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BILL ANALYSIS



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Senate Bills 998, 999, and 1000 (as introduced 2-17-04)

Sponsor: Senator Alan L. Cropsy (S.B. 998)
Senator Alan Sanborn (S.B. 999)
Senator Bruce Patterson (S.B. 1000)

Committee: Judiciary

Date Completed: 2-17-04

CONTENT

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

- Allow each drug treatment court (drug court) to determine an individual's admission to the court, but specify that violent offenders would not be eligible.
- Require an individual to cooperate with and complete a preadmission screening and evaluation assessment and agree to future assessments, in order to be eligible for a drug court program.
- Require an individual considered for drug court participation to plead guilty to a criminal charge or admit responsibility for a juvenile violation.
- Require a drug treatment court participant to waive certain due process rights, such as the right to a speedy trial and the right to counsel at drug court appearances.
- Require a drug court to maintain jurisdiction over an individual admitted to the drug court and, in the case of a juvenile, allow drug court jurisdiction over the participant's parents or guardians.
- Specify a drug court's responsibilities to a participant.
- Require a drug court participant to pay certain costs and fees.
- 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 person admitted to the court to pay a fee of up to \$500.
- Create the "State Drug Treatment Court Advisory Committee" within the Legislative Council.

Senate Bills 999 and 1000 would amend the Public Health Code and the Holmes Youthful Trainee Act (HYTA), respectively, to exclude a person who had successfully completed participation in a drug treatment court from the deferral and dismissal of certain controlled substance charges and from designation as a youthful trainee under HYTA. The bills are tie-barred to Senate Bill 998.

Senate Bill 998

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, treatment providers, and probation departments in the circuit or district. The agreement could include the roles of local law enforcement, defense counsel, 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 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 a delinquent act 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 admissions 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 had been assigned youthful trainee status under the Holmes Youthful Trainee Act, or whose criminal proceedings were dismissed under Section 7411 of the Public Health Code, would be eligible only once under those statutes for admission to a drug treatment court. A person participating under HYTA, for the purpose of receiving treatment for drug or alcohol abuse, or a person participating under Section 7411, would be considered participating in a drug court for purposes of Chapter 10a. (Under Section

7411 of the Public Health Code, drug-related criminal proceedings may be deferred and dismissed if a first-time offender pleads guilty and complies with the conditions of probation.)

To be admitted to a drug court, an individual would have to cooperate with and complete a preadmissions 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.
- An assessment of the risk of danger or harm to the individual, others, or the community.
- 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.
- A complete review of any special needs or circumstances the individual had that could potentially affect his or her ability to receive substance abuse treatment and follow the court's orders.
- For a juvenile, a complete assessment of the family situation, including a similarly complete review of any guardians or parents.

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 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 preliminary examination, speedy trial, and representation by an attorney at all drug court sessions. Any statement or other information obtained as a result of participating in a drug court 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.

The prosecutor would have to approve of the guilty plea or the admission of responsibility and the person's admission to the drug court. 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.

Upon admitting an individual, the drug court would have to maintain jurisdiction over the individual. 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.

Program Participation

A drug treatment court would have to provide a participant with all of the following:

- Consistent, continual, and close monitoring of the participant and interaction between the court, treatment providers, probation, and the participant.
- Mandatory periodic and random testing for the presence of any controlled substance or alcohol in the participant's blood 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; and comply with all court orders. 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, 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. Except as provided in HYTA or Section 7411 of the Public Health Code, the court would have to send a record of the conviction and sentence or, in the case of a juvenile, the finding or adjudication of responsibility and disposition, to the Criminal Justice Information Center of the Department of State Police, as well as enter the information into the Law Enforcement Information Network (LEIN) with an indication of participation by the individual in a drug court. If part of the agreement, all proceedings regarding the disposition of the criminal charge and participation in drug court could be closed to public inspection and would be exempt from disclosure under FOIA, but would have to be open to courts of this or another state, the DOC, law enforcement personnel, and prosecutors, but only for use in the performance of their duties or to determine whether an employee had violated conditions of employment or whether an applicant met criteria for employment. The Records and Identification Division of the Department of State Police 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 could 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 in the drug court to the Department of State Police Criminal Justice Information Center and 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 former participant'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 Department of State Police 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 court would have to use information to evaluate the individual's participation in the program and to evaluate the program's effectiveness. The Department would have to provide the requested information.

Evaluation

Each drug court would have to collect data on each individual applicant and participant case and the entire program, as required by the SCAO. Each drug court also would be responsible for annually evaluating the program's performance. The court would have to have an independent party review and evaluate the court, and would have to cooperate fully with the evaluator and provide all requested data. The court's evaluation plan would have to be presented to and approved by the SCAO. As soon as practicable, the court would have to include in its evaluation a review of comparable information regarding a comparison or control group. Each court would have to maintain files or databases on every individual applicant or referral who was denied or refused admission to the program, including the reasons for denial or rejection, the applicant's criminal history, the preadmission evaluation and assessment, and other demographic information.

Each drug court would have to maintain files or databases on each participant for review and evaluation as well as treatment. The information would have to include all of the following:

- Location and contact information for the participant upon both admission and termination or completion of the program for follow-up reviews. This bill specifies that this should include third-party contact information.
- Significant transition point dates, including dates of referral, enrollment, new court orders, violations, detentions, changes in services or treatment provided, discharge for completion or termination, any provision of after-care, and after-program

recidivism, including offense dates, conviction dates, and incarceration dates, for both detention and release.

- The individual's precipitating offenses and significant factual information, source of referral, and all drug court evaluations and assessments.
- Treatments provided, including intensity of care or dosage, and their outcomes.
- Other services or opportunities provided to and used by the individual, such as education or employment and the individual's participation and outcome.
- Reasons for discharge, completion, or termination of the program.

For three years after discharge, upon either completion or termination of the program, the drug court would have to conduct follow-up contacts with and review of each individual for key outcome indicators at least every six months. The outcome indicators would have to include at least drug use, recidivism, and employment. The bill specifies that recidivism should include records of dates in detention and release from detention.

Each drug court would have to give the SCAO its evaluations and all information that the SCAO requested.

With the approval, and at the discretion of the Supreme Court, the SCAO would be responsible for evaluating and collecting data on the performance of drug courts. The SCAO would have to provide an annual review of the courts' performance to the majority and minority leadership in the Senate and the House of Representatives, the Governor, and the Supreme Court. The SCAO would have to develop the collection of 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 SCAO would have to provide standards for drug courts and approve each court's evaluation plan.

Information collected 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 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 12 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.

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

Under the Holmes Youthful Trainee Act, 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.

The bill would exclude from consideration of youthful trainee status 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.

Proposed MCL 600.1060-600.1082 (S.B. 998)
MCL 333.7411 (S.B. 999)
MCL 762.11 & 762.14 (S.B. 1000)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

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 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, as well as keep data for a control group. The bill also could increase costs by requiring each drug court to participate in training and to get an independent third party review and evaluation.

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 program 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 increasing 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 prohibit 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

To the extent that the bill would prohibit successful drug court participants from being eligible for youthful trainee status and the deferral and dismissal provision 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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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.