

Testimony on House Bill 5625
David Gruber, Roundtable Strategies
House Law & Justice Committee, November 27, 2018

Dear Representative Kesto and Members of the House Law and Justice Committee.

My name is David Gruber. I am executive director of Roundtable Strategies, a Lansing nonprofit 501(c)(3) organization. We promote the use of mediation and other collaborative processes to help people resolve disputes. Quite often, these methods resolve issues in less time, with less cost, and with better outcomes than formal investigations, hearings, and litigation.

Roundtable Strategies supports HB 5625. The bill would amend MCL 330.1788 to permit the early use of mediation to resolve recipient rights complaints under the Michigan Mental Health Code. The goal is to make mediation readily available as a cost-effective method for resolving recipient rights complaints.

MCL 330.1788 currently allows mediation only after a complaint has been investigated and a report issued. This process can take up to 90 days. At the end of the process, the party favored by the investigation outcome has no incentive to mediate. HB 5625 would make mediation available after a complaint is filed but before the investigation begins. In addition, it would require the subject of a complaint to mediate if mediation is selected, increasing the likelihood of its use. Average turnaround time in mediation is 30 days and potentially less if the parties and a mediator are available. The bill would not deny access to due process.

Early mediation in behavioral health disputes garnered support from the 2014 Mental Health and Wellness Commission, the 2017 Final Report of the 298 Facilitation Work Group, and the 2018 House C.A.R.E.S. Task Force. According to research, mediation supports the goals of self-determination and recovery among mental health consumers. It also supports the administrative goal of saving government agencies time and cost in dispute resolution.

For example, Roundtable Strategies manages Special Education Mediation Services, a grant-funded initiative of the Michigan Department of Education, which provides mediation to resolve special education disputes. The program's average annual agreement rate since 2005 is approximately 80 percent. Michigan's Community Dispute Resolution Program, a network of nonprofit conflict resolution centers created by the Legislature in 1988, mediates a wide range of issues. It reports that in 2017, 75% of mediated cases settled.

These resolution rates indicate that many disputes can avoid the time and cost of formal, multi-layered, and often adversarial dispute resolution processes. (See attached diagram, Proposed Recipient Rights Process Including Mediation under HB 5625.) Mediation sessions are relatively quick to schedule, and most agreements are reached in one session of a few hours or less. The resulting efficiencies can help agencies, including community mental health service providers, reach resolutions faster, reduce backlogs, manage heavy caseloads, and target resources toward their most complex cases.

DRER believes the behavioral health community would benefit from an early mediation option in the Michigan Mental Health Code. Amending MCL 330.1788 accordingly has the potential to improve the lives of behavioral health consumers and the functioning of state government.

Thank you.

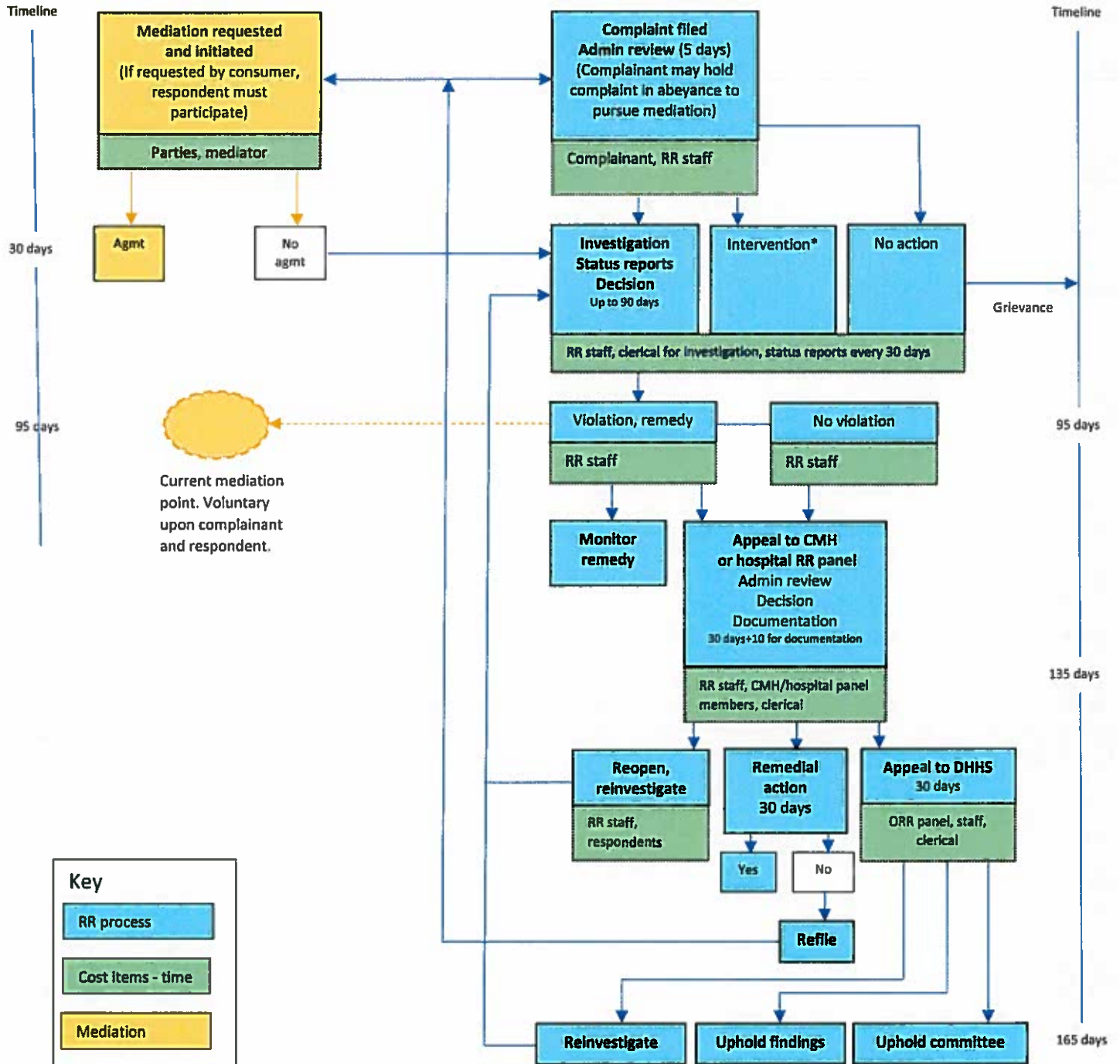
Proposed Recipient Rights Process Including Mediation under HB 5625

Bill would amend MCL 330.1788 to:

- Permit recipient rights (RR) complainant to choose mediation upon filing a complaint
- Require participation of respondent once mediation is requested by complainant
- Make mediation available throughout the recipient rights process
- Suspend all appeal and response times while mediation is pending

Rationale:

MCL 330.1788 currently negates the use of cost-effective mediation by permitting its use only after RR completes an investigation report. At that point, the "winner" of the investigation has no incentive to mediate.



* Intervention is defined as "acting on behalf of a recipient to resolve a complaint alleging a violation of a {Mental Health} Code protected right when the facts are clear and the remedy, if applicable, is clear, easily obtainable and does not involve statutorily required disciplinary action."