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## BILL ANALYSIS



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Senate Bill 251 (as enacted)  
Sponsor: Senator John Proos  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 185 of 2016**

Date Completed: 7-13-16

**CONTENT**

The bill amends the juvenile code to do the following:

- Allow the family division of circuit court (family court) to proceed informally on a consent calendar, if the court determines that a juvenile should not be under its 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 appears that proceeding on the consent calendar is not in the best interest of either the juvenile or the public.
- Prohibit statements made by a juvenile in a consent calendar case from being used against him or her at a trial on the formal calendar on the same charge.
- Require the court to close the case, destroy records of the proceeding, and notify the Department of State Police when a juvenile successfully completes the consent calendar case plan.
- Require the Department 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 determines that the juvenile and the public will be served by the court's protective and supportive action.

The bill will take effect on September 19, 2016.

**Consent Calendar**

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

The court may 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 may 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 is placed on the consent calendar, the prosecutor must 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 must be maintained in a nonpublic manner. Access to consent calendar case records must 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. Consent calendar case records may not be disclosed to Federal agencies or military recruiters. For purposes of this provision, "case records" include the 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.

The contents of the "confidential file", as defined in Michigan Court Rule 3.903, must 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 test 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 must conduct a consent calendar conference with the juvenile, the juvenile's attorney, if any, and the juvenile's parent, guardian, or legal custodian to discuss the allegations. The prosecuting attorney and victim may be present, but their presence is not required.

If it appears to the court that the juvenile has engaged in conduct that subjects him or her to the court's jurisdiction, the court must issue a written consent calendar case plan. The case plan may include a provision requiring the juvenile, parent, guardian, or legal custodian to reimburse the court for the cost of the consent calendar services for the juvenile. The reimbursement amount must be reasonable, taking into account the juvenile's income and resources. The case plan also must include a requirement that the juvenile pay restitution under the Crime Victim's Rights Act. A case plan may not contain a provision removing the juvenile from the custody of his or her parent, guardian, or legal custodian. A case plan will not be an order of the court, but must be included as part of the case record. Violation of the

terms of a consent calendar case plan may result in the court's returning the case to the formal calendar for further proceedings.

The court may not enter an order of disposition in a case while it is on the consent calendar.

#### Transfer of Case to Formal Calendar

If it appears to the court at any time 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, it may, 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 may 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 must 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 may not be used against him or her at a trial on the formal calendar on the same charge.

#### Completion of Case Plan & Nonpublic Record

When a juvenile successfully completes a consent calendar case plan, the court must 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 has completed the terms of the consent calendar case plan, the court must report the successful completion to the juvenile and the Department of State Police.

The Department must maintain a nonpublic record of the case, which must 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 has violated his or her conditions of employment or whether an applicant meets criteria for employment with the court, Department, agency, or office.

#### Jurisdiction over Other Matters

Under the juvenile code, if a person offers the family court information that a juvenile meets certain conditions 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 may proceed on the consent calendar if, at any time before disposition, it 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.

MCL 712A.2f & 712A.11

Legislative Analyst: Patrick Affholter

**FISCAL IMPACT**

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

Fiscal Analyst: Bruce Baker  
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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.