MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Williams-Barnes

To: Public Health and Human Services; Judiciary A

HOUSE BILL NO. 692

AN ACT TO CREATE NEW SECTION 9-27-10, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON BEFORE A CHANCERY COURT ALLEGED TO BE IN NEED OF MENTAL HEALTH TREATMENT IS ELIGIBLE FOR PARTICIPATION IN A MENTAL HEALTH COURT; TO AMEND SECTION 9-23-11, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ROLE OF CHANCERY COURTS AS INTERVENTION COURTS; TO AMEND SECTIONS 9-27-3 AND 9-27-5, MISSISSIPPI CODE OF 1972, WHICH REGULATE MENTAL HEALTH COURTS, TO CONFORM TO THE PRECEDING SECTIONS; TO BRING FORWARD SECTION 9-27-11, MISSISSIPPI CODE OF 1972, WHICH REGULATES ALTERNATIVE SENTENCING FOR MENTAL HEALTH COURTS, FOR PURPOSES OF AMENDMENT; TO AMEND SECTIONS 41-21-63 AND 41-21-73, MISSISSIPPI CODE OF 1972, TO AUTHORIZE PARTICIPATION IN MENTAL HEALTH COURTS AND AS ALTERNATIVE TO COMMITMENT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The following shall be codified as Section 9-27-10, Mississippi Code of 1972:

9-27-10. Except as otherwise provided in Section 9-27-11 for alternative sentencing, in order to be eligible for alternative civil commitment through a local mental health court any person before the chancery court who is alleged to be in need of treatment under Section 41-21-67 or for any other reason within the chancery court's jurisdiction and a mental health issue is alleged, is eligible for participation in a local mental health

intervention court within the chancellor's discretion. All intervention services authorized by this act shall be available to such person.

SECTION 2. Section 9-23-11, Mississippi Code of 1972, is amended as follows:

9-23-11. (1) The Administrative Office of Courts shall establish, implement and operate a uniform certification process for all intervention courts and other problem-solving courts including juvenile courts, veterans courts, mental health courts, * * * any * * * court designed to adjudicate criminal actions involving an identified classification of criminal defendant, or any chancery court designed to assist a person who is alleged to be in need of treatment for mental health and to ensure funding for intervention courts * * * and support effective and proven practices that reduce recidivism and substance dependency and improve management of treatment for mental health among their participants.

(2) The Administrative Office of Courts shall establish a certification process that ensures any new or existing intervention court meets minimum standards for intervention court operation.

(a) These standards shall include, but are not limited to:

(i) The use of evidence-based practices including, but not limited to, the use of a valid and reliable risk and needs

assessment tool to identify participants and deliver appropriate interventions;

(ii) Targeting medium to high-risk offenders for participation, except a chancery court shall target those in need of treatment for mental health issues;

(iii) The use of current, evidence-based interventions proven to reduce dependency on drugs or alcohol, or both;

(iv) Frequent testing for alcohol or drugs;

(v) Coordinated strategy between all intervention court program personnel involving the use of graduated clinical interventions;

(vi) Ongoing judicial interaction with each participant; *** * ***

(vii) Monitoring and evaluation of intervention court program implementation and outcomes through data collection and reporting *** * ***; and

(viii) Targeting those in need of treatment for mental health issues.

(b) Intervention court certification applications shall include:

(i) A description of the need for the intervention court;

(ii) The targeted population for the intervention court;

(iii) The eligibility criteria for intervention court participants;

(iv) A description of the process for identifying appropriate participants including the use of a risk and needs assessment and a clinical assessment;

(v) A description of the intervention court intervention components, including anticipated budget and implementation plan;

(vi) The data collection plan which shall include collecting the following data:

1. Total number of participants;

2. Total number of successful participants;

3. Total number of unsuccessful participants and the reason why each participant did not complete the program;

4. Total number of participants who were arrested for a new criminal offense while in the intervention court program;

5. Total number of participants who were convicted of a new felony or misdemeanor offense while in the intervention court program;

6. Total number of participants who committed at least one (1) violation while in the intervention court program and the resulting sanction(s);

7. Results of the initial risk and needs assessment or other clinical assessment conducted on each participant; *** * ***

8. Total number of applications for screening by race, gender, offenses charged, indigence and, if not accepted, the reason for nonacceptance; and

9. Any other data or information as required by the Administrative Office of Courts.

(c) Every intervention court shall be certified under the following schedule:

(i) An intervention court application submitted after July 1, 2014, shall require certification of the intervention court based on the proposed drug court plan.

(ii) An intervention court initially established and certified after July 1, 2014, shall be recertified after its second year of funded operation on a time frame consistent with the other certified courts of its type.

(iii) A certified adult felony intervention court in existence on December 31, 2018, must submit a recertification petition by July 1, 2019, and be recertified under the requirements of this section on or before December 31, 2019; after the recertification, all certified adult felony intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification

process must be completed by December 31 *** * *** of every odd calendar year.

(iv) A certified youth, family, misdemeanor or chancery intervention court in existence on December 31, 2018, must submit a recertification petition by July 31, 2020, and be recertified under the requirements of this section by December 31, 2020. After the recertification, all certified youth, family, misdemeanor and chancery intervention courts must submit a recertification petition every two (2) years to the Administrative Office of Courts. The recertification process must be completed by December 31 *** * *** of every even calendar year.

(3) All certified intervention courts shall measure successful completion of the drug court based on those participants who complete the program without a new criminal conviction.

(4) (a) All certified drug courts must collect and submit to the Administrative Office of Courts each month, the following data:

(i) Total number of participants at the beginning of the month;

(ii) Total number of participants at the end of the month;

(iii) Total number of participants who began the program in the month;

(iv) Total number of participants who successfully completed the intervention court in the month;

(v) Total number of participants who left the program in the month;

(vi) Total number of participants who were arrested for a new criminal offense while in the intervention court program in the month;

(vii) Total number of participants who were convicted for a new criminal arrest while in the intervention court program in the month; and

(viii) Total number of participants who committed at least one (1) violation while in the intervention court program and any resulting sanction(s).

(b) By August 1, 2015, and each year thereafter, the Administrative Office of Courts shall report to the PEER Committee the information in subsection (4)(a) of this section in a sortable, electronic format.

(5) All certified intervention courts may individually establish rules and may make special orders and rules as necessary that do not conflict with the rules promulgated by the Supreme Court or the Administrative Office of Courts.

(6) A certified intervention court may appoint the full- or part-time employees it deems necessary for the work of the intervention court and shall fix the compensation of those

employees. Such employees shall serve at the will and pleasure of the judge or the judge's designee.

(7) The Administrative Office of Courts shall promulgate rules and regulations to carry out the certification and re-certification process and make any other policies not inconsistent with this section to carry out this process.

(8) A certified intervention court established under this chapter is subject to the regulatory powers of the Administrative Office of Courts as set forth in Section 9-23-17.

SECTION 3. Section 9-27-3, Mississippi Code of 1972, is amended as follows:

9-27-3. (1) The Legislature recognizes the critical need for judicial intervention to establish court processes and procedures that are more responsive to the needs of defendants with mental illnesses and the needs of any person before a chancery court who is alleged to be in need of treatment for mental illness, while maintaining public safety and the integrity of the court process.

(2) The goals of the mental health courts under this chapter include, but are not limited to, the following:

(a) Reduce the number of future criminal justice contacts among offenders with mental illnesses;

(b) Reduce the inappropriate institutionalization of people with mental illnesses;

(c) Improve the mental health and well-being of defendants who come in contact with the criminal justice system;

(d) Improve linkages between the criminal justice system and the mental health system;

(e) Expedite case processing;

(f) Protect public safety;

(g) Establish linkages with other state and local agencies and programs that target people with mental illnesses in order to maximize the delivery of services; * * *

(h) To use corrections resources more effectively by redirecting prison-bound offenders whose criminal conduct is driven in part by mental illnesses to intensive supervision and clinical treatment available in the mental health court * * *;

(i) Reduce the number of people with untreated or mismanaged mental health issues; and

(j) To give all courts more authority to manage citizens with mental health related issues.

SECTION 4. Section 9-27-5, Mississippi Code of 1972, is amended as follows:

9-27-5. For the purposes of this chapter, the following words and phrases shall have the meanings ascribed unless the context clearly requires otherwise:

(a) "Chemical tests" means the analysis of an individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v)

saliva, (vi) urine, or (vii) other bodily substance to determine the presence of alcohol or a controlled substance.

(b) "Mental health diversion program" means an immediate and highly structured intervention process for persons classified with mental illness by a chancery court or for mental health treatment of eligible defendants or juveniles that:

(i) Brings together mental health professionals, local social programs and intensive judicial monitoring; and

(ii) Follows the key components of the mental health court curriculum published by the Bureau of Justice of the United States Department of Justice.

(c) "Evidence-based practices" means supervision policies, procedures and practices that scientific research demonstrates reduce recidivism.

(d) "Risk and needs assessment" means the use of an actuarial assessment tool validated on a Mississippi corrections population to determine a person's risk to reoffend and the characteristics that, if addressed, reduce the risk to reoffend.

SECTION 5. Section 9-27-11, Mississippi Code of 1972, is brought forward as follows:

9-27-11. (1) In order to be eligible for alternative sentencing through a local mental health court, the participant must satisfy each of the following criteria:

(a) The participant cannot have any felony convictions for any offenses that are crimes of violence as defined in Section

97-3-2, other than burglary under Section 97-17-23(1), within the previous ten (10) years.

(b) The crime before the court cannot be a crime of violence as defined in Section 97-3-2, other than burglary under Section 97-17-23(1).

(c) Other criminal proceedings alleging commission of a crime of violence other than burglary under Section 97-17-23(1) cannot be pending against the participant.

(d) The crime before the court cannot be a charge of driving under the influence of alcohol or any other substance that resulted in the death of a person. In addition, persons who are ineligible for nonadjudication under Section 63-11-30 shall be ineligible to participate in a mental health court.

(e) The crime charged cannot be one of trafficking in controlled substances under Section 41-29-139(f), nor can the participant have a prior conviction for same.

(2) Participation in the services of a mental health treatment component shall be open only to the individuals over whom the court has jurisdiction, except that the court may agree to provide the services for individuals referred from another mental health court. In cases transferred from another jurisdiction, the receiving judge shall act as a special master and make recommendations to the sentencing judge.

(3) (a) As a condition of participation in a mental health court, a participant may be required to undergo a chemical test or

a series of chemical tests as specified by the program. A participant is liable for the costs of all chemical tests required under this section, regardless of whether the costs are paid to the mental health court or the laboratory; however, if testing is available from other sources or the program itself, the judge may waive any fees for testing. Fees may be waived if the applicant is determined to be indigent.

(b) A laboratory that performs a chemical test under this section shall report the results of the test to the mental health court.

(4) A person does not have a right to participate in a mental health court under this chapter. The court having jurisdiction over a person for a matter before the court shall have the final determination about whether the person may participate in the mental health court under this chapter. However, any person meeting the eligibility criteria in subsection (1) of this section, shall, upon request, be screened for admission into the court's program.

SECTION 6. Section 41-21-63, Mississippi Code of 1972, is amended as follows:

41-21-63. (1) No person, other than persons charged with crime, shall be committed to a public treatment facility except under the provisions of Sections 41-21-61 through 41-21-107 *** * ***, 43-21-611 *** * ***, 43-21-315 or Section 1 of this act. However, nothing herein shall be construed to repeal, alter or otherwise

affect the provisions of Section 35-5-31 or to affect or prevent the commitment of persons to the Veterans Administration or other agency of the United States under the provisions of and in the manner specified in those sections.

(2) (a) The chancery court, or the chancellor in vacation, shall have jurisdiction under Sections 41-21-61 through 41-21-107 except over persons with unresolved felony charges unless paragraph (b) of this subsection applies.

(b) If a circuit court with jurisdiction over unresolved felony charges enters an order concluding that the person is incompetent to stand trial and is not restorable to competency in the foreseeable future, the matter should be referred to the chancery court to be subject to civil commitment procedures under Sections 41-21-61 through 41-21-107. The order of the circuit court shall be in lieu of the affidavit for commitment provided for in Section 41-21-65. The chancery court shall have jurisdiction and shall proceed with civil commitment procedures under Sections 41-21-61 through 41-21-107.

(3) The circuit court shall have jurisdiction under Sections 99-13-7, 99-13-9 and 99-13-11.

(4) Before the release of a person referred for civil commitment under this section and committed under Sections 41-21-61 through 41-21-107, the Department of Mental Health must notify the district attorney of the county where the offense was committed. The district attorney must notify the crime victim or

a family member who has requested notification under Section 99-43-35 and the sheriffs of both the county where the offense was committed and the county of the committed person's destination.

SECTION 7. Section 41-21-73, Mississippi Code of 1972, is amended as follows:

41-21-73. (1) The hearing shall be conducted before the chancellor. However, the hearing may be held at the location where the respondent is being held. Within a reasonable period of time before the hearing, notice of same shall be provided the respondent and his attorney, which shall include: (a) notice of the date, time and place of the hearing; (b) a clear statement of the purpose of the hearing; (c) the possible consequences or outcome of the hearing; (d) the facts that have been alleged in support of the need for commitment; (e) the names, addresses and telephone numbers of the examiner(s); and (f) other witnesses expected to testify.

(2) The respondent must be present at the hearing unless the chancellor determines that the respondent is unable to attend and makes that determination and the reasons therefor part of the record. At the time of the hearing, the respondent shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment that the respondent has received pending the

hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(3) The respondent shall have the right to offer evidence, to be confronted with the witnesses against him and to cross-examine them and shall have the privilege against self-incrimination. The rules of evidence applicable in other judicial proceedings in this state shall be followed.

(4) If the court finds by clear and convincing evidence that the proposed patient is a person with mental illness or a person with an intellectual disability and, if after careful consideration of reasonable alternative dispositions, including, but not limited to, dismissal of the proceedings, the court finds that there is no suitable alternative to judicial commitment, the court shall commit the patient for treatment in the least restrictive treatment facility that can meet the patient's treatment needs. Treatment before admission to a state-operated facility shall be located as closely as possible to the patient's county of residence and the county of residence shall be responsible for that cost. Admissions to state-operated facilities shall be in compliance with the catchment areas established by the State Department of Mental Health. A nonresident of the state may be committed for treatment or confinement in the county where the person was found.

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient

commitment for treatment with specific reference to a treatment regimen, participation in a mental health court, day treatment in a hospital, night treatment in a hospital, placement in the custody of a friend or relative, or the provision of home health services.

For persons committed as having mental illness or having an intellectual disability, the initial commitment shall not exceed three (3) months.

(5) No person shall be committed to a treatment facility whose primary problems are the physical disabilities associated with old age or birth defects of infancy.

(6) The court shall state the findings of fact and conclusions of law that constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable.

(7) A stenographic transcription shall be recorded by a stenographer or electronic recording device and retained by the court.

(8) Notwithstanding any other provision of law to the contrary, neither the State Board of Mental Health or its members, nor the State Department of Mental Health or its related facilities, nor any employee of the State Department of Mental Health or its related facilities, unless related to the respondent

by blood or marriage, shall be assigned or adjudicated custody, guardianship, or conservatorship of the respondent.

(9) The county where a person in need of treatment is found is authorized to charge the county of the person's residence for the costs incurred while the person is confined in the county where such person was found.

SECTION 8. This act shall take effect and be in force from and after July 1, 2021.