

By: Senator(s) Branning, Jackson (32nd)

To: Judiciary, Division A;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2842

1 AN ACT TO AUTHORIZE PILOT MENTAL HEALTH DIVERSION PROGRAMS;
2 TO SPECIFY THE PURPOSE AND GOALS OF MENTAL HEALTH DIVERSION
3 PROGRAMS; TO PROVIDE CERTAIN DEFINITIONS; TO ESTABLISH THE
4 ADVISORY COMMITTEE; TO SPECIFY MINIMUM STANDARDS FOR MENTAL
5 HEALTH; TO PROVIDE CERTAIN MENTAL HEALTH INTERVENTION SERVICES; TO
6 SET FORTH ALTERNATIVE SENTENCING ELIGIBILITY CRITERIA AND
7 CONDITIONS; TO DESIGNATE THE POWERS OF THE ADMINISTRATIVE OFFICE
8 OF COURTS REGARDING MENTAL HEALTH DIVERSION PROGRAMS; TO AUTHORIZE
9 MENTAL HEALTH DIVERSION PROGRAMS TO RECEIVE FUNDS AND ASSESS
10 REASONABLE FEES; TO PROVIDE IMMUNITY TO PERSONS WHO PERFORM THEIR
11 MENTAL HEALTH DUTIES IN GOOD FAITH; TO PROVIDE THAT PERSONS WHO
12 COMPLETE ALL REQUIREMENTS IMPOSED BY THE MENTAL HEALTH DIVERSION
13 PROGRAMS WILL HAVE THE RECORD EXPUNGED; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** This chapter shall be known and may be cited as
16 the Mississippi Mental Health Diversion Program Act.

17 **SECTION 2.** (1) The Legislature recognizes the critical need
18 for judicial intervention to establish court processes and
19 procedures that are more responsive to the needs of defendants
20 with mental illnesses, while maintaining public safety and the
21 integrity of the court process. It is the intent of the
22 Legislature to facilitate local mental health diversion program



23 alternatives that are adaptable to chancery, circuit, county,
24 youth, municipal and justice courts.

25 (2) The goals of the mental health diversion programs under
26 this chapter include the following:

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

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

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

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

35 (e) Expedite case processing;

36 (f) Protect public safety;

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

40 (h) To use corrections resources more effectively by
41 redirecting prison-bound offenders whose criminal conduct is
42 driven in part by mental illnesses to intensive supervision and
43 clinical treatment available in the mental health diversion
44 program.

45 **SECTION 3.** For the purposes of this chapter, the following
46 words and phrases shall have the meanings ascribed unless the
47 context clearly requires otherwise:



48 (a) "Chemical tests" means the analysis of an
49 individual's: (i) blood, (ii) breath, (iii) hair, (iv) sweat, (v)
50 saliva, (vi) urine, or (vii) other bodily substance to determine
51 the presence of alcohol or a controlled substance.

52 (b) "Crime of violence" means an offense listed in
53 Section 97-3-2, other than burglary under Section 97-17-23(b).

54 (c) "Mental health diversion program" means an
55 immediate and highly structured intervention process for mental
56 health treatment of eligible defendants or juveniles that:

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

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

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

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

69 **SECTION 4.** (1) The State Mental Health Diversion Program
70 Advisory Committee is established to develop and periodically
71 update proposed statewide evaluation plans and models for
72 monitoring all critical aspects of mental health diversion



73 programs. The committee shall provide the proposed evaluation
74 plans to the Chief Justice and the Administrative Office of
75 Courts. The committee shall be chaired by the Director of the
76 Administrative Office of Courts or a designee and shall consist of
77 not less than seven (7) members nor more than eleven (11) members
78 appointed by the Supreme Court and shall be broadly representative
79 of the courts, mental health treatment communities, law
80 enforcement, corrections, juvenile justice and child protective
81 services.

82 (2) The State Mental Health Diversion Program Advisory
83 Committee may also make recommendations to the Chief Justice, the
84 Director of the Administrative Office of Courts and state
85 officials concerning improvements to mental health diversion
86 program policies and procedures including the mental health
87 certification process. The committee may make suggestions as to
88 the criteria for eligibility and other procedural and substantive
89 guidelines for mental health diversion program operation.

90 (3) The State Mental Health Diversion Program Advisory
91 Committee shall act as arbiter of disputes arising out of the
92 operation of mental health diversion programs established under
93 this chapter and make recommendations to improve the mental health
94 diversion program. The committee shall also make recommendations
95 to the Supreme Court necessary and incident to compliance with
96 established rules.



97 (4) The State Mental Health Diversion Program Advisory
98 Committee shall establish through rules and regulations a viable
99 and fiscally responsible plan to expand the number of adult and
100 juvenile mental health diversion programs operating in
101 Mississippi. These rules and regulations shall include plans to
102 increase participation in existing and future programs while
103 maintaining their voluntary nature.

104 (5) The State Mental Health Diversion Program Advisory
105 Committee shall receive and review the monthly reports submitted
106 to the Administrative Office of Courts by each certified mental
107 health court and provide comments and make recommendations, as
108 necessary, to the Chief Justice and the Director of the
109 Administrative Office of Courts.

110 **SECTION 5.** (1) The Administrative Office of Courts is the
111 repository for reports filed by pilot programs established under
112 this act. The goal of the pilot programs is to support effective
113 and proven practices that reduce recidivism and provide treatment
114 for participants.

115 (2) Pilot programs must adhere to the standards established
116 in this chapter.

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

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



121 assessment tool to identify participants and deliver appropriate
122 treatments;

123 (ii) Targeting medium to high risk offenders for
124 participation;

125 (iii) The use of current, evidence-based
126 interventions proven to provide mental health treatment;

127 (iv) Coordinated strategy between all mental
128 health diversion program personnel;

129 (v) Ongoing judicial interaction with each
130 participant; and

131 (vi) Monitoring and evaluation of mental health
132 diversion program implementation and outcomes through data
133 collection and reporting.

134 (b) Pilot programs must implement a data collection
135 plan, which shall include collecting the following data:

136 (i) Total number of participants;

137 (ii) Total number of successful participants;

138 (iii) Total number of unsuccessful participants

139 and the reason why each participant did not complete the program;

140 (iv) Total number of participants who were
141 arrested for a new criminal offense while in the program;

142 (v) Total number of participants who were
143 convicted of a new felony or misdemeanor offense while in the
144 program;



145 (vi) Total number of participants who committed at
146 least one (1) violation while in the program and the resulting
147 sanction(s);

148 (vii) Results of the initial risk and needs
149 assessment or other clinical assessment conducted on each
150 participant; and

151 (viii) Any other data or information as required
152 by the Administrative Office of Courts.

153 (3) All mental health diversion programs must measure
154 successful completion of the program based on those participants
155 who complete the program without a new criminal conviction.

156 (4) (a) Pilot programs must collect and submit to the
157 Administrative Office of Courts each month, the following data:

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

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

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

164 (iv) Total number of participants who successfully
165 completed the program in the month;

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



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

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

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

177 (b) By August 1, 2018, and each year thereafter, the
178 Administrative Office of Courts shall report to the PEER Committee
179 the information in subsection (4)(a) of this section in a
180 sortable, electronic format.

181 (5) Mental health diversion pilot programs may individually
182 establish rules and may make special orders and rules as necessary
183 that do not conflict with rules promulgated by the Supreme Court
184 or the Administrative Office of Courts.

185 (6) A mental health diversion pilot program may appoint the
186 full or part-time employees it deems necessary for the work of the
187 mental health diversion program and shall fix the compensation of
188 those employees, who shall serve at the will and pleasure of the
189 senior circuit court judge.

190 (7) A mental health diversion pilot program established
191 under this chapter is subject to the regulatory powers of the



192 Administrative Office of Courts as set forth in Section 8 of this
193 act.

194 **SECTION 6.** (1) A mental health diversion program's mental
195 health intervention component shall provide for eligible
196 individuals, either directly or through referrals, a range of
197 necessary court treatment services, including, but not limited to,
198 the following:

199 (a) Screening using a valid and reliable assessment
200 tool effective for identifying persons affected by mental health
201 issues for eligibility and appropriate services;

202 (b) Clinical assessment;

203 (c) Education;

204 (d) Referral;

205 (e) Service coordination and case management; and

206 (f) Counseling and rehabilitative care.

207 (2) Any inpatient treatment ordered by the court shall be
208 certified by the Department of Mental Health, other appropriate
209 state agency or the equivalent agency of another state.

210 **SECTION 7.** (1) In order to be eligible for alternative
211 sentencing through a local mental health diversion program, the
212 participant must satisfy each of the following criteria:

213 (a) The participant cannot have any felony convictions
214 for any offenses that are crimes of violence as defined in Section
215 97-3-2, other than burglary under Section 97-17-23(1), within the
216 previous ten (10) years.



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

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

223 (d) The crime before the court cannot be a charge of
224 driving under the influence of alcohol or any other substance that
225 resulted in the death of a person.

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

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

236 (3) (a) As a condition of participation in a mental health
237 diversion program, a participant may be required to undergo a
238 chemical test or a series of chemical tests as specified by the
239 program. A participant is liable for the costs of all chemical
240 tests required under this section, regardless of whether the costs
241 are paid to the mental health diversion program or the laboratory;



242 however, if testing is available from other sources or the program
243 itself, the judge may waive any fees for testing.

244 (b) A laboratory that performs a chemical test under
245 this section shall report the results of the test to the mental
246 health diversion program.

247 (4) A person does not have a right to participate in a
248 mental health diversion program under this chapter. The court
249 having jurisdiction over a person for a matter before the court
250 shall have the final determination about whether the person may
251 participate in the mental health diversion program under this
252 chapter.

253 **SECTION 8.** With regard to any mental health diversion
254 program established under this chapter, the Administrative Office
255 of Courts shall do the following:

256 (a) Make or approve agreements and contracts to
257 effectuate the purposes of this chapter with:

258 (i) Another department, authority or agency of the
259 state;

260 (ii) Another state;

261 (iii) The federal government;

262 (iv) A state-supported or private university; or

263 (v) A public or private agency, foundation,
264 corporation or individual.

265 (b) Directly, or by contract, approve and certify any
266 treatment component established under this chapter.



267 (c) Collect monthly data reports submitted by all
268 mental health diversion programs, provide those reports to the
269 State Mental Health Diversion Program Advisory Committee, compile
270 an annual report summarizing the data collected and the outcomes
271 achieved by all mental health diversion pilot programs and submit
272 the annual report to the PEER Committee.

273 (d) After three (3) years, contract with an external
274 evaluator to conduct an evaluation of the effectiveness of the
275 mental health diversion programs in complying with the key
276 components of the mental health diversion programs.

277 (e) Adopt rules to implement this chapter.

278 **SECTION 9.** (1) All monies received from any source by a
279 mental health diversion program shall be accumulated in a local
280 fund to be used only for mental health diversion program purposes.
281 Any funds remaining in this fund at the end of a fiscal year shall
282 not lapse into any general fund, but shall be retained in the
283 mental health diversion program fund for the funding of further
284 activities by the mental health diversion program.

285 (2) A mental health diversion program may apply for and
286 receive the following:

287 (a) Gifts, bequests and donations from private sources.

288 (b) Grant and contract monies from governmental
289 sources.



290 (c) Other forms of financial assistance approved by the
291 court to supplement the budget of the mental health diversion
292 program.

293 (3) The costs of participation in a mental health treatment
294 program required by the mental health diversion program may be
295 paid by the participant or out of user fees or such other state,
296 federal or private funds that may, from time to time, be made
297 available.

298 (4) The court may assess such reasonable and appropriate
299 fees to be paid to the local mental health diversion program fund
300 for participation in a mental health treatment program.

301 **SECTION 10.** The director and members of the professional and
302 administrative staff of the mental health diversion program who
303 perform duties in good faith under this chapter are immune from
304 civil liability for:

305 (a) Acts or omissions in providing services under this
306 chapter; and

307 (b) The reasonable exercise of discretion in
308 determining eligibility to participate in the mental health
309 diversion program.

310 **SECTION 11.** If the participant completes all requirements
311 imposed upon him by the mental health diversion program, including
312 the payment of fines and fees assessed, the charge and prosecution
313 shall be dismissed. If the defendant or participant was sentenced
314 at the time of entry of a plea of guilty, the successful



315 completion of the mental health diversion program order and other
316 requirements of probation or suspension of sentence will result in
317 the record of the criminal conviction or adjudication being
318 expunged.

319 **SECTION 12.** The Second and Eighth Circuit Court Districts
320 may establish a mental health diversion pilot program. The
321 purpose of a pilot program is to implement procedures to meet the
322 goals listed in Section 2 of this act on a trial basis and is
323 conditioned upon the availability of funds obtained for that
324 purpose from public or private sources. Any drug court in the
325 Second or Eighth Circuit Court District shall render such
326 assistance as is authorized by the senior circuit judge.

327 **SECTION 13.** This act shall be codified as a new chapter in
328 Title 9, Mississippi Code of 1972.

329 **SECTION 14.** This act shall take effect and be in force from
330 and after its passage, and shall stand repealed from and after
331 June 30, 2021.

