from the family treatment court due to a new offense, noncompliance, absconding, voluntary withdrawal, medical discharge, or death.

The court would have to send to DHHS a notice of family treatment court completion and final disposition or a notice of termination of family court participation, as applicable, and DHHS would have to record either successful participation by the individual in a family treatment court or the termination of the individual's participation in the family treatment court program.

All court proceedings under the above provisions would have to be open to the public.

### **Information collection and maintenance**

Each family treatment court would have to collect and provide data on each individual applicant and participant in the program as required by SCAO.

A family treatment court would have to maintain files or databases on each individual applicant or referral who was denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission evaluation or assessment, and other demographic information as required by SCAO.

A family treatment court also would have to maintain files or databases on each individual participant in the program for review and evaluation, as directed by SCAO. The information collected for evaluation purposes would have to include a minimum standard data set developed and specified by SCAO.

The bill states that this information should be maintained in the court files or otherwise accessible by the courts and SCAO and, as much as practicable, should include all of the following:

- Location and contact information for each individual participant, upon admission and termination or completion of the program for follow-up reviews, and third-party contact information.
- Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.
- The individual's precipitating adjudication and significant factual information, source of referral, and all family treatment court evaluations and assessments.

- Treatments provided, including the intensity of care or dosage, and the outcome of each treatment.
- Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and the participation of and outcome for that individual.
- Reasons for discharge, completion, or termination of the program.
- Outcomes related to reunification and placement of a child or children.

The bill states that, as directed by SCAO, after an individual is discharged either upon completion of or termination from the program, the family treatment court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as substance use, custody status of children, recidivism, and employment, as frequently and for a period of time determined by SCAO based on the nature of the family treatment court and of the participant. The follow-up contact and review of former participants would not be an extension of the court's jurisdiction over the individual.

A family treatment court would have to provide to SCAO all information requested by SCAO.

With the approval and at the discretion of the Michigan Supreme Court, SCAO would be responsible for evaluating and collecting data on the performance of family treatment courts in this state. SCAO should do all of the following:

- Provide an annual review of the performance of family treatment courts in Michigan to the minority and majority party leaders in the Senate and House of Representatives, the governor, the Michigan Supreme Court, and the State Drug Treatment Court Advisory Committee.
- Provide standards for family treatment courts in Michigan, including developing a list of approved measurement instruments and indicators for data collection and evaluation. These standards would have to provide comparability between programs and their outcomes.
- Provide evaluation plans, including appropriate and scientifically valid research designs that, as soon as practicable, include the use of comparison and control groups.

The information collected as described above regarding applicants to family treatment court programs for the purpose of application to that program and participants who have successfully completed family treatment courts would be exempt from disclosure under FOIA.

### **Funding**

The Michigan Supreme Court would be responsible for the expenditure of state funds for the establishment and operation of family treatment courts. Federal funds provided to the state for the operation of family treatment courts would have to be distributed by DHHS or the appropriate state agency as otherwise provided by law.

The state treasurer could receive money or other assets from any source for deposit into the appropriate state fund or funds for the purposes described above.

Each family treatment court would have to report quarterly to SCAO, in a manner prescribed by SCAO, on the funds received and expended by that family treatment court.

**State Drug Treatment Court Advisory Committee**

The State Drug Treatment Court Advisory Committee created under the act to monitor the effectiveness of drug treatment courts and veterans treatment courts currently consists of 18 members (the state court administrator and 17 members appointed jointly by the Speaker of the House and the Senate majority leader).

The bill would increase the number of members appointed jointly by the Speaker of the House and the Senate majority leader from 17 to 18 (adding a circuit court judge who has presided over a family treatment court) and would additionally direct the committee to monitor the effectiveness of family treatment courts.

MCL 600.1082 and proposed MCL 600.1099aa et seq.

**FISCAL IMPACT:**

House Bill 5340 would likely increase state expenditures to the Department of Health and Human Services and local units of government by an indeterminate amount. The fiscal impact of the bill would be dependent on an increased number of family treatment courts along with the population of the entities that would establish family treatment courts. Any additional impact of the bill would be dependent on minimal administration costs.

The bill provides specific authority, standards, and guidance for family treatment courts. It creates model standards and best practices that family treatment courts in the state would have to follow in order to become certified. The bill does not establish additional courts, but does establish a model by which family treatment courts need to operate. The bill would not cost the state or local court funding units. However, if additional family treatment courts were established in the future, the state most likely would need additional appropriations to support the additional courts.

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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.