

AUTHORIZE DRUG TREATMENT COURTS

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Senate Bill 998 as enrolled
Public Act 224 of 2004
Sponsor: Sen. Alan L. Cropsey

House Bill 5928 as enrolled
Public Act 223 of 2004
Sponsor: Rep. Paul Condino

House Bill 5647 as enrolled
Public Act 219 of 2004
Sponsor: Rep. Jim Howell

House Bill 5932 as enrolled
Public Act 222 of 2004
Sponsor: Alexander C. Lipsey

House Bill 5674 as enrolled
Public Act 220 of 2004
Sponsor: Rep. Daniel Acciavatti

Senate Bill 999 as enrolled
Public Act 225 of 2004
Sponsor: Sen. Alan Sanborn

House Bill 5716 as enrolled
Public Act 221 of 2004
Sponsor: Rep. Andrew Meisner

Senate Bill 1000 as enrolled
Public Act 226 of 2004
Sponsor: Sen. Bruce Patterson

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (2-8-05)

BRIEF SUMMARY: Senate Bill 998 is the primary bill in the package. It would add Chapter 10a (Drug Treatment 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 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 treatment court program.
- Require an individual considered for drug treatment 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 treatment court appearances.
- Require a drug treatment 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 treatment court program under an agreement that would permit a discharge or dismissal of a criminal traffic offense.

- Require a drug treatment court to maintain jurisdiction over an individual admitted to the drug treatment court and, in the case of a juvenile, allow jurisdiction over the participant's parents or guardians.
- Specify a drug treatment court's responsibilities to a participant.
- Allow a drug treatment court to discharge and dismiss the proceedings against a person who successfully completed the drug treatment 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 a discharge and dismissal of a domestic violence offense only if certain conditions were met.
- Allow the court to sentence a participant on the original charges if he or she were terminated from or failed to complete the drug treatment court program.
- Specify program evaluation requirements.
- Establish funding responsibility and financial reporting requirements.
- Allow a drug treatment court to require a participant to pay a reasonable drug treatment court fee, as well as costs of treatment and drug treatment 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 treatment 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 treatment 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 treatment court program, without entering a judgment of guilt, if the individual were eligible for a drug treatment 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 treatment 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 treatment 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 Bill 5928 and House Bill 5932 would amend the Michigan Penal Code and the fingerprinting act, respectively, to include references to the drug treatment court program in certain provisions.

All the bills take effect January 1, 2005.

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 treatment court participants. House Bill 5928 would have no direct fiscal impact on the judiciary and House Bill 5932 would have no materialized fiscal impact on state and local government. (More detailed information is found later under Fiscal Information.)

THE APPARENT PROBLEM:

Many crimes are committed by perpetrators under the influence of controlled substances or alcohol. As part of a national trend for some courts to operate as “problem solving courts,” so-called drug courts have been created with the aim of reducing crime by treating underlying substance abuse problems. To encourage offenders to complete substance abuse treatment programs, drug courts sometimes use the possibility of a “discharge and dismissal” for non-violent, first-time offenders, whereby the successful completion of probation results in charges being dismissed and cases discharged without a conviction. In other cases, participation in a drug treatment court program may be a condition of probation. Thirty-six drug courts currently operate in Michigan with another 27 in the planning stages. However, Michigan law does not explicitly allow for drug treatment courts, nor is there a statutory framework for such courts.

THE CONTENT OF THE BILLS:

Senate Bill 998

The bill would add Chapter 10A, entitled “Drug treatment 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 treatment 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 treatment court planning, implementation, and operation.
- The forging of partnerships among other drug treatment 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, under a statute or court rules. Also, the family division of circuit court (family court) in any judicial circuit could adopt or institute a juvenile drug treatment court. Courts could not adopt or institute a drug treatment court, however, unless they entered into a memorandum of understanding with each participating county prosecuting attorney 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, a domestic violence service provider program that received funding from the state Domestic Violence Prevention and Treatment Board, 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 treatment court would be subject to the same procedures and requirements provided in the bill for drug treatment 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 or accredited 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 treatment court.

A drug treatment 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 treatment 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 treatment 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 treatment 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 treatment 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 treatment 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 treatment 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 treatment 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 treatment court. The department would have to provide the requested information.

Before an individual could be admitted to a drug treatment 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 treatment court.
- The individual understood the consequences of entering the drug treatment 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 treatment 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 treatment court.

In addition, the individual would have to waive, in writing, the right to a speedy trial, representation by an attorney at all drug treatment 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 treatment 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 treatment 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 treatment 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 treatment court pursuant to an agreement that would allow a discharge or dismissal of a traffic offense upon successful completion of the drug treatment 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 treatment 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 treatment court program, under 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 treatment court program, the court would have to enter a judgment of guilt or a juvenile adjudication of responsibility. Under the agreement with an individual admitted to drug treatment 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 treatment 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 treatment court.

The drug treatment 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 treatment court. The court also could issue and enforce any appropriate and necessary order regarding a juvenile participant's parent or guardian.

A drug treatment 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 treatment court fees to the treasurer of the local funding unit at the end of each month.

A drug treatment 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 treatment 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 treatment 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 for an offense that occurred after the defendant was admitted to a drug treatment court, the judge would have to terminate the participant's participation in the program.

The court would have to require that a participant pay all fines, costs, and the drug treatment court fee allowed under the bill, and pay all, or make substantial contributions toward the payment of, costs of the treatment and the drug treatment court program services provided to the participant. This would include 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 treatment 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 treatment court, or the agreement as it was later altered by the court with the approval of the participant and the prosecutor. If an individual were participating in drug treatment court under 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 according to the applicable section of law. There could be only one drug treatment court discharge and dismissal under those provisions.

A drug treatment 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 treatment 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.

The court could grant a discharge and dismissal of a domestic violence offense only if the individual had not previously had proceedings dismissed for a domestic violence charge; the domestic violence offense was eligible to be dismissed under Section 769.4a of the Code of Criminal Procedure; and the individual fulfilled the terms and conditions imposed under Section 769.4a and the discharge and dismissal of the proceedings were processed and reported under that section of law.

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 treatment 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 MSP would have to enter that information into LEIN with an indication of participation by the individual in a drug treatment court.

All records of the proceedings regarding drug treatment 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 conditions of employment or whether a job applicant met criteria for 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 treatment 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 treatment court participation.

For a participant whose participation was terminated or who failed to complete the drug treatment 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 had pleaded guilty or admitted responsibility before admission to the drug treatment 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 treatment court.

Evaluation. Each drug treatment 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 treatment court would have to maintain files or databases on each individual applicant or referral denied or refused admission to the drug treatment 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 treatment court also would have to maintain files or databases on each individual participant in the drug treatment 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 treatment court program, the drug treatment 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 treatment court and the nature of the participant. These follow-up reviews would not be extensions of the drug treatment court's jurisdiction over the individuals.

The bill would require that each drug treatment 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 treatment courts. The SCAO would have to provide an annual review of the performance of drug treatment 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 treatment 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 treatment court programs, for the purpose of application to the programs, and participants who successfully completed drug treatment 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 treatment 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 treatment courts. Each drug treatment 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 State Court Administrator, or his or her designee, plus 16 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 treatment court program.
- An individual who had successfully completed a juvenile drug treatment court program.
- An advocate for the rights of crime victims.
- An individual representing the Michigan Association of Drug treatment 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.
- An individual representing domestic violence service provider programs that receive funding from the state Domestic Violence Prevention and Treatment Board.

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 treatment courts.

Senate Bill 999

The bill 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 treatment 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

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

The bill 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 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 treatment court. Lastly, the bill would delete an obsolete provision that referred to individuals who were placed on probation for life. (Probation for life was eliminated by legislation that lifted the mandatory minimum sentences for certain drug-related offenses.)

House Bill 5674

The bill 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 treatment court program if he or she qualified under the code for a deferral and dismissal of charges for domestic assault.

Upon fulfillment of the terms and conditions of probation, a court must discharge the person and dismiss the proceedings against the person. 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

The bill 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 Bill 5928

The bill would amend the Michigan Penal Code (MCL 750.350a and 750.430). Under the code, 1) it is a misdemeanor offense for a health practitioner to practice with a blood alcohol content of 0.05 grams or higher and 2) parental kidnapping is a felony offense. However, for a first violation of either, the court can defer judgment, place the offender on probation, and if the probation is completed successfully, the court can discharge the offender from probation and dismiss the charges. The bill would allow the terms and conditions of probation for either offense to include participation in a drug treatment court of the kind proposed under Senate Bill 998.

The Department of State Police must also keep a nonpublic record of an arrest and discharge and dismissal for these offenses, though the record must be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action had already availed himself or herself of a discharge and dismissal. Similarly, the bill would allow a court, police agency, or prosecutor to access the records in order to determine a defendant's eligibility for discharge and dismissal of proceedings by a drug treatment court.

House Bill 5932

The bill would amend Public Act 289 of 1925 (MCL 28.243), referred to as the fingerprinting act. Under the act, upon final disposition of the charge against an accused, the clerk of the court must immediately advise the Department of State Police of the final

disposition of the arrest for which the person had been fingerprinted if he or she had been found responsible (juvenile) or convicted (adult) of the offense. The information transmitted to the department must include a summary of any deposition or sentence imposed. The summary is required to include, among other things, if the sentence was imposed for certain crimes eligible for discharge and dismissal; for instance, parental kidnapping and certain controlled substance offenses.

The bill would also require the summary to describe whether a sentence had been imposed on a person under Section 1076(4) of the Revised Judicature Act, a new section that would be added by Senate Bill 998 to create a framework for drug treatment courts, or Section 430(a) of the Michigan Penal Code, which pertains to a health professional practicing with a blood alcohol content of 0.05 grams or higher.

BACKGROUND INFORMATION:

Additional information on Senate Bills 998-1000 is available from the Senate Fiscal Agency. Some of the information in this analysis is derived from the SFA analysis of those bills dated 3-26-04.

FISCAL INFORMATION:

The bills could increase various costs for the state and local units of government. Correctional costs could be offset, however, to the extent that the bills operated to encourage sentencing judges to utilize probation combined with drug court participation as an alternative to incarceration. Long-term savings also could result if drug court programs lowered the incidence of re-offending among those who successfully completed them. (However, as drug court participants would be ineligible for "deferral and dismissal" of criminal charges, a drug court participant who re-offended could, by virtue of his or her multiple offenses, receive a sanction under sentencing guidelines that was longer or more severe than might otherwise have been the case.)

Where drug treatment courts were established or maintained under the bills, counties or local court funding units could experience increased costs of recordkeeping and training. Drug treatment court costs also could be offset by fees assessed upon and paid by drug treatment court participants. Further, to the extent that the bills' requirements were consistent with federal and state requirements for drug treatment court grant recipients, increased costs attributable to the bills could be minimal for drug treatment 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 treatment 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.

ARGUMENTS:

For:

Although the state has funded drug court initiatives only since 1999, some drug courts have been operating in Michigan since at least 1992 with the benefit of federal and, in some cases, local funding. According to the SCAO, there are 63 drug courts in Michigan, of which 36 are operational and 27 are in planning stages. Nevertheless, while these courts have recently proliferated, there are no guidelines or even authorization for them in statute. Based on the success of drug courts in other states and the emerging drug court program in Michigan, the state should continue to foster the development of drug courts by providing a statutory structure to authorize their implementation and operation and to ensure both that drug courts meet certain standards and are properly evaluated.

The concept behind drug courts is that the judge, through court proceedings and interactions with offenders, can change behavior and reduce criminal activity. Drug courts have become increasingly accepted and effective across the country over the last 15 years or so. According to information provided by the SCAO, a national survey conducted in 2000 by the Drug Court Clearinghouse, operated by American University, revealed that more than 57,000 individuals had graduated from drug courts and that drug court retention rates were between 60 percent and 80 percent despite their difficult target population. Of those drug court graduates, almost 50 percent had used drugs for at least 10 years and 65 percent previously had been incarcerated for drug offenses. After the individuals completed a drug court program, however, more than 1,000 drug-free babies were born to those participants; more than 90 percent of the successful participants obtained or retained employment; more than 4,500 who had been behind in child support obligations became current in those payments; and about 3,500 parents who had lost custody of children were able to regain custody.

In addition, drug court participation appears to be cost-effective and to improve recidivism rates. According to the SCAO, the National Drug Court Institute estimates that \$10 is saved for every \$1 spent on drug courts, and that jurisdictions with drug court programs have an average cost of \$8 to \$14 per day for each participant, compared with average incarceration costs of about \$40 per day. Also, the National Institute of Justice reportedly found drug court participants' recidivism rates to be 16.5 percent after one year and 27.5 percent after two, compared with the 60 to 80 percent rates typical with other criminal offenders.

Given the success of drug courts in dealing with criminals who use or abuse drugs or alcohol, and the expected reduction in public spending on incarceration and social services, it would be wise for Michigan to establish its drug court program in statute. The bills not only would encourage the development of this progressive method of addressing criminal behavior by addicts but also would ensure that the courts operated consistently throughout the State and were properly evaluated to assure their effectiveness.

For:

Drug addiction is a complex, chronic disease and requires a comprehensive continuum of therapeutic intervention and services. To be most effective, it is generally agreed that drug courts must operate as a coordinated effort involving not only the usual players in the criminal justice system (the court, the prosecutor, law enforcement, and defense counsel), but also treatment providers and coordinators who assist in developing treatment and supervision plans based on each defendant's needs and diagnosis.

Senate Bill 998 would establish a drug court program consistent with that approach. Under the bill, a drug court would have to enter into an agreement with the prosecutor, community treatment providers, and the court probation department, and could include law enforcement, defense counsel, community corrections agencies, and substance abuse coordinating agencies in that agreement. A potential drug court participant would have to undergo a thorough preadmission screening and evaluation assessment, agree to comply with drug court and treatment provider requirements, and agree to waive certain procedural rights for the privilege of participating in a drug court program.

For:

House Bills 5928 and 5932 are needed to ensure seamless implementation of drug treatment court programs. House Bill 5928 would add clarification that the terms and conditions for probation for a health professional practicing while under the influence of controlled substances or alcohol or for parental kidnapping (both of which are eligible for discharge and dismissal for a first offense) could include participation in a drug treatment court program. Also, the bill would ensure that a court, police agency, or prosecutor could have access to the non-public record that must be created for sentences imposed for certain crimes eligible for discharge and dismissal. This is important because offenders can only receive one discharge and dismissal; these officials need access to the records to determine eligibility for participation in a drug treatment court program.

Similarly, House Bill 5932 would update the list of statutes for which the non-public records are kept for discharge and dismissals to include the discharge and dismissal provision proposed by Senate Bill 998.

Against:

Although strong, effective drug court programs can be a significant component in the state's criminal justice system, critics have raised a number of concerns regarding the efficacy of the drug courts as proposed. Individuals should not be precluded from participating simply because they previously had been in drug court or had availed themselves of one of the deferral and dismissal provisions currently allowed under Michigan law. Drug court programs should recognize that dealing with substance abuse is complicated, and that addicts often have relapses and commit repeated violations. Failure to complete a drug court program, or to sustain the gains accomplished by completing a drug court program or other deferral and dismissal opportunity, should not result in future ineligibility for drug court.

In addition, those who successfully completed a drug court program should be guaranteed that the charges will be dismissed and they would not face additional sentencing. To be as effective as possible in reducing public costs, drug court should explicitly be a jail diversion program. Keeping nonviolent drug and alcohol addicts or abusers out of the prison system should be one of the principal goals of a drug court program. Successful completion of drug court should be rewarded; this provides the incentive for eligible criminal defendants to participate. Defendants who know that they might be required to serve criminal sentences even if they successfully complete a comprehensive drug court program might be discouraged from participating. The threat that incarceration could follow even completion of drug court would undermine the goal of keeping these nonviolent offenders out of prison. Also, successful participants should be given the assurance that help would be available, if necessary, without criminal penalties.

Moreover, a drug court participant should not automatically be excluded or dismissed from the program simply for being charged with another crime. In the criminal justice system, defendants are considered innocent until proven guilty. The bill, however, would subject people to sanctions even if they were eventually found not guilty or if the additional criminal charges were dismissed or dropped.

Response:

Participation in drug court is a privilege, not a right. To remain eligible, a participant should be required to exhibit exemplary behavior. Criminal charges are brought only when probable cause has been found, and that by itself should be sufficient to warrant dismissal or exclusion from the drug court program. Participation should be available only to criminal offenders whom the prosecutor and court believe could benefit from the program and those whose participation could benefit the community.

Also, requiring offenders to pay fees and costs, including restitution and crime victims rights assessments, is an important part of a drug court participant's rehabilitation. Participants should be expected to meet standards of responsibility and accountability. Nevertheless, the bill would allow the court to waive payment requirements if it determined that payment would pose a substantial hardship or would interfere with the participant's substance abuse treatment.

In addition, while the possibility of diversion from incarceration may be an important aspect of a successful drug court program, it should not be a guarantee for every participant. For some offenders, jail time could be a necessary part of the rehabilitative process.

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■ 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.