



**House
Legislative
Analysis
Section**

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

JUVENILE DIVERSION PROGRAMS

House Bill 4597 (Substitute H-1)
First Analysis (12-10-87)

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Sponsor: Rep. Bill Martin
Committee: Judiciary

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THE APPARENT PROBLEM:

One of the thorniest criminal justice problems facing society is how to prevent young people from turning to criminal behavior. With juvenile courts in metropolitan areas laboring under staggering caseloads, with a juvenile justice system largely perceived as ineffectual, and with indications that juveniles are engaging in more serious and assaultive crime at younger ages, policymakers have turned attention to how to prevent a situation that seems to defy cure. One means of early intervention with potentially criminal youth is at the point of first contact with law enforcement and the juvenile justice system. If, it is argued, nonassaultive juveniles apprehended by police could be diverted into a special program rather than processed through the juvenile court, those youngsters and their families could receive early counseling and juvenile court resources could be conserved for more serious offenders. Standardized recordkeeping could ensure that repeat offenders are dealt with appropriately. Although a number of jurisdictions evidently have informal diversion programs and recordkeeping, there is no statewide consistency in such programs and statute provides no standards for them. Legislation has been proposed to establish diversion criteria and procedures.

THE CONTENT OF THE BILL:

The bill would create the Juvenile Diversion Act to establish criteria and procedures under which certain minors could be diverted from the juvenile court system, and to require that confidential records be kept on diverted minors. The bill would apply to minors less than 17 years of age who were not accused of or charged with an assaultive offense and for whom a juvenile court petition either had not been filed or had not been authorized.

A law enforcement official or court intake worker investigating an alleged offense by a minor could do one of the following: release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation; divert the matter by making an agreement under the bill with the minor and his or her parent or guardian to refer the minor to someone who will assist the minor and his or her family in resolving the problem that initiated the investigation; or file a petition with the juvenile court or authorize a petition that had been filed.

The following factors would have to be examined before a decision was made to divert a minor: the nature of the alleged offense and the problem that led to it; the minor's age and his or her character, conduct, and behavior in school, family, and group settings; and, any prior diversion decisions made concerning the minor and the minor's compliance with the diversion agreement.

Upon a decision to divert, a conference with the minor and parent would be held to consider alternatives to pursuing the matter in juvenile court. However, the conference could not be held until after the alleged offense had been investigated or any questioning of the minor completed. The law enforcement official or court worker could not mention diversion during any questioning of the minor. Information divulged by a minor during a conference or

after agreeing to diversion could not be used against the minor.

The law enforcement official or court worker would inform the minor and his or her parent that participation in the conference or resulting referral plan was voluntary, that an attorney could accompany them at the conference, and that if diversion is accepted, a petition cannot be pursued in juvenile court. In addition, the minor and parent would have to be informed of the alternative referral programs available and the criteria used to determine whether to file a petition with the court or to dispose of a petition with a referral.

The diversion agreement would be put in writing, dated, and signed by the law enforcement official or court worker, the minor, and the minor's parent, guardian, or custodian. If a conference was held and no agreement was reached, the law enforcement official could file a petition in juvenile court and a court intake worker could authorize a petition. If a petition is to be filed, it would have to be done within 14 days after the conference.

When a decision was made to divert a minor, the official or court worker would file certain information with the court, which would keep a separate diversion record for each minor. The information would consist of the minor's name, address, and date of birth; the act for which the minor was apprehended, along with date and place it occurred; the diversion decision made, whether referred or released; and the nature of the minor's compliance with the diversion agreement.

Diversion records would be open only by order of the court to persons having a legitimate interest, except that a law enforcement agency or court intake worker could view records to decide whether to divert a minor. A minor's record kept under the bill would be destroyed within 28 days after he or she turned 17 years old.

A record kept under the bill could not be used by any person, including a law enforcement official or court intake worker, for any purpose other than making a decision on whether to divert a minor. Violation of this prohibition would be a misdemeanor punishable by up to 180 days in jail, a fine of up to \$1,000, or both.

The bill would take effect April 1, 1988. It is tie-barred to Senate Bill 602, which would make complementary amendments to the juvenile code.

FISCAL IMPLICATIONS:

Fiscal information is not available. (12-9-87)

ARGUMENTS:

For:

Juvenile diversion programs can ensure that troubled youth and their families get needed counseling before a developing delinquency problem turns violent. By siphoning off cases that might otherwise demand the attention of the juvenile court, such programs ease the court's caseload

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and enable it to focus on more serious cases. However, such programs should not be used to give "free rides" to youths who do not take their parts under diversion agreements seriously. Consistent recordkeeping on diverted youth would provide information needed by law enforcement and courts in deciding whether diversion is appropriate for a given youngster.

POSITIONS:

The Department of State Police supports the bill. (12-9-87)

The Michigan Council on Crime and Delinquency supports the bill. (12-8-87)

The Prosecuting Attorneys Association of Michigan supports the bill. (12-8-87)