

**A SUMMARY OF HOUSE BILLS 5045 AND 5046 AS INTRODUCED 10-26-99**

House Bill 5046 would amend the Code of Criminal Procedure to create a mental health treatment alternative for individuals charged with certain misdemeanor offenses. House Bill 5045 would amend the Mental Health Code to require that individuals ordered to receive mental health services under the provisions of House Bill 5046 be considered a priority population. The bills are tie-barred to each other. Specifically, the bills would do the following:

House Bill 5046 would amend Chapter VII of the Code of Criminal Procedure (MCL 767.84), entitled “Grand Juries, Indictments, Informations and Proceedings Before Trial”, to allow a court hearing to determine if an individual charged with a misdemeanor offense either needed treatment or services for a serious mental illness, serious emotional disturbance, or developmental disability, or had previously received such treatment and services. (The proceeding terms are defined in the Mental Health Code.) The hearing would also be used to determine if the best interests of the public and the individual would be best served by requiring the person to obtain mental health services. An individual could refuse to participate in a program of mental health treatment or services that was offered under the bill, in which case the criminal proceeding would proceed. If the individual did not indicate refusal to go through a mental health treatment or services program, a contract would have to be signed by both the court and the individual. A signed contract would stay the criminal proceeding for the length of the contract or for a period of one year, whichever was sooner. If the individual abided by the terms of the contract, the misdemeanor charge would be dismissed. The stay would be lifted and the criminal proceedings would proceed if the individual did not comply with the contract’s terms.

Eligibility. In making a determination to offer a mental health treatment alternative, a court would have to consider the nature and seriousness of the crime, the individual’s prior mental health and criminal records, the likelihood that the individual would benefit from mental health treatment or services, and other information considered relevant by the court. The individual could be ordered to undergo a medical examination or psychiatric or psychological evaluation by a community mental health services program (CMHSP). Either upon its own volition or upon a motion, a court could order a second opinion or an independent initial evaluation from a mental health professional or provider other than a CMHSP. Both the individual and his or her attorney would have to be notified that participation in a mental health treatment or services program could be refused, but doing so would set the criminal proceeding in motion.

Treatment contract. If an individual did not notify the court that he or she refused an alternative treatment program, the court would have to present the individual with a contract that could contain one or more of the factors that the court used to determine the individual’s suitability

for the treatment program. By signing the contract, the individual would be agreeing to comply with the terms of any court order for the duration of the contract; to remain in substantial compliance with an individual plan of services developed under provisions of the Mental Health Code; to comply with any related order of the court; and not to violate any federal, state, or local criminal law or ordinance. The court, in turn, by signing the contract would be agreeing not to adjudicate the criminal charge further and to dismiss the charge at the end of one year or the end of the contract period, whichever was sooner.

Breach of contract. If an individual failed to comply with the ordered mental health treatment services, the person providing the mental health services or the person in charge of implementing the individual's plan of services would have to notify the court. The court then could hold a hearing to determine whether the individual did or did not abide by the contract's terms. Upon a finding by a preponderance of the evidence that the individual has not abided by the contractual terms, the court could rescind the contract and renew adjudication of the criminal case. However, if the court did not rescind the contract, it would remain in force and be binding on all of the parties. If the contract was rescinded, a written notice of the rescission would have to be sent to the individual, his or her attorney, and the prosecuting attorney.

Confidentiality. Statements made by an individual to a psychiatrist, psychologist, or other mental health professional in the course of an evaluation made under the bill would not be admissible during any criminal proceeding involving 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.

House Bill 5045 is a companion bill that would amend the Mental Health Code (MCL 330.1208) to require that persons ordered to obtain mental health services under the provisions of House Bill 5046 be included among those populations identified as having priority in receiving services from community mental health services programs.

Analyst: S. Stutzky

---

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