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Senate Bills 418, 419, and 421 through 423 (as introduced 6-28-23)

Sponsor: Senator Sylvia Santana (S.B. 418 & S.B. 419)

Senator Veronica Klinefelt (S.B. 421)

Senator Kristen McDonald Rivet (S.B. 422)

Senator Roger Victory (S.B. 423)

Committee: Civil Rights, Judiciary, and Public Safety

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## **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 would require the Department of Health and Human Services' (DHHS) Child Care Fund (CCF) 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. 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. The bills would make screening and assessment results confidential and set implementation standards.

Senate Bills 419, 421, 422, and 423 are tie-barred to Senate Bill 418.

## **BRIEF FISCAL IMPACT**

The bills would adopt recommendations 7, 10, and 17 from the report of the Michigan Task Force on Juvenile Justice Reform, published July 22, 2022. Recommendations 7, 10, and 17 concern the development and implementation of several 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. The bill package would have an immediate fiscal impact of roughly \$32.0 million to the DHHS and a savings of between \$25.5 to \$28.5 million for the counties based on the enhanced reimbursement rate offered by the State to the counties for community-based services and the cost of the required quality assurance specialist and screening tools.

## **PREVIOUS LEGISLATION**

*(Please note: This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)*

Senate Bills 418, 419, 421, 422, and 423 are companion bills to House Bills 4624, 4625, 4627, 4628, and 4629, respectively.

MCL 400.117a (S.B. 418)

722.822 et al. (S.B. 419)

712A.18 (S.B. 421)

712A.2f (S.B. 422); 712A.15 & 712A.16 (S.B. 423)

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## **CONTENT**

**Senate Bill 418 would amend the Social Welfare Act to do the following:**

- Specify that the DHHS's CCF could be used for juvenile justice services ranging from prearrest diversion starting at the point of law enforcement contact through residential placement and reentry.
- Modify county child care fund reimbursement rates from the DHHS's CCF for specified juvenile justice services, such as by requiring the CCF to reimburse a county's child care fund at a rate of 75% of annual expenditures for in-home expenses and per diem rates for the use of respite care and shelter for less than 30 days.
- Require a county to use funds received from the State to adopt a validated risk screening tool, a validated risk assessment tool, and a detention screening tool, and to use research-based juvenile specific probation standards.

**Senate Bill 419 would amend the Juvenile Diversion Act to do the following:**

- Require 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 could be 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.

**Senate Bill 421 would amend the juvenile Code to do the following:**

- Require a designated, trained court officer to conduct a risk and needs assessment for each juvenile before a disposition decision.
- Require a court to consider the results of a risk and needs assessment and several other factors when making a disposition decision.
- Require an additional assessment to be conducted if six months had passed since the prior assessment, if the juvenile experienced a major life event, or a major change occurred in the juvenile's proceedings.

**Senate Bill 422 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.**

**Senate Bill 423 would amend the juvenile Code to 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, pending a hearing.**

### **Senate Bill 418**

#### **Use of Juvenile Justice Service Expenditures**

Among other things, the Social Welfare Act establishes a system for funding counties' juvenile

justice services. The Act requires a county to establish its own child care fund and deposit money into the fund for the purpose of juvenile justice services. It requires counties to cover these juvenile justice services costs and requires the DHHS to reimburse counties for eligible costs with money from the CCF at a rate of 50%.

The Act defines "juvenile justice service" as a service, exclusive of judicial functions, provided by a county for juveniles who are within or likely to come within the court's jurisdiction under Section 2 of Chapter XIIIA (Jurisdiction, Procedure, and Disposition Involving Minors) of the Probate Code (also called the juvenile code) or within the jurisdiction of the court of general criminal jurisdiction under the Revised Judicature Act, if that court commits the juvenile to a county or court juvenile facility under the Code of Criminal Procedure. A service includes intake, detention, detention alternatives, probation, foster care, diagnostic evaluation and treatment, shelter care, or any other service approved by the office or county juvenile agency, as applicable, including preventative, diversionary, or protective care services. A juvenile justice service approved by the office or agency must meet all applicable State and local government licensing standards.

The DHHS must promulgate rules for authorized uses of the CCF under the Act. Under the bill, the DHHS's CCF could be used for programs and practices from prearrest diversion starting at the point of law enforcement contact through residential placement and reentry. This would exclude general prevention services for all youth at risk of juvenile justice system involvement. The DHHS would have to align CCF policies, budget requirements, and oversight practices to support these goals and to ensure the appropriate use of funding.

#### Rate of Reimbursement

The Act also specifies expenditures eligible for reimbursement. For juveniles not placed with DHHS for care, supervision, or placement, but who are within the court's jurisdiction, these expenditures include salaries and fringe benefits for out-of-home care facility employees, clothing and food for children, and more. As mentioned, the county amount distributed for these services equals 50% of the annual expenditures from the county's child care fund; however, beginning October 1, 2021, the Act required the State to pay 100% of the cost to provide juvenile justice services when a court exercises jurisdiction over a juvenile who is 17 years of age, but under the age of 18 at the time of the offense. The bill would end this requirement September 30, 2024.

In addition, the bill specifies that a county's child care fund annual expenditures equaling 50% would be for residential services of detention and long-term residential placements. The bill would require the county amount distributed from the CCF to equal 75% of the annual expenditures from the county's child care fund for in-home expenses, including community-based supervision, services, and related practices, and per diem rates for the use of respite care and shelter for less than 30 days.

The Act prescribes an equation that must be used to calculate the rate of reimbursement paid by the State for all juveniles beginning on October 1, 2025. The equation generally uses the total State expenditures required for juvenile justice services at the rate of 50% reimbursement from fiscal years (FY) 2021-2022, 2022-2023, and 2023-2024 and divides the total by all expenditures made for all eligible juveniles over that period. The bill would delete this provision.

#### Requirements of CCF Funding

The bill would require a county to do all the following with the funds it received from the CCF:

- Adopt a validated risk screening tool to guide diversion and consent calendar decisions (see **Senate Bill 419**).
- Adopt a validated risk assessment tool to use before disposition (see **Senate Bill 421**).
- Adopt a detention screening tool to inform the use of secure detention (see **Senate Bill 423**).
- Utilize research-based juvenile-specific probation standards as developed and approved by the SCAO.
- Employ a local quality assurance specialist to support the county with implementing research-based practices, excluding counties or tribes receiving the basic grant.

The DHHS would have to promulgate rules, policies, and practices to implement these requirements and to oversee compliance with these requirements by counties and tribes. It also would have to establish performance measures, in consultation with the SCAO, for evaluating county adherence to the bill's proposed requirements and for evaluating the goals of the CCF more generally. Beginning October 1, 2025, the DHHS would have to prepare and submit an annual report to the Legislature on yearly CCF juvenile justice expenditures and related performance measures.

### **Senate Bill 419**

#### 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 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.

#### 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 would have to 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 court officer 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.

#### Diversion 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 Michigan Supreme Court to create guidelines on the use of risk screening tools and mental health screening tools. Under the bill, 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.

### **Senate Bill 421**

#### **Initial Risk and Needs Assessment**

The juvenile Code describes the jurisdiction, procedure, and disposition of minors. The bill would amend the code to require a designated court officer to conduct a risk and needs assessment for each juvenile before disposition. The officer designated to conduct risk and needs assessments would have to be trained on the appropriate use of the assessment selected by the court. The results of this assessment would have to be used to inform a dispositional recommendation, 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.

In addition to the results of a risk and needs assessment, the following factors would have to be equally considered when determining the most appropriate disposition for a juvenile:

- Public safety.
- Victim interests.
- Rehabilitation of the juvenile.
- Improved juvenile outcomes, including educational advancement.

The bill also would require the results of a risk and needs assessment, and a dispositional recommendation made by the designated court officer who performed the assessment to be shared with the court and each party to the proceeding.

#### **Additional Risk and Needs Assessments**

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 if any of the following conditions occurred:

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

#### **Additional Provisions Concerning Assessment**

The bill would require 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 the bill's guidelines and be research based and nationally validated for use with juveniles.

A risk and needs assessment conducted as part of a proceeding and any information obtained from a minor in the court of the assessment, including any admissions, 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.

### **Senate Bill 422**

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 court officer who 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.<sup>1</sup>

The bill would require 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.

### **Senate Bill 423**

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, in collaboration with local courts, would have to determine the appropriate detention screening tool. Before detaining an individual, the court would have to consult the results of the detention screening tool and follow any rules regarding its use that were set by

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<sup>1</sup> MCL 712A.11

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 or other information obtained as a result of participating in a screen would be confidential, exempt from disclosure under the Freedom of Information Act, and could not be used in any future juvenile delinquency proceeding.

## **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.<sup>2</sup>

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 unanimously suggested that the CCF be enhanced to create a minimum framework of juvenile best practices across the state. These proposed practices would be supported by an increase in the reimbursement rate (from 50% to 75%) to counties and tribes to incentivize the creation of community-based supervision and services. 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).<sup>3</sup>

## **FISCAL IMPACT**

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 proposed by the bill package, including the creation of guidelines on the use of risk screening tools and mental health screening tools related to diversion, the creation of guidelines on the use of a risk and needs assessment tool, the provision of training for court officers on the application of a risk and needs assessment tool, the possible promulgation of rules for the use of a detention screening tool, and the collaboration with local courts on the selection of an appropriate detention screening tool.

Regarding costs to local court systems, new procedures would have to be adopted, including the adoption of a validated risk screening tool, a validated risk assessment tool, a detention

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<sup>2</sup> Executive Order 2021-6.

<sup>3</sup> *Michigan Task Force on Juvenile Justice Reform Report and Recommendations*, pp. 12, 14-17, July 22, 2022.



screening tool, the utilization of juvenile-specific probation standards, and the employment of a local quality assurance specialist to support the implementation of new practices. These costs are currently indeterminate.

The cost for the enhanced reimbursement rate for community-based services for juvenile youth is estimated to be \$31.5 million, which was appropriated in the FY24 budget. The bill package would have an immediate fiscal impact of roughly \$32.0 million to the DHHS and a savings of between \$25.5 to \$28.5 million for the counties based on the enhanced reimbursement rate offered by the State to the counties for community-based services and the cost of the required quality assurance specialist and screening tools. The cost of the enhanced reimbursement rate to the State is approximately \$31.5 million, which has been appropriated in the FY24 budget, and an equal savings to the counties and local units of government. The costs of the county quality assurance specialist, validated screening tools, and State oversight would be up to \$300,000 for the State and from \$3.0 to \$6.0 million on the counties. Starting in FY25 (October 1, 2024), the State would no longer cover 100% of the costs of youth in the juvenile justice system, reverting back to the 50% cost sharing or 75% for qualified community-based services. This would represent \$15.0 million savings for the State and \$15.0 million increased costs to counties. The immediate cost to the DHHS would be approximately \$32.0 million and beginning FY25 it would cost \$17.0 million with the savings from reverting back to the normal reimbursement for 17-year-old youth. Counties and local units of government would see an immediate savings of \$25.5 to \$28.5 million based on the savings from the enhanced reimbursement rate and costs of implementing the quality assurance specialist and validated screening tools, and beginning in FY25, reassuming the cost for 17-year-old youth would drop the savings down to \$10.5 to \$13.5 million.

Indirectly, it is likely that implementation of these new procedures regarding juvenile adjudication, and the application of the research-based tools associated with them, would 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.<sup>4</sup>

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.

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<sup>4</sup> See the Justice Center's cost calculator, based upon Michigan incarceration data from 2019-20 and found at: <https://csgjusticecenter.org/projects/course-corrections/cost-calculator/>.

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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.