



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



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

House Bill 4625 (Substitute H-3 as passed by the House)
House Bills 4628 and 4629 (Substitute H-2 as passed by the House)
Sponsor: Representative Brenda Carter (H.B. 4625)
Representative Felicia Brabec (H.B. 4628)
Representative Amos O'Neal (H.B. 4629)
House Committee: Criminal Justice
Senate Committee: Committee of the Whole

Date Completed: 10-19-23

INTRODUCTION

Collectively, the bills would expand the uses of juvenile justice services funding to align with recommendations made by the Task Force on Juvenile Justice Reform (see **BACKGROUND**). They also would require a county to use funds received to adopt risk and mental health screening tools for use in diversion and consent calendar decisions and for use prior to disposition or detention of a juvenile. Additionally, counties would have to use research-based juvenile-specific probation standards and employ a local quality assurance specialist for support. Screening results would not be admissible as evidence in a court proceeding.

FISCAL IMPACT

The bills would adopt recommendations 7 & 17 from the report of the Michigan Task Force on Juvenile Justice Reform, published July 22, 2022. These recommendations concern the development and implementation of new procedures that would need to be developed by the Supreme Court and the State Court Administrative Office (SCAO) and implemented by local courts prior to making detention and or diversion determinations for juveniles. The costs associated with the development and implementation of these new procedures are largely indeterminate on a statewide and local level, however some of the costs have already been deferred in the most recent omnibus budget bill for FY 2023-24.

Regarding statewide judicial costs, Public Act 119 included new ongoing funding of \$2.025 million and 13.0 FTEs for a Juvenile Justice Services Division within the SCAO. It is likely this new administrative division will be responsible for several statewide responsibilities outlined by the bill, including the creation of guidelines on the use of risk screening tools mental health screening tools related to diversion, and the use of a screening tool prior to detention. Regarding costs to local court systems, new procedures must be adopted to implement the use of the new tools. These costs are indeterminate at this time.

Indirectly, it is likely that implementation of these new procedures regarding juvenile adjudication, and the application of the research-based tools associated with them, will result in a statewide reduction in juvenile incarceration. There is likely to be a cost reduction for corrections, statewide, as a result. The amount of any savings is not known and could vary widely. Lastly, a reduction in youth incarceration will result in a correlating reduction in legal liability to the state if, or when, incarcerated juveniles are subjected to abuse or mistreatment. Any such reduction in this kind of liability is indeterminate; however, Michigan has settled such claims in the past for tens of millions of dollars.

Legislative Analyst: Tyler P. VanHuyse
Fiscal Analyst: Joe Carrasco, Jr.; Michael Siracuse

CONTENT

House Bill 4625 (H-3) would amend the Juvenile Diversion Act to do the following:

- Allow a risk screening and mental health screening tool to be conducted on a minor before a decision to divert the minor from a court petition was made.
- Establish standards for a risk screening and mental health screening tool.
- Prohibit a minor accused or charged with a "specified juvenile violation" from being diverted and define the term.
- Specify that the results of a risk screening and mental health screening tool 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.
- Modify the definition of "diversion" to allow a diversion to take place during an investigation into a minor's alleged offense.
- Prohibit restitution from being considered when deciding if the minor could be diverted under these provisions.

House Bill 4628 (H-2) would amend the juvenile Code to require a court to consider the results of a risk screening tool and mental health screening tool conducted on a juvenile before placing the juvenile's case on the consent calendar and classify the results of the screenings tool as confidential case records. It also would prohibit a court from considering restitution when determining if a juvenile's case should be placed on a consent calendar.

House Bill 4629 (H-2) would amend the juvenile Code to require an individual or agency designated by the court to use a detention screening tool on a juvenile before the juvenile could be detained in a secure facility, pending a hearing. It also would specify that any statement, admission, confession, or incriminating evidence obtained from a juvenile during the screening would not be admissible as evidence in any court proceeding.

House Bill 4625, 4628, and 4629 are tie-barred to Senate Bill 418. Each bill would take effect October 1, 2024. Generally, Senate Bill 418 requires the Department of Health and Human Services' (DHHS) Child Care Fund to reimburse counties at a rate of 75% of annual expenditures for in-home expenses related to juvenile justice, such as community-based supervision and services.

House Bill 4625 (H-3)

Modified Definitions

The Juvenile Diversion Act defines "assaultive crime" as an offense that, if committed by an adult, would constitute an offense against a person described in Chapter XI (Assaults), Chapter XLV (Homicide), Chapter L (Kidnaping), Chapter LVIII (Mayhem), Chapter LXXVI (Rape), Chapter LXXVIII (Robbery) of the Michigan Penal Code. The bill would delete this definition.

The bill would add the definition of "specified juvenile violation" to the Act. "Specified juvenile violation" would mean that term as defined in Section 2 of the juvenile code:

- A violation of the Michigan Penal Code chapters listed above, in addition to a violation of first degree arson.

- A violation of Chapter XI (Assaults) or Chapter XVI (Breaking and Entering) of the Michigan Penal Code, if the juvenile was armed with a loaded or unloaded firearm, whether operable or inoperable; a knife or other object specifically designed or customarily carried or possessed for use as a weapon; an object that was likely to cause death or bodily injury when used as a weapon and that was used as a weapon or carried or possessed for use as a weapon; an object or device that was used or fashioned in a manner to lead a person to believe the object or device was an object or device previously described.
- A violation of Section 186a of the Michigan Penal Code regarding escape or attempted escape from a juvenile facility, but only if the juvenile facility from which the individual escaped or attempted to escape was a high-security or medium-security facility operated by DHHS or a county juvenile agency or a high-security facility operated by a private agency under contract with DHHS or a county juvenile agency.
- A violation of Section 7401 or Section 7403 of the Public Health Code, which generally prohibit the manufacturing, delivery, or possession of controlled substances.
- An attempt to commit, conspiracy to commit, or solicitation to commit any of the above violations.
- A lesser included offense of a violation described above if the individual is charged with a violation described above.
- Another violation arising out of the same transaction as a violation described above if the individual is charged with a violation described above.

Additionally, the term would mean any of the following:

- A violation of Section 82(2) of the Michigan Penal Code, which concerns assault with a weapon in a weapon free zone without intending to commit murder or to inflict great bodily harm.
- A violation of Section 321 of the Michigan Penal Code, which prescribes a penalty for manslaughter.
- A violation of Section 397 of the Michigan Penal Code which generally prohibits mayhem such as malicious intent to disfigure another person.
- A violation of Section 520c of the Michigan Penal Code, which concerns criminal sexual conduct in the second degree.

The bill would modify the definition of "divert" or "diversion." Currently, the terms mean the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor that, if a petition were filed with the court, would bring that minor under the juvenile code and instead of petitioning the court or authorizing a petition, the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued or the minor and the minor's parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation. The bill would modify this to include the placement that occurred when a formally recorded apprehension or *investigation* was made by a law enforcement agency. Additionally, the bill would specify that restitution could not be considered when deciding if the minor could be diverted under these provisions.

Required Use of Screening Tool Before Diversion

Under the Act, if in the course of investigating an alleged offense by a minor a petition has not been filed or authorized, a law enforcement official or court intake worker may divert the matter by making an agreement with the minor and the minor's parent, guardian, or custodian to refer the minor to a person, organization, or agency that will assist the minor in resolving

the problem that initiated the investigation. The bill would subject this provision to the requirements below.

Under the bill, except as otherwise provided, a risk screening tool and a mental health screening tool could be conducted on a minor before a diversion decision was made. A risk screening tool and a mental health screening tool could not be conducted on a minor who was currently under supervision in the juvenile justice system by the court or DHHS or was accused or charged with a specified juvenile violation.

The bill would prohibit a minor from being diverted unless the following requirements were met:

- The law enforcement official or court intake worker received the results of a risk screening tool and a mental health screening tool for the minor conducted by a designated individual or agency who was trained in those screening tools.
- The law enforcement official or court intake worker used the results of the risk screening tool and the mental health screening tool, and the best interests of public safety and the minor, to inform the decision to divert the minor.

Under the bill, a minor accused or charged with a specified juvenile violation could not be diverted.

Diversions Filing Requirements

When a decision is made to divert a minor, the law enforcement official or court intake worker must file with the court in the county in which the minor resides or in which specific information is found, including the minor's name, address, and date of birth and the act or offense for which the minor was apprehended. Under the bill, if the minor were diverted by making an agreement with the minor and the minor's parent, guardian, or custodian to refer the minor to a person or public or private organization or agency that would assist the minor and the minor's family in resolving the problem that initiated the investigation, the law enforcement official or court intake worker also would have to file the results of the minor's risk screening tool and mental health screening tool.

Additional Screening Provisions

The bill specifies that a risk screening tool and a mental health screening tool conducted as part of a proceeding under the Act and any information obtained from a minor in the course of those screenings or provided by the minor in order to participate in a diversion program, 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.

The bill would require the SCAO under supervision and direction of the Michigan Supreme Court to create guidelines on the use of risk screening tools and mental health screening tools. A risk screening tool and a mental health screening tool would have to be research based and nationally validated for use with minors and comply with the Supreme Court's guidelines.

House Bill 4628 (H-2)

Generally, the juvenile Code allows the court to handle juvenile cases through the consent calendar process, an informal process not considered an official court proceeding. The Code requires the juvenile, the juvenile's parent, guardian, or legal custodian, and the prosecutor

to agree to place a case on the consent calendar. Under the bill, in addition to that agreement, a case could not be placed on the consent calendar unless all the following applied:

- The court considered 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.
- The court determined that the case should proceed on the consent calendar if it determined that the protective and supportive action by the court would serve the best interests of the juvenile and the public.¹

Additionally, the bill would specify that the court could not consider restitution when determining if the case could be placed on the consent calendar.

The bill would require the SCAO under supervision and direction of the Michigan Supreme Court to create guidelines on the use of risk and needs assessments. A risk and needs assessment would have to comply with these guidelines and be research based and nationally validated for use with juveniles.

Access to consent calendar case records is only available to specified individuals, such as the juvenile and the parent or guardian, among others. Currently, "case records" includes authorized petitions, notices, and available transcripts, among other things. Under the bill, "case records" also would include risk screening tool and mental health screening tool results.

The bill would further specify a risk screening tool and a mental health screening tool conducted as part of a proceeding under a consent calendar case 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 was accused and were not subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

House Bill 4629 (H-2)

Under the juvenile Code, the court may order a juvenile detained in a court-designated facility, pending the hearing, if a complaint has been made or a petition filed against that juvenile. The bill would require a person or agency designated by the court to use a detention screening tool on a juvenile before the juvenile could be detained in a secure facility.

The SCAO under supervision and direction of the Michigan Supreme Court, in collaboration with local courts, would have to determine the appropriate detention screening tool. Before detaining an individual, pending hearing, the court would have to consult the results of the detention screening tool and follow any rules regarding its use that were set by the Michigan Supreme Court. The court would have to share the results of the detention screen tool with all parties before a juvenile's detention hearing.

Any statement, admission, confession, or incriminating evidence obtained from a juvenile during a screen would not be admissible evidence in an adjudicatory hearing in which the juvenile was accused, could not be subject to subpoena, and could not be used in any other court proceeding for any other purpose.

MCL 722.822 et al. (H.B. 4625)
712A.2f (H.B. 4628)
712A.15 & 712A.16 (H.B. 4629)

¹ MCL 712A.11

PREVIOUS LEGISLATION

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

House Bills 4625, 4628, and 4629 are companion bills to Senate Bills 419, 422, and 423, respectively.

BACKGROUND

Governor Gretchen Whitmer signed Executive Order 2021-6 on June 9, 2021, which, among other things, created the Task Force on Juvenile Justice Reform (Task Force) as a temporary advisory body within the 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 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.

The Task Force also recommended that local courts be required to adopt a validated risk screening tool and mental health screening tool to guide diversion and consent calendar decisions, adopt a validated risk assessment tool for use prior to disposition, adopt a detention screening tool, adhere to best practice probation standards, including officers being certified in these standards every two years, and employ a local quality assurance specialist to support the above practices (excluding counties/tribes that receive the basic grant).³

² Executive Order 2021-6.

³ *Michigan Task Force on Juvenile Justice Reform Report and Recommendations*, pp. 12, 14-17, 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.