



Senate Fiscal Agency
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BILL



ANALYSIS

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House Bill 4980 (as reported with amendment)
Sponsor: Representative Thomas Kelly
House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

Date Completed: 2-27-96

RATIONALE

The Juvenile Diversion Act, which was enacted as part of the 1987-88 68-bill crime package, provides criteria and procedures under which certain minors can be diverted from the juvenile court system. (The Act applies to minors who are less than 17 years of age and who are not accused of or charged with an assaultive offense and for whom a juvenile petition either has not been filed or has not been authorized.) A juvenile is diverted when he or she has been apprehended either for an act that would be a crime if committed by an adult or for a status offense (an act that is an offense if committed by a juvenile but would not be an offense if committed by an adult), and either the juvenile is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or the juvenile and his or her parent, guardian, or custodian agree with the law enforcement official or court intake worker to work with a person or organization that will assist the minor and his or her family to resolve the problem that led to the minor's apprehension. A diversion agreement results from a conference between the law enforcement official or court intake worker and the juvenile and his or her parent, guardian, or custodian, in which the juvenile agrees to comply with the diversion agreement and referral plan and the law enforcement agency or court worker agrees not to seek a juvenile court petition.

If a juvenile fails to comply with the terms of a diversion agreement, however, there is no statutory recourse for law enforcement. The officer or court worker apparently must uphold his or her side of the agreement by not filing or authorizing a juvenile court petition, regardless of whether the juvenile complies with the terms of the agreement. Some people believe that, for

diversion agreements to be fair and effective, the Juvenile Diversion Act should allow the pursuit of juvenile court action against a juvenile who violated the terms of a diversion agreement.

CONTENT

The bill would amend the Juvenile Diversion Act to provide that, if a minor failed to comply with the terms of a diversion agreement and referral, a law enforcement official or court intake worker could revoke the diversion agreement. The bill also would extend from 14 days to 30 days the period after a failed diversion agreement conference during which a petition concerning the minor may be filed with the juvenile division of probate court (juvenile court).

The bill would take effect on May 1, 1996.

Under the Act, if a decision is made to divert a minor with a referral to a person or agency that will assist the minor and his or her family, a conference must be held with the minor and his or her parent, guardian, or custodian, to consider alternatives to the filing of a juvenile court petition or authorization of a petition. The law enforcement official or court intake worker must inform the minor and parent, guardian, or custodian 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. If the conference results in diversion that imposes conditions on the minor, the terms of the diversion agreement must 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.

The bill would require that, at the diversion conference, the law enforcement official or court intake worker inform the minor and his or her parent, guardian, or custodian that a juvenile court petition could not be filed or authorized if diversion were agreed to and the minor complied with the terms of the diversion agreement and referral plan. If the minor failed to comply with the terms of the diversion agreement and referral plan, the law enforcement officer or court intake worker could revoke the diversion agreement. If the diversion agreement were revoked, a petition could be filed with the juvenile court and a petition could be authorized. If diversion were revoked pursuant to the bill, the law enforcement official or court intake worker would have to file with the juvenile court the fact of and reasons for the revocation.

Currently, if an agreement on diversion and referral is not reached at the conference, a petition may be filed and authorized, but the petition must be filed with the juvenile court no later than 14 days after the conference. The bill would require filing within 30 days after the conference.

MCL 722.825 & 722.826

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted an amendment to the bill to correct a citation to the section of the Juvenile Diversion Act that identifies diversion options.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By requiring compliance with the terms of a diversion agreement in order to prevent the revocation of the agreement and subsequent filing of a juvenile court petition, the bill would encourage greater accountability by juvenile offenders and provide for more effective enforcement of juvenile diversion agreements. The bill also could encourage law enforcement officers and court intake workers to make better use of diversion agreements as an alternative to juvenile court action because of an increased ability to enforce the agreements.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on the State Department of Social Services budget under certain conditions of a diversion agreement. It is not clear how many cases would be affected, but the rescission of a diversion agreement could cause more juveniles to be detained for services by the State delinquency services system. The juveniles, under the proposed system, could enter the system on the basis of a revocation of the agreement, while under the current system an arrest is necessary. On the other hand, juvenile detention could be averted by the agreement, but only if the juvenile continued to comply with the diversion agreement.

The bill would have a minimal fiscal impact on the courts. Depending on the number of revoked diversions, the probate court could see an increase in petitions filed. However, the current use of diversion agreements by law enforcement and court intake workers is minimal.

Fiscal Analyst: C. Cole
M. Bain

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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.