



House Bill 5647 (as passed by the House)
House Bill 5674 (Substitute H-1 as passed by the House)
House Bill 5716 (Substitute H-1 as passed by the House)
House Bills 5928 and 5932 (as passed by the House)

Sponsor: 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)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 6-1-04

CONTENT

The bills would amend 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 would include the deferral and dismissal of certain charges in several reporting requirements.

House Bills 5647 and 5674 (H-1) would amend the Code of Criminal Procedure. House Bill 5716 would amend the juvenile code. House Bill 5928 would amend the Michigan Penal Code. House Bill 5932 would amend the fingerprinting law.

All of the bills are tie-barred to Senate Bill 998, which would add Chapter 10a ("Drug Courts") to the Revised Judicature Act (RJA), to authorize circuit and district courts to adopt drug treatment courts and authorize family courts to adopt juvenile drug treatment courts. House Bill 5932 also is tie-barred to House Bill 5674.

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 could 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 would add, "such as participation in a drug treatment court".

House Bill 5674 (H-1)

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 could 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 State Police 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 would have to be furnished for the purpose of determining whether the defendant was eligible for discharge and dismissal of proceedings by a drug treatment court under Section 1076(4) of the Revised Judicature Act. (Proposed by Senate Bill 998, that section would allow a drug treatment court to discharge and dismiss the proceedings against a drug court participant if certain conditions were met.) The House bill also would require the State Police 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 would have to include the sentence if imposed under Section 1076(4) of the RJA (described above), or Section 305a or 430 of the Michigan Penal Code. (Those 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 would amend definitions in the sentencing guidelines chapter of the Code of Criminal Procedure. The bill would include participation in a drug treatment court in "intermediate sanctions", and would add 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 (H-1)

Under the juvenile code, if the family division of circuit court (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 would allow the court to order the juvenile to participate in a juvenile drug treatment court.

Presently, the family court has jurisdiction over adults as provided in the code. The bill also would give the court jurisdiction over adults as provided in proposed Chapter 10a of the RJA. (Under Senate Bill 998, a drug court could obtain jurisdiction over a juvenile participant's parents or guardian in order to assist in ensuring the juvenile's continued participation 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 would amend both sections to specify that the terms and conditions of probation could 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 State Police, upon request, also would have to give

the record to a court, police agency, or prosecutor for the purpose of determining whether a criminal defendant was 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 would include 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 771.1 & 771.3 (H.B. 5647)

Legislative Analyst: Suzanne Lowe

769.4a (H.B. 5674)

712A.6 & 712A.18 (H.B. 5716)

750.350a & 750.430 (H.B. 5928)

28.243 (H.B. 5932)

FISCAL IMPACT

House Bill 5647

To the extent that the availability of drug court participation as a sanction would increase the likelihood of judges' sentencing offenders to probation rather than incarceration, the bill would potentially decrease State and local corrections costs.

House Bill 5674 (H-1)

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

House Bill 5716 (H-1)

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

House Bill 5928

The bill would have no fiscal impact on State or local government.

House Bill 5932

The bill would 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.