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BILL ANALYSIS



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Senate Bills 998, 999, and 1000 (as enrolled)  
House Bills 5647, 5674, and 5716 (as enrolled)  
House Bills 5928 and 5932 (as enrolled)

Sponsor: Senator Alan L. Cropsey (S.B. 998)  
Senator Alan Sanborn (S.B. 999)  
Senator Bruce Patterson (S.B. 1000)  
Representative Jim Howell (H.B. 5647)  
Representative Daniel Acciavatti (H.B. 5674)  
Representative Andrew Meisner (H.B. 5716)  
Representative Paul Condino (H.B. 5928)  
Representative Alexander C. Lipsey (H.B. 5932)

Senate Committee: Judiciary  
House Committee: Judiciary

Date Completed: 4-11-05

### **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 operated 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, until recently, there was no statutory framework to authorize and govern the operation of drug courts in the Michigan judiciary. It was suggested that legislation authorizing drug courts, and specifying minimum requirements and program evaluation standards, be adopted in order to ensure that Michigan drug courts operate in a consistent and effective manner.

### **CONTENT**

**Senate Bill 998 added 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**

**PUBLIC ACTS 224-226 of 2004**  
**PUBLIC ACTS 219-221 of 2004**  
**PUBLIC ACTS 223 & 222 of 2004**

**juvenile drug treatment courts. The bill does all of the following:**

- **Allows each drug treatment court (drug court) to determine an individual's admission to the court, but specifies that violent offenders are not eligible.**
- **Requires 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.**
- **Requires an individual considered for drug court participation to plead guilty to a criminal charge or admit responsibility for a juvenile violation.**
- **Requires a drug court participant to waive certain procedural rights, such as the right to a speedy trial and the right to counsel at drug court appearances.**
- **Requires a drug court to accept a guilty plea or admission of responsibility, and in some cases, defer further proceedings.**
- **Prohibits 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.**

- Requires a drug court to maintain jurisdiction over an individual admitted to the drug court and, in the case of a juvenile, allows jurisdiction over the participant's parents or guardians.
- Specifies a drug court's responsibilities to a participant.
- Allows a drug court to discharge and dismiss the proceedings against a person who successfully completes the drug court program for the first time and who has not previously had charges deferred and dismissed under other provisions of law and has not pleaded guilty to a criminal traffic offense.
- Allows the court to sentence a participant on the original charges if he or she is terminated from or fails to complete the drug court program.
- Specifies program evaluation requirements.
- Establishes funding responsibility and financial reporting requirements.
- Allows a drug court to require a participant to pay a fee, as well as costs of treatment and drug court services.
- Creates the State Drug Treatment Court Advisory Committee within the Legislative Council.

**Senate Bill 999 amended the Public Health Code to allow the terms and conditions of probation for certain drug offenders to include drug court participation, and expand access to certain nonpublic records maintained by the Department of State Police.**

**Senate Bill 1000 amended the Holmes Youthful Trainee Act (HYTA) to allow the terms and conditions of probation for youthful trainees to include drug court participation and expand access to certain nonpublic records.**

**House Bills 5647, 5674, 5716, 5928, and 5932 amended various acts to authorize courts to order participation in a drug treatment court as a condition of probation, including probation ordered for the deferral of particular charges. The bills also include the deferral and dismissal of certain charges in several reporting requirements.**

House Bills 5647 and 5674 amended the Code of Criminal Procedure. House Bill 5716 amended the juvenile code. House Bill 5928 amended the Michigan Penal Code. House Bill 5932 amended the fingerprinting law.

The bills took effect January 1, 2005. Senate Bills 999 and 1000 and House Bills 5647, 5674, 5716, 5928, and 5932 were tie-barred to Senate Bill 998. House Bill 5932 also was tie-barred to House Bill 5674.

### **Senate Bill 998**

#### Drug Treatment Courts

The bill defines "drug treatment court" as a court-supervised treatment program for individuals who abuse or are 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 may 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 may adopt or institute a juvenile drug court, pursuant to statute or court rules. Courts may not adopt or institute a drug court, however, unless they enter into a memorandum of understanding with each participating prosecuting attorney in the circuit or district, a representative of the criminal defense bar, and a representative or representatives of community treatment providers. The memorandum of understanding also may include other parties considered necessary, such as any other prosecutor in the circuit or district, local law enforcement, the probation departments in that circuit or district, the local substance abuse coordinating agency, a domestic violence service provider program that receives funding from the domestic violence prevention and treatment board, and community corrections agencies in the circuit or district. The memorandum of understanding must describe the role of each party.

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

A court that adopts a drug treatment court must 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 may 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 court.

A drug court must cooperate, 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

The bill requires each drug treatment court to determine whether an individual may be admitted to the court. No individual has a right to be admitted. An individual is not eligible for admission if he or she is a "violent offender", i.e., a person who meets either of the following:

- Is currently charged with or has pleaded guilty to (or, if a juvenile, is currently alleged to have committed or has admitted responsibility for) any of the following: an offense involving the death of or a serious bodily injury to any individual or the carrying, possession, or use of a firearm or other dangerous weapon, regardless of whether any of those circumstances are an element of the offense; or criminal sexual conduct of any degree.
- Has one or more prior convictions for (or, if a juvenile, has 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 is eligible for admission to a drug court under the bill may be admitted if he or she has 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 may be admitted to a drug court if he or she has had criminal proceedings deferred and has 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 or under the influence of a controlled substance (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 must 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 must include all of the following:

- A complete review of the individual's criminal history, and a review of whether he or she has previously been admitted to or has participated, or is currently participating, 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 may 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 practicable, a comparable review of any guardians or parents.

As much as practicable, a preadmission screening and evaluation assessment also must 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 abuses controlled substances or alcohol or is drug- or alcohol-dependent. (The bill states: "It is the intent of the legislature that this assessment should be a

clinical assessment as much as practicable.")

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

A drug court may 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 has previously been admitted to, and participated in, a drug court. A drug court also may request LEIN information for purposes of determining an applicant's compliance with court orders. The Department must provide the requested information.

Before an individual is admitted to a drug court, the court must find on the record, or place a statement in the court file pertaining to, all of the following:

- The individual is dependent upon or abusing drugs or alcohol and is an appropriate candidate for participation in the drug court.
- The individual understands the consequences of entering the drug court and agrees to comply with all court orders and requirements of the court's program and treatment providers.
- The individual is 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 is not a violent offender.
- The individual has completed a preadmission screening and evaluation assessment and has agreed to cooperate with any future evaluation assessment as directed by the drug court.
- If applicable, the individual meets the requirements for participation under HYTA or other provisions of law that allow deferred proceedings and probation.
- 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 is charged in a criminal case or, in the case of a juvenile, is alleged to have engaged in activities that would constitute a criminal act if committed by an adult, his or her admission is subject to all of the following conditions:

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

In addition, the individual must 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 must approve of the person's admission to the drug court. In addition to rights accorded a victim under the Crime Victim's Rights Act, the court must allow any victim of the offense or offenses of which the individual is charged, any victim of a prior offense of which that individual was convicted, and members of the community in which either the offenses were committed or the defendant lives, to submit a written statement to the court regarding the advisability of admitting the individual to the drug court.

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

A person may 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" means a violation of the Michigan Vehicle Code or a substantially

corresponding local ordinance that involves the operation of a vehicle and is a felony or misdemeanor.)

For a person who is admitted to drug court based on having criminal charges currently filed against him or her, the court must accept a guilty plea or juvenile admission of responsibility. In the case of a person who pleaded guilty to a nontraffic offense and may 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 may 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 may not be eligible for discharge and dismissal upon successful completion of the drug court program, the court must 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 may 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 considers necessary. All of these provisions apply upon the admission of a person to drug court.

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

A drug court may require an individual admitted to the court to pay a reasonable drug court fee that is reasonably related to the court's cost for administering the drug court program. The court clerk must transmit the drug court fees to the treasurer of the local funding unit at the end of each month.

#### Program Participation

The bill requires a drug court 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 available, accepted, and scientifically valid methods.
- Periodic evaluation assessments of the participant's circumstances and progress in the program.
- A regimen or strategy of appropriate and graduated but immediate rewards for compliance and sanctions for noncompliance, including the possibility of incarceration or confinement.
- Substance abuse treatment services, relapse prevention services, education, and vocational opportunities as appropriate and practicable.

In order to continue to participate in and successfully complete a drug court program, an individual must pay all court-ordered fines and costs, including minimum State costs; pay the drug treatment court fee allowed under the bill; pay all crime victims rights assessments; pay all court-ordered restitution; and comply with all court orders, violations of which may be sanctioned according to the court's discretion.

The drug court must be notified if a participant is accused of a new crime, and the judge must consider whether to terminate the person's participation in conformity with the memorandum of understanding. If the participant is convicted of a felony for an offense that occurs after the defendant is admitted to drug court, the judge must terminate his or her participation.

The court must require that a participant pay all fines, costs, the fee, restitution, and crime victims assessments, 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 includes the costs of urinalysis and any testing or counseling provided. If the court determines that the payment of fines, the fee, or costs of treatment would be a substantial hardship for the individual or would interfere with his or her substance abuse treatment, the court may waive all or part of those amounts.

## Completion

The bill requires the court, upon completion or termination of the drug court program, 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 completes probation or other court supervision, and whose proceedings were deferred or who was sentenced under the bill, the court must 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 is 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 under the influence, the court must proceed pursuant to the applicable section of law. There may be only one drug court discharge and dismissal under those provisions.

With the agreement of the prosecutor and in conformity with the memorandum of understanding, the drug court may discharge and dismiss the proceedings against a participant who meets all of the following criteria:

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

The court may grant a discharge and dismissal of a domestic violence offense only if all of the following circumstances apply:

- The individual has not previously had a proceeding dismissed for a domestic assault violation.
- The domestic violence offense otherwise is eligible to be dismissed.
- The individual fulfills the terms and conditions otherwise imposed for a discharge and the discharge and dismissal of proceedings are processed and reported under the Code of Criminal Procedure's provision for dismissal of domestic violence proceedings.

A discharge and dismissal under the bill must be without adjudication of guilt or, for a juvenile, without adjudication of responsibility, and is not a conviction or finding of responsibility for purposes of disqualifications or disabilities imposed by law. There may be only one discharge and dismissal for an individual. The drug court must send a record of a discharge and dismissal to the Michigan Department of State Police (MSP) Criminal Justice Information Center (CJIC), and the Department must 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 are closed to public inspection and exempt from public disclosure under FOIA, but are open to courts of this State, another state, or the United States, the Department of Corrections (DOC), law enforcement personnel, and prosecutors only for use in performing their duties or to determine whether an employee of the court, DOC, agency, or prosecutor's office has violated his or her conditions of employment or whether a job applicant meets criteria for employment. The MSP Records and Identifications Division must retain a nonpublic record of an arrest and the discharge and dismissal under the bill.

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

- Enter a judgment of guilt or a finding or adjudication of responsibility, if the court has not already done so.
- Proceed to criminal sentencing or juvenile disposition, if the court has 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 must enter the information into LEIN with an indication of the individual's successful drug court participation.

For a participant whose participation is terminated or who fails to complete the drug court program successfully, the court must enter an adjudication of guilt (or, for a juvenile, a finding of responsibility) if entry or adjudication was deferred. The court then must 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 must send a record of that sentence and the individual's unsuccessful participation to the CJIC, and the MSP must enter the information into LEIN, with an indication that the individual unsuccessfully participated in a drug court.

#### Date Collection; Evaluation

The bill requires each drug court to collect and provide data on each individual applicant and participant case and the entire program, as required by the SCAO.

Each drug court must maintain files or databases on each individual applicant or referral who is 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 must 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 must 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 is 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. The bill states that these follow-up reviews are not extensions of the drug court's jurisdiction over the individuals.

The bill requires that each drug court provide all information that the SCAO requests.

With the approval and at the discretion of the Supreme Court, the SCAO is responsible for evaluating and collecting data on the performance of drug courts. The SCAO must 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 created by the bill, the Governor, and the Supreme Court.

The SCAO also must provide standards for drug courts, including a list of approved measurement instruments and indicators for data collection and evaluation. The standards must 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 have successfully completed drug courts is exempt from disclosure under FOIA.

#### Funding

The bill provides that the Supreme Court is 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, must distribute Federal funds provided to the State for the operation of drug courts.

The State Treasurer may 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 must report quarterly to the SCAO on the funds it receives and spends, as prescribed by the SCAO.

#### Advisory Committee

The bill created the State Drug Treatment Court Advisory Committee within the Legislative Council. The advisory committee consists 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 has presided for at least two years over a drug treatment court.
- A circuit or district court judge who has presided for at least two years over an alcohol treatment court.



- A court administrator who has worked for at least two years with a drug or alcohol treatment court.
- A prosecuting attorney who has worked for at least two years with a drug or alcohol treatment court.
- An individual representing law enforcement in a jurisdiction that has had a drug or alcohol treatment court for at least two years.
- An individual representing drug treatment providers, who has worked for at least two years with a drug or alcohol treatment court.
- An individual representing defense attorneys, who has worked for at least two years with drug or alcohol treatment courts.
- An individual who has successfully completed a drug court program.
- An individual who has 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 has worked for at least two years for a drug or alcohol treatment court.
- A representative of substance abuse coordinating agencies.
- A representative of domestic violence service provider programs that receive funding from the State domestic violence prevention and treatment board.

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

The advisory committee must monitor the effectiveness of drug treatment courts and the availability of funding for them. The committee must 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, the terms and conditions of probation may include participation in a drug court under Chapter 10a of the RJA.

In addition, the Code requires the Records and Identifications Division of the Department of State Police to retain a nonpublic record of an arrest and discharge or dismissal under the provisions described above. The record is available only to certain entities under specific conditions. Under the bill, those records also are available to either of the following:

- A court, police agency, or prosecutor upon request for the purpose of determining whether the defendant in a criminal action is eligible drug court participation.
- A court or the office of a prosecuting attorney to determine whether an employee has violated conditions of employment or whether an applicant meets criteria for employment. (As previously provided, the records are available to the DOC and law enforcement agencies for these purposes.)

### **Senate Bill 1000**

The bill amended the Holmes Youthful Trainee Act to specify that the terms and conditions of probation may include participation in a drug 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 Department of Human Services, and law enforcement personnel for use only in the performance of their duties. The bill includes prosecuting attorneys in that exception.

### **House Bill 5647**

Under the Code of Criminal Procedure, a court may require a probationer to comply

with certain requirements as a condition of probation. These include participation in inpatient or outpatient drug treatment. Under the bill, the court also may require participation in drug treatment or in a drug treatment court.

In an action in which the court may place the defendant on probation, the Code allows the court to delay sentencing for up to one year to give the defendant an opportunity to prove his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation. The bill added, "such as participation in a drug treatment court".

### **House Bill 5674**

Under the Code of Criminal Procedure, a court may defer the proceedings against a first-time domestic assault offender, and dismiss the charges after he or she serves a probationary period. As a condition of probation, the court may require the accused to participate in a mandatory counseling program. Under the bill, the court also may order the accused to participate in a drug treatment court.

The Code requires the Department of State Police to retain a nonpublic record of a discharge or dismissal. Upon request, the MSP must furnish the report to a court or police agency for the purpose of showing that a domestic assault defendant already has had charges deferred and dismissed. Under the bill, a record also must be furnished for the purpose of determining whether the defendant is eligible for discharge and dismissal of proceedings by a drug treatment court under Section 1076(5) of the Revised Judicature Act. (That section, enacted by Senate Bill 998, allows a drug treatment court to discharge and dismiss domestic violence proceedings against a drug court participant if certain conditions are met.) The House bill also requires the MSP to give a copy of the report to a prosecuting attorney's office, upon request.

Under the Code, the court clerk must report the final disposition of criminal charges to the State Police. The report must contain specified information, and include the sentence if it is imposed under certain sections of the law. Under the bill, the report also must include the sentence if imposed under Section 1076(4) of the RJA

(which allows the discharge and dismissal of the proceedings against a successful drug court participant), or Section 305a or 430 of the Michigan Penal Code. (Those Penal Code sections allow a court to defer and dismiss the charges against a parent for parental kidnapping or against a health care professional for practicing under the influence.)

The bill also amended definitions in the sentencing guidelines chapter of the Code of Criminal Procedure. The bill includes participation in a drug treatment court in "intermediate sanctions", and adds an individual assigned or deferred under Section 1076(4) of the RJA or under Section 430 of the Penal Code to the definition of "delayed sentence status".

### **House Bill 5716**

Under the juvenile code, if the family court finds that a juvenile is within the code, the court may enter various orders of disposition, including an order placing the juvenile on probation. The bill also allows the court to order the juvenile to participate in a juvenile drug treatment court.

The family court has jurisdiction over adults as provided in the code. The bill also gives the court jurisdiction over adults as provided in Chapter 10a of the RJA. (Under Senate Bill 998, a drug court may obtain jurisdiction over a juvenile participant's parents or guardian in order to assist in ensuring the juvenile's continued participation in and successful completion of the drug court.)

### **House Bill 5928**

Under Section 350a of the Penal Code, when a parent who has not previously been convicted of a kidnapping offense, pleads guilty to or is found guilty of parental kidnapping, the court may defer further proceedings and place the parent on probation without entering a judgment of guilt. Section 430 contains similar deferral and dismissal provisions regarding a health care professional who practiced under the influence of alcohol or controlled substances. The bill amended both sections to specify that the terms and conditions of probation may include participation in a drug treatment court.

Upon fulfillment of the terms and conditions of probation, the court must discharge the parent or health care professional from probation and dismiss the proceedings against him or her. The Department of State Police must retain a nonpublic record of a discharge and dismissal, and furnish the record to a court or police agency upon request for the purpose of showing that a criminal defendant has already had a charge deferred and dismissed under Section 350a or 430. Under the bill, the MSP, upon request, also must give the record to a court, police agency, or prosecutor for the purpose of determining whether a criminal defendant is eligible for discharge and dismissal of proceedings by a drug treatment court.

### **House Bill 5932**

Under the fingerprinting law, the court clerk must advise the State Police of the final disposition of the charge for which a person was fingerprinted, or if an accused was convicted of an offense or if a juvenile was adjudicated to have committed a juvenile offense. The summary of the sentence must include specified information, and indicate whether the sentence is imposed under particular sections of the law. The bill includes in these Section 1076(4) of the RJA and Section 430(8)(a) of the Penal Code (which provide for the deferral and dismissal of charges against a drug court participant or a health care professional who practiced under the influence, respectively).

MCL 600.1060-600.1082 (S.B. 998)  
333.7411 (S.B. 999)  
762.13 & 762.14 (S.B. 1000)  
771.1 & 771.3 (H.B. 5647)  
769.4a (H.B. 5674)  
712A.6 & 712A.18 (H.B. 5716)  
750.350a & 750.430 (H.B. 5928)  
28.243 (H.B. 5932)

### **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, as of March 2004, Michigan had 63 drug courts, of which 36 were operational and 27 were in planning stages. Nevertheless, while these courts proliferated in recent years, there were 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. The bills enable the State to do so by providing a statutory structure to authorize their implementation and operation as well as ensure that drug courts meet certain standards and are 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 is wise for Michigan to establish its drug court program in statute. The bills not only encourage the development of this progressive method of addressing criminal behavior by addicts but also ensure that the courts operate consistently throughout the State and are 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 establishes a drug court program consistent with that approach. Under the bill, a drug court must enter into an agreement with the prosecutor, defense counsel, and community treatment providers, and may include law enforcement, community corrections agencies, the court probation department, substance abuse coordinating agencies, and domestic violence treatment providers in that agreement. A potential drug court participant must 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.

### **Supporting Argument**

Michigan law 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 under the influence. The drug court program established by the bills is similar in that it allows a nonviolent criminal defendant an opportunity to be rehabilitated while serving a probationary period under the drug court's supervision. Drug court programs dovetail with other deferral and dismissal provisions in law.

### **Opposing Argument**

Although strong, effective drug court programs can be a significant component of the State's criminal justice system, there are a number of concerns regarding the efficacy of the drug courts Senate Bill 998 authorizes. The bill's definition of "violent offender" and its limit on the number of times a person may participate in drug court may unduly restrict participation; the bill may give prosecutors too much authority over drug court programs; and the payment requirements regarding fees, costs, and restitution may 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 has been in drug court or has availed himself or herself of one of the deferral and dismissal provisions otherwise 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 complete a drug court program should be guaranteed that the charges will be dismissed and they will 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 incentive for eligible criminal defendants to participate. If a defendant knows 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 complete drug court undermines the goal of keeping these nonviolent offenders out of prison. Also, successful participants should be given the assurance that help will 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, subjects people to sanctions even if they are eventually found not guilty or the additional criminal charges are 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 is 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 might benefit from the program and those whose participation might 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 allows the court to waive payment requirements if it determines that payment poses 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

may be a necessary part of the rehabilitative process.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 998**

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 have already been keeping data, the bill may increase program costs by requiring drug courts to keep extensive data for each participant throughout treatment. The bill also might increase costs by requiring each drug court to participate in training.

Currently, the State appropriates \$1,100,700 in GF/GP funds, \$1,734,300 in State restricted funds, and \$3,900,000 in Federal funds for grants to support the implementation, operation, and evaluation of drug court programs. The bill allows a drug court to require a participant to pay a reasonable fee reasonably related to the cost to the court for administering the program, although this may be waived for indigent participants.

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

Finally, the bill might 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 Bills 999 and 1000**

The bills will have no fiscal impact on State or local government.

### **House Bill 5647**

To the extent that the availability of drug court participation as a sanction increases the likelihood of judges' sentencing offenders to probation rather than

incarceration, the bill will potentially decrease State and local corrections costs.

**House Bill 5674**

To the extent that the availability of drug court participation as an intermediate sanction decreases the likelihood of judges' ordering incarceration, the bill will potentially decrease State and local corrections costs.

**House Bill 5716**

To the extent that the availability of drug court participation as a sanction for juvenile offenders decreases the likelihood of judges' using residential programs or imposing incarceration, the bill will potentially decrease State and local juvenile justice and corrections costs.

**House Bills 5928 and 5932**

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.