

HOUSE BILL No. 4662

May 8, 2003, Introduced by Reps. Caswell, Milosch, Drolet, Acciavatti, Emmons, Bradstreet, Tabor, Casperson, Pastor, LaJoy, Voorhees, Hager, Hart, Ruth Johnson, Woronchak, Middaugh, Newell, Brandenburg, Hummel, Nofs and Palmer and referred to the Committee on Criminal Justice.

A bill to permit certain individuals to be diverted from the court system having jurisdiction over certain offenses; to establish diversion criteria and procedures; to require certain records to be made and kept; to prescribe certain powers and duties of courts having jurisdiction over certain offenses and of law enforcement agencies; and to prescribe certain remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "bad check pretrial diversion act".

3 Sec. 3. As used in this act:

4 (a) "Check" means a dishonored check or draft upon which an
5 offense is based.

6 (b) "Contractor" means a private entity that contracts with
7 a prosecuting attorney to operate a bad check pretrial diversion
8 program described in section 7.

1 (c) "Offender" means an individual charged with, or for whom
2 probable cause exists to charge the individual with, an offense.

3 (d) "Offense" means any of the following:

4 (i) A violation or attempted violation of chapter XIX of the
5 Michigan penal code, 1931 PA 328, MCL 750.131 to 750.134.

6 (ii) A violation or attempted violation of a local ordinance
7 substantially corresponding to a violation of chapter XIX of the
8 Michigan penal code, 1931 PA 328, MCL 750.131 to 750.134.

9 (e) "Pretrial diversion" means the decision of a county
10 prosecutor to refer an offender to a pretrial diversion program
11 with the condition that the criminal charges against the offender
12 shall be dismissed after a specified period of time, or the case
13 shall not be charged, if the offender successfully completes the
14 pretrial diversion program.

15 (f) "Pretrial diversion program" means a pretrial diversion
16 program established and operated as described in this act.

17 (g) "Restitution" means the money that would be payable to a
18 victim under section 1a of chapter IX of the code of criminal
19 procedure, 1927 PA 175, MCL MCL 769.1a, if the offender was
20 sentenced for an offense, and including any fees payable under
21 section 17.

22 Sec. 5. A prosecuting attorney may establish within his or
23 her office a pretrial diversion program for an offender who is
24 eligible under section 9 and who agrees to voluntarily
25 participate in the pretrial diversion program in lieu of
26 prosecution. The pretrial diversion program may be conducted by
27 the prosecuting attorney or by a private entity under contract

1 with the prosecuting attorney.

2 Sec. 7. If the prosecuting attorney contracts with a
3 private entity to perform any services in operating a pretrial
4 diversion program, that entity shall operate under the
5 supervision, direction, and control of the prosecuting attorney.
6 A private entity providing services to a pretrial diversion
7 program shall not be considered a collection agency required to
8 be licensed under article 9 of the occupational code, 1980 PA
9 299, MCL 339.901 to 339.920.

10 Sec. 9. If an offender is referred to the prosecuting
11 attorney, the prosecuting attorney may determine if the offender
12 is eligible for pretrial diversion to a pretrial diversion
13 program established under section 5. The prosecuting attorney
14 may consider any of the following factors in making a
15 determination under this section:

16 (a) The amount of the check that was drawn or passed.

17 (b) Prior referrals of the person to a pretrial diversion
18 program.

19 (c) Whether charges for other offenses are pending against
20 the offender.

21 (d) The evidence presented regarding the facts and
22 circumstances of the offense.

23 (e) The offender's criminal history.

24 (f) The reason the check was dishonored by the financial
25 institution.

26 (g) Any other factor considered pertinent to the offender's
27 chances of successfully completing the pretrial diversion

1 program.

2 Sec. 11. The prosecuting attorney or contractor may require
3 an offender to accomplish all of the following as conditions for
4 participating in the pretrial diversion program:

5 (a) Successfully complete an educational class held by the
6 prosecuting attorney or contractor and pay the cost of that
7 class.

8 (b) Make full restitution for the offense.

9 (c) Pay any fees imposed under this act.

10 Sec. 13. The prosecuting attorney shall agree in writing
11 not to prosecute the offender upon the offender's successful
12 completion of the pretrial diversion program conditions. The
13 agreement shall specify the offenses that will not be prosecuted
14 by identifying the checks involved in the offenses.

15 Sec. 15. (1) The offender shall pay an administrative fee
16 to defray the costs of administering the pretrial diversion
17 program to the prosecuting attorney or contractor. This
18 administrative fee shall be deposited in a bank account that is
19 maintained by the prosecuting attorney for the purpose of paying
20 the expenses of the pretrial diversion program. However, the
21 prosecuting attorney may require that the administrative fee be
22 paid directly to a contractor.

23 (2) An administrative fee required to be paid under
24 subsection (1) shall not exceed \$35.00 per check. However, the
25 county board of commissioners of a county in which the
26 prosecuting attorney or contractor operates a pretrial diversion
27 program may increase the administrative fee authorized under

1 subsection (1) if the increase is justified by a cost study
2 showing that the administrative fees being collected are
3 insufficient to cover the cost of operating the pretrial
4 diversion program.

5 Sec. 17. (1) In addition to the face amount of a check, the
6 prosecuting attorney or contractor may recover a transaction fee
7 to defray the costs and expenses incurred by a person who
8 received a check that was made or delivered by the offender. A
9 transaction fee described in this section shall be paid to the
10 victim as restitution.

11 (2) A transaction fee authorized under subsection (1) shall
12 not exceed the following:

13 (a) Twenty-five dollars if the face amount of the check is
14 not more than \$100.00.

15 (b) Thirty dollars if the face amount of the check is more
16 than \$100.00 but not more than \$250.00.

17 (c) Thirty-five dollars if the face amount of the check is
18 more than \$250.00 but not more than \$500.00.

19 (d) Forty dollars if the face amount of the check is more
20 than \$500.00 but not more than \$1,000.00.

21 (e) Fifty dollars if the face amount of the check is more
22 than \$1,000.00.

23 Sec. 19. (1) If, in the sole discretion of the prosecuting
24 attorney or contractor, an offender has failed to comply with the
25 requirements of the pretrial diversion program agreed to under
26 section 13, the prosecuting attorney may terminate the offender's
27 involvement in the pretrial diversion program and charge or

1 reinstitute charges against the offender.

2 (2) An offender who fails to successfully complete the
3 pretrial diversion program is not entitled to the return of or
4 credit for any fees or costs paid as a condition of participation
5 in the pretrial diversion program.