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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 2
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by Senate Judiciary

Primary Sponsor: Sen. Gavarone

Local Impact Statement Procedure Required: Yes

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Highlights

- Generally, inpatient competency evaluations may no longer be conducted at facilities operated by the Ohio Department of Mental Health and Addiction Services (OhioMHAS) or the Ohio Department of Developmental Disabilities (ODODD) for defendants charged with nonviolent misdemeanors unless the court determines the defendant is in need of immediate hospitalization. Approximately 15 defendants with nonviolent misdemeanor charges received inpatient competency evaluations at these facilities during calendar year 2018. Thus, these facilities may realize a decrease in costs.
- The Ohio Association of County Behavioral Health Authorities anticipates that costs for county alcohol, drug addiction, and mental health services (ADAMHS) boards could increase due to the evaluation or restoration provisions within the bill if the payer is shifted or if additional services are provided. The magnitude is uncertain, but will depend on several factors including the number of additional people utilizing services and the types of services rendered, as well as if any patient or third-party reimbursements are received. In addition, local courts and any other government programs that pay for treatment services could realize an impact to costs.
- Municipal, county, and common pleas courts could see additional expenses due to the bill's additional hearing and notification requirements. The magnitude of the increase is indeterminate.
- The bill enters Ohio into the Psychology Interjurisdictional Compact (PSYPACT). As a result, the State Board of Psychology may pay annual assessments of up to \$6,000 per year. In addition, the Board will have additional administrative costs related to regulation, investigations, rule promulgation, and notification requirements.

Detailed Analysis

Competency evaluations in certain state facilities

The bill prohibits a court from ordering a criminal defendant to undergo inpatient competency evaluations at a center, program, or facility operated or certified by the Ohio Department of Mental Health and Addiction Services (OhioMHAS) or the Ohio Department of Developmental Disabilities (ODODD) unless the defendant has been charged with a felony or an offense of violence or unless the court determines the defendant is in need of immediate hospitalization. OhioMHAS estimates that for calendar year 2018,¹ 15 individuals had been charged with a nonviolent misdemeanor and ordered to receive an inpatient evaluation at a state OhioMHAS hospital. In FY 2020, the average daily cost per resident was about \$688.² If all 15 of these individuals stayed the full 20 days, the inpatient evaluation cost would be approximately \$206,000 (15 individuals x \$688 x 20 days). As a result, OhioMHAS hospital costs may decrease.

In 2018, ODODD indicated that they rarely conduct inpatient competency evaluations for individuals charged with a nonviolent misdemeanor. Due to the rarity of evaluations in these circumstances, the bill should have a minimal to negligible fiscal impact to ODODD.³

Under current practice, the cost for an evaluation outside of a state facility is borne by either the court or the county alcohol, drug addiction, and mental health services (ADAMHS) boards depending on the county. Costs could increase locally if evaluations are shifted out of state facilities. The magnitude is uncertain, but will depend on several factors including the number of additional people utilizing services and the types of services rendered, as well as if any patient or third-party reimbursements are received. The bill also requires that if the examiner gives a recommendation in the report as to the least restrictive placement or commitment alternative for the defendant due to the defendant's condition, the examiner must consider the housing needs and availability of mental health treatment in the community. This provision could result in an increase in utilization of community services.

Written report by an examiner

The bill requires a written report filed by the examiner who assesses a defendant's mental state to be filed with the court under seal and requires the court to allow for inspection of the report by certain parties.⁴ The report is not open to public inspection, but the bill permits a person to file a motion seeking disclosure for good cause and requires the court to notify the defendant of the pending motion. If the defendant objects to the disclosure, the court is required to hold a hearing. Municipal, county, and common pleas courts could see additional expenses

¹ This figure was provided by OhioMHAS on December 13, 2018. Current figures are likely similar.

² Provided to LBO from OhioMHAS.

³ This information was provided by ODODD in 2018. LBO has also asked ODODD for an updated number, but ODODD is still working on this request. LBO assumes that this information has not changed drastically since 2018.

⁴ Parties include the defendant, the defendant's guardian, and any mental health professional involved in the treatment of the defendant, probate courts, and boards of alcohol, drug addiction, and mental health services.

due to these additional hearing and notification requirements, the magnitude of which is dependent on the number of motions filed.

Incompetence to stand trial

The bill allows a criminal trial court that finds a defendant charged with a misdemeanor offense, other than a misdemeanor offense of violence, incompetent to stand trial to do one of the following:

- Dismiss the charges pending against the defendant without prejudice and discharge the defendant from custody; or
- Order the defendant to undergo outpatient competency restoration treatment at a facility operated or certified by OhioMHAS as being qualified to treat mental illness, at a public or community mental health facility, or in the care of a psychiatrist or other mental health professional.

If a defendant who has been released on bail or recognizance refuses to comply with this court-ordered outpatient treatment, the court is permitted to dismiss the charges pending against the defendant or amend the conditions of bail or recognizance and order the sheriff to take the defendant into custody and deliver the defendant to a center, program, or facility operated or certified by OhioMHAS for treatment.

Furthermore, the bill prohibits a court from proceeding against a defendant under the above process if the defendant is charged with a misdemeanor offense of violence and found incompetent to stand trial unless the prosecutor recommends that the court follow those diversion procedures. If the prosecutor does not recommend those procedures and the court is unable to determine whether there is a substantial probability that the defendant will become competent to stand trial within the time frame permitted under existing law for treatment, the court may order continuing evaluation of the defendant for a period not to exceed that maximum period.

Additionally, the bill requires the court, when determining the place of commitment for a defendant found incompetent to stand trial, to consider the availability of housing and supportive services, including outpatient mental health services.

These provisions could result in an increase in costs for ADAMHS boards, local courts, and possibly other government programs that pay for treatment (e.g., Medicaid for eligible participants and medically necessary services). The amount of the increase is uncertain, but will depend on a number of factors including the number of people receiving these services, the scope of services rendered to each individual, as well as the amount of any potential patient or third-party payer reimbursements.

Involuntary status

The bill authorizes a hospital's chief clinical officer to file an affidavit for involuntary treatment of a mental health patient in voluntary status if the patient refuses to accept the written treatment plan required under existing law. The bill requires a hospital's chief clinical officer to immediately notify the appropriate trial court or prosecutor if the officer decides to discharge a mental health patient in voluntary status who had, within the past 12 months, been a defendant found incompetent to stand trial for a misdemeanor charge and subject to involuntary mental health treatment or institutionalization by court order because of intellectual disability.

The bill authorizes the trial court or prosecutor, not later than three court days after being notified of the intent to discharge, to file an affidavit for involuntary mental health treatment with the probate court of the county where the patient is hospitalized or the county where the patient resides. The bill requires that if such an affidavit is filed, the patient's discharge must be postponed until a hearing on the involuntary treatment is held.

Probate courts could see additional expenses due to the additional hearing requirements. While the total impact of these provisions are uncertain, it is possible that government-owned hospitals, ADAMHS boards, and other state programs that pay for treatment, such as Medicaid, could realize an increase in costs if treatment stays are extended or additional treatment is provided due to the bill.

Psychology Interjurisdictional Compact

The Psychology Interjurisdictional Compact (PSYPACT) is a multi-jurisdictional psychology contract created in 2015 to regulate the practice of telepsychology and temporary in-person, face-to-face psychology across state boundaries. The bill enters Ohio into PSYPACT, permitting eligible psychologists to practice telepsychology and temporary in-person, face-to-face psychology with patients in other compact states. All states participating in PSYPACT help establish the Psychology Interjurisdictional Compact Commission, a collective governing agency overseeing the implementation of PSYPACT. The bill establishes the Commission's powers and authority and specifies that the Commission is allowed to accept any and all appropriate revenue sources, donations, grants, equipment, etc. and may also levy on and collect an annual assessment from each compact state or impose fees on other parties. The bill establishes the requirements a psychologist must meet to practice under PSYPACT. The Commission is responsible for developing and maintaining a Coordinated Licensure Information System to record licensure and disciplinary action for practicing PSYPACT psychologists. The bill outlines what data compact states are required to submit.

The State Board of Psychology will be required to pay an annual assessment to the Commission. The amount that the Board must pay is not explicitly stated in the bill; however, a rule developed by the Commission that went into effect on October 9, 2019, states that a compact state will be charged \$10 per PSYPACT participating psychologist licensed in their home state up to a maximum of \$6,000 annually. In addition to these annual assessments, there may be additional administrative costs to investigate complaints. There will also be other costs to the Board associated with submitting uniform data to the Commission and notifying other compact states of certain actions taken about any licensees. The total costs will depend on the number of Ohio psychologists that opt to practice under PSYPACT, the number of other compact state psychologists that practice in Ohio, and the number of complaints that the Board is required to investigate.

There could be other impacts associated with Ohio entering PSYPACT. For instance, additional PSYPACT psychologists located in other compact states could provide services to Ohio residents. If this occurs, there could be additional reimbursements from state and local programs that reimburse for these services. In addition, if an Ohio resident utilizes an out-of-network provider located in another compact state there could be some additional costs to state and local programs or health plans. However, if the provision of these services led to any avoidances in hospital admissions or any other more expensive treatments, there could be a reduction in costs.