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House Bill 4633 (Substitute H-3 as passed by the House)

Sponsor: Representative Kelly Breen

House Committee: Criminal Justice

Senate Committee: Committee of the Whole

Date Completed: 10-19-23

CONTENT

The bill would amend the juvenile Code to do the following:

- **Modify the factors a court would have to consider before electing to try a juvenile in the same manner as an adult.**
- **Specify that the terms of a consent calendar case plan could not exceed six months unless the court made a specific determination otherwise.**

The bill would take effect October 1, 2024.

The Code specifies situations in which a juvenile can be tried in the same manner as an adult. The family division of circuit court (family court) may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried as an adult. The court must consider the following factors to make such a determination:

- The seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- The juvenile's culpability in committing the alleged offense, including the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- The juvenile's prior record of delinquency including any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- The juvenile's programming history including the juvenile's past willingness to participate meaningfully in available programming.
- The adequacy of the punishment or programming available in the juvenile justice system.
- The dispositional options available for the juvenile.

Instead, under the bill, the court would have to consider the following factors:

- The seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the sentencing guidelines and the use of a firearm or other dangerous weapon.
- The juvenile's culpability in committing the alleged offense, including the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- The juvenile's prior record of delinquency that would be a crime if committed by an adult.
- The juvenile's programming history including any out-of-home placement or treatment, and the juvenile's past willingness to participate meaningfully in available programming.
- The adequacy of the programming available to rehabilitate and hold accountable the juvenile in the juvenile justice system and the juvenile's amenability to treatment.

- The dispositional options available for the juvenile.
- The juvenile's developmental maturity, emotional health, and mental health.
- If the juvenile were a member of a federally recognized Indian Tribe, culturally honoring traditional values of the juvenile's tribe.
- The impact on any victim.

The Code allows the family court to proceed in an informal manner referred to as a consent calendar if the court determines that formal jurisdiction over a juvenile should not be acquired. Among the current consent calendar requirements, the bill would specify that the period for a juvenile to complete the terms of a consent calendar case plan could not exceed six months, unless the family court determined that a longer period was needed for the juvenile to complete a specific treatment program and included the determination as part of the consent calendar record.

MCL 712A.2d et al.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is a companion bill to Senate Bill 427.

BACKGROUND

Governor Gretchen Whitmer signed Executive Order 2021-6 on June 9, 2021, which, among other things, created the Task Force on Juvenile Justice Reform (Task Force) as a temporary advisory body within the Department of Health and Human Services. The Task Force was charged with acting in an advisory capacity with the goal of developing ambitious, innovative, and thorough analysis of Michigan's juvenile justice system, and include recommendations for changes to State law, policy, and appropriations aimed to improve youth outcomes.¹

The Task Force released its report and recommendations on July 22, 2022. Overall, the report found that the quality of services and case management received by youth, from defense to post-disposition placement, differs across the State. The State lacks uniform judicial justice policies and quality assurance standards, leading to disparities the State cannot address and data it cannot rely upon. Additionally, the lack of State centralization has led to discrepancies in the implementation of research-based, developmentally appropriate practices across the State. Accordingly, the report specifies that children participating in the judicial justice system may not receive quality care or may receive care different from their peers.

Among other recommendations, the Task Force unanimously suggested that the State require the use of a validated risk and mental health screening tool to inform diversion and consent calendar decisions.²

Legislative Analyst: Tyler P. VanHuyse

FISCAL IMPACT

The bill would require courts to include consideration of a particular juvenile's developmental maturity, emotional health, and mental health during hearings to determine if the juvenile should be tried as an adult. No additional costs to local courts are anticipated by this

¹ Executive Order 2021-6.

² *Michigan Task Force on Juvenile Justice Reform Report and Recommendations*, p. 17, July 22, 2022.

procedural change and no appropriations have been made to date to accommodate this change. The bill would have no fiscal impact on the Department of Health and Human Services or local units of government.

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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.