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Comment:

The court rule should account for and document the new MCL 712A.823(4), the first sentence of which now states: 'Except as otherwise provided in this subsection, before a diversion decision is made for a minor, a risk screening tool and a mental health screening tool may be conducted on the minor.' The original version of this bill used the word "shall" instead of "may". It was changed, I assume, to allow courts to NOT use a diversion screening tool on cases they intend to divert regardless of the outcome of a screening tool. In other words, mandatory use of a screening tool could unintentionally result in less diversions rather than more diversions if the tool advises against diversion in a case that would otherwise have been diverted. Before we get to "shall" language in the new version of MCL 722.823(5) (whatever this means in light of (4)), section (4) makes it clear that the court need NOT use a diversion screening tool in every case that ultimately gets diverted.

Act No. 287
Public Acts of 2023
Approved by the Governor
December 12, 2023
Filed with the Secretary of State
December 13, 2023
EFFECTIVE DATE: October 1, 2024

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Reps. Brenda Carter, Hope, Wilson, Morse, Tsernoglou, Paiz, Pohutsky, Byrnes, Miller, Young, Rheingans, Wegela, Dievendorf, Hood, Grant, O’Neal, Breen, Price, Brixie, Morgan, Hoskins, MacDonell, Edwards, Arbit, Brabec, Glanville, Scott, Conlin, Skaggs and Aiyash

ENROLLED HOUSE BILL No. 4625

AN ACT to amend 1988 PA 13, entitled “An act to permit certain minors to be diverted from the court system having jurisdiction over minors; to establish diversion criteria and procedures; to require certain records to be made and kept; to prescribe certain powers and duties of courts having jurisdiction over minors and of law enforcement agencies; and to prescribe certain penalties,” by amending sections 2, 3, 6, and 9 (MCL 722.822, 722.823, 722.826, and 722.829), section 2 as amended by 2019 PA 101 and section 6 as amended by 1996 PA 137.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) “Court” means the family division of circuit court.
- (b) “Divert” or “diversion” means the placement that occurs when a law enforcement agency makes a formally recorded investigation or apprehension 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 XIAA of the probate code of 1939, 1939 PA 288, MCL 712A.2, and instead of petitioning the court or authorizing a petition, either of the following occurs:
 - (i) The minor is released into the custody of the minor’s 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.
- (c) “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.
- (d) “Minor” means an individual who is less than 18 years of age.
- (e) “Specified juvenile violation” means any of the following:
 - (i) A specified juvenile violation as that term is defined in section 2 of chapter XIAA of the probate code of 1939, 1939 PA 288, MCL 712A.2.
 - (ii) A violation of section 82(2), 321, 397, or 520c of the Michigan penal code, 1931 PA 328, MCL 750.82, 750.321, 750.397, and 750.520c.

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 the minor's parent, guardian, or custodian and discontinue the investigation.

(b) Subject to subsections (4) and (5), divert the matter by making an agreement under 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. Restitution must not be considered when deciding if the minor may be diverted under this subdivision.

(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 a specified juvenile violation must not be diverted.

(4) Except as otherwise provided in this subsection, before a diversion decision is made for a minor, a risk screening tool and a mental health screening tool may be conducted on the minor. A risk screening tool and a mental health screening tool may not be conducted on a minor who meets any of the following criteria:

(a) Is accused or charged with a specified juvenile violation.

(b) Is currently under supervision in the juvenile justice system by the court or the department of health and human services.

(5) A minor must not be diverted under subsection (1)(b) unless both of the following requirements are met:

(a) 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 that is trained in those screening tools.

(b) 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.

(6) A risk screening tool and a mental health screening tool described in subsections (4) and (5) must meet both of the following requirements:

(a) Be research based and nationally validated for use with minors.

(b) Comply with the guidelines created under subsection (7).

(7) The state court administrative office, under the supervision and direction of the supreme court, shall create guidelines on the use of risk screening tools and mental health screening tools described in subsections (4) and (5).

Sec. 6. (1) 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.

(f) If the diversion is under section 3(1)(b), the results of the minor's risk screening tool and mental health screening tool.

(2) If a diversion agreement is revoked under section 5(5), the law enforcement official or court intake worker shall file the fact of and reasons for the revocation with the court in which the information described in subsection (1) is filed.

Sec. 9. (1) A record kept under this act must 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 that violates subsection (1) is guilty of a misdemeanor punishable by imprisonment for not more than 180 days, a fine of not more than \$1,000.00, or both.

(3) A risk screening tool and a mental health screening tool conducted as part of a proceeding under this 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, but not limited to, any admission, confession, or incriminating evidence, are not admissible into evidence in any adjudicatory hearing in which the minor is accused and are not subject to subpoena or any other court process for use in any other proceeding or for any other purpose.

Enacting section 1. This amendatory act takes effect October 1, 2024.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 418 of the 102nd Legislature is enacted into law.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor