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BILL ANALYSIS

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House Bill 4597 (Substitute H-1 as reported without amendment)**Sponsor: Representative Bill Martin****House Committee: Judiciary****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 1-25-88*****RATIONALE***

Some people believe that, in an effort to reduce crime, the State should implement more effective policies for dealing with youthful offenders. Many feel that future criminal activity could be reduced if there were a program of intervention for potentially criminal youths at the point of their first contact with law enforcement agencies and the criminal justice system. If, it is argued, nonassaultive juveniles apprehended by police could be diverted to 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. Although a number of jurisdictions evidently have informal diversion programs, there is no statewide consistency in such programs and statute provides no standards for them. Some people believe that a statewide diversion program should be adopted.

CONTENT

House Bill 4597 (H-1) 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 would assist the minor and his or her family in resolving the problem that initiated the investigation.
- File a petition with the juvenile court or authorize a petition that had been filed.

Before a decision was made to divert a minor, several factors would have to be examined. These factors include the nature of the alleged offense and the problem that led to it; the minor's age, 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 his or her parent would have to be held to consider alternatives to pursuing the matter in juvenile court. Such a conference could not be held until after the alleged

offense was investigated or any questioning of the minor completed. Under the bill, 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 have to 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 were accepted, a petition could not 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 have to be 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 were 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 were 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 have to file certain information with the court, which would be required to keep a separate diversion record for each minor. The required information would consist of the minor's name, address, and date of birth; the act for which the minor was apprehended, along with the 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 have to 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 on April 1, 1988, and is tie-barred to Senate Bill 602, which would make complementary amendments to the juvenile code.

H.B. 4597 (1-25-88)

(88-57-1) / ACB . B. M.

FISCAL IMPACT

The bill would have no fiscal impact on the State and an indeterminate impact on local units of government.

ARGUMENTS

Supporting Argument

A juvenile diversion program could ensure that troubled youths and their families received needed counseling before a developing delinquency problem turned violent. By siphoning off cases that might otherwise demand the attention of the juvenile court, such a program could ease the court's caseload and enable it to focus on more serious cases. Diversion programs, however, should not be used to offer a "free ride" to youths who fail to take seriously their responsibilities under diversion agreements. Consistent recordkeeping on diverted youths would provide information needed by law enforcement agencies and courts in deciding whether diversion is appropriate for a given youngster.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.