

HOUSE BILL No. 4238

February 12, 2013, Introduced by Reps. Oakes, Lane, Townsend, Brown, Howrylak, Slavens, Lipton, Hovey-Wright, Banks, Schor and Irwin and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," (MCL 760.1 to 777.69) by adding section 85 to chapter VII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER VII

SEC. 85. (1) UPON THE MOTION OF A PARTY OR UPON THE COURT'S OWN MOTION, THE COURT MAY CONDUCT A HEARING TO DETERMINE WHETHER AN INDIVIDUAL CHARGED WITH COMMITTING A CRIME DESIRES OR REQUIRES TREATMENT OR HAS PREVIOUSLY BEEN TREATED OR APPLIED FOR TREATMENT OR SERVICES FOR A MENTAL ILLNESS, EMOTIONAL DISTURBANCE, DEVELOPMENTAL DISABILITY, OR MENTAL RETARDATION AND WHETHER THE INTERESTS OF THE PUBLIC AND THE INDIVIDUAL WOULD BE BEST SERVED BY REQUIRING THE INDIVIDUAL TO OBTAIN TREATMENT FOR THE MENTAL ILLNESS, EMOTIONAL DISTURBANCE, DEVELOPMENTAL DISABILITY, OR MENTAL RETARDATION. IN MAKING THE DETERMINATION UNDER THIS SUBSECTION, THE

1 COURT SHALL CONSIDER ALL OF THE FOLLOWING:

2 (A) THE NATURE AND SERIOUSNESS OF THE CRIME ALLEGEDLY
3 COMMITTED.

4 (B) THE INDIVIDUAL'S PRIOR CRIMINAL RECORD.

5 (C) THE INDIVIDUAL'S PRIOR MENTAL HEALTH RECORD.

6 (D) THE LIKELIHOOD THAT THE INDIVIDUAL WOULD BENEFIT FROM
7 MENTAL HEALTH TREATMENT OR SERVICES.

8 (E) OTHER INFORMATION CONSIDERED RELEVANT BY THE COURT.

9 (2) THE COURT SHALL INFORM THE INDIVIDUAL AND HIS OR HER
10 ATTORNEY THAT THE INDIVIDUAL MAY REFUSE TO PARTICIPATE IN A PROGRAM
11 OF TREATMENT OFFERED UNDER THIS SECTION AND INSTEAD ALLOW THE
12 CRIMINAL PROCEEDING TO PROCEED.

13 (3) UNLESS THE INDIVIDUAL INFORMS THE COURT THAT HE OR SHE
14 DOES NOT WISH TO PARTICIPATE IN A MENTAL HEALTH TREATMENT PROGRAM
15 AS PROVIDED IN SUBSECTION (1), THE COURT SHALL PRESENT TO THE
16 INDIVIDUAL A DIVERSION CONTRACT TO BE SIGNED BY THE INDIVIDUAL AND
17 THE COURT. BY SIGNING THE DIVERSION CONTRACT, THE INDIVIDUAL AGREES
18 FOR THE TERM OF THE DIVERSION PERIOD TO ABIDE BY THE TERMS OF ANY
19 COURT ORDER ENTERED WITH RESPECT TO HIS OR HER CASE, TO REMAIN IN
20 SUBSTANTIAL COMPLIANCE WITH ANY COURSE OF TREATMENT RECOMMENDED OR
21 ORDERED UNDER AN ORDER OF THE COURT, AND NOT TO VIOLATE ANY
22 CRIMINAL LAW OR ORDINANCE OF THE UNITED STATES, THIS STATE, OR A
23 POLITICAL SUBDIVISION OF THIS STATE. BY SIGNING THE DIVERSION
24 CONTRACT, THE COURT AGREES TO STAY FURTHER ADJUDICATION OF THE
25 UNDERLYING CRIMINAL CHARGE AND TO DISMISS THE CHARGE AT THE
26 CONCLUSION OF THE PERIOD OF DIVERSION IF THE INDIVIDUAL ABIDES BY
27 THE TERMS OF THE DIVERSION CONTRACT.

1 (4) IF A DIVERSION CONTRACT HAS BEEN SIGNED UNDER SUBSECTION
2 (3), THE COURT SHALL STAY THE CRIMINAL CASE FOR NOT MORE THAN 1
3 YEAR.

4 (5) IF THE COURT IS INFORMED AT ANY TIME DURING THE
5 DIVERSIONARY PERIOD THAT THE INDIVIDUAL HAS NOT ABIDED BY THE TERMS
6 OF THE DIVERSION CONTRACT, THE COURT MAY RESCIND THE DIVERSION
7 CONTRACT AND RENEW ADJUDICATION OF THE CRIMINAL CASE. IF THE COURT
8 CHOOSES NOT TO RESCIND THE DIVERSION CONTRACT, THE CONTRACT REMAINS
9 IN EFFECT AND IS BINDING ON ALL OF THE PARTIES.

10 (6) IF THE COURT RESCINDS THE DIVERSION CONTRACT DURING THE
11 PERIOD OF DIVERSION UNDER SUBSECTION (5), THE COURT SHALL PROVIDE A
12 WRITTEN NOTICE OF THE RESCISSION TO THE INDIVIDUAL AND HIS OR HER
13 ATTORNEY AND TO THE PROSECUTING ATTORNEY.

14 (7) AT THE CONCLUSION OF THE DIVERSION PERIOD, THE COURT SHALL
15 COMPLY WITH THE TERMS OF THE DIVERSION CONTRACT.

16 (8) STATEMENTS MADE BY A DEFENDANT TO A PSYCHIATRIST,
17 PSYCHOLOGIST, OR OTHER MENTAL HEALTH PROFESSIONAL WHO CONDUCTS AN
18 EXAMINATION OF AN INDIVIDUAL UNDER THIS SECTION ARE NOT ADMISSIBLE
19 DURING ANY SUBSEQUENT CRIMINAL PROCEEDING INVOLVING THE ALLEGED
20 CRIMINAL CONDUCT ON ANY ISSUE OTHER THAN THE INDIVIDUAL'S MENTAL
21 ILLNESS, INSANITY, OR DIMINISHED CAPACITY AT THE TIME OF THE
22 ALLEGED OFFENSE.

23 (9) AN INDIVIDUAL WHO HAS A MENTAL ILLNESS, EMOTIONAL
24 DISTURBANCE, DEVELOPMENTAL DISABILITY, OR MENTAL RETARDATION SHALL
25 NOT BE HELD IN A JAIL OR OTHER PLACE OF CRIMINAL DETENTION AS AN
26 ALTERNATIVE TO MENTAL HEALTH TREATMENT UNLESS HE OR SHE IS BEING
27 HELD IN PROTECTIVE CUSTODY AS DEFINED IN SECTION 100C OF THE MENTAL

1 **HEALTH CODE, 1974 PA 258, MCL 330.1100C.**

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No.____ or House Bill No. 4239(request no.
4 00428'13 a) of the 97th Legislature is enacted into law.