

HOUSE BILL No. 4006

January 27, 2005, Introduced by Rep. Caswell and referred to the Committee on Judiciary.

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 "bad
2 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 a

1 prosecuting attorney to operate a bad check pretrial diversion
2 program described in section 7.

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

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

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

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

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

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

19 (g) "Restitution" means the money payable under section 17.

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

26 Sec. 7. If the prosecuting attorney contracts with a private
27 entity to perform any services in operating a pretrial diversion

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

7 Sec. 9. The prosecuting attorney may determine if the offender
8 is eligible for pretrial diversion to a pretrial diversion program
9 established under section 5.

10 Sec. 11. The prosecuting attorney may require an offender to
11 accomplish 1 or more of the following as conditions for
12 participating in the pretrial diversion program:

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

15 (b) Make full restitution for the offense as described in
16 section 17.

17 (c) Pay any fees authorized by this act.

18 Sec. 13. The prosecuting attorney shall notify the offender in
19 writing of the pretrial diversion program conditions. The notice
20 shall identify the offenses that will not be prosecuted.

21 Sec. 15. Pursuant to section 11, the prosecutor may require
22 the offender to pay an administrative fee to defray the costs of
23 administering the pretrial diversion program, which fee shall be
24 determined by the prosecutor. The prosecutor may require that the
25 offender pay 1 or more of the following directly to a contractor or
26 to the prosecutor:

27 (a) The administrative fee described in this section.

1 (b) The cost of an educational class described in section 11.

2 (c) Restitution as described in section 17.

3 Sec. 17. The prosecutor may recover restitution from the
4 offender in the face amount of the check and an additional \$35.00
5 to defray the costs and expenses incurred by the person who
6 received a check made or delivered by the offender.

7 Sec. 19. (1) If, in the sole discretion of the prosecuting
8 attorney, an offender has failed to comply with the requirements of
9 the pretrial diversion program agreed to under section 13, the
10 prosecuting attorney may terminate the offender's involvement in
11 the pretrial diversion program and charge or reinstitute charges
12 against the offender.

13 (2) An offender who fails to successfully complete the
14 pretrial diversion program is not entitled to the return of or
15 credit for any fees, costs, or restitution paid as a condition of
16 participation in the pretrial diversion program.