

SPECIALTY COURT CERTIFICATION FROM SCAO

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Senate Bill 435 reported from committee as (H-1)
Senate Bills 436, 437, and 438 as reported from committee w/o amendment

Analysis available at
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Sponsor: Sen. Tonya Schuitmaker
House Committee: Law and Justice
Senate Committee: Judiciary
Complete to 10-24-17

(Enacted as Public Acts 161 to 164 of 2017)

BRIEF SUMMARY: Senate Bills 435, 437, and 438 would amend the Revised Judicature Act (RJA) to require that specialty courts receive certification from the State Court Administrative Office (SCAO) in order to operate in Michigan. Senate Bill 436 would amend the Michigan Vehicle Code to reflect those changes and to expand the list of permissible driving for someone with a restricted license due to a conviction for operating a vehicle while intoxicated.

These bills are tie-barred, which means if one of the bills is not enacted, none of the bills would be enacted.

FISCAL IMPACT: Senate Bills 435, 437, and 438 would create additional administrative costs for the State Court Administrative Office, primarily for increased staff time and travel. According to the State Court Administrative Office, the additional cost would be roughly \$60,000 annually, which would be supported by existing appropriations.

Senate Bill 436 would have no fiscal impact on the state or on local units of government.

THE APPARENT PROBLEM:

According to a representative from SCAO, studies show that offenders who go through specialized treatment courts, also called problem-solving courts, are less likely to offend again. Because of this, treatment courts should be available to more offenders to help reduce recidivism rates. If the proposed model in the Senate Bills, which is based off national best practices, is adopted, then Michigan would join 32 other states that currently follow the national model.

THE CONTENT OF THE BILLS:

SCAO Certification

Senate Bills 435, 437, and 438 would amend the RJA to require that beginning January 1, 2018, the following specialty courts must be certified by SCAO to operate:

- Drug Treatment Courts (SB 435, Section 1062)
- DWI/Sobriety Courts (SB 435, Section 1084)
- Mental Health Courts (SB 437, Section 1091), and
- Veterans Treatment Courts (SB 438, Section 1201).

More specifically, the bills would require that, beginning January 1, 2018, a specialty court operating in Michigan, or a circuit or district court in any judicial circuit seeking to adopt or institute a specialty court, must be certified by SCAO. The bills would require that SCAO establish the procedure for certification and that approval and certification by SCAO is required to begin or continue operating a specialty court. Once a specialty court is certified, SCAO would have to include that court on the statewide official list of applicable specialty courts; SCAO could not recognize and include a specialty court that has not been certified on that list. A specialty court that is not certified would not be allowed to perform any of the functions of a specialty court, including, but not limited to:

- Charging a fee.
- Discharging or dismissing a case.
- Receiving funding.
- Certifying to the Secretary of State that an individual is eligible to receive a restricted license under Section 1084 of this Act and Section 304 of the Michigan Vehicle Code (MCL 257.304). [Not applicable to mental health courts.]

Senate Bill 435 would further amend the RJA by adding a provision to the drug treatment courts (Section 1070), mental health courts (Section 1095), and veterans treatment courts (Section 1206) to mandate that the original court of jurisdiction would maintain jurisdiction over the drug, mental health, or veterans treatment court participant, unless a memorandum of understanding stating otherwise is made between a receiving court and the court of original jurisdiction.

SB 435 would add Section 1088 to require that a memorandum of understanding includes, but would not be limited to, all of the following:

- A detailed statement of how all funds assessed to the defendant would be accounted for, including, but not limited to, the need for a receiving state-certified treatment court to collect funds and remit them to the court of original jurisdiction.
- A statement providing which court is responsible for providing information to the Department of State Police as required under Section 3 of the Bureau of Criminal Identifications and Records Act (MCL 28.243) and for forwarding an abstract to the Secretary of State for inclusion on the defendant's driving record.
- A statement providing where jail sanctions or incarceration sentences would be served, as applicable.
- A statement that the defendant has been determined eligible by and will be accepted into the state-certified treatment court upon transfer.
- The approval of all of the following:
 - The chief judge and assigned judge of the receiving state-certified treatment court and the court of original jurisdiction.
 - A prosecuting attorney from the receiving state-certified treatment court and the court of original jurisdiction.
 - The defendant.

State-certified treatment courts would include the treatment courts certified by SCAO as provided in Section 1062 (Drug Treatment Courts), 1084 (DWI/Sobriety Courts), 1091 (Mental Health Courts), or 1201 (Veterans Treatment Courts).

Drug Court Eligibility: Definition of Violent Offender

Senate Bill 435 would amend Section 1060 of the RJA, by deleting two provisions from the definition for “violent offender,” thereby expanding drug court eligibility to the following individuals [Sec. 1064 prohibits violent offenders from participating in a drug court]:

- An individual charged with the offense of carrying, possessing, or using a firearm or other dangerous weapon.
- An individual with prior convictions for a felony involving the use or attempted use of force against another individual with intent to cause death or bodily harm.

The definition of violent offender remaining would include “an offense involving the death of or serious bodily injury to any individual, whether or not any of the circumstances are an element of the offense, or an offense that is criminal sexual conduct of any degree.” This would align the definition of a violent offender for the purposes of a drug treatment court with that used to prohibit eligibility for mental health courts and veterans treatments courts.

Michigan Vehicle Code

Senate Bill 436 would amend Section 304 of the Michigan Vehicle Code to update references regarding DWI/Sobriety courts to reflect the changes proposed in SB 435.

This bill would also add to the list of permissible driving that can occur under a restricted license to include, “at the discretion of the judge, the custodian of a minor child may drive to and from the facilities of a provider of day care services at which the custodian's minor child is enrolled, or an education institution at which the custodian's minor child is enrolled as a student for the purposes of classes, academic meetings or conferences, and athletic or extracurricular activities sanctioned by the educational institution in which the minor child is a participant. As used in this subparagraph, 'minor child' means an individual who is less than 18 years of age.”

HOUSE COMMITTEE ACTION:

The House Law and Justice Committee adopted an (H-1) Substitute to Senate Bill 435 to require that a court of original jurisdiction would keep jurisdiction over an offender, unless a memorandum of understanding made between a receiving court and the court of original jurisdiction states otherwise. The substitute also added the information that a memorandum of understanding must include.

ARGUMENTS:

For:

Proponents of the bills argued that more offenders should be eligible to receive treatment from a specialized court. Because treatment courts produce lower recidivism rates, it would be in everyone's best interests to have more offenders go through the treatment courts to keep reducing recidivism rates in Michigan.

Supporters of the bills also believe that a standard model for treatment courts to follow throughout Michigan would produce better outcomes for offenders to further reduce recidivism rates.

Against:

Opponents of the bills argued that a standardized model may not be appropriate for all localities because most serve to meet local needs and are tied to specific and local incentives. As a result, a one-size-fits-all implementation may not produce the low recidivism rates that are currently experienced by specialty courts.

Critics of the bills also would like to see certain criminal sexual conduct offenders included in treatment courts, as a fourth-degree violation is considered a misdemeanor.

Response:

Supporters of the bills responded that treatment courts are not designed to help certain offenders, including those who commit more serious criminal sexual conduct crimes. Criminal sexual conduct offenders were considered when drafting the bills, but because most felony criminal sexual conduct offenses are pled down to the misdemeanor, a blanket exclusion is the only way to keep the more egregious offenders out of treatment courts.

POSITIONS:

Representatives from the following entities showed support for the bills:

- Michigan District Judges Association (10-3-17)
- Michigan Association of Treatment Court Professionals (10-3-17)
- Attorney General Bill Schuette (10-3-17)
- Prosecuting Attorneys Association of Michigan (10-3-17)
- Michigan Judges Association (10-3-17)
- State Bar of Michigan (10-3-17)
- State Court Administrative Office (10-3-17 and 10-17-17)

The 13th Circuit Court judge testified in opposition to the bills. (10-3-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.