



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 251 (as introduced 4-14-15)
Sponsor: Senator John Proos
Committee: Judiciary

Date Completed: 4-28-15

CONTENT

The bill would amend the juvenile code to do the following:

- Allow the family division of circuit court (family court) to proceed informally on a consent calendar, if it determined that a juvenile should not be under the court's formal jurisdiction.
- Allow cases involving certain violations that would be criminal offenses if committed by an adult to be placed on the consent calendar only upon compliance with procedural requirements of the Crime Victim's Rights Act.
- Require consent calendar cases to be maintained in a nonpublic manner, and restrict access to case records.
- Require the court to conduct a consent calendar conference and issue a consent calendar case plan.
- Require 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 a juvenile's statements made in a consent calendar case from being used against him or her on the same charge at a trial on the formal calendar.
- Require the court to close the case and destroy records of the proceedings upon a juvenile's successful completion of the consent calendar case plan.
- Require the court to notify the Department of State Police of a juvenile's successful completion of a consent calendar case plan.
- Require the Department of State Police to maintain a nonpublic record of the case, and allow limited access to that record.
- Allow the court to proceed on the consent calendar in a matter other than a violation that would be a crime if committed by an adult, if it determined that the juvenile and the public would be served by the court's protective and supportive action.

Consent Calendar

The bill would allow the family court to proceed in an informal manner referred to as a consent calendar, if it determined that formal jurisdiction over a juvenile should not be acquired. A case could not be placed on the consent calendar unless the juvenile and the parent, guardian, or legal custodian and the prosecutor agreed to the placement.

The court could transfer a case from the formal calendar to the consent calendar at any time before disposition.

A case involving the alleged commission of an "offense" as that term is defined in Section 31 of the Crime Victim's Rights Act could be placed on the consent calendar only upon compliance with the procedures set forth in Section 36b of that Act. (Section 31 defines "offense" as a violation of a penal law for which a juvenile offender, if convicted as an adult, may be punished by imprisonment for more than one year, or an offense that is designated as a felony; a violation of certain sections of the law that establish misdemeanors; or a violation of a substantially corresponding ordinance. Under Section 36b, before any formal or informal action is taken on a case involving the alleged commission of an offense, the prosecutor must notify the victim of the time and place of the hearing on the proposed removal of the case from the adjudicative process, and the victim has the right to attend the hearing and to address the court at the hearing.)

After a case was placed on the consent calendar, the prosecutor would have to give the victim notice as required by Article 2 of the Crime Victim's Rights Act. (Article 2 of that Act deals with the rights of victims of juvenile offenders.)

Consent Calendar Case Records

Consent calendar cases would have to be maintained in a nonpublic manner. Access to consent calendar case records would have to be provided to the juvenile; the juvenile's parents, guardian, or legal custodian; the guardian ad litem; counsel for the juvenile; the Department of Health and Human Services, if related to an investigation of neglect and abuse; law enforcement personnel; the prosecutor; and other courts. For purposes of this provision, "case records" would include the pleadings, motions, authorized petitions, notices, memoranda, briefs, exhibits, available transcripts, findings of the court, register of actions, consent calendar case plan, and other orders related to the case placed on the consent calendar.

The contents of the "confidential file", as defined in Michigan Court Rule 3.903, would have to continue to be maintained confidentially. (That rule defines "confidential file" as that part of a file made confidential by statute or court rule, including diversion records, statements about known victims of juvenile offenses, testimony taken during a closed proceeding, dispositional reports, fingerprinting material required to be maintained, reports of sexually motivated crimes, and tests or results of those charged with certain sexual offenses or substance abuse offenses. "Confidential file" also means the contents of a social file maintained by the court, including materials such as a youth and family record fact sheet, a social study, various reports, Department of Health and Human Services records, correspondence, victim statements, and information regarding the identity or location of a foster parent, preadoptive parent, relative caregiver, or juvenile guardian.)

Consent Calendar Conference & Case Plan

The court would have to conduct a consent calendar conference with the juvenile and his or her parent, guardian, or legal custodian to discuss the allegations. The prosecuting attorney and victim could be present, but their presence would not be required.

If it appeared to the court that the juvenile had engaged in conduct that would subject the juvenile to the court's jurisdiction, the court would have to issue a written consent calendar case plan. A consent calendar case plan could include a requirement that the juvenile pay actual court costs and would have to include a requirement that he or she pay restitution under the Crime Victim's Rights Act. A case plan could not contain a provision removing the juvenile from the custody of his or her parent, guardian, or legal custodian. The case plan would not be an order of the court, but would have to be included as part of the case record. Violation of the terms of the consent calendar case plan could result in the court's returning the case to the formal calendar for further proceedings.

Transfer of Case to Formal Calendar

If it appeared to the court at any time that proceeding on the consent calendar was not in the best interest of either the juvenile or the public, the court would have to proceed as follows.

If the court did not authorize the original petition, it could, without a hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition to determine whether the petition should be authorized. If the court authorized the original petition, it could transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition only after a hearing. After transfer to the formal calendar, the court would have to proceed with the case from where it left off before placement on the consent calendar.

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

Completion of Case Plan & Nonpublic Record

Upon a juvenile's successful completion of a consent calendar case plan, the court would have to close the case and destroy all records of the proceeding in accordance with the records management policies and procedures of the State Court Administrative Office, established in accordance with Supreme Court rules.

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 of the consent calendar to the juvenile and the Department of State Police.

The Department would have to maintain a nonpublic record of the case, which would have to be open to the courts of this State, another state, or the United States, the Department of Corrections, law enforcement personnel, and prosecutors, only for use in the performance of their duties or to determine whether an employee of the court, Department, law enforcement agency, or prosecutor's office had violated his or her conditions of employment or whether an applicant met criteria for employment with the court, Department, agency, or office.

Jurisdiction over Other Matters

Under the juvenile code, if a person offers information to the family court that a juvenile meets certain requirements unrelated to a violation that would be a crime if committed by an adult, the court may conduct a preliminary inquiry and determine whether the interests of the public or the juvenile require that further action be taken. If the court determines that formal jurisdiction should be acquired, it may authorize a juvenile petition to be filed. (The matters this provision pertains to include the following:

- A juvenile deserting his or her home without sufficient cause.
- A juvenile repeatedly being disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian.
- A juvenile's willful and repeated truancy.
- A parent's neglect or refusal to provide proper or necessary support, education, medical, or other necessary care.
- A juvenile living in an unfit home environment.
- A dependent juvenile being in danger of substantial physical or psychological harm.
- Failure of a parent, without good cause, to comply with a limited guardian placement plan or other court-structured plan regarding the juvenile.)

Under the bill, the court could proceed on the consent calendar if, at any time before disposition, it determined that a case should not proceed on the formal calendar but that the

protective and supportive action by the court would serve the best interests of the juvenile and the public.

MCL 712A.11 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
John Maxwell

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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.