

Legislative Analysis



JUVENILE DIVERSION ACT

House Bill 4625 (H-1) as reported from committee
Sponsor: Rep. Brenda Carter

House Bill 4626 (H-1) as reported from committee
Sponsor: Rep. Kara Hope

Committee: Criminal Justice
Complete to 10-11-23

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

SUMMARY:

House Bills 4625 and 4626 would amend the Juvenile Diversion Act to allow, and in some cases require, the use of a risk screening tool and a mental health screening tool before a diversion decision is made for a minor; to generally prohibit the terms of a diversion agreement from taking longer than three months to complete; and to provide that a minor accused or charged with a specified juvenile violation (instead of an assaultive crime) cannot be diverted.

The act defines *divert* or *diversion* as 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 within section 2(a) of chapter XIIA of the Probate Code (governing Family Division of Circuit Court jurisdiction over violations of law or ordinance and certain status offenses), and instead of petitioning the court or authorizing a petition, either of the following occurs:

- The minor is released into the custody of their parent, guardian, or custodian and the investigation is discontinued.
- 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.

Specified juvenile violations

Currently, the act provides that a juvenile accused of or charged with an assaultive offense must not be diverted, and defines an *assaultive crime* as any of the following:

- Armed robbery (MCL 750.529).
- Assault by strangulation or suffocation (MCL 750.84).
- Assault with intent to commit a felony (MCL 750.87).
- Assault with intent to commit criminal sexual conduct (MCL 750.520g).
- Assault with intent to commit murder (MCL 750.83).
- Assault with intent to do great bodily harm (MCL 750.84).
- Assault with intent to maim (MCL 750.86).
- Assault with intent to rob while armed (MCL 750.89).
- Assault with intent to rob while unarmed (MCL 750.88).
- Carjacking (MCL 750.529a).
- Felonious assault (MCL 750.82).
- First-degree criminal sexual conduct (MCL 750.520b).
- First-degree murder (MCL 750.316).
- Fourth-degree criminal sexual conduct (MCL 750.520e).

- Kidnapping (MCL 750.349).
- Kidnapping a child under the age of 14 (MCL 750.350).
- Manslaughter (MCL 750.321).
- Mayhem (MCL 750.397).
- Prisoner taking another person as hostage (MCL 750.349a).
- Second-degree criminal sexual conduct (MCL 750.520c).
- Second-degree murder (MCL 750.317).
- Third-degree criminal sexual conduct (MCL 750.520d).
- Unarmed robbery (MCL 750.530).

House Bill 4625 would instead provide that a juvenile accused of or charged with a *specified juvenile violation*, meaning any of the following, must not be diverted:

- Armed robbery (MCL 750.529).
- Assault by strangulation or suffocation, if armed with a dangerous weapon (MCL 750.84).
- Assault with intent to commit murder (MCL 750.83).
- Assault with intent to do great bodily harm, if armed with a dangerous weapon (MCL 750.84).
- Assault with intent to maim (MCL 750.86).
- Assault with intent to rob while armed (MCL 750.89).
- Attempted murder (MCL 750.91).
- Carjacking (MCL 750.529a).
- Escape or attempted escape from a medium- or high-security facility operated by the Department of Health and Human Services (DHHS) or a county juvenile agency or from a high-security facility operated by a private agency under contract with the DHHS or a county juvenile agency (MCL 750.186a).
- First-degree arson (MCL 750.72).
- First-degree criminal sexual conduct (MCL 750.520b).
- First-degree home invasion, if armed with a dangerous weapon (MCL 750.110a(2)),
- First-degree murder (MCL 750.316).
- Kidnapping (MCL 750.349).
- Manufacture, creation, or delivery, or possession with intent to do so, of 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine (MCL 333.7401(2)(a)(i)).
- Possession of 1,000 grams or more of a Schedule 1 or 2 narcotic or cocaine (MCL 333.7403(2)(a)(i)).
- Robbery of a bank, safe, or vault (MCL 750.531).
- Second-degree murder (MCL 750.317).
- An attempt, conspiracy, or solicitation to commit any of the above crimes.
- Any lesser-included offense of a specified juvenile violation, if the juvenile is charged with a specified juvenile violation.

Risk and mental health screening tools

House Bill 4625 would allow a risk screening tool and a mental health screening tool to be conducted on a minor before a diversion decision is made for the minor. However, those screening tools could not be used on a minor who is accused or charged with a specified juvenile violation or who is currently under supervision in the juvenile justice system by the court or by DHHS.

In addition, a minor could not be diverted under an agreement 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 unless both of the following requirements were met:

- The law enforcement official or court intake worker receives the results of a risk screening tool and a mental health screening tool for the minor, conducted by a designated individual or agency trained in those screening tools.
- The law enforcement official or court intake worker uses 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.

The State Court Administrative Office (SCAO), under the supervision and direction of the supreme court, would have to create guidelines for the use of the screening tools described above. The screening tools described above would have to comply with those guidelines and be research-based and nationally validated for use with minors.

The results of a minor's risk screening tool and mental health screening tool, if conducted, would have to be included in the information required to be filed with the court when a decision is made to divert a minor.

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 screening 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 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.

Time period of diversion agreement

House Bill 4626 would provide that the time period for a minor to complete the terms of a diversion agreement must not exceed three months, unless the law enforcement official or court intake worker determines that a longer period is needed for the minor to complete a specific treatment program and documents this determination in the information required to be filed with the court when a decision is made to divert a minor. The diversion agreement could not include a term requiring the reimbursement of costs related to diversion services.

Other provisions

House Bill 4625 would provide that restitution must not be considered when, in cases where a petition has not been filed with the court or not been authorized, a decision is being made as to whether a minor may be diverted and an agreement made to refer the minor to 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 into an alleged offense by the minor.

House Bill 4625 would take effect October 1, 2024, but cannot take effect unless HB 4624 is also enacted. (House Bill 4624 would increase the reimbursement formula for the Child Care Fund administered by DHHS and require counties receiving reimbursement to adopt validated assessment or screening tools to guide juvenile justice decisions.¹)

HB 4625: MCL 722.822, 722.823, and 722.826

HB 4626: MCL 722.825 and 722.826

¹ <http://legislature.mi.gov/doc.aspx?2023-HB-4624>

BACKGROUND:

The Michigan Task Force on Juvenile Justice Reform was created by Executive Order 2021-6 as a bipartisan advisory body in the Department of Health and Human Services² to “lead a data-driven analysis of [Michigan’s] juvenile justice system and recommend proven practices and strategies for reform grounded in data, research, and fundamental constitutional principles.” In particular, in the words of its final report,³ the task force was “charged with developing recommendations to improve state law, policy, and appropriations guided by the following objectives:

- Safely reduce placement in detention and residential placement and associated costs.
- Increase the safety and well-being of youth impacted by the juvenile justice system.
- Reduce racial and ethnic disparities among youth impacted by the juvenile justice system.
- Improve the efficiency and effectiveness of the state’s and counties’ juvenile justice systems.
- Increase accountability and transparency within the juvenile justice system.
- Better align practices with research and constitutional mandates.”

The task force issued its final report on July 18, 2022.⁴

The bills appear to implement parts of the task force’s unanimous recommendations 7 and 9.

FISCAL IMPACT:

House Bills 4625 and 4626 would increase costs for the Department of Health and Human Services and local units of government by an indeterminate amount. The fiscal impact of the bill on the counties would be dependent on the cost of adopting a mental health screening tool and a risk screening tool in accordance with guidelines set by the Supreme Court. Additionally, increased costs to DHHS or local county governments would depend upon an increased number of juveniles that might be diverted and referred for treatment or services under the provisions of the bill. Under the provisions of HB 4624, in-home care would be eligible for a 75% state 25% county reimbursement rate while out-of-home care is eligible for 50% state 50% county reimbursement rate.

POSITIONS:

Michigan Supreme Court Chief Justice Elizabeth Clement testified in support of the bills. (6-20-23)

Representatives of the following entities testified in support of the bills:

- Department of Health and Human Services (9-12-23)
- Prosecuting Attorneys Association of Michigan (PAAM) (6-20-23)
- Michigan Probate Judges Association (6-20-23)

² <https://www.legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2021-EO-06.pdf>

³ <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>

⁴ <https://www.michigan.gov/whitmer/news/press-releases/2022/07/18/task-force-on-juvenile-justice-reform-approves-blueprint-for-transforming-juvenile-justice>

- The Delta Project (6-20-23)
- Michigan Association for Family Court Administration (6-27-23)
- Michigan Center for Youth Justice (6-27-23)

The following entities indicated support for the bills:

- State Court Administrative Office (9-26-23)
- Department of the Attorney General (9-26-23)
- Criminal Defense Attorneys of Michigan (6-20-23)
- Safe and Just Michigan (6-27-23)
- Michigan League for Public Policy (6-20-23)
- Michigan Association of Counties (9-26-23)
- State Appellate Defender Office (6-20-23)
- State Bar of Michigan (9-26-23)
- Michigan Catholic Conference (9-26-23)
- Michigan Federation for Children and Families (7-11-23)
- Council of State Governments Justice Center (7-11-23)
- Coalition for Juvenile Justice (6-7-23)
- Michigan Association of Circuit Court Administrators (7-11-23)
- Student Advocacy Center of Michigan (9-11-23)

The following entities indicated opposition to House Bill 4625:

- Michigan Association of Chiefs of Police (6-20-23)
- Michigan Sheriffs Association (6-27-23)

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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.