

Act No. 591
Public Acts of 2018
Approved by the Governor
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**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Reps. Calley and LaGrand

ENROLLED HOUSE BILL No. 5807

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 1088, 1091, 1093, 1094, 1095, and 1098 (MCL 600.1088, 600.1091, 600.1093, 600.1094, 600.1095, and 600.1098), section 1088 as added and section 1095 as amended by 2017 PA 161, section 1091 as amended by 2017 PA 163, section 1093 as added by 2013 PA 274, section 1094 as added by 2013 PA 276, and section 1098 as added by 2013 PA 275.

The People of the State of Michigan enact:

Sec. 1088. (1) Beginning January 1, 2018, a case may be transferred totally from 1 court to another court for the defendant’s participation in a state-certified treatment court. A total transfer may occur prior to or after adjudication, but must not be consummated until the completion and execution of a memorandum of understanding that must include, but need not be limited to, all of the following:

(a) A detailed statement of how all funds assessed to defendant will be accounted for, including, but not necessarily limited to, the need for a receiving state-certified treatment court to collect funds and remit them to the court of original jurisdiction.

(b) A statement providing which court is responsible for providing information to the department of state police, as required under section 3 of 1925 PA 289, MCL 28.243, and forwarding an abstract to the secretary of state for inclusion on the defendant’s driving record.

(c) A statement providing where jail sanctions or incarceration sentences would be served, as applicable.

(d) A statement that the defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.

(e) The approval of all of the following:

(i) The chief judge and assigned judge of the receiving state-certified treatment court and the court of original jurisdiction.

(ii) A prosecuting attorney from the receiving state-certified treatment court and the court of original jurisdiction.

(iii) The defendant.

(2) As used in this section, “state-certified treatment court” includes the treatment courts certified by the state court administrative office as provided in section 1062, 1084, 1091, 1099c, or 1201.

Sec. 1091. (1) The circuit court or the district court in any judicial circuit or a district court in any judicial district may adopt or institute a mental health court pursuant to statute or court rules. However, if the mental health court will include in its program individuals who may be eligible for discharge and dismissal of an offense, delayed sentence, or deviation from the sentencing guidelines, the circuit or district court shall not adopt or institute the mental health court unless the circuit or district court enters into a memorandum of understanding with each participating prosecuting attorney in the circuit or district court district, a representative or representatives of the community mental health services programs, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, including, but not limited to, a representative or representatives of the local court funding unit or a domestic violence service provider program that receives funding from the Michigan domestic and sexual violence prevention and treatment board. The memorandum of understanding must describe the role of each party.

(2) A court that has adopted a mental health court under this section may accept participants from any other jurisdiction in this state based upon the residence of the participant in the receiving jurisdiction, the nonavailability of a mental health court in the jurisdiction where the participant is charged, and the availability of financial resources for both operations of the mental health court program and treatment services. A mental health court may refuse to accept participants from other jurisdictions.

(3) Beginning January 1, 2018, a mental health court operating in this state, or a circuit court in any judicial circuit or the district court in any judicial district seeking to adopt or institute a mental health court, must be certified by the state court administrative office. The state court administrative office shall establish the procedure for certification. Approval and certification under this subsection of a mental health court is required to begin or to continue the operation of a mental health court under this chapter. The state court administrative office shall not recognize and include a mental health court that is not certified under this subsection on the statewide official list of mental health courts. The state court administrative office shall include a mental health court certified under this subsection on the statewide official list of mental health courts. A mental health court that is not certified under this subsection shall not perform any of the functions of a mental health court, including, but not limited to, any of the following functions:

- (a) Charging a fee under section 1095.
- (b) Discharging and dismissing a case as provided in section 1098.
- (c) Receiving funding under section 1099a.

Sec. 1093. (1) Each mental health court shall determine whether an individual may be admitted to the mental health court. No individual has a right to be admitted into a mental health court. Admission into a mental health court program is at the discretion of the court based on the individual's legal or clinical eligibility. An individual may be admitted to mental health court regardless of prior participation or prior completion status. However, in no case shall a violent offender be admitted into mental health court.

(2) In addition to admission to a mental health court under this chapter, an individual who is eligible for admission under this chapter may also be admitted to a mental health court under any of the following circumstances:

(a) The individual has been assigned the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(b) The individual has had criminal proceedings against him or her deferred and has been placed on probation under any of the following:

- (i) Section 7411 of the public health code, 1978 PA 368, MCL 333.7411.
- (ii) Section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.
- (iii) Section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(3) To be admitted to a mental health court, an individual shall cooperate with and complete a preadmission screening and evaluation assessment and shall submit to any future evaluation assessment as directed by the mental health court. A preadmission screening and evaluation assessment must include all of the following:

(a) A review of the individual's criminal history. A review of the law enforcement information network may be considered sufficient for purposes of this subdivision unless a further review is warranted. The court may accept other verifiable and reliable information from the prosecution or defense to complete its review and may require the individual to submit a statement as to whether or not he or she has previously been admitted to a mental health court and the results of his or her participation in the prior program or programs.

(b) An assessment of the risk of danger or harm to the individual, others, or the community.

(c) A mental health assessment, clinical in nature, and using standardized instruments that have acceptable reliability and validity, meeting diagnostic criteria for a serious mental illness, serious emotional disturbance, co-occurring disorder, or developmental disability.

(d) A review of any special needs or circumstances of the individual that may potentially affect the individual's ability to receive mental health or substance abuse treatment and follow the court's orders.

(4) Except as otherwise permitted in this chapter, any statement or other information obtained as a result of participating in a preadmission screening and evaluation assessment under subsection (3) is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and must not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

(5) The court may request that the department of state police provide to the court information contained in the law enforcement information network pertaining to an individual applicant's criminal history for the purposes of determining an individual's eligibility for admission into the mental health court and general criminal history review.

Sec. 1094. (1) If the individual is charged in a criminal case his or her admission to mental health court is subject to all of the following conditions:

(a) The individual pleads guilty, no contest, or be convicted of any criminal charge on the record.

(b) The individual waives, in writing, the right to a speedy trial and, with the agreement of the prosecutor, the right to a preliminary examination.

(c) The individual signs a written agreement to participate in the mental health court. If the individual is an individual who has been assigned a guardian, the legal guardian is required to sign all documents for the individual's admission in the mental health court.

(2) Nothing in this chapter shall be construed to preclude a court from providing mental health services to an individual before he or she enters a plea and is accepted into the mental health court.

(3) An individual who has waived his or her right to a preliminary examination, who has pled guilty or no contest and who is subsequently not admitted to a mental health court may withdraw his or her plea and is entitled to a preliminary examination.

(4) In addition to rights accorded a victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, the mental health court shall permit any victim of the offense or offenses of which the individual is charged as well as any victim of a prior offense of which that individual was convicted to submit a written statement to the court regarding the advisability of admitting the individual into the mental health court.

Sec. 1095. (1) Upon admitting an individual into a mental health court, all of the following apply:

(a) For an individual who is admitted to a mental health court based upon having criminal charges currently filed against him or her and who has not already pled guilty or no contest the court shall accept the plea of guilty or no contest.

(b) For an individual who pled guilty or no contest to criminal charges for which he or she was admitted into the mental health court, the court shall do either of the following:

(i) In the case of an individual who pled guilty or no contest to criminal offenses that are not traffic offenses and who may be eligible for discharge and dismissal under the agreement for which he or she was admitted into mental health court upon successful completion of the mental health court program, the court shall not enter a judgment of guilt.

(ii) In the case of an individual who pled guilty to a traffic offense or who pled guilty to an offense but may not be eligible for discharge and dismissal pursuant to the agreement with the court and prosecutor upon successful completion of the mental health court program, the court shall enter a judgment of guilt.

(iii) Pursuant to the agreement with the individual and the prosecutor, the court may either delay further proceedings as provided in section 1 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.1, or proceed to sentencing, as applicable, and place the individual on probation or other court supervision in the mental health court program with terms and conditions according to the agreement and as considered necessary by the court.

(2) Unless a memorandum of understanding made pursuant to section 1088 between a receiving mental health court and the court of original jurisdiction provides otherwise, the original court of jurisdiction maintains jurisdiction over the mental health court participant as provided in this chapter until final disposition of the case, but not longer than the probation period fixed under section 2 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.2.

(3) The mental health court may require an individual admitted into the court to pay a reasonable mental health court fee that is reasonably related to the cost to the court for administering the mental health court program as provided in the memorandum of understanding. The clerk of the mental health court shall transmit the fees collected to the treasurer of the local funding unit at the end of each month.

Sec. 1098. (1) Upon completion or termination of the mental health court program, the court shall find on the record or place a written statement in the court file indicating whether the participant completed the program successfully or whether the individual's participation in the program was terminated and, if it was terminated, the reason for the termination.

(2) If an individual is participating in a mental health court under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11, section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430, the court shall proceed under the applicable section of law. There may only be 1 discharge or dismissal under this subsection.

(3) Except as provided in subsection (4), the court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding under section 1091, may discharge and dismiss the proceedings against an individual who meets all of the following criteria:

(a) The individual has participated in a mental health court for the first time.

(b) The individual has successfully completed the terms and conditions of the mental health court program.

(c) The individual is not required by law to be sentenced to a correctional facility for the crimes to which he or she has pled guilty.

(d) The individual has not previously been subject to more than 1 of the following:

(i) Assignment to the status of youthful trainee under section 11 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11.

(ii) The dismissal of criminal proceedings against the individual under section 7411 of the public health code, 1978 PA 368, MCL 333.7411, section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, or section 350a or 430 of the Michigan penal code, 1931 PA 328, MCL 750.350a and 750.430.

(4) The court may order a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

(a) The individual has not previously had proceedings dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(b) The domestic violence offense is eligible to be dismissed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(c) The individual fulfills the terms and conditions imposed under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a, and the discharge and dismissal of proceedings are processed and reported under section 4a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.4a.

(5) A discharge and dismissal under subsection (3) is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may only be 1 discharge and dismissal under subsection (3) for an individual. The court shall send a record of the discharge and dismissal to the criminal justice information center of the department of state police, and the department of state police shall enter that information into the law enforcement information network with an indication of participation by the individual in a mental health court. All records of the proceedings regarding the participation of the individual in the mental health court under subsection (3) are closed to public inspection from the date of deferral and are exempt from public disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but must be open to the courts of this state, another state, or the United States, the department of corrections, law enforcement personnel, and prosecutors only for use in the performance of their duties or to determine whether an employee of the court, department, law enforcement agency, or prosecutor's office has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, department, law enforcement agency, or prosecutor's office. The records and identifications division of the department of state police shall retain a nonpublic record of an arrest, court proceedings, and the discharge and dismissal under this subsection.

(6) Except as provided in subsection (2), (3), or (4), if an individual has successfully completed probation or other court supervision, the court shall do the following:

(a) If the court has not already entered an adjudication of guilt, enter an adjudication of guilt.

(b) If the court has not already sentenced the individual, proceed to sentencing pursuant to the agreement under which the individual was admitted into the mental health court.

(c) Send a record of the conviction, sentence, and disposition to the criminal justice information center of the department of state police.

(7) For a participant whose participation is terminated or who fails to successfully complete the mental health court program, the court shall enter an adjudication of guilt, if the entry of guilt was delayed or deferred under section 1094, and shall then proceed to sentencing of the individual for the original charges to which the individual pled guilty prior to admission to the mental health court. Except for program termination due to the commission of a new crime, failure to complete a mental health court program must not be a prejudicial factor in sentencing. All records of the proceedings regarding the participation of the individual in the mental health court must remain closed to public inspection and exempt from public disclosure as provided in subsection (5).

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5806 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor