COMMITTEE REPORT

March 18, 2015

**S. 426**

Introduced by Senator Sheheen

S. Printed 3/18/15--S.

Read the first time February 5, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 426) to amend Title 14 of the 1976 Code, relating to courts, by adding Chapter 31, to establish a Mental Health Court Program, to provide for a system that diverts, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Title 14 of the 1976 Code is amended by adding:

“CHAPTER 31

Mental Health Court Program

Section 14‑31‑10. This chapter may be cited as the ‘Mental Health Court Program Act’.

Section 14‑31‑20. The purpose of this chapter is to divert qualifying mentally ill offenders away from the criminal justice system and into appropriate treatment programs, thereby reserving prison space for violent criminals and others for whom incarceration is the only reasonable alternative. Offenders with a diagnosed, or diagnosable mental illness generally recognized in the psychiatric community qualify for participation in a mental health court program.

Section 14-31-30. The following definitions shall apply to this chapter:

(1) ‘Pre-adjudicatory mental health court program’ means a program that allows an offender to expedite the offender’s criminal case before conviction and requires successful completion of the mental health court program as part of the agreement.

(2) ‘Post-adjudicatory mental health court program’ means a program in which an offender has admitted guilt or has been found guilty and agrees to enter a mental health court program as part of the offender’s sentence.

(3) ‘Combination mental health court program’ means a mental health court program that includes a pre-adjudicatory mental health court program and a post-adjudicatory mental health court program.

Section 14‑31‑40. (A)(1)(a) Except as provided in item (2), each circuit solicitor may establish a mental health court program under one of the formats defined in Section 14-31-30. An offender arrested or convicted for any charges, except those excluded under the provisions of Section 16-1-130, who are suffering from a diagnosed or diagnosable mental illness, including those with a co-concurring disorder of substance abuse, may be eligible for referral to a mental health court program. In cases involving victims, proper notice shall be given to victims pursuant to Section 16-3-1525. Proper notice to a victim is not achieved unless reasonable attempts are made to contact the victim and the victim is either nonresponsive or cannot be located after a reasonable search.

(b) Each circuit solicitor that accepts state funding for the implementation of a mental health treatment court program must establish and administer at least one mental health court program for the circuit within one hundred eighty days of receipt of funding. The circuit solicitor must administer the program and ensure that all eligible persons are permitted to apply for admission to the program.

(2) Mental health court programs established pursuant to an Administrative Order issued by the Chief Justice of the South Carolina Supreme Court shall continue to operate pursuant to the terms and conditions of the court’s orders pertaining to that mental health court program. To the extent that provisions contained in this chapter conflict with provisions contained in those Supreme Court Administrative Orders, the provisions of the administrative orders shall control.

(B) The Chief Justice of the South Carolina Supreme Court shall appoint all mental health court judges for mental health courts operating pursuant to (A)(1) and (2). Service as a mental health court judge shall be at the pleasure of the Chief Justice and shall be subject to any limitations and directives issued by the Chief Justice. In order to be appointed as a mental health court judge, a person must be a probate judge, a summary court judge, or an active or retired member of the state’s unified judicial system. Service as a mental health court judge is voluntary.

(C) Mental health court judges are entitled to the same protections from civil liability and immunities as judicial office holders in this State.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

A. SHANE MASSEY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

This bill is not expected to significantly impact state expenditures. All agencies surveyed indicated that either the costs associated with implementation would be minimal and could be absorbed, or that there would be no cost to the agency.

**Explanation of Fiscal Impact**

**State Expenditure**

Senate Bill 426 adds Chapter 31 to establish a Mental Health Court Program. The bill provides for a system that diverts mentally ill offenders to appropriate treatment programs rather than incarceration. Additionally, the bill contains provisions that determine an offender’s eligibility for mental health court and mandates that each solicitor establish such a program. Further, the bill requires solicitors accepting state funding for the program to establish it within one hundred eighty (180) days.

**Department of Mental Health.**

There will be no fiscal impact to the Department of Mental Health (DMH) from the passage of this legislation. DMH currently provides services to eligible clients in the existing mental health courts in Charleston, Greenville, and Richland counties through its Community Mental Health Services Division and utilizes Medicaid and self-pay billing methods. Additional eligible clients who may present at newly established mental health courts in the state will access services in accordance with this same model.

**Judicial Department.**

While there will be no impact on federal funds or other funds allotted to the Judicial Department, the passage of this bill will have a minimal fiscal impact on the agency’s general funds. The proposed bill will allow solicitors to develop mental health court programs in their local areas of purview using state funds. The Chief Justice of the S.C. Supreme Court is required to appoint judges overseeing mental health courts. These judges must be members in good standing of the South Carolina bar as well as either probate judges, summary court judges, or active or retired members of the state’s judiciary. Service as a mental health court judge is voluntary. Provided new mental health courts are operated in accordance with the financial model used by the three existing mental health courts, there should be no additional cost to Judicial Department general funds.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND TITLE 14 OF THE 1976 CODE, RELATING TO COURTS, BY ADDING CHAPTER 31, TO ESTABLISH A MENTAL HEALTH COURT PROGRAM, TO PROVIDE FOR A SYSTEM THAT DIVERTS MENTALLY ILL OFFENDERS TO APPROPRIATE TREATMENT PROGRAMS RATHER THAN INCARCERATION, TO PROVIDE FOR ELIGIBILITY TO PARTICIPATE IN MENTAL HEALTH COURT, TO PROVIDE THAT EXISTING MENTAL HEALTH COURTS ESTABLISHED PURSUANT TO AN ADMINISTRATIVE ORDER OF THE SUPREME COURT SHALL CONTINUE IN EXISTENCE, TO PROVIDE THAT EACH SOLICITOR MUST ESTABLISH A PROGRAM, TO PROVIDE FOR QUALIFICATIONS FOR SERVICE AS A MENTAL HEALTH COURT JUDGE, TO PROVIDE THAT MENTAL HEALTH COURT JUDGES HAVE THE SAME PROTECTIONS FROM CIVIL LIABILITY AND IMMUNITY AS OTHER JUDICIAL OFFICERS IN THIS STATE; AND TO PROVIDE THAT SOLICITORS WHO ACCEPT STATE FUNDING FOR THE PROGRAM MUST ESTABLISH IT WITHIN ONE HUNDRED EIGHTY DAYS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 14 of the 1976 Code is amended by adding:

“CHAPTER 31

Mental Health Court Program

Section 14‑31‑10. This chapter may be cited as the ‘Mental Health Court Program Act’.

Section 14‑31‑20. The purpose of this chapter is to divert qualifying mentally ill offenders away from the criminal justice system and into appropriate treatment programs, thereby reserving prison space for violent criminals and others for whom incarceration is the only reasonable alternative. Offenders with a diagnosed, or diagnosable, mental illness generally recognized in the psychiatric community qualify for participation in a mental health court program.

Section 14‑31‑30. (A)(1) Except as provided in item (2), each circuit solicitor may establish a mental health court program. Each circuit solicitor that accepts state funding for the implementation of a mental health treatment court program must establish and administer at least one mental health court program for the circuit within one hundred eighty days of receipt of funding. The circuit solicitor must administer the program and ensure that all eligible persons are permitted to apply for admission to the program.

(2) The mental health courts in Charleston, Richland, Greenville, and Anderson Counties, established by the circuit solicitor or the probate judge pursuant to an Administrative Order issued by the Chief Justice of the South Carolina Supreme Court, shall continue in existence under the terms and conditions of the court’s order. If any provisions contained in this chapter conflict with those contained in the administrative order, the provisions of the administrative order shall control.

(B) The Chief Justice of the South Carolina Supreme Court shall appoint all mental health court judges. Service as a mental health court judge shall be at the pleasure of the Chief Justice and shall be subject to any limitations and directives issued by the Chief Justice. In order to be appointed as a mental health court judge, a person must be a member in good standing of the South Carolina Bar, and a probate judge, a summary court judge, or an active or retired member of the state’s judiciary. Service as a mental health court judge is voluntary.

(C) Mental health court judges are entitled to the same protections from civil liability and immunities as judicial office holders in this State.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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