

## JUDICIAL SECTION

Respectfully submits the following position on:

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HB 4674

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The Judicial Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Judicial Section only and is not the position of the State Bar of Michigan.

The State Bar's position in this matter is to support the portions of the bill that improve the functioning of the courts.

The total membership of the Judicial Section is 27.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 27. The number who voted in favor to this position was 20. The number who voted opposed to this position was 0.

## Report on Public Policy Position

**Name of section:**

Judicial Section

**Contact person:**

Hon. James M. Alexander

**E-Mail:**

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**Bill Number:**

[HB 4674](#) (Leonard) Mental health; code; assisted outpatient treatment program; modify. Amends secs. 100a, 100c, 401, 404, 420, 422, 423, 425, 426, 427, 429, 431, 434, 435, 438, 447, 448, 449, 451, 452, 454, 455, 463, 468, 469a, 472a, 474, 474a & 475 of [1974 PA 258](#) (MCL [330.1100a](#) et seq.); adds sec. 400b & repeals secs. 116a, 424, 428 & 433 of 1974 PA 258 (MCL [330.1116a](#) et seq.).

**Date position was adopted:**

June 5, 2015

**Process used to take the ideological position:**

Position adopted after discussion and vote at a scheduled meeting.

**Number of members in the decision-making body:**

27

**Number who voted in favor and opposed to the position:**

20 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote (absent)

**Position:**

Support

**Explanation of the position, including any recommended amendments:**

When adopted 10 years ago, Kevin's Law was hailed as permitting early intervention in the course of someone's mental illness in order to avoid harm. Kevin's Law was intended to offer Assisted Outpatient Treatment (AOT) as a method to avoid repeated hospitalization, homelessness and incarceration. However, in the intervening 10 years, Kevin's Law has been sorely underutilized.

Lt. Governor Calley convened a panel to look for ways to stimulate more use of AOT and make recommendations to address barriers to the use of AOT to unlock the promise of Kevin's Law. The Judicial Council supports the following recommendations to increase the use of AOT:

1. AOT should be an option in all petitions seeking mental health treatment.
2. There should only be one process to seek mental health treatment.
3. The law should be modified to permit early intervention.
4. The process should be further simplified for those petitions where only AOT is sought.

While the legislative history suggests that AOT would be an option in all cases, the statute was drafted in such a way to make this nearly impossible. This is demonstrated by the fact that AOT is so seldom used. The law needs to be modified to permit AOT whenever appropriate.

Currently, cases seeking mental health treatment are commenced as either applications, petitions to require treatment, or petitions for AOT. All cases seeking mental health treatment should follow one process commenced by a common petition. The procedure employed should be the same in all cases, except in those cases where no hospitalization is requested. In those cases clinical certificates would not be necessary since no hospitalization will occur before the hearing.

The Mental Health Code should be modified to permit earlier intervention. That was one of the promises of Kevin's Law. It should not be necessary to wait for crisis to intervene. Earlier intervention can prevent hospitalization, incarceration and homelessness and can help people when necessary, on an outpatient basis and not have to reach a crisis point. If a person's lack of understanding of their need for treatment can reasonably be expected to result in harm, the court should be able to order treatment.

Currently, to secure AOT it is necessary to prove that the individual is currently noncompliant with treatment that has been recommended by a mental health professional. Privacy issues make this an impossible burden to prove and the person may not have a current treatment plan. The law should be modified to provide that it will be sufficient to show that the person's lack of understanding of their need for treatment is impaired to the point that voluntary compliance is unlikely and treatment is necessary to prevent a relapse or harmful deterioration of his or her condition that has been demonstrated by prior actions.

The Mental Health Code, as currently designed is an in-patient model in an out-patient world. These changes we would begin to align the Mental Health Code with the current model of mental health care delivery.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://legislature.mi.gov/doc.aspx?2015-HB-4674>

**FOR LEGISLATIVE ISSUES ONLY:**

This position falls within the following Keller-permissible category:

- ✓ The regulation and discipline of attorneys
  - ✓ The improvement of the functioning of the courts
  - ✓ The availability of legal services to society
- The regulation of attorney trust accounts  
The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.