

Legislative Analysis



ADDITIONAL DRUG TREATMENT COURT PROVISIONS

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House Bill 5928 as introduced
Sponsor: Rep. Paul Condino

House Bill 5932 with House committee amendment
Sponsor: Rep. Alexander C. Lipsey

Committee: Judiciary
First Analysis (5-26-04)

BRIEF SUMMARY: The bills would amend the penal code and fingerprinting act to include references to the drug treatment court program in certain provisions.

FISCAL IMPACT: House Bill 5928 would have no direct fiscal impact on the judiciary and House Bill 5932 would have no materialized fiscal impact on state and local government.

THE APPARENT PROBLEM:

It is a well-known fact that the majority of crimes are committed by a perpetrator that is under the influence of controlled substances or alcohol. Drug courts, part of the national trend for some courts to operate as “problem solving courts”, attempt to reduce crime by treating the underlying substance abuse problem. Drug courts sometimes use the possibility of a “discharge and dismissal” for non-violent, first-time offenders, in which successful completion of probation means that the charges are dismissed and the case discharged without a conviction, as encouragement to complete a substance abuse treatment program. In other cases, participation in a drug treatment court program may be a condition of probation. Thirty-six drug courts currently operate in Michigan with another 27 in the planning stages. However, Michigan law does not explicitly allow for drug treatment courts, nor is there a statutory framework for such courts.

Recently, the Senate passed a bill package to establish a framework for drug treatment courts and to allow their use for certain crimes involving nonviolent offenders and the House added three companion bills. These bills are awaiting House floor action. (For more information, see the Senate Fiscal Agency analysis on Senate Bills 998-1000 dated 3-26-04 and the House Fiscal Agency’s summary of House Bills 5647, 5674, and 5716 and Senate Bills 998-1000 as reported from the House Judiciary Committee dated 5-19-04). As this bill package was being considered, it became apparent that comparable changes needed to be made to several other statutory provisions pertaining to offenses eligible for discharge and dismissal and to records kept by the Department of State Police regarding cases that were discharged and dismissed. Legislation has been offered to make the necessary changes in the other statutes.

THE CONTENT OF THE BILLS:

House Bill 5928 would amend the Michigan Penal Code (MCL 750.350a and 750.430). Under the code, 1) it is a misdemeanor offense for a health practitioner to practice with a blood alcohol content of 0.05 grams or higher and 2) parental kidnapping is a felony offense. However, for a first violation of either, the court can defer judgment, place the offender on probation, and if the probation is completed successfully, the court can discharge the offender from probation and dismiss the charges. The bill would allow the terms and conditions of probation for either offense to include participation in a drug treatment court of the kind proposed under Senate Bill 998.

The Department of State Police must also keep a nonpublic record of an arrest and discharge and dismissal for these offenses, though the record must be furnished to a court or police agency upon request for the purpose of showing that a defendant in a criminal action had already availed himself or herself of a discharge and dismissal. Similarly, the bill would allow a court, police agency, or prosecutor to access the records in order to determine a defendant's eligibility for discharge and dismissal of proceedings by a drug treatment court.

The bill is tie-barred to Senate Bill 998.

House Bill 5932 would amend Public Act 289 of 1925 (MCL 28.243), referred to as the fingerprinting act. Under the act, upon final disposition of the charge against an accused, the clerk of the court must immediately advise the Department of State Police of the final disposition of the arrest for which the person had been fingerprinted if he or she had been found responsible (juvenile) or convicted (adult) of the offense. The information transmitted to the department must include a summary of any deposition or sentence imposed. The summary is required to include, among other things, if the sentence was imposed for certain crimes eligible for discharge and dismissal; for instance, parental kidnapping and certain controlled substance offenses.

The bill would also require the summary to describe whether a sentence had been imposed on a person under Section 1076(4) of the Revised Judicature Act, a new section that would be added by Senate Bill 998 to create a framework for drug courts, or Section 430(a) of the Michigan Penal Code, which pertains to a health professional practicing with a blood alcohol content of 0.05 grams or higher.

The bill is tie-barred to Senate Bill 998 and House Bill 5674, both of which pertain to drug treatment courts.

ARGUMENTS:

For:

The bills are companions to the package of drug court treatment bills that has already been reported by the House Judiciary Committee and are needed to ensure seamless implementation of drug treatment court programs. House Bill 5928 would add clarification that the terms and conditions for probation for a health professional

practicing while under the influence of controlled substances or alcohol or for parental kidnapping (both of which are eligible for discharge and dismissal for a first offense) could include participation in a drug treatment court program. Also, the bill would ensure that a court, police agency, or prosecutor could have access to the non-public record that must be created for sentences imposed for certain crimes eligible for discharge and dismissal. This is important because offenders can only receive one discharge and dismissal; therefore, it is important that these officials have access to the records to determine eligibility for participation in a drug treatment court program.

Similarly, House Bill 5932 would update the list of statutes for which the non-public records are kept for discharge and dismissals to include the discharge and dismissal provision proposed by Senate Bill 998.

POSITIONS:

A representative of the Michigan Association of Counties indicated support for the bills.
(5-25-04)

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