

AUTHORIZE DRUG TREATMENT COURTS

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House Bill 5647 as introduced
Sponsor: Rep. Jim Howell

Senate Bill 998
(Substitute H-2)
Sponsor: Sen. Alan L. Cropsey

House Bill 5674 (Substitute H-1)
Sponsor: Rep. Daniel Acciavatti

Senate Bill 999 (Substitute H-1)
Sponsor: Sen. Alan Sanborn

House Bill 5716 as introduced
Sponsor: Rep. Andrew Meisner

Senate Bill 1000 (Substitute H-1)
Sponsor: Sen. Bruce Patterson

House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (5-19-04)

BRIEF SUMMARY: Senate Bill 998 would add Chapter 10a (Drug Courts) to the Revised Judicature Act (RJA), in order to authorize circuit and district courts to adopt drug treatment courts and authorize family courts to adopt juvenile drug treatment courts. The bill would do all of the following:

- Allow each drug treatment court (drug court) to determine an individual's admission to the court, but specify that violent offenders would not be eligible.
- Require an individual to cooperate with and complete a preadmission screening and evaluation assessment and agree to future assessments, in order to be eligible for a drug court program.
- Require an individual considered for drug court participation to plead guilty to a criminal charge or admit responsibility for a juvenile violation.
- Require a drug treatment court participant to waive certain procedural rights, such as the right to a speedy trial and the right to counsel at drug court appearances.
- Require a drug court to accept a guilty plea or admission of responsibility, and in some cases, defer further proceedings.
- Prohibit an individual from being admitted to, or remaining in, a drug court program under an agreement that would permit a discharge or dismissal of a criminal traffic offense.
- Require a drug court to maintain jurisdiction over an individual admitted to the drug court and, in the case of a juvenile, allow jurisdiction over the participant's parents or guardians.
- Specify a drug court's responsibilities to a participant.
- Allow a drug court to discharge and dismiss the proceedings against a person who successfully completed the drug court program for the first time and who had not

previously had charges deferred and dismissed under other provisions of law and had not pleaded guilty to a criminal traffic offense.

- Allow the court to sentence a participant on the original charges if he or she were terminated from or failed to complete the drug court program.
- Specify program evaluation requirements.
- Establish funding responsibility and financial reporting requirements.
- Allow a drug court to require a participant to pay a reasonable drug court fee, as well as costs of treatment and drug court services.
- Create the State Drug Treatment Court Advisory Committee within the Legislative Council.
- Exclude a person who had successfully completed participation in a drug court from designation as a youthful trainee under HYTA

Senate Bill 999 would amend the Public Health Code to include participation in a drug treatment court in the terms and conditions of probation for individuals whose sentencing is deferred for certain controlled substance charges.

Senate Bill 1000 would amend the Holmes Youthful Trainee Act (HYTA) section of the Code of Criminal Procedure to allow a court to require participation in a drug court as a condition of probation.

House Bill 5647 would amend the code of Criminal Procedure to authorize a court to defer sentencing and place an individual on probation in a drug court program, without entering a judgment of guilt, if the individual were eligible for a drug court program under proposed Chapter 10a of the RJA.

House Bill 5674 would amend the Code of Criminal Procedure to include participation in a drug court within the code's definition of "intermediate sanction" with respect to the application of sentencing guidelines and allow a court to order a person into a drug court program if he or she qualified for a deferral and dismissal of charges for domestic assault.

House Bill 5716 would amend the Probate Code to allow the family division of circuit court to order a juvenile to participate in a drug treatment court.

House Bills 5647, 5674, and 5716 and Senate Bills 999 and 1000 are tie-barred to Senate Bill 998.

FISCAL IMPACT: The bills could increase certain costs for the state and local units of government. Costs could be offset, however, to the extent that the bills operated to reduce subsequent criminal activity by drug court participants.

THE CONTENT OF THE BILLS:

Senate Bill 998 would add Chapter 10A, entitled "Drug Courts", to the Revised Judicature Act (MCL 600.1060 et al.). A detailed description of the bill follows.

Drug Treatment Courts. The bill would define “drug treatment court” as a court-supervised treatment program for individuals who abused or were dependent upon any controlled substance or alcohol. The bill specifies that a drug court should comply with the 10 key components promulgated by the National Association of Drug Court Professionals. Those components include all of the following essential characteristics:

- Integration of alcohol and other drug treatment services with justice system case processing.
- Use by prosecution and defense of a nonadversarial approach that promotes public safety while protecting any participant’s due process rights.
- Identification of eligible participants early with prompt placement in the program.
- Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.
- Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court’s responses to participants’ compliance.
- Ongoing close judicial interaction with, and supervision of progress for, each participant.
- Monitoring and evaluation of the achievement of program goals and the program’s effectiveness.
- Continued interdisciplinary education in order to promote effective drug court planning, implementation, and operation.
- The forging of partnerships among other drug courts, public agencies, and community-based organizations to generate local support.

Under the bill, any circuit or district court could adopt or institute a drug treatment court, pursuant to statute or court rules. Also, the family division of circuit court (family court) in any judicial circuit could adopt or institute a juvenile drug court, pursuant to statute or court rules. Courts could not adopt or institute a drug court, however, unless they entered into a memorandum of understanding with the prosecuting attorney of the county in the circuit or district court district, a representative or representatives of community treatment providers, and a representative of the criminal defense bar. The agreement could include other parties considered necessary, such as local law enforcement, the local substance abuse coordinating agency, and community corrections agencies and probation departments in the circuit or district. The memorandum of understanding would have to describe the role of each party.

A juvenile drug court would be subject to the same procedures and requirements provided in the bill for drug courts, except as otherwise specified in the bill.

A court that adopted a drug treatment court would have to participate in training as required by the State Court Administrative Office (SCAO) and the U.S. Department of Justice Bureau of Justice Assistance.

A drug treatment court could hire or contract with licensed treatment providers, in consultation and cooperation with the local substance abuse coordinating agency, and other appropriate people to assist the court in fulfilling its requirements under the bill, such as investigation of an individual's background or circumstances or the clinical evaluation of a person for his or her admission into or participation in a drug court.

A drug court would have to cooperate with, and act in a collaborative manner with, the prosecutor, defense counsel, treatment providers, probation department, and, to the extent possible, local law enforcement, the Department of Corrections (DOC), and community corrections agencies.

Admission to Drug Court. Each drug treatment court would have to determine whether an individual could be admitted to the court. No individual would have a right to be admitted. An individual would not be eligible for admission if he or she were a "violent offender", i.e., a person who met either of the following:

- Was currently charged with or had pleaded guilty to (or, if a juvenile, was currently alleged to have committed or had admitted responsibility for) any of the following: an offense involving the death of or a serious bodily injury to any individual; the carrying, possession, or use of a firearm or other dangerous weapon; or criminal sexual conduct of any degree.
- Had one or more prior convictions for (or, if a juvenile, had one or more prior findings of responsibility for) a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

A person who was eligible for admission to a drug court under the bill could be admitted if he or she had been assigned youthful trainee status under the Holmes Youthful Trainee Act. (Under HYTA, if a person pleads guilty to a criminal offense, other than a felony for which the maximum punishment is imprisonment for life, a major controlled substance offense, or a traffic offense, that was committed on or after the person's 17th birthday but before his or her 21st birthday, the court may consider and assign the person youthful trainee status. After the person has served a period of incarceration or probation, if his or her youthful trainee status has not been revoked, the court must discharge the person and dismiss the proceedings upon final release from youthful trainee status. An assignment of youthful trainee status is not a conviction of a crime and, except for registration requirements under the Sex Offenders Registration Act, the person "shall not suffer a civil disability or loss of right or privilege" following his or her release from youthful trainee status as a result of his or her assignment as a youthful trainee.)

An eligible person also could be admitted to a drug court if he or she had criminal proceedings deferred and had been placed on probation under any of the following:

- Section 7411 of the Public Health Code, regarding certain drug offenses (MCL 333.7411).
- Section 4a of Chapter 9 of the Code of Criminal Procedure, regarding domestic assault (MCL 769.4a).

- Section 430 of the Michigan Penal Code, regarding practicing a health care profession with a bodily alcohol content of .05 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine (MCL 750.430).
- Section 350a of the Michigan Penal Code, regarding parental kidnapping (MCL 750.350a).

To be admitted to a drug court, an individual would have to cooperate with and complete a preadmission screening and evaluation assessment and agree to cooperate with any future evaluation assessment, as directed by the court. A preadmission screening and evaluation assessment would have to include all of the following:

- A complete review of the individual's criminal history, and a review of whether he or she had previously been admitted to or participated in a drug court.
- An assessment of the risk of danger or harm to the individual, others, or the community.
- A review of any special needs or circumstances of the individual that could potentially affect his or her ability to receive substance abuse treatment and follow the court's orders.
- For a juvenile, an assessment of the family situation, including, as much as was practicable, a comparable review of any guardians or parents.

As much as practicable, a preadmission screening and evaluation assessment also would have to include a complete review of the individual's history regarding the use or abuse of any controlled substance or alcohol and a clinical assessment of whether the individual abused controlled substances or alcohol or was drug- or alcohol-dependent. (The bill states: "It is the intent of the legislature that this assessment should be a clinical assessment as much as practicable.")

Any statement or other information obtained as a result of participating in a drug court preadmission screening and evaluation assessment would be confidential and exempt from disclosure under the Freedom of Information Act (FOIA), and could not be used in a criminal prosecution unless it revealed criminal acts other than, or inconsistent with, personal drug use.

A drug court could request the Department of State Police to provide information contained in the Law Enforcement Information Network (LEIN) pertaining to an applicant's criminal history and whether he or she had previously been admitted to, and participated in, a drug court. The department would have to provide the requested information.

Before an individual could be admitted to a drug court, the court would have to find on the record, or place a statement in the court file pertaining to, all of the following:

- The individual was not a violent offender.
- The individual was dependent upon or abusing drugs or alcohol and was an appropriate candidate for participation in the drug court.

- The individual understood the consequences of entering the drug court and agreed to comply with all court orders and requirements of the court's program and treatment providers.
- The individual was not an unwarranted or substantial risk to the safety of the public or any individual, based on the screening and assessment or other information presented to the court.
- The individual met participation requirements regarding preadmission screening.
- The terms, conditions, and duration of the agreement between the parties, especially as to the outcome for the participant upon successful completion or termination.

If an individual considered for admission to a drug court were charged in a criminal case or, in the case of a juvenile, were alleged to have engaged in activities that would constitute a criminal act if committed by an adult, his or her admission would be subject to all of the following conditions:

- The offense or offenses allegedly committed would have to be related to the abuse, illegal use, or possession of a controlled substance or alcohol.
- The individual, if an adult, would have to plead guilty to the charges on the record. If a juvenile, the individual would have to admit responsibility for the violation that he or she was accused of having committed.
- The individual would have to sign a written agreement to participate in the drug court.

In addition, the individual would have to waive, in writing, the right to a speedy trial, representation by an attorney at all drug court review hearings, and, with the prosecutor's agreement, the right to a preliminary examination.

The prosecutor would have to approve the person's admission to the drug court program in conformity with the memorandum of understanding. The court would have to allow any victim of the offense or offenses of which the individual was charged, any victim of a prior offense of which that individual had been convicted, and members of the community in which either the offenses were committed or the defendant lived, to submit a written statement to the court regarding the advisability of admitting the individual to the drug court.

A person who had waived the right to a preliminary examination and pleaded guilty (or, if a juvenile, admitted responsibility), and who was not admitted to drug court, would have to be allowed to withdraw the plea and would be entitled to a preliminary examination.

A person could not be admitted to, or remain in, drug court pursuant to an agreement that would allow a discharge or dismissal of a traffic offense upon successful completion of the drug court program. ("Traffic offense" would mean a violation of the Michigan Vehicle Code or a substantially corresponding local ordinance that involved the operation of a vehicle and was a felony or misdemeanor.)

For a person who was admitted to drug court based on having criminal charges currently filed against him or her, the court would have to accept a guilty plea or juvenile admission of responsibility. In the case of a person who pleaded guilty to a nontraffic offense and could be eligible for discharge and dismissal upon successful completion of the drug court program, pursuant to an agreement with the court and prosecutor, the court could not enter a judgment of guilt or a juvenile adjudication of responsibility. In the case of a person who pleaded guilty to a traffic offense or pleaded guilty to an offense but would not necessarily be eligible for discharge and dismissal upon successful completion of the drug court program, the court would have to enter a judgment of guilt or a juvenile adjudication of responsibility. Pursuant to the agreement with an individual admitted to drug court and the prosecutor, the court could either defer proceedings or proceed to sentencing, and place the individual on probation or other court supervision in the drug court with terms and conditions in the agreement or that the court considered necessary. All of these provisions would apply upon the admission of a person to drug court.

The drug court would have to maintain jurisdiction over a participant until final disposition of the case, but not longer than the appropriate probationary period. In the case of a juvenile participant, the court could obtain jurisdiction over his or her parents or guardians in order to assist in ensuring the juvenile's continued participation and successful completion of the drug court. The court also could issue and enforce any appropriate and necessary order regarding a juvenile participant's parent or guardian.

A drug court could require an individual admitted to the court to pay a reasonable drug treatment court fee that was reasonably related to the cost to the court for administering the program as provided in the memorandum of understanding. The court clerk would have to transmit the drug court fees to the treasurer of the local funding unit at the end of each month.

A drug court could request the Department of State Police to provide to the court information contained in LEIN pertaining to an applicant's criminal history for purposes of determining his or her compliance with court orders. The department would have to provide the information requested.

Program Participation. A drug court would have to provide a participant with all of the following:

- Consistent, continual, and close monitoring of the participant and interaction between the court, treatment providers, probation, and the participant.
- Mandatory periodic and random testing for the presence of any controlled substance or alcohol in the participant's blood, urine, or breath, using to the extent practicable the best available, accepted, and scientifically valid methods.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.

- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable.

In order to continue to participate in and successfully complete a drug court program, an individual would have to pay all court-ordered fines and costs, including minimum state costs; drug treatment court fee; pay all court-ordered restitution or crime victims rights assessments; and comply with all court orders. Violations of court orders could be sanctioned according to the court's discretion.

The drug treatment court would have to be notified if the participant was accused of a new crime. At that time, the judge would have to consider whether to terminate the participant's participation in the program in conformity with the memorandum of understanding. If the participant were convicted of a felony, the judge would have to terminate the participant's participation in the program.

The court would have to require that a participant pay for all fines, costs, and the drug treatment court fee allowed under the bill, and pay all, or make substantial contributions toward the payment of, the costs of the treatment and the drug court program services provided to the participant. This would include the costs of urinalysis and any testing or counseling provided. If the court determined that the payment of fines, fees, or costs of treatment would be a substantial hardship for the individual or would interfere with his or her substance abuse treatment, the court could waive all or part of those amounts.

Completion. Upon completion or termination of the drug court program, the court would have to find on the record, or place in the court file a written statement as to whether the participant completed the program successfully or whether his or her participation was terminated and, if so, the reason for termination.

For a participant who successfully completed probation or other court supervision, and whose proceedings were deferred or who was sentenced under the bill, the court would have to comply with the agreement made with the participant upon admission to the drug court, or the agreement as it was altered by the court after admission with the approval of the participant and the prosecutor. If an individual were participating in drug court pursuant to the discharge and dismissal provisions of HYTA, the Public Health Code for a controlled substance offense, the Code of Criminal Procedure for a domestic assault violation, or the Michigan Penal Code for parental kidnapping or practicing a health profession with a BAC of .05 or more, the court would have to proceed pursuant to the applicable section of law. There could be only one drug court discharge and dismissal under those provisions.

A drug court, with the agreement of the prosecutor and in conformity with the terms and conditions of the memorandum of understanding, could discharge and dismiss the proceedings against a participant who met all of the following criteria:

- The individual had participated in drug court for the first time.
- The individual successfully completed the terms and conditions of the drug treatment program.
- The individual was not required by law to be sentenced to a correctional facility for the crimes to which he or she had pleaded guilty.
- The individual was not currently charged with and had not pleaded guilty to a criminal traffic offense.
- The individual had not previously been subject to more than one discharge and dismissal under HYTA or for a drug violation, domestic assault, parental kidnapping, or practicing a health care profession with a BAC of .05 or more.

A discharge and dismissal under the bill would have to be without adjudication of guilt or, for a juvenile, without adjudication of responsibility, and would not be a conviction or finding of responsibility for purposes of disqualifications or disabilities imposed by law. There could be only one discharge and dismissal for an individual. The drug court would have to send a record of a discharge and dismissal to the Michigan Department of State Police (MSP) Criminal Justice Information Center (CJIC), and the department would have to enter that information into LEIN with an indication of participation by the individual in a drug court.

All records of the proceedings regarding drug court participation would be closed to public inspection and would be exempt from public disclosure under FOIA, but would be open to courts of this state, another state, or the United States and to the Department of Corrections (DOC), law enforcement personnel, and prosecutors only for use in performing their duties or to determine whether an employee had violated his or her conditions of employment or whether a job applicant met criteria from employment. The MSP Records and Identifications Division would have to retain a nonpublic record of an arrest and conviction.

Except as otherwise provided for a discharge and dismissal, if an individual successfully completed drug court probation or other court supervision, the court would have to do the following:

- Enter a judgment of guilt or a finding or adjudication of responsibility, if the court had not already done so.
- Proceed to criminal sentencing or juvenile disposition, if the court had not already done so.
- Send a record of the conviction and sentence, or the finding or adjudication of responsibility and disposition, to the CJIC. The MSP would have to enter the information into LEIN with an indication of the individual's successful drug court participation.

For a participant whose participation was terminated or who failed to complete the drug court program successfully, the court would have to enter an adjudication of guilt (or, for a juvenile, a finding of responsibility) if that proceeding had been deferred. The court

then would have to proceed to sentence the individual for the original charges to which he or she pleaded guilty or, if a juvenile, to which the juvenile admitted responsibility before admission to the drug court. The court would have to send a record of that sentence and the individual's unsuccessful participation to the CJIC, and the department would have to enter the information in LEIN, with an indication that the individual unsuccessfully participated in a drug court.

Evaluation. Each drug court would have to collect and provide data on each individual applicant and participant case and the entire program, as required by the SCAO.

Each drug court would have to maintain files or databases on each individual applicant or referral who was denied or refused admission to the drug court program, including the reasons for the denial or rejection, the applicant's criminal history, the preadmission evaluation and assessment, and other demographic information required by the SCAO.

Each drug court also would have to maintain files or databases on each individual participant in the drug court program for review and evaluation as well as treatment, as directed by the SCAO. The information collected for evaluation purposes would have to include a minimum standard data set developed and specified by the SCAO. The bill states that the information should be maintained in the court files or otherwise be accessible by the courts and the SCAO and, as much as practicable, should include all of the following:

- Location and contact information for each individual participant, upon both admission and termination or completion of the program for follow-up reviews, and third-party contact information.
- Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatments provided, discharge for completion or termination, any provision of after-care, and after-program recidivism.
- The individual's precipitating offenses and significant factual information, source of referral, and all drug treatment court evaluations and assessments.
- Treatments provided, including intensity of care or dosage, and their outcomes.
- Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and his or her participation and outcome.
- Reasons for discharge, completion, or termination of the program.

The bill specifies that as directed by the SCAO, after an individual was discharged upon completion or termination of the drug court program, the drug court should conduct, as much as practicable, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment, as frequently and for a period of time determined by the SCAO based on the nature of the drug court and the nature of the participant. These follow-up reviews would not be extensions of the drug court's jurisdiction over the individuals.

The bill would require that each drug court provide all information that the SCAO requested.

With the approval and at the discretion of the Supreme Court, the SCAO would be responsible for evaluating and collecting data on the performance of drug courts. The SCAO would have to provide an annual review of the performance of drug courts to the minority and majority party leaders in the Senate and House of Representatives, the advisory committee proposed by the bill, the governor, and the state supreme court. The SCAO also would have to provide standards for drug courts, including a list of approved measurement instruments and indicators for data collection and evaluation. The standards would have to provide for comparability between programs and their outcomes.

The bill specifies that the SCAO's evaluation plans should include appropriate and scientifically valid research designs, which, as soon as practicable, should include the use of comparison and control groups.

Collected information regarding individual applicants to drug court programs, for the purpose of application to the programs, and participants who successfully completed drug courts would be exempt from disclosure under FOIA.

Funding. The supreme court would be responsible for the expenditure of state funds for establishing and operating drug treatment courts. The Department of Community Health, or the appropriate state agency otherwise provided by law, would have to distribute federal funds provided to the state for the operation of drug courts.

The state treasurer could receive money or other assets from any source for deposit into the appropriate state fund or funds for establishing and operating drug courts. Each drug court would have to report quarterly to the SCAO on the funds it received and spent, as prescribed by the SCAO.

Advisory Committee. The bill would create the State Drug Treatment Court Advisory Committee within the Legislative Council. The advisory committee would consist of the DOC director, the director of the Office of Drug Control Policy in the Department of Community Health, and the State Court Administrator, or those officials' designees, plus 15 members appointed jointly by the Senate Majority Leader and the Speaker of the House, as follows:

- A district court judge, a circuit court judge, and a family court judge, each of whom had presided for at least two years over a drug treatment court.
- A circuit or district court judge who had presided for at least two years over an alcohol treatment court.
- A court administrator who had worked for at least two years with a drug or alcohol treatment court.
- A prosecuting attorney who had worked for at least two years with a drug or alcohol treatment court.

- An individual representing law enforcement in a jurisdiction that had a drug or alcohol treatment court for at least two years.
- An individual representing drug treatment providers who had worked for at least two years with a drug or alcohol treatment court.
- An individual representing defense attorneys, who had worked for at least two years with drug or alcohol treatment courts.
- An individual who had successfully completed a drug court program.
- An individual who had successfully completed a juvenile drug court program.
- An advocate for the rights of crime victims.
- An individual representing the Michigan Association of Drug Court Professionals.
- A probation officer who had worked at least two years for a drug or alcohol treatment court.
- A representative of substance abuse coordinating agencies.

Advisory committee members would serve without compensation but could be reimbursed for their actual and necessary expenses incurred in the performance of their duties. Members would serve staggered four-year terms. The advisory committee would have to meet at least quarterly, and would be subject to FOIA and the Open Meetings Act.

The advisory committee would have to monitor the effectiveness of drug treatment courts and the availability of funding for them. The committee would have to present to the legislature and the supreme court annual recommendations of proposed statutory changes regarding drug courts.

Senate Bill 999 would amend the Public Health Code (MCL 333.7411). Under Section 7411 of the Public Health Code, when an individual who has not previously been convicted of a drug-related offense pleads guilty to or is found guilty of certain controlled substance offenses, the court may defer further proceedings and place the person on probation and, upon fulfillment of the terms and conditions of probation, discharge the person and dismiss the proceedings without adjudication of guilt. Under the bill, the terms and conditions of probation could include participation in a drug court under Chapter 10a of the RJA.

In addition, the code requires the Records and Identifications Division of the Department of State Police to retain a nonpublic record of an arrest and discharge or dismissal under the provisions described above. The record is available only to certain entities under specific conditions. Under the bill, those records also would be available to a court and the office of a prosecuting attorney. The bill would also add that the records would be available for the purpose of determining whether the defendant in a criminal action was eligible for discharge and dismissal of proceedings by a drug treatment court.

Senate Bill 1000 would amend the Code of Criminal Procedure (MCL 762.13 and 762.14) to allow a court to defer sentencing and place an individual assigned to Holmes Youthful Trainee status for an offense punishable for more than one year imprisonment on probation in a drug court program. The bill would exclude from consideration of

youthful trainee status, under the code's HYTA provisions, an individual who had already successfully completed participation in a drug treatment court under Chapter 10a of the RJA.

Under HYTA, all proceedings regarding the disposition of the criminal charge and the individual's assignment as a youthful trainee are closed to public inspection except to the courts, the DOC, the Family Independence Agency, and law enforcement personnel for use only in the performance of their duties. The bill would include prosecuting attorneys in that provision.

House Bill 5647 would amend Chapter XI of the Code of Criminal Procedure (MCL 771.1 and 771.3). Currently, in an action in which a court can place a defendant on probation, the court may delay sentencing for not more than one year to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. The bill would allow the court to order participation in a drug treatment court under Chapter 10A of the Revised Judicature Act, which would be created under Senate Bill 998, during the time that sentencing was delayed. The bill would also allow a court to require a probationer, as a condition of probation, to participate in a drug court.

House Bill 5674 would amend Chapter IX of the Code of Criminal Procedure (MCL 769.4a et al.) to include participation in a drug treatment court within the code's definition of "intermediate sanction" with respect to the application of sentencing guidelines and the definition of "delayed sentence status". The bill would also allow a court to order a person into a drug court program if he or she qualified under the code for a deferral and dismissal of charges for domestic assault.

A person can only receive one discharge and dismissal under this provision of law and the Department of State Police keeps a nonpublic record of the arrest and discharge or dismissal. Copies of the record are furnished only to a court or police agency upon request in order to determine if the accused has already received a discharge and dismissal. The bill would also allow a copy to be released to a county prosecutor.

Further, a clerk of a court must report the final disposition for certain crimes along with certain information on a form to the Department of State Police. The bill would also require that the clerk include on the form the sentence if imposed under Chapter 10A of the Revised Judicature Act or under the Penal Code for parental kidnapping or practicing a health profession with a BAC of .05 or more.

House Bill 5716 would amend the Probate Code (MCL 712A.6 and 712A.18) to specify that the family division of a circuit court would have jurisdiction over adults as provided in Chapter 10A of the Revised Judicature Act (RJA). The bill would also allow a court to order a juvenile under its jurisdiction to participate in a juvenile drug treatment court under Chapter 10A of the RJA.

HOUSE COMMITTEE ACTION:

The committee substitutes for the Senate bills revised many provisions. Among the more substantive changes, the H-2 substitute for Senate Bill 998 deleted the requirement for a prosecutor to approve a guilty plea or the admission of responsibility before an individual could enter a drug treatment court program, as well as eliminated the requirement for the prosecutor to approve the agreement for disposition upon completion or termination of the program. Also, instead of allowing a court to require participants to pay a fee up to \$500 for participation in a drug treatment court program, the substitute would allow a court to charge a reasonable fee that was related to the administrative costs incurred by the court to administer the program. The committee substitute also removed from the definition of a “violent offender” an individual charged with or who had pled guilty to an offense that involved the use or attempted use of force; therefore, a person would not be automatically excluded from participation in a drug treatment court program for a minor use of force, such as a shove, during the commission of the crime or while being arrested.

BACKGROUND INFORMATION:

For more information on drug treatment courts and Senate Bills 998-1000 as passed by the Senate, please see the Senate Fiscal Agency’s analysis of the bills dated 3-26-04.

FISCAL INFORMATION:

The bills could increase certain costs for the state and local units of government. Costs could be offset, however, to the extent that the bills operated to reduce subsequent criminal activity by drug court participants.

Where drug courts were established or maintained under the bills, counties or local court funding units could experience increased costs of recordkeeping and training. Drug court costs also could be offset by fees assessed upon and paid by drug court participants. Further, to the extent that the bills' requirements were consistent with federal and state requirements for drug court grant recipients, increased costs attributable to the bills would be minimal for drug courts obtaining grant funding. (Fiscal year 2003-04 judiciary budget appropriations for drug treatment courts total \$4,635,000: \$1,267,500 GF/GP, \$1,267,500 from the drug court fund, and \$2,100,000 in federal funding.)

The legislation could minimally increase state administrative costs through creation of an advisory committee within the legislative council and through provisions authorizing drug treatment courts to obtain criminal history information from the Department of State Police.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan indicated support for the bills. (5-11-04)

A representative of the Michigan Association of Drug Court Professionals indicated support for the bills. (5-11-04)

A representative of the Association of Licensed Substance Abuse Organizations indicated support for the bills. (5-11-04)

A representative of the Families Against Mandatory Minimums (FAMM) indicated support for Senate Bill 998. (5-11-04)

A representative of the Barry County Trial Court indicated support for Senate Bill 998. (5-11-04)

A representative of the State Bar of Michigan indicated that the Bar supports the bill package in principle. (5-11-04)

A representative of the Families Against Mandatory Minimums (FAMM) indicated support for Senate Bill 998. (5-11-04)

A representative of the Department of Community Health indicated the department supports the concept of Senate Bills 998-1000. (5-11-04)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.