

# Legislative Analysis



## ALLOW ACCESS TO JUVENILE DIVERSION RECORDS FOR RESEARCH PURPOSES

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**Senate Bill 688 (S-2) as passed by the Senate**

**Sponsor: Sen. Stephanie Chang**

**House Committee: Judiciary**

**Senate Committee: Civil Rights, Judiciary, and Public Safety**

**Complete to 12-10-24**

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

### SUMMARY:

Senate Bill 688 would amend the Juvenile Diversion Act to allow individuals or organizations to request juvenile records from the State Court Administrative Office (SCAO) or an individual court for research purposes. Currently, records kept under the act may not be accessed or used by any person or entity (including court staff and law enforcement officials) for any purpose other than deciding whether to divert a minor. Under the bill, upon submission of a records request, SCAO and the interested parties would be required to agree to a negotiated ***data use agreement*** designed to safeguard or redact ***personally identifying information*** contained in any released juvenile records. The bill would also allow SCAO to charge a requesting individual or organization to cover costs incurred from processing these research requests, as well as exempt data and records provided under the agreements from disclosure under the Freedom of Information Act (FOIA).

***Data use agreement*** would mean any agreement between an individual or organization and SCAO or individual court outlining the technical standards and other provisions to protect the integrity of the data and shield personally identifying information from public disclosure.

***Personally identifying information*** would mean any information that would reveal an individual's identity, such as an individual's name, date of birth, Social Security number, address, and other information unique to an individual.

The bill would also require SCAO and any court that receives a research request to maintain records of all of the following:

- Requests that are received and the dates they are received.
- Requests that are granted and the dates they are granted.
- A description of the data released as a result of a granted request.

If enacted, the bill would take effect October 1, 2024.

MCL 722.829

## BACKGROUND:

### Juvenile Diversion

Under section 4 of the Juvenile Diversion Act, certain minors may be diverted from *family court*<sup>1</sup> prior to a formal investigation and released to the custody of a parent, guardian, or custodian once the court has considered all of the following factors:

- The nature of the alleged offense.
- The minor's age.
- The nature of the problem that led to the alleged offense.
- The minor's character and conduct.
- The minor's behavior in school, family, and group settings.
- Any prior diversion decisions made concerning the minor and nature of the minor's compliance with the diversion agreement.

If a minor is successfully diverted, the investigation is either discontinued or the minor's parent, guardian, or custodian agree to work with an individual, organization, or agency that will assist the minor in resolving the problem that initiated the investigation. Current law requires that a minor's record kept under the act pertaining to diverted minors must be destroyed within 28 days after the minor becomes 18 years of age.

### Juvenile Justice Task Force

On June 9, 2021, Governor Gretchen Whitmer signed Executive Order 2021-6 creating the Task Force on Juvenile Justice Reform ("Task Force") as a temporary advisory body within the Department of Health and Human Services (DHHS). The Task Force was charged with conducting a comprehensive, data-driven review of Michigan's juvenile justice system and producing a slate of recommendations for changes in state law, policy, and appropriations to improve youth outcomes.<sup>2</sup> At a minimum, the Task Force was required to consider all of the following in conducting its assessment:

- Key drivers of, and available alternatives to, detention and residential placement of juvenile offenders.
- Outcomes associated with educational and skills training opportunities for youth impacted by the juvenile justice system, as well as opportunities to increase the safety and wellbeing of those individuals.
- Racial and ethnic disparities among youth in contact with the juvenile justice system.
- The efficiency and effectiveness of state and county oversight systems.
- Opportunities for better alignment with research and constitutional mandates.

The Task Force released its report and recommendations on July 22, 2022. Overall, the report found that the state's juvenile justice system lacks the unified policy framework and centralized structure necessary to produce high-quality youth outcomes. The report addresses the state's insufficient infrastructure for diverting low-risk youth, as well as inconsistent practices and inadequate alignment with research-based, developmentally appropriate standards. Specific

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<sup>1</sup> *Family court* refers to the family division of circuit court, as established by the Revised Judicature Act. The court has jurisdiction over cases involving domestic relations (e.g., divorce, child support), adoptions, juvenile code proceedings (e.g., delinquency, guardianship, protective proceedings), and family division miscellaneous proceedings (e.g., personal protection orders, name changes, minor emancipation).

<sup>2</sup> Executive Order 2021-6 (<https://www.michigan.gov/whitmer/news/state-orders-and-directives/2021/06/09/executive-order-2021-6-task-force-on-juvenile-justice-reform>).

issues include the absence of centralized public defense resources, overuse of predisposition detention, minimal guidance for post-disposition placements, and disparities in service quality, adjudication rates, and length of detention across county, wardship, and facility, especially among youth of color.<sup>3</sup> The legislature enacted 2023 PAs 289 to 293 and 297 to 302, all of which took effect October 1, 2024, based on some of the Task Force’s findings.

#### Data Availability and Transparency

A common theme in the Task Force’s report is the unavailability or unreliability of data used to track outcomes at nearly every stage of the state’s juvenile justice system. Existing sources highlight these systemwide deficiencies, which include unstandardized and incomplete information on juvenile race, ethnicity, offense, violation, placement, and risk across counties, as well as an inability to clearly distinguish state from county wards within local post-disposition data.

Some of these data-related challenges arise out of the stringent protections afforded to juvenile records under current law. Currently, the Juvenile Diversion Act restricts access to most family court records (including juvenile diversion records) dated January 1, 2021, or later to ***persons having a legitimate interest***. In other words, current law provides no mechanism for interested third parties, such as researchers, to obtain access to these confidential records.

***Persons having a legitimate interest*** is defined as any of the following [MCL 712A.28(4)(d)]:

- The juvenile.
- The juvenile’s parent, guardian, legal custodian, or tribe.
- The juvenile’s counsel.
- The department or agency responsible for supervising, placing, or otherwise caring for the juvenile.
- A member of a local foster care review board (under section 4 of the act).
- Law enforcement personnel, a prosecutor, or a court.

#### **FISCAL IMPACT:**

Senate Bill 688 would have an indeterminate, but likely minimal, fiscal impact on the state. Under the bill, the State Court Administrative Office would be required to create data use agreements that protect personally identifiable information from public disclosure when records are requested for research activities. It is anticipated the State Court Administrative Office would be able to cover administrative costs associated with creating data use agreements with existing appropriations. Also under the bill, the State Court Administrative Office would be authorized to charge researchers for costs incurred in processing research requests.

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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.

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<sup>3</sup> *Michigan Task Force on Juvenile Justice Reform: Report and Recommendations*, available at <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>.