

## CONSENT CALENDAR FOR JUVENILE DISPOSITIONS

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**Senate Bill 251 (Substitute H-2 as reported)**

**Sponsor: Sen. John Proos**

**House Committee: Judiciary**

**Senate Committee: Judiciary**

**Complete to 5-27-16**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 185 of 2016)*

### BRIEF SUMMARY:

The bill would amend the Juvenile Code to address consent calendars. The term "consent calendar" refers to a less formal process for handling juvenile cases (See *Background Information*). Among other things, the bill would do the following:

- ❖ Allow the family division of circuit court to proceed informally on a consent calendar if it determined that the juvenile should not be under the court's formal jurisdiction.
- ❖ Require consent calendar case records to be maintained in a nonpublic manner and restrict access to those records.
- ❖ Require the court to conduct a consent calendar conference and issue a consent calendar case plan.
- ❖ Allow a consent calendar case plan to require the juvenile, parent, guardian, or legal custodian to reimburse the court for the cost of consent calendar services.
- ❖ Require the consent calendar case plan to require the juvenile pay restitution under the Crime Victim's Rights Act.
- ❖ Allow the court to transfer a case from the consent calendar to the formal calendar if it appeared that proceeding on the consent calendar was not in the best interest of either the juvenile or the public.
- ❖ Prohibit statements made by the juvenile during the consent calendar case proceedings to be used against the juvenile at a trial on the formal calendar on the same charge.
- ❖ Upon successful completion of the terms of the consent calendar case plan, require the court to close the case and destroy all records of the proceedings in accordance with SCAO records management policies and procedures.

**FISCAL IMPACT:** The bill would not have a fiscal impact on state or local governments.

### BACKGROUND INFORMATION:

In delinquency cases, the family division of circuit court has several options how to proceed when a juvenile (person under 17 years of age) is charged with violating a criminal law or ordinance, or with a status offense (an act that would not constitute a crime if committed by an adult such as truancy or running away from home). The judge has wide discretion and can dismiss the petition against the juvenile, refer the juvenile for counseling, place

the juvenile on probation (diversion), or place the case on the court's formal calendar or docket and allow charges to go forward.

"Consent calendar" refers to a less formal process for handling juvenile cases. A case may be placed on the consent calendar if, under the Michigan Court Rules, it appears that "the protective and supportive action by the court will serve the best interests of the juvenile and the public". Unlike a case placed on the "formal calendar", no formal petition is filed, no formal plea is entered (except for violations of the Michigan Vehicle Code), and the case is closed upon successful completion by the juvenile of a consent calendar case plan. Further, case records may be destroyed by the court 28 days after the juvenile turns 17.

When a delinquency case is placed on the "formal calendar," the court conducts a formal adjudicative hearing and if adjudicated, or found responsible for the violation, a dispositional hearing is held. The disposition may include dismissal of the case, probation, placement in a public or private institution (incarceration), placement in a boot camp, a civil fine, community service, victim restitution, being ordered into treatment or counseling, and/or residential placement.

#### **DETAILED SUMMARY:**

Senate Bill 251 amends the juvenile code within the Probate Code. Currently, if a juvenile is found to be within the jurisdiction of the family division of circuit court for a violation of a criminal law, local ordinance, status offense, or traffic offense, a preliminary inquiry may be made to determine whether the interests of the public or the juvenile require that further action be taken (that is, placed on the formal calendar). If the court determines that formal jurisdiction should be acquired, the court is required to authorize a petition to be filed. Under the bill, however, the court could proceed on the consent calendar under provisions added by the bill in Section 2f if, at any time before disposition, the court determines that a case should not proceed on the formal calendar but that the protective and supportive action by the court will serve the best interests of the juvenile and the public.

#### Section 2f

The bill adds a new section allowing a court to proceed in an informal manner, referred to as a consent calendar, if the court determines that formal jurisdiction by the court should not be acquired over a juvenile. While a case is on the consent calendar, the court could not enter an order of disposition.

Placement on the consent calendar. For a case to be placed on a consent calendar, the juvenile and the parent, guardian, or legal custodian and the prosecutor must agree to have the case placed on it. If the alleged offense involved a felony or certain misdemeanors (e.g., high-court misdemeanors, assault and battery, breaking and entering, stalking, among others), the case could only be put on a consent calendar if procedures required under the William Van Regenmorter Crime Victim's Rights Act (CVRA) regarding notification to the prosecutor and victim were complied with. After placement on the consent calendar, the prosecutor must provide the victim with notice as required by Article 2 of the CVRA.

Maintenance of case in a nonpublic manner. Consent calendar cases would have to be maintained in a nonpublic manner as follows:

- ❖ Access to consent calendar case records would be provided to the juvenile; the parents, guardian, or legal custodian; guardian ad litem; counsel for the juvenile; Department of Health and Human Services, if related to a neglect and abuse investigation; and law enforcement personnel, prosecutor, and other courts. However, the case records could not be disclosed to federal agencies or military recruiters.
- ❖ Consent calendar "case records" would include pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, register of actions, consent calendar case plan, and court orders related to the case placed on the consent calendar.
- ❖ Contents of the confidential file (as defined in the Michigan Court Rules), must continue to be maintained confidentially.

Conference. The court would be required to conduct a consent calendar conference with the juvenile, the juvenile's attorney (if any), and a parent, guardian, or legal custodian to discuss the allegations. The prosecuting attorney and victim would not be required to be present at the conference, but would be allowed to do so.

Consent calendar case plan. The court would be required to issue a written consent calendar case plan if it appeared to the court that the juvenile had engaged in conduct that would subject the juvenile to the court's jurisdiction. The consent calendar case plan may include a provision requiring the juvenile, parent, guardian, or legal custodian to reimburse the court for the cost of consent calendar services to the juvenile. The reimbursement amount would have to be reasonable and take into account the juvenile's income and resources. The plan must also require the juvenile to pay restitution under the CVRA.

A case plan could not contain a provision removing the juvenile from the custody of the parent, guardian, or legal custodian. Though not an order of the court, the consent calendar case plan would have to be included as a part of the case record. A violation of the terms of the case plan could result in the court returning the case to the formal calendar for further proceedings.

Completion of the case plan. Upon successful completion, the case would have to be closed and all records of the proceeds be destroyed in accordance with the records management policies and procedures of the State Court Administrative Office, as established with Supreme Court rules. Further, upon a judicial determination that the juvenile completed the terms of the consent calendar case plan, the court would have to report the successful completion to the juvenile and the Department of State Police (MSP). MSP would be required to maintain a nonpublic record of the case open only to state and federal courts, Department of Corrections, law enforcement personnel, and prosecutors and then only for use in the performance of their duties or to determine whether an employee of the entity

has violated his or her conditions of employment or whether an applicant meets criteria for employment with an entity listed above.

Transfer to formal calendar. If at any time it appears to the court that proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court must proceed as follows:

- ❖ If the court did not authorize the original petition, the court could, without a hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition so to determine whether the petition should be authorized.
- ❖ If the court had authorized the original petition, the court could transfer the case to the formal calendar on the charges contained in the original petition only after a hearing. After transferring the case to the formal calendar, the court must proceed with the case from where it left off before being placed on the consent calendar.

Statements made by the juvenile during the consent calendar proceeding could not be used against the juvenile at a trial on the formal calendar on the same charge.

#### **BRIEF DISCUSSION OF THE ISSUES:**

Currently, court rules allow judges to divert some juveniles from the formal calendar to the more informal consent calendar. This enables the juvenile to avoid having a criminal record. However, only cases eligible for diversion may be placed on the consent calendar. The bill would place the authority to move juvenile cases to the consent calendar in statute and would expand eligibility, at least in theory, to any type of case. A concern was raised that this could include cases involving assaultive crimes or criminal sexual conduct. However, it was noted in testimony that prosecuting attorneys will retain veto power over a transfer to the consent calendar, thus providing a check and balance that protects public safety.

The bill acknowledges compelling research regarding the ability of youths to be rehabilitated when appropriate services are provided. Advocates say that even children who commit serious offenses have the resiliency to respond to treatment, mature, and become productive and responsible members of society. Further, many criminal penalties, created with adult offenders in mind, do not fit juveniles well. For example, the criminal sexual conduct offenses provide a harsher penalty if the victim is younger than 13 years of age. Yet, a child offender is more likely to assault a child close to his or her own age. The result is that a 12-year-old whose victim is 10 may face the same criminal penalties and lifetime repercussions as a 50-year-old who targets a 10-year-old, even if rehabilitation is obtainable. The bill is seen by judges as an additional tool that provides flexibility to find the most appropriate penalty that would serve not just the juvenile, but also the best interests of the public.

Additionally, the bill, by requiring the state police to maintain a nonpublic record of a consent calendar case, will enable the cases to be tracked. This is not currently possible.

Thus, though the bill does not limit the number of times a juvenile's case can be moved to the consent calendar, being able to track a juvenile's history will give judges and prosecutors more information on which to base their decisions for placement of a current case. The nonpublic record could also be used to screen applicants for employment with the Department of Corrections, law enforcement, courts, or prosecutor's offices. The bill also will result in better notification to victims when a case is moved to the consent calendar. Reportedly, this is a problem under the current system. Though the victim would not have direct involvement in the decision-making process over whether a youthful offender would be kept on the formal calendar or diverted to the consent calendar, the prosecutor—who represents the victim and the public—would be involved and, as mentioned earlier, must consent to the case being transferred. The bill also requires that the juvenile pay restitution to the victim.

#### **POSITIONS:**

The State Bar of Michigan indicated support for the bill. (2-12-16)

Michigan Probate Judges Association indicated support for the bill. (5-10 & 5-24-16)

The Prosecuting Attorneys Association of Michigan (PAAM) indicated support for the bill. (5-24-16)

The Michigan Judges Association indicated opposition to the bill. (2-2 & 5-10-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.