

Act No. 13
Public Acts of 1988
Approved by the Governor
February 17, 1988
Filed with the Secretary of State
February 18, 1988

**STATE OF MICHIGAN
84TH LEGISLATURE
REGULAR SESSION OF 1988**

Introduced by Reps. Martin, Kilpatrick, Power, Bennane, Stabenow, Van Regenmorter, Jondahl and Connors

ENROLLED HOUSE BILL No. 4597

AN ACT to permit certain minors to be diverted from the juvenile court system; to establish diversion criteria and procedures; to require certain records to be made and kept; to prescribe certain powers and duties of juvenile courts and of law enforcement agencies; and to prescribe certain penalties.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "juvenile diversion act".

Sec. 2. As used in this act:

(a) "Assaultive crime" means an offense which if committed by an adult would constitute an offense against a person described in any of the following sections: 82 to 89, 316, 317, 321, 349 to 350, 397, 520a to 520g, 529, and 530 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.82 to 750.89, 750.316, 750.317, 750.321, 750.349 to 750.350, 750.397, 750.520a to 750.520g, 750.529, and 750.530 of the Michigan Compiled Laws.

(b) "Court" means the juvenile division of the probate court.

(c) "Divert" or "diversion" means 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 Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Michigan Compiled Laws, and instead of petitioning the court or authorizing a petition, either of the following occurs:

(i) The minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued.

(ii) 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.

(d) "Law enforcement agency" means a police department of a city, village, or township; a sheriff's department; the department of state police; or any other governmental law enforcement agency in this state.

(e) "Minor" means a person less than 17 years of age.

Sec. 3. (1) If in the course of investigating an alleged offense by a minor a petition has not been filed with the court, or if a petition has not been authorized, a law enforcement official or court intake worker may do 1 of the following:

(a) Release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation.

(b) Divert the matter by making an agreement pursuant to section 5 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 will assist the minor and the minor's family in resolving the problem that initiated the investigation.

(c) File a petition with the court or authorize a petition that has been filed.

(2) A minor may be diverted only as provided in subsection (1)(a) or (b) and subsection (3).

(3) A minor accused or charged with an assaultive offense shall not be diverted.

Sec. 4. Before a decision is made to divert a minor, all of the following factors shall be examined:

(a) The nature of the alleged offense.

(b) The minor's age.

(c) The nature of the problem that led to the alleged offense.

(d) The minor's character and conduct.

(e) The minor's behavior in school, family, and group settings.

(f) Any prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement.

Sec. 5. (1) If a decision is made to divert a minor with a referral under section 3(b), a conference with the minor and the minor's parent, guardian, or custodian shall be held to consider alternatives to the filing of a petition with the court or to the authorization of a petition. The law enforcement official or intake worker shall notify the minor and the minor's parent, guardian, or custodian of the proposed conference and shall inform the minor, and the minor's parent, guardian, or custodian of all of the following:

(a) That participation in the conference or resulting referral plan is voluntary.

(b) That an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference.

(c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.

(d) That if diversion is agreed to, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.

(2) The conference to consider alternatives to the filing of a petition with the court or to consider alternatives to the authorization of a petition shall not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with the court or has been authorized, shall not be used against the minor.

(3) If a conference held under this section results in diversion that imposes conditions on the minor and that will prevent the filing of a petition with the court or the authorization of a petition, the terms of the diversion agreement shall be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian.

(4) If a conference is held under this section and an agreement under subsection (3) is not reached, the law enforcement official may file a petition with the court and a court intake worker may authorize a petition. If an agreement under subsection (3) is not reached and the law enforcement official decides to file a petition, the law enforcement official shall file the petition with the court not later than 14 days after the conference.

Sec. 6. When a decision is made to divert a minor, the law enforcement official or court intake worker shall file with the court in the county in which the minor resides or is found all of the following information:

(a) The minor's name, address, and date of birth.

(b) The act or offense for which the minor was apprehended.

(c) The date and place of the act or offense for which the minor was apprehended.

(d) The diversion decision made, whether referred or released.

(e) The nature of the minor's compliance with the diversion agreement.

Sec. 7. The court in the county in which a diverted minor resides or is found shall keep a separate diversion record for that minor.

Sec. 8. (1) Except as otherwise required in subsection (2), a record required to be kept under this act shall be open only by order of the court to persons having a legitimate interest.

(2) A record required to be kept under this act shall be open to a law enforcement agency or court intake worker for only the purpose of deciding whether to divert a minor.

(3) A minor's record kept under this act shall be destroyed within 28 days after the minor becomes 17 years of age.

Sec. 9. (1) A record kept under this act shall not be used by any person, including a court official or law enforcement official, for any purpose except in making a decision on whether to divert a minor.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 180 days, or a fine of not more than \$1,000.00, or both.

Sec. 10. This act shall not take effect unless Senate Bill No. 602 of the 84th Legislature is enacted into law.

Sec. 11. This act shall take effect April 1, 1988.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.