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BILL ANALYSIS

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Senate Bill 998 (Substitute S-4 as passed by the Senate)  
Senate Bill 999 (as passed by the Senate)  
Senate Bill 1000 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Alan L. Cropsy (S.B. 998)  
Senator Alan Sanborn (S.B. 999)  
Senator Bruce Patterson (S.B. 1000)  
Committee: Judiciary

Date Completed: 3-26-04

### **RATIONALE**

Drug courts are part of an evolving therapeutic justice movement, and are targeted toward nonviolent criminal offenders who abuse or are addicted to drugs and/or alcohol. These courts provide a comprehensive program of treatment and intervention to rehabilitate substance abuse offenders, thereby reducing the possibility that they will return to the justice system. Although some drug courts have been operating in Michigan, through Federal grants and some local funding, since at least 1992, and the State has provided funding for the establishment and operation of drug courts since a fiscal year 1998-99 supplemental appropriation, there is no statutory framework to authorize and govern the operation of drug courts in the Michigan judiciary. Some people believe that legislation authorizing drug courts, and specifying minimum requirements and program evaluation standards, should be adopted in order to ensure that Michigan drug courts operate in a consistent and effective manner.

### **CONTENT**

**Senate Bill 998 (S-4)** 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 fee of up to \$500, as well as costs of treatment and drug court services.
- Create the "State Drug Treatment Court Advisory Committee" within the Legislative Council.

**Senate Bill 999** would amend the Public Health Code to exclude a person who had successfully completed participation in a drug treatment court from the deferral and dismissal of certain controlled substance charges.

**Senate Bill 1000 (S-1)** would amend the Holmes Youthful Trainee Act (HYTA) and other sections of the Code of Criminal Procedure to do all of the following:

- 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.
- Allow a court to require participation in a drug court as a condition of probation.
- Include participation in a drug court within the Code's definition of "intermediate sanction" with respect to the application of sentencing guidelines.
- Exclude a person who had successfully completed participation in a drug court from designation as a youthful trainee under HYTA.
- 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.

Senate Bills 999 and 1000 (S-1) are tied to Senate Bill 998.

## **Senate Bill 998 (S-4)**

### 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 or agreement of understanding with the prosecutor, a representative or representatives of

community treatment providers, and probation departments in the circuit or district. The agreement could include other parties considered necessary, such as local law enforcement, defense counsel, the local substance abuse coordinating agency, and community corrections agencies in the circuit or district. The agreement 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; the use or attempted use of

force against another individual, regardless of whether any of those circumstances were an element of the offense; 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 evaluation or 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 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 of the guilty plea or the admission of responsibility. The prosecutor also would have to approve the person's admission to the drug court and the agreement for disposition upon completion or termination of the program. 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 fee of up to \$500. 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 the best common practices of the industry and accepted 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, costs, or fees; pay all court-ordered restitution or crime victims rights assessments; and comply with all court orders; the individual also could not be charged with, or convicted of, any new crime. Violations of court orders could be sanctioned according to the court's discretion.

The court would have to require that a participant pay for all fines 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 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 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 under HYTA.
- 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 an individual who had been adjudicated guilty (or, in the case of a juvenile, found responsible) and had been admitted to drug court for the first time, and was not otherwise required to be sentenced to a correctional facility, the court could, if allowed under the agreement with the drug court participant, order that all records of proceedings regarding the disposition of the criminal charge and drug court participation be closed to public inspection and be exempt from disclosure under FOIA. Those records, however, would be open to the courts of this or another state, the DOC, law enforcement personnel, and prosecutors but 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 for employment. If the court ordered records of the proceedings to be closed to the public as part of the agreement, the MSP Records and Identifications Division would have to retain a nonpublic record of an arrest and conviction.

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.

Upon a participant's completion or termination of the drug court, and for three years after that date, the court would have to continue to provide for statistical analyses as part of its overall program evaluations, by monitoring the individual's criminal history through LEIN to determine if there were any relapse or continued substance abuse or other related criminality. The court could request the MSP to provide the court with information contained in LEIN pertaining to a participant's criminal history during and after his or her participation in the drug court program. The Department would have to provide the requested information. The court would have to use the information to evaluate the individual's participation in the program and to evaluate the program's effectiveness. This monitoring of a former participant's criminal history would not be an extension of the drug court's jurisdiction over the individual.

#### 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 evaluation 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 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 14 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 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.
- 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**

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, these provisions could apply to a person who had not previously been convicted of a drug-related offense and who had not successfully completed 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 prosecuting attorney.

### **Senate Bill 1000 (S-1)**

The bill would amend the Code of Criminal Procedure to allow a court to defer sentencing and place an individual on probation in a drug court program, without entering a judgment of guilt, if he or she were eligible for admission to a drug court and pleaded guilty to or were found guilty of a crime. The bill also would allow a court to require a probationer to participate in a drug court, as a condition of probation.

The bill would include participation in a drug court within the Code's definition of "intermediate sanction" with respect to the application of sentencing guidelines.

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.

The bill also would 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.

Proposed MCL 600.1060-600.1082  
(S.B. 998)  
MCL 333.7411 (S.B. 999)  
MCL 762.11 et al. (S.B. 1000)

## **ARGUMENTS**

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

### **Supporting Argument**

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 currently 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 met certain standards and that they were properly evaluated.

### **Supporting Argument**

The concept behind drug courts is that the judge, through his or her actions in court proceedings and through interactions with offenders, can effect a change in offenders' behavior resulting in reduced 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% and 80% despite their difficult target population. Of those drug court graduates, almost 50% had used drugs for at least 10 years and 65% 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% 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% after one year and 27.5% after two, compared with the 60% to 80% rates that are 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.

### **Supporting Argument**

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 (S-4) 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.

**Response:** The bill would give too much control of the program to the prosecutor. For example, the bill would require that the prosecutor approve of the participant's guilty plea, or juvenile admission of responsibility; a waiver of a preliminary examination; an individual's admission to drug court; and the agreement for a disposition upon completion of the drug court program. The judge, not the prosecutor, should be the program's gatekeeper and have the ultimate authority to approve an individual's drug court participation and the proceedings necessary to effect that participation.

### **Supporting Argument**

Michigan law currently specifies various means for a criminal offender to have his or her charges deferred, serve a period of probation (which may or may not include incarceration), and then have the charges dismissed upon fulfillment of the probationary terms and conditions. The Holmes Youthful Trainee Act allows a young offender to have criminal charges dismissed; the Public Health Code allows certain drug violations to be deferred and dismissed; a first-time domestic assault offender can have charges dismissed after serving a probationary period under the Code of Criminal Procedure; and the Michigan Penal Code affords similar opportunities to those who commit parental kidnapping or who practice a health profession with a BAC of .05 or more. The drug court concept outlined in the bills is similar in that it would allow a nonviolent criminal defendant an opportunity to be rehabilitated while serving a probationary period under the drug court's supervision. Drug court programs would dovetail with the deferral and dismissal provisions already in law.

### **Opposing Argument**

Although strong, effective drug court programs can be a significant component in the State's criminal justice system, there are a number of concerns regarding the efficacy of the drug courts Senate Bill 998 (S-4) would authorize. The bill's definition of "violent offender" and its limit on the number of times a person could participate in drug court would unduly restrict participation; as mentioned above, the bill would give prosecutors too much authority over drug court programs; and the payment requirements regarding fees, costs, and restitution would be too strict. In an

effective drug court program, the judge should have as much discretion as possible over these matters.

Participation should not be precluded simply because an individual previously had been in drug court or had availed himself or herself of one of the deferral and dismissal provisions currently allowed under Michigan law. Drug court programs should recognize that dealing with substance abuse is quite 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 be penalized by future ineligibility for drug court.

In addition, those who successfully completed a drug court program should be guaranteed that the charges would be dismissed and they would not be sentenced further. In order 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, thereby providing the carrot needed to encourage eligible criminal defendants to participate. If a defendant knew that he or she might be required to serve a criminal sentence even after successfully completing a comprehensive drug court program, he or she might not be inclined to participate. Subjecting participants to a possible term of incarceration even after they completed 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 the participants' being subjected to further 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 found guilty. The bill, however, would subject people to sanctions even if they were eventually found not guilty or 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 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.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 998 (S-4)**

The costs of operating a drug court are incurred by the county or local court funding unit. Depending on the extent to which existing drug courts are already keeping data, the bill could increase program costs by requiring drug courts to keep extensive data for each participant throughout treatment and for three years following completion of the program. The bill also could increase costs by requiring each drug court to participate in training.

Currently, the State appropriates \$1,567,500 in GF/GP funds, \$1,267,500 in State restricted funds, and \$3,600,000 in Federal funds for grants to support the implementation and operation of drug court programs. The bill would allow a drug court to require a participant to pay a maximum fee of \$500 plus pay all or make

contributions to the cost of treatment and drug court-provided services, although this could be waived for indigent participants.

The bill also would increase State administrative costs by creating an advisory committee. Although the members would serve without compensation, the State would reimburse them for actual and necessary costs incurred while fulfilling their duties. The bill could increase administrative costs for the Michigan State Police, as well, by expanding its record-keeping requirements.

Finally, the bill could increase both State and local revenue from court-ordered fines, costs, and fees by requiring drug court participants to pay each fully in order to complete the program successfully.

### **Senate Bill 999**

To the extent that the bill would prevent successful drug court participants from being eligible for the deferral and dismissal provisions under Section 7411 of the Public Health Code, it could minimally increase the number of offenders who have multiple offenses on their record. This could increase the severity of the sanction and length of minimum sentence they would receive for subsequent offenses, thereby increasing State and local sentencing costs.

### **Senate Bill 1000 (S-1)**

To the extent that the bill would prohibit successful drug court participants from being eligible for youthful trainee status and the deferral and dismissal of criminal charges, it could minimally increase the number of offenders who have multiple offenses on their record. This could increase the severity of the sanction and length of minimum sentence they would receive for subsequent offenses, thereby increasing State and local sentencing costs.

Fiscal Analyst: Bethany Wicksall

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