

# HOUSE BILL NO. 6399

September 22, 2022, Introduced by Reps. Whitsett and Calley and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending section 461 (MCL 330.1461), as amended by 2018 PA 593, and by adding section 1021 and chapter 10A.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 461. (1) ~~An~~ **For a petition filed under section 434(1) to**  
2   **(6), an** individual may not be found to require treatment unless at  
3   least 1 physician or licensed psychologist who has personally  
4   examined that individual testifies in person or by written  
5   deposition at the hearing.

1 (2) For a petition filed under section 434(7), that does not  
2 seek hospitalization before the hearing, an individual may not be  
3 found to require treatment unless a psychiatrist who has personally  
4 examined that individual testifies. A psychiatrist's testimony is  
5 not necessary if a psychiatrist signs the petition. If a  
6 psychiatrist signs the petition, at least 1 physician or licensed  
7 psychologist who has personally examined that individual must  
8 testify. The requirement for testimony may be waived by the subject  
9 of the petition. If the testimony given in person is waived, a  
10 clinical certificate completed by a physician, licensed  
11 psychologist, or psychiatrist must be presented to the court before  
12 or at the initial hearing.

13 (3) The examinations required under this section for a  
14 petition filed under section 434(7) ~~shall~~**must** be arranged by the  
15 court and the local community mental health services program or  
16 other entity as designated by the department.

17 (4) A written deposition may be introduced as evidence at the  
18 hearing only if the attorney for the subject of the petition was  
19 given the opportunity to be present during the taking of the  
20 deposition and to cross-examine the deponent. This testimony or  
21 deposition may be waived by the subject of a petition. An  
22 individual may be found to require treatment even if the petitioner  
23 does not testify, as long as there is competent evidence from which  
24 the relevant criteria in section 401 can be established.

25 **Sec. 1021. Sections 1022 to 1044 do not apply to an individual**  
26 **charged with a misdemeanor offense who has been diverted to**  
27 **assisted outpatient treatment under chapter 10A.**

28 **CHAPTER 10A**

29 **Sec. 1075. (1) At the time a misdemeanor offense is charged,**

1 or at any later time before trial, the prosecuting attorney, the  
2 defendant, or defense counsel may bring a motion seeking an  
3 assessment by a physician, psychologist, or, if working under the  
4 supervision of a psychiatrist, a psychiatric nurse practitioner or  
5 physician's assistant to determine if the defendant meets the  
6 criteria for assisted outpatient treatment under this chapter.

7 (2) The defendant or defense counsel may oppose a motion made  
8 by the prosecuting attorney under subsection (1). The prosecuting  
9 attorney may oppose a motion made by the defendant or defense  
10 counsel under subsection (1).

11 (3) If a motion under subsection (1) is opposed by the  
12 prosecuting attorney, defendant, or defense counsel, the defendant  
13 must not be diverted into assisted outpatient treatment and the  
14 competency provisions of chapter 10 must be followed, as  
15 applicable.

16 (4) If upon assessment under subsection (1) it is determined  
17 that the defendant meets the criteria for assisted outpatient  
18 treatment, the prosecuting attorney shall file a petition as  
19 provided for a person requiring treatment under section 434(7).

20 (5) If a petition is filed under subsection (4), the judge of  
21 the district court may request assignment from the state court  
22 administrative office as a probate judge to hear and determine the  
23 petition or direct the prosecuting attorney to file the petition in  
24 the probate court in the defendant's county of residence. If the  
25 petition is filed in the probate court as provided under this  
26 subsection, the probate court shall hear and determine the  
27 petition.

28 (6) If, at the hearing on the petition for assisted outpatient  
29 treatment, the prosecuting attorney or the defendant objects to

1 entry of the order for assisted outpatient treatment, the petition  
2 must be dismissed and the procedures under sections 1022 to 1044  
3 apply to the case.

4 (7) If, at the hearing on the petition for assisted outpatient  
5 treatment, there is no objection to entry of the order for assisted  
6 outpatient treatment, the court shall enter the order.

7 (8) As used in this section, "person requiring treatment"  
8 means that term as defined in section 401.

9 Sec. 1076. (1) If diversion from criminal prosecution and into  
10 assisted outpatient treatment is ordered after a hearing on a  
11 petition under section 1075, the court that heard the petition  
12 shall enter an order providing for assisted outpatient treatment  
13 for not more than 180 days.

14 (2) If a defendant fails to comply with the terms of the  
15 assisted outpatient treatment order, the provisions under section  
16 475 apply to the case. Any bond or bond conditions are separate  
17 from and not to be included in the determination of whether or not  
18 the defendant has complied with the assisted outpatient treatment  
19 order.

20 (3) If a designated community treatment program is not in  
21 compliance with delivery of services required by the assisted  
22 outpatient treatment order, the court shall conduct a hearing and  
23 determine whether to order the program to deliver services.

24 Sec. 1077. (1) The misdemeanor charges against the defendant  
25 receiving assisted outpatient treatment must remain pending until  
26 dismissed by the district court for purposes of enforcing  
27 conditions of release. The conditions of release for a defendant  
28 receiving assisted outpatient treatment must be separate from  
29 compliance with the treatment plan. Compliance with the assisted

1 outpatient treatment must not be a condition of release.

2 (2) All matters concerning noncompliance with the assisted  
3 outpatient treatment plan must be addressed in a civil proceeding  
4 under section 475.

5 (3) Except as otherwise provided in this subsection, a pending  
6 misdemeanor charge must be dismissed by the district court 90 days  
7 after the entry of the assisted outpatient treatment order. If the  
8 defendant was charged with a serious misdemeanor, the misdemeanor  
9 charge must be dismissed 180 days after the entry of the assisted  
10 outpatient treatment order.

11 (4) As used in this section, "serious misdemeanor" means that  
12 term as defined in section 61 of the William Van Regenmorter crime  
13 victim's rights act, 1985 PA 87, MCL 780.811.

14 Sec. 1078. The provider of the assisted outpatient treatment  
15 shall notify the prosecutor, district court, and probate court, as  
16 applicable, that the assisted outpatient treatment has terminated  
17 upon its termination.

18 Enacting section 1. This amendatory act does not take effect  
19 unless House Bill No. 5593 of the 101st Legislature is enacted into  
20 law.