

MAINE STATE LEGISLATURE

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MS
KAS

L.D. 151

DATE: 6-14-05

(Filing No. S-368)

HEALTH AND HUMAN SERVICES

Reported by:

MINORITY

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT 'B' to S.P. 57, L.D. 151, Bill, "An Act To Improve the Delivery of Maine's Mental Health Services"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 34-B MRSA §3801, sub-§10 is enacted to read:

10. Assertive community treatment. "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical social worker or licensed clinical professional counselor. An ACT team

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2 member who is a state employee is, while in good faith performing
3 a function as a member of an ACT team, performing a discretionary
4 function within the meaning of Title 14, section 8104-B,
5 subsection 3.

6 **Sec. A-2. 34-B MRSA §3832, sub-§1**, as amended by PL 1983, c.
7 580, §10, is further amended to read:

8
9 **1. Patient's right.** A patient admitted under section 3831
10 is free to leave the hospital at any time after admission
11 ~~without undue delay following examination by a licensed physician~~
12 ~~or a licensed clinical psychologist, except that~~ within 16 hours
13 of the patient's request unless application for admission of the
14 person under section 3863 is not precluded, if at any time such
15 an admission is considered necessary in the interest of the
16 person and of the community initiated within that time.

17 **Sec. A-3. 34-B MRSA §3863, sub-§2, ¶B**, as amended by PL 1997,
18 c. 438, §2, is further amended to read:

19
20 B. The physician, physician's assistant, certified
21 psychiatric clinical nurse specialist, nurse practitioner or
22 psychologist is of the opinion that the person is mentally
23 ill and, because of that illness, poses a likelihood of
24 serious harm. The written application must include a
25 description of the grounds for that opinion.

26
27 **Sec. A-4. 34-B MRSA §3863, sub-§5, ¶¶B and C**, as amended by PL
28 1995, c. 496, §2, are further amended to read:

29
30 B. If the chief administrative officer of the hospital
31 determines that admission of the person as an informally
32 admitted patient is not suitable, or if the person declines
33 admission as an informally admitted patient, the chief
34 administrative officer of the hospital may seek involuntary
35 commitment of the patient by filing an application for the
36 issuance of an order for hospitalization under section 3864,
37 except that if the hospital is a designated nonstate mental
38 health institution and if the patient was admitted under the
39 contract between the hospital and the department for receipt
40 by the hospital of involuntary patients, then the chief
41 administrative officer may seek involuntary commitment only
42 by requesting the commissioner to file an application for
43 the issuance of an order for hospitalization under section
44 3864.

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47 (1) The application must be made to the District Court
48 having territorial jurisdiction over the hospital to
49 which the person was admitted on an emergency basis.

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(2) The application must be filed within 5 3 days from the date of admission of the patient under this section, excluding--the--day--of--admission--and--any Saturday,--Sunday--or--legal--holiday except that, if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday.

C. If neither readmission on an informal voluntary basis nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital to which the person was admitted on an emergency basis shall discharge the person immediately.

Sec. A-5. 34-A MRSA §3863, sub-§5, ¶D is enacted to read:

D. If the chief administrative officer of the hospital has filed an application in the District Court for an order of hospitalization under section 3864 but the hearing on the application has not yet been conducted, the chief administrative officer may also submit in the interim a request for an administrative hearing before a hearing officer employed by or under contract with the department to administer medication on an involuntary basis to the patient if the court orders such commitment. In such cases, the administrative hearing to consider the request for involuntary treatment must be held within 4 business days of the date of the court's order permitting involuntary hospitalization under section 3864.

Sec. A-6. 34-B MRSA §3864, sub-§5, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. The District Court shall hold a hearing on the application not later than ~~15~~ 14 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the ~~District-Court-Civil-Rules-shall~~ Maine Rules of Civil Procedure apply.

2 **Sec. A-7. 34-B MRSA §3864, sub-§5, ¶E**, as enacted by PL 1983,
c. 459, §7, is amended to read:

4 E. In addition to proving that the patient is a mentally
6 ill individual, the applicant ~~shall~~ must show:

8 (1) By evidence of the patient's recent actions and
10 behavior, that due to the patient's mental illness the
12 patient poses a likelihood of serious harm; and

14 (2) That, after full consideration of less restrictive
16 treatment settings and modalities, inpatient
18 hospitalization is the best available means for the
20 treatment of the person.

22 **Sec. A-8. 34-A MRSA §3864, sub-§7**, as amended by PL 1995, c.
24 496, §6, is further amended to read:

26 **7. Commitment.** Upon making the findings described in
28 subsection 6, the court may order commitment to a hospital for a
30 period not to exceed 4 months ~~in the first instance and not to~~
32 ~~exceed one year after the first and all subsequent hearings.~~

34 A. The court may issue an order of commitment immediately
36 after the completion of the hearing, or it may take the
38 matter under advisement and issue an order within 24 hours
40 of the hearing.

42 B. If the court does not issue an order of commitment
44 within 24 hours of the completion of the hearing, it shall
46 dismiss the application and order the patient discharged
48 immediately.

50 **Sec. A-9. 34-B MRSA §3870, sub-§3, ¶C** is enacted to read:

C. Discharge from convalescent status occurs upon
expiration of the period of involuntary commitment.

Sec. A-10. 34-B MRSA §3870, sub-§4, ¶C, as enacted by PL 1997,
c. 422, §22, is amended to read:

 C. If the order is not voluntarily complied with, an
involuntarily committed patient on convalescent leave may be
returned to the hospital if the following conditions are met:

 (1) An order is issued pursuant to paragraph A;

 (2) The order is brought before a District Court Judge
or justice of the peace; and

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(3) Based upon clear and convincing evidence that return to the hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

PART B

Sec. B-1. 34-B MRSA §3801, sub-§4, ¶¶B and C, as enacted by PL 1983, c. 459, §7, are amended to read:

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his the person's care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his the person's actions or behavior ~~which--demonstrate--his~~ that demonstrates the person's inability to avoid or protect ~~himself~~ the person from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his the person's care are unavailable; or

Sec. B-2. 34-B MRSA §3801, sub-§4, ¶D is enacted to read:

D. For the purposes of section 3873, subsection 6, in view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that deterioration of the person's mental health will occur and that the person will in the foreseeable future pose a danger of:

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(1) A substantial risk of physical harm to the person as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm;

(2) A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to themselves; or

(3) A reasonable certainty that severe physical or mental impairment or injury will result to the person as manifested by recent evidence of actions or behavior that demonstrates the person's inability to avoid or protect the person from such impairment or injury.

Sec. B-3. 34-B MRSA §3801, sub-§§7-A, 8-A and 10 are enacted to read:

7-A. Aftercare program. "Aftercare program" or "program" means a program of services provided to persons who voluntarily agree to participate under section 3873.

8-A. Severe and persistent mental illness. "Severe and persistent mental illness" means a diagnosis of one or more qualifying mental illnesses or disorders plus a listed disability or functional impairment that has persisted continuously or intermittently or is expected to persist for at least one year as a result of that disease or disorder. The qualifying mental illnesses or disorders are schizophrenia, schizoaffective disorder or other psychotic disorder, major depressive disorder, bipolar disorder or a combination of mental disorders sufficiently disabling to meet the criteria of functional disability. The listed disabilities or functional impairments, which must result from a diagnosed qualifying mental illness or disorder, include inability to adequately manage one's own finances, inability to perform activities of daily living and inability to behave in ways that do not bring the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect the person from harm.

10. Inability to make an informed decision. "Inability to make an informed decision" means being unable to make a responsible decision whether to accept or refuse a recommended treatment as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment after a thorough and informative explanation has been given by a qualified mental health professional.

Sec. B-4. 34-B MRSA §3863, sub-§8 is enacted to read:

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8. Rehospitalization from aftercare program. The assertive community treatment team physician or psychologist may make a written application under this section to rehospitalize a person who fails to fully participate in the aftercare program in accordance with section 3873, subsection 6. The provisions of this section apply to that application, except that the standard for admission is governed by section 3873, subsection 6, paragraph B.

Sec. B-5. 34-B MRSA §3871, sub-§6 is enacted to read:

6. Discharge to aftercare program. If a person participates in the aftercare program under section 3873, the time period of a commitment under this section terminates on entry into the aftercare program.

Sec. B-6. 34-B MRSA §3873 is enacted to read:

§3873. Aftercare program

1. Program established. The department shall establish the aftercare program to provide care for persons who meet the criteria of subsection 2.

2. Criteria for participation. The following criteria apply to participation in the aftercare program.

A. Participation in the program is voluntary and must be agreed to by the person who participates and the superintendent of the state mental health institute to which the person has been committed. Prior to the person's entry into the aftercare program, the superintendent shall document in the person's health record at the state mental health institute findings of voluntariness and capacity to make an informed decision regarding participation in the program.

B. The person must:

- (1) Be 21 years of age or older;
- (2) Have been clinically determined to be suffering from a severe and persistent mental illness;
- (3) Have been under an order of involuntary commitment to a state mental health institute at the time of filing of the application for the aftercare program; and

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2 (4) Have been clinically determined to be in need of
3 the aftercare program in order to prevent interruptions
4 in treatment, relapse and deterioration of mental
5 health and to enable the person to survive safely in a
6 community setting in the reasonably foreseeable future
7 without posing a likelihood of serious harm as defined
8 in section 3801, subsection 4, paragraph D. A
9 determination under this subparagraph must be based on
10 current behavior, treatment history, documented history
11 of positive responses to treatment while hospitalized,
12 relapse and deterioration of mental health after
13 discharge and inability to make informed decisions
14 regarding treatment.

15 3. Participation agreement. The superintendent of a state
16 mental health institute, after consideration of a person's
17 clinical condition, treatment and mental health history, shall
18 determine whether to offer aftercare program services to a person
19 who qualifies under this section based on the likelihood that the
20 program is able to provide appropriate services needed by the
21 person. A person who elects to participate in the aftercare
22 program must sign a participation agreement that provides that:

23 A. The person has been informed of the requirements and
24 terms of the aftercare program and is making a voluntary and
25 informed decision to participate;

26 B. Commitment to the state mental health institute will
27 cease and the person will participate in the aftercare
28 program;

29 C. The person will receive treatment and care in accordance
30 with an individualized treatment plan from an assertive
31 community treatment team as a condition of participation;

32 D. Successful completion of the aftercare program in
33 accordance with subsection 5 will result in termination of
34 aftercare services; and

35 E. Failure to fully participate in the program and follow
36 the individualized treatment plan that results in
37 deterioration of the person's mental health or the person's
38 posing a likelihood of serious harm as defined in section
39 3801, subsection 4, paragraph D will result in termination
40 of participation in the program and an application for
41 rehospitalization and legal proceedings under subsection 6
42 and sections 3862, 3863 and 3864.

43 4. Duration of participation. Except as provided in
44 subsections 5 and 6, participation in the aftercare program must

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2 be for a term of 6 months. Participation in the program ends if
3 a person successfully completes the program in accordance with
4 subsection 5 or is rehospitalized pursuant to a court order under
5 subsection 6. Participation is suspended if a person is
6 voluntarily rehospitalized and recommences upon discharge from
7 the hospital.

8 5. Successful completion. A person who fully participates
9 in the aftercare program and follows the individualized treatment
10 plan successfully completes the program upon expiration of 6
11 months or certification by the assertive community treatment team
12 physician or psychologist that the person no longer needs the
13 services of the program.

14 6. Termination of participation. Failure of the person to
15 fully participate in the aftercare program and follow the
16 individualized treatment plan results in termination of
17 participation and rehospitalization under this subsection.

18 A. If the person does not fully participate in the program
19 and follow the individualized treatment plan and if the
20 assertive community treatment team physician or psychologist
21 determines based on clinical findings that the person's
22 mental health has deteriorated so that hospitalization is in
23 the person's best interest and the person poses a likelihood
24 of serious harm as defined in section 3801, subsection 4,
25 paragraph D, the team physician or psychologist shall
26 complete a certificate stating that the person requires
27 hospitalization and the grounds for that belief. The person
28 may agree to hospitalization or may be subject to an
29 application for readmission under paragraph B.

30 B. A person who participates in the aftercare program may
31 be rehospitalized on an emergency basis under the provisions
32 of section 3863 if the judicial officer reviewing the
33 certificate under section 3863, subsection 3 finds that
34 rehospitalization is in the person's best interest and that
35 the person poses a likelihood of serious harm as defined in
36 section 3801, subsection 4, paragraph D. This paragraph
37 does not preclude the use of protective custody by law
38 enforcement officers pursuant to section 3862.

39 C. A person who participates in the progressive treatment
40 program may be committed under section 3864 if the court
41 reviewing the application finds that hospitalization is in
42 the person's best interest and that person poses a
43 likelihood of serious harm as defined in section 3801,
44 subsection 4, paragraph D.

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2 D. If the person has an advance directive or durable power
3 of attorney or a guardian, the advance directive may be
4 admitted into evidence and the attorney in fact or guardian
5 may provide testimony and evidence to the court in any
6 proceeding under this subsection. The court shall consider
7 but is not required to follow any directions within the
8 advance directive or durable power of attorney document or
9 testimony from the attorney or guardian.

10 7. Repeal. This section is repealed April 1, 2008.

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PART C

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Sec. C-1. Educational and training materials. The Department of Health and Human Services shall develop and distribute educational and training materials with input from interested consumer, advocacy and professional organizations describing assertive community treatment, guardianship, advance directives, convalescent status, the process for medications for hospitalized patients and the aftercare program for distribution to the courts, judges, providers of mental health services, law enforcement officials, consumers, family members and the general public.

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Sec. C-2. Department rules on aftercare program. The Department of Health and Human Services shall amend its MaineCare rules in Section 17, "Community Support Services," to prohibit any provider of assertive community treatment from rejecting any person participating in the aftercare program.

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Sec. C-3. Interim report. The Department of Health and Human Services shall submit an interim report describing the goals, progress in the implementation, and the measurable outcomes of the aftercare program to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before June 1, 2007.

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PART D

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Sec. D-1. Appropriations and allocations. The following appropriations and allocations are made.

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**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly BDS)**

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Mental Health Services - Community 0121

COMMITTEE AMENDMENT **B** to S.P. 57, L.D. 151

Initiative: Provides funds for the additional housing costs associated with assertive community treatment.

4	GENERAL FUND	2005-06	2006-07
	All Other	\$113,400	\$226,800
6		<hr/>	<hr/>
	GENERAL FUND TOTAL	\$113,400	\$226,800

Mental Health Services - Community Medicaid 0732

Initiative: Provides funds for the state share of the additional costs associated with assertive community treatment.

14	GENERAL FUND	2005-06	2006-07
	All Other	\$362,910	\$727,432
16		<hr/>	<hr/>
	GENERAL FUND TOTAL	\$362,910	\$727,432

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly BDS)
DEPARTMENT TOTALS**

22		2005-06	2006-07
	GENERAL FUND	\$476,310	\$954,232
24		<hr/>	<hr/>
	DEPARTMENT TOTAL - ALL FUNDS	\$476,310	\$954,232

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly DHS)**

Medical Care - Payments to Providers 0147

Initiative: Provides funds for the federal share of the additional costs associated with assertive community treatment teams.

36	FEDERAL EXPENDITURES FUND	2005-06	2006-07
	All Other	\$628,580	\$1,233,301
38		<hr/>	<hr/>
	FEDERAL EXPENDITURES FUND TOTAL	\$628,580	\$1,233,301

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly DHS)
DEPARTMENT TOTALS**

42		2005-06	2006-07
	FEDERAL EXPENDITURES FUND	\$628,580	\$1,233,301
44		<hr/>	<hr/>
	DEPARTMENT TOTAL - ALL FUNDS	\$628,580	\$1,233,301

JUDICIAL DEPARTMENT

PL 03

COMMITTEE AMENDMENT **B** to S.P. 57, L.D. 151

2 **Courts - Supreme, Superior,**
3 **District and Administrative 0063**

4 Initiative: Provides funds for a part-time Judge, a part-time
5 Security Officer position, a part-time Clerk position, indigent
6 legal services and other costs associated with the requirements
7 of this legislation.

10	GENERAL FUND	2005-06	2006-07
	POSITIONS - LEGISLATIVE COUNT	1.500	1.500
12	Personal Services	\$89,944	\$96,012
	All Other	\$224,514	\$214,717
14		<hr/>	<hr/>
	GENERAL FUND TOTAL	\$314,458	\$310,729
16			
	JUDICIAL DEPARTMENT		
18	DEPARTMENT TOTALS	2005-06	2006-07
20	GENERAL FUND	\$314,458	\$310,729
22	DEPARTMENT TOTAL - ALL FUNDS	\$314,458	\$310,729
24			
	SECTION TOTALS	2005-06	2006-07
26	GENERAL FUND	\$790,768	\$1,264,961
	FEDERAL EXPENDITURES FUND	\$628,580	\$1,233,301
28		<hr/>	<hr/>
	SECTION TOTAL - ALL FUNDS	\$1,419,348	\$2,498,262

30 **PART E**

32 **Sec. E-1. Effective date.** This Act takes effect January 1,
34 2006.'

36 **SUMMARY**

38 This amendment is the minority report of the committee. The
40 amendment replaces the bill. The amendment does the following.

42 1. It amends current involuntary commitment laws and
44 defines "assertive community treatment," providing Maine Tort
46 Claims Act protections to state employee members of the assertive
community treatment, or ACT, team.

48 2. It amends current involuntary commitment laws to
50 establish a type of release from involuntary mental health
commitment for persons who are committed to Riverview Psychiatric
Center or Bangor Mental Health Institute. Under this status,

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COMMITTEE AMENDMENT "B" to S.P. 57, L.D. 151

2 patients to whom the superintendent of a state mental health
 4 institute has determined that the program is likely to provide
 6 appropriate services may voluntarily choose to participate in the
 8 aftercare program, which would provide treatment and care through
 10 an assertive community treatment team for a period of 6 months.
 12 The superintendent is required to document voluntariness and
 14 capacity to make an informed decision to participate. Successful
 16 completion of the aftercare program results in termination of
 18 aftercare services. Failure to fully participate and follow the
 20 individualized treatment plan that results in deterioration of
 the person's mental health so that hospitalization is in the
 person's best interest and the person poses a likelihood of
 serious harm results in the treatment team applying for the
 person to be readmitted to the hospital under the current
 emergency admission procedure. If the person is admitted on an
 emergency basis, and if the superintendent determines that
 continued hospitalization is required, within 3 days of admission
 an application for commitment must be filed with the court under
 the current involuntary commitment law. The law is repealed in
 2008.

22 3. It requires educational and training materials regarding
 24 mental health treatment options, rulemaking regarding the
 26 aftercare program, an interim report by June 1, 2007 and an
 effective date of January 1, 2006.

28 4. It adds an appropriation and allocation section.

30 **FISCAL NOTE REQUIRED**
 (See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 151

LR 0913(03)

An Act To Improve the Delivery of Maine's Mental Health Services

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Health and Human Services

Fiscal Note Required: Yes

Minority Report

Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings)				
General Fund	\$790,768	\$1,264,961	\$1,315,559	\$1,368,182
Appropriations/Allocations				
General Fund	\$790,768	\$1,264,961	\$1,315,559	\$1,368,182
Federal Expenditures Fund	\$628,580	\$1,233,301	\$1,294,966	\$1,359,714

Fiscal Detail and Notes

This bill includes General Fund appropriations of \$476,310 in fiscal year 2005-06 and \$954,232 in fiscal year 2006-07 for the Department of Health and Human Services to support the additional costs associated with assertive community treatment teams.

This bill includes General Fund appropriations of \$314,458 in fiscal year 2005-06 and \$310,729 in fiscal year 2006-07 for the Judicial Department to support additional court hearing costs associated with the requirements of this legislation.