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Senate Bills 428 & 429 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Stephanie Chang
Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

Collectively, the bills would prohibit a court from ordering a juvenile or a juvenile's parent, guardian, or legal custodian to pay non-restitution costs associated with the juvenile's court case, court proceedings, or post-disposition care. These costs would include consent calendar service fees and juvenile agency costs of care and service, among others. The bills also would prohibit a court from collecting the balance of any court-ordered fines or fees assessed to a juvenile and from entering an order to intercept the tax refunds of a juvenile or the juvenile's parent or guardian to recover the costs of care or service. Additionally, a juvenile could not be placed outside his or her home solely based on nonpayment of restitution or inability to perform community service. Finally, the bills would require a court to consider the results of a risk screening and mental health screening tool before determining whether a case should proceed on the consent calendar; the results of a risk and needs assessment would have to be considered when making dispositional decisions.

BRIEF RATIONALE

The Task Force on Juvenile Justice, created by Governor Whitmer's Executive Order 2021-6, was charged with analyzing Michigan's juvenile justice system and recommending changes to State law, policy, and appropriations aimed to improve youth outcomes. The Task Force found that inconsistent court fees and assessments across the State may disproportionately burden the rehabilitation of some juveniles. Additionally, testimony indicates that non-restitution fees, such as court costs and assessments, generally can make juvenile rehabilitation more difficult. Accordingly, it has been suggested that all non-restitution fees be prohibited.

BRIEF FISCAL IMPACT

The bills likely would result in an upfront loss of revenue for the State and local governments at an indeterminate amount. Some of this loss likely would be mitigated by a synonymous reduction in collection efforts costs. It is also possible that a resulting reduction in juvenile incarceration or detention costs, long term, could further mitigate or eliminate immediate revenue losses to the State and local units of government.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bills 428 and 429 are companion bills to House Bills 4634 and 4635 of the 2023-2024 Legislative Session. Senate Bill 429 is a reintroduction of House Bill 4989 of the 2021-2022 Legislative Session, whereas Senate Bill 428 is similar to House Bill 4987 of that session.

MCL 712A.2f et al. (S.B. 428)
28.176 (S.B. 429)

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CONTENT

Senate Bill 428 (S-2) would amend the juvenile Code to do the following:

- Prohibit a court from considering restitution when determining if a case should be placed on a consent calendar.
- Require a court to consider the results of a risk screening tool and mental health screening tool conducted on a juvenile by a designated, trained individual or agency before determining whether a case should proceed on the consent calendar.
- Limit the period for a juvenile to complete the terms of a consent calendar case plan to three months.
- Prohibit a court from ordering a juvenile or a juvenile's parent, guardian, or legal custodian to pay specified fees or costs associated with the juvenile's court case, court proceedings, or post-disposition care.
- Prohibit the court from collecting the balance of any court-ordered fines, fees, or costs previously assessed to a juvenile, beginning October 1, 2024.
- Prohibit an individual from being placed outside of his or her home solely based on nonpayment of restitution or inability to perform community service.
- Require a risk and needs assessment to be conducted on a juvenile before disposition and the require the results to be used in a dispositional decision.
- Require a risk and needs assessment to be conducted on a juvenile if six months had passed since the juvenile's last assessment or if the juvenile experienced a major life event or a change in proceedings.
- Require 100% of the money collected from a juvenile subject to crime victim payments to be applied to the payment of restitution to a victim's estate before the balance could be applied to assessments to the Crime Victim Rights Fund.
- Repeal Section 18m of the Code, which establishes the minimum costs a juvenile must pay arising from a juvenile proceeding.

Senate Bill 429 (S-2) would amend the DNA Identification Profiling System Act to exempt a juvenile within the jurisdiction of the court under the juvenile Code or a parent, legal guardian, or legal custodian of a juvenile from the requirement to pay a \$60 assessment for the retention of the juvenile's DNA identification profile.

The bills are tie-barred, and each bill would take effect October 1, 2024. Senate Bill 428 also is tie-barred to Senate Bill 421, which would amend the juvenile Code to require a risk and needs assessment to be used in making a disposition decision; House Bill 4628, which would amend the juvenile Code to provide that a juvenile case could not be placed on the consent calendar unless the court considered the results of a risk screening tool and mental health screening tool; House Bill 4633, which would amend the juvenile Code to revise the factors considered by the court for traditional waivers and designations; House Bill 4636, which would amend the Revised Judicature Act to exempt juveniles and their guardians from paying late penalties; and House Bill 4637, which would amend the Code of Criminal Procedure to eliminate certain provisions that require a juvenile or their guardians to pay the court reimbursement for the cost of care and service. Senate Bill 429 also is tie-barred to House Bills 4636 and 4637.

Senate Bill 428 (S-2)

Consent Calendar Requirements

The bill would prohibit the court from considering restitution when determining if a case should be placed on the consent calendar.

Currently, a case may only be placed on the consent calendar if the juvenile and the parent, guardian, or legal custodian and the prosecutor agree to have the case placed on the consent calendar.

The bill would require the court to consider the results of the risk screening tool and mental health screening tool conducted on the juvenile by a designated individual or agency that was trained in those screening tools. Only after this consideration could the court determine consent calendar placement. A risk screening tool and a mental health screening tool would have to be research-based and nationally validated for use with juveniles and comply with guidelines established by the State Court Administrative Office, under the supervision and direction of the Michigan Supreme Court.

The bill would add risk screening tool and mental health screen tool results to the definition of "case records", meaning that they could not be disclosed to Federal agencies or military recruiters. It also would provide that a risk screening tool and a mental health screening tool conducted as part of a proceeding and any information obtained from a juvenile in the course of those screenings or provided by the juvenile in order to participate in a consent calendar case plan, including any admission, confession, or incriminating evidence, would not be admissible into evidence in any adjudicatory hearing in which the juvenile is accused and would not be subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

The bill would prohibit the period for a juvenile to complete the terms of a consent calendar case plan from exceeding three months, unless the court determined that a longer period was needed and included this determination as part of the consent calendar record.

Prohibition of Juvenile Fees

Among other things, the juvenile Code allows the court to order a juvenile or the juvenile's parent, guardian, or legal custodian to pay a variety of fines. The fines include:

- Reasonable reimbursement to the court for the cost of consent calendar services, considering the juvenile's income and resources.
- As a condition of probation or supervision, the minimum State cost for a juvenile (\$68.00, if the juvenile is found to be within the court's jurisdiction for a felony, or \$50.00, if the juvenile is found to be within the court's jurisdiction for a misdemeanor or ordinance violation).¹
- If the court finds a juvenile has violated a municipal ordinance or State or Federal law, a civil fine in the amount of the civil or penal fine provided by the ordinance or law.
- Reasonable reimbursement for the cost of care or service outside of a juvenile's own home and under State, county juvenile agency, or court supervision, taking into account the income and resources of the juvenile, parent, guardian, or custodian.
- Reimbursement to the court for the cost of service for an order of disposition placing a juvenile in the juvenile's own home.
- If the court appoints an attorney to represent a juvenile, reasonable reimbursement to the court for attorney fees, taking into account the income and resources of the juvenile, parent, guardian, or custodian.
- If the court enters an order of disposition based on an act classified as a juvenile offense under Public Act (PA) 196 of 1989, which describes the rights of crime victims, the cost of the required assessment under PA 196.
- If the court enters a judgement of conviction for an offense that is a felony, misdemeanor, or ordinance violation, the cost of the assessment as provided by PA 196.

¹ MCL 712A.18m(1)

-- If the juvenile is within the court's jurisdiction, the minimum State cost for a juvenile described above.

The bill would delete these fines. Instead, the bill would specify that a court could not order a juvenile or a juvenile's parent, guardian, or legal custodian to pay for fees or costs associated with consent calendar services; community service; a violation of a municipal ordinance or a State or Federal law if another disposition had been ordered; the costs of care, services, court-appointed attorney representation, or other costs or assessments related to the juvenile court's proceedings; or to reimburse the court for any fine, fees, or costs related to the juvenile's court case.

Beginning October 1, 2024, the court could not collect the balance of any court-ordered fines, fees, or costs previously assessed to a juvenile. Only the portion of any court order that imposed those fines, fees, or costs would be vacated and unenforceable. Additionally, the bill would prohibit an individual from being placed outside of his or her home solely based on nonpayment of restitution or inability to perform community service.

Under the juvenile Code, if the court requires a juvenile or the juvenile's parent, guardian, or legal custodian to reimburse the court for the cost of care or service outside of a juvenile's own home and under State, county juvenile agency, or court supervision, the reimbursement provision applies during the entire period the juvenile remains in care outside the juvenile's own home, unless the juvenile is in permanent custody of the court. If the juvenile receives adoption assistance under the Social Welfare Act, the amount must not exceed the amount of the support subsidy. The bill would delete these provisions.

The Code allows a juvenile who has been ordered to pay the minimum State cost as a condition of probation or supervision and who is not in willful default of payment to petition the court at any time for a remission of the payment of any unpaid portion of the minimum State cost. If the court determines that payment of the amount due will impose a manifest hardship on the juvenile or his or her immediate family, the court may remit all or part of the amount of the minimum State cost due or modify the method of payment. The bill would delete this provision.

Currently, in cases of delinquent accounts, the court may enter an order to intercept State or Federal tax refunds of a juvenile, parent, guardian, or custodian and initiate the necessary offset proceedings to recover the cost of care or service. The court must send to the person who is the subject of the intercept order advance written notice of the proposed offset. The notice must include notice of the opportunity to contest the offset on the grounds that the intercept is not proper because of a mistake of fact concerning the amount of the delinquency or the identity of the person subject to the order. The bill would delete these provisions.

Additionally, in an order of commitment to a State institution or agency described in the Youth Rehabilitation Services Act, except for commitment to the Department of Health and Human Services (DHHS) or a county juvenile agency, the court must name the superintendent of the institution where the juvenile is committed as a special guardian to receive benefits due to the juvenile from the United States Government. An order of commitment to DHHS or a county juvenile agency must name that agency as a special guardian to receive those benefits. The benefits received by the special guardian must be used to pay for the portions of the cost of care in the institution or facility that the parent or parents are found unable to pay. The bill would delete this provision.

Risk and Needs Assessments

The bill would require a designated individual or agency to conduct a risk and needs

assessment for each juvenile *before* disposition. The results of the risk and needs assessment, and a dispositional recommendation made by the designated individual or agency that performed the risk and needs assessment, would have to be shared with the court and each party to the proceeding, including the juvenile, counsel for the juvenile, and the prosecuting attorney.

The results of the risk and needs assessment would have to be used to inform a dispositional recommendation and to determine the most appropriate disposition for the juvenile considering all the following factors:

- The least restrictive setting possible.
- Public safety.
- Victim interests.
- Rehabilitation of the juvenile.
- Improved juvenile outcomes, including educational advancement.

The court also would have to consider the results of the risk and needs assessment when making a dispositional decision regarding a juvenile, including any of the following decisions:

- Whether to place a juvenile under supervision, including the length, level, and conditions of this supervision.
- Whether to place a juvenile on probation.
- Whether to place a juvenile in out-of-home care.

For the duration of each order of disposition for a juvenile, the court would have to require a new risk and needs assessment for the juvenile, to be conducted, shared, and used in the same manner as described above, if any of the following conditions occurred:

- Six months have passed since the juvenile's last risk and needs assessment.
- The juvenile experiences a major life event.
- There is a major change in the juvenile's proceedings.

Like the risk screening tool and a mental health screening tool provided for in the bill, the risk and needs assessment would have to be research based and nationally validated for use with juveniles and comply with guidelines established by the State Court Administrative Office, under the supervision and direction of the Michigan Supreme Court. A designated individual or agency that conducted risk and needs assessments would have to be trained on the appropriate use of the applicable assessment selected by the court.

A risk and needs assessment conducted as part of a proceeding and any information obtained from a minor in the course of the assessment, including any admission, confession, or incriminating evidence, would not be admissible into evidence in any adjudicatory hearing in which the minor was accused and would not be subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

Victim Payments

Under the Code, if a child is subject to payment of victim payments and any combination of other fines, costs, assessments, or other payments, 50% of the money collected from that child, or his or her parent or parents, must be first applied to payment of victim payments.

The remaining balance must be applied to the payment of fines, costs, and other assessments or payments. If fines, costs, or other assessments or payments remain unpaid after all victim

payments have been paid, additional money collected will be applied to payment of those fines, costs, or other assessments or payments, and vice versa.

In cases involving orders of disposition for offenses that would be violations of State law if committed by an adult or violations of local ordinances if committed by an adult, money allocated for payment of fines, costs, and assessments or payments other than victim payments must be applied in the following order of priority:

- Payment of the minimum State cost.
- Payment of other costs.
- Payment of fines.
- Payment of assessments and other payments.

The bills would delete the above provisions. Under the bill, if a child were subject to payment of victim payments, 100% of the money collected from that child, or his or her parent or parents, would have to be applied first to payment of restitution to a victim or victim's estate before the balance could be applied to assessments to the Crime Victim Rights Fund.

("Victim payments" means restitution under the juvenile Code and under the William Van Regenmorter Crime Victims' Rights Act ordered to be paid to the victim or the victim's estate, but not to a person who reimbursed the victim for his or her loss. Under the bill, crime victim payments also would include assessments to the Crime Victim Rights Fund ordered under PA 196 of 1989. The bill also would change the term to "crime victim payments").

Senate Bill 429 (S-2)

The DNA Identification Profiling System Act requires the Department of State Police (MSP) to permanently retain a DNA identification profile of an individual if the individual is arrested for committing or attempting to commit, convicted of, or found responsible for a felony offense or an offense that would be a felony if committed by an adult. This provision also applies to individuals found guilty of specified misdemeanors or violations of specified local ordinances.

The Act requires the court to order each individual found responsible for or convicted of one or more of these crimes to pay an assessment of \$60. The bill would exempt a juvenile, or a parent, guardian, or legal custodian of a juvenile within the jurisdiction of the court under the juvenile Code from paying this assessment.

BACKGROUND

Governor Gretchen Whitmer signed Executive Order 2021-6 on June 9, 2021, which, among other things, created the Task Force on Juvenile Justice Task (Task Force) as a temporary advisory body within the Department of Health and Human Services (DHHS). The Task Force was charged with acting in an advisory capacity with the goal of developing ambitious, innovative, and thorough analysis of Michigan's juvenile justice system, and include recommendations for changes to State law, policy, and appropriations aimed to improve youth outcomes.²

The Task Force released its report and recommendations on July 22, 2022. Overall, the report found that the quality of services and case management received by youth, from defense to post-disposition placement, differs across the State. The State lacks uniform judicial justice policies and quality assurance standards, leading to disparities the State cannot address and data it cannot rely upon. Additionally, the lack of State centralization has led to discrepancies

² Executive Order 2021-6.

in the implementation of research-based, developmentally appropriate practices across the State. Accordingly, children participating in the judicial justice system may not receive quality care or may receive care different from their peers.

Among other recommendations, the Task Force unanimously recommended that most non-restitution fees and costs associated with the juvenile justice system be eliminated.³

FISCAL IMPACT

Senate Bill 428 (S-2) would have an indeterminate impact on the Department of Health and Human Services and local governments. The elimination of collecting benefits paid by the Federal government for court wards would mean that some of the costs currently offset by those benefits would fall on the State and local governments to fund.

Regarding, statewide judicial costs, Public Act 119 included new ongoing funding of \$2.025 million and 13.0 full-time employees (FTEs) for a Juvenile Justice Services Division within the State Court Administrative Office. It is likely this new administrative division would be responsible for several statewide responsibilities proposed by the bill, including the creation of guidelines on the use of risk screening tools and mental health screening tools related to diversion and the creation of guidelines on the use of a risk and needs assessment tool.

Additionally, the bill would eliminate non-restitution fees and costs for juvenile adjudication. The cost to local courts and the State are indeterminate; however, associated costs related to the current collection of such fees and costs would also be reduced, again, to an indeterminate degree. According to the State Court Administrative Office, the statewide costs for local courts to collect such fees are high and may currently cost court systems more than the outstanding amounts owed on an annual basis. This cannot be confirmed.

Some statewide data is available. According to the most recent Statewide Circuit Court Summary, total dispositions in circuit court under the juvenile Code amounted to 20,762 in 2021. Additionally, there were 2,181 consent calendar proceedings for juveniles that same year.

Senate Bill 429 (S-2) would have a minimal negative fiscal impact on the Justice System Fund, as it would end the requirement that a juvenile, convicted under the bill in which DNA analysis costs were involved in the prosecution, pay an assessment of \$60, which is deposited into the Fund. The Fund was created by Public Act 97 of 2003 to simplify the assessment, collection, and distribution of monetary obligations imposed in criminal cases. Revenue deposited into the Fund comes from various assessments related to court penalties and is distributed according to a percentage formula outlined in the Revised Judicature Act, which supports justice-related activities across State government in the Departments of Corrections, Health and Human Services, MSP, and Treasury. The Fund also supports justice-related issues in the Legislative Retirement System and the Judiciary. For FY 2021-22, these distributions totaled \$33.1 million in restricted revenue.

³ *Michigan Task Force on Juvenile Justice Reform Report and Recommendations*, p. 17, July 22, 2022.
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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.