

# Legislative Analysis



## CONSIDERATIONS FOR WAIVERS AND DESIGNATIONS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 4633 (H-1) as reported from committee

Sponsor: Rep. Kelly Breen

Committee: Criminal Justice

Complete to 10-11-23

Analysis available at  
<http://www.legislature.mi.gov>

## SUMMARY:

House Bill 4633 would amend Chapter XIIA of the Probate Code (known as the juvenile code) to revise the factors considered by the court for traditional waivers and designations and to require that the period of a consent calendar case plan not exceed three months.

### Factors in consideration

Currently, in both designated proceedings and traditional waivers, the court must consider the following specified factors (italicized to highlight differences with the bill) in determining whether the best interests of the juvenile and the public would be served by the designation or waiver:

- 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.

The bill would instead require consideration of all of the following:

- 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. (Same as current law, except that "impact on any victim" is deleted here and moved to its own provision below.)
- 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. (Same as current law.)
- 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. (Same as current law.)
- *The juvenile's developmental maturity, emotional health, and mental health.*
- *If the juvenile is a member of a federally recognized Indian tribe, culturally honoring traditional values of the juvenile's tribe.*
- The impact on any victim.

Under both current law and the bill, in considering the above factors, the court must give greater weight to the seriousness of the alleged offense and the juvenile's prior delinquency record.

### **Consent calendar plan**

The bill would provide that the period for a juvenile to complete the terms of a consent calendar plan must not exceed three months, unless the court determines that a longer period is needed for the juvenile to complete a specific treatment program and includes this determination as part of the consent calendar case record.

MCL 712A.2d, 712A.2f, and 712A.4

### **BACKGROUND:**

The Michigan Task Force on Juvenile Justice Reform was created by Executive Order 2021-6 as a bipartisan advisory body in the Department of Health and Human Services<sup>1</sup> to “lead a data-driven analysis of [Michigan’s] juvenile justice system and recommend proven practices and strategies for reform grounded in data, research, and fundamental constitutional principles.” In particular, in the words of its final report,<sup>2</sup> the task force was “charged with developing recommendations to improve state law, policy, and appropriations guided by the following objectives:

- Safely reduce placement in detention and residential placement and associated costs.
- Increase the safety and well-being of youth impacted by the juvenile justice system.
- Reduce racial and ethnic disparities among youth impacted by the juvenile justice system.
- Improve the efficiency and effectiveness of the state’s and counties’ juvenile justice systems.
- Increase accountability and transparency within the juvenile justice system.
- Better align practices with research and constitutional mandates.”

The task force issued its final report on July 18, 2022.<sup>3</sup>

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<sup>1</sup> <https://www.legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2021-EO-06.pdf>

<sup>2</sup> <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>

<sup>3</sup> <https://www.michigan.gov/whitmer/news/press-releases/2022/07/18/task-force-on-juvenile-justice-reform-approves-blueprint-for-transforming-juvenile-justice>

Among its unanimous recommendations was that the state “Ensure that factors considered by the court for traditional waivers and designations account for youth’s developmental maturity and emotional and mental health, and their ability to get more treatment and rehabilitation for those needs in juvenile court.”

**FISCAL IMPACT:**

House Bill 4633 would have no fiscal impact on the state or on local units of government.

**POSITIONS:**

Michigan Supreme Court Chief Justice Elizabeth Clement testified in support of the bills. (6-20-23)

Representatives of the following entities testified in support of the bills:

- State Appellate Defender Office (9-19-23)
- Prosecuting Attorneys Association of Michigan (PAAM) (6-20-23)
- Michigan Probate Judges Association (6-20-23)
- The Delta Project (6-20-23)
- Michigan Association for Family Court Administration (6-20-23)

The following entities indicated support for the bills:

- State Court Administrative Office (9-26-23)
- Department of the Attorney General (9-26-23)
- Department of Health and Human Services (9-19-23)
- Michigan Center for Youth Justice (9-19-23)
- Criminal Defense Attorneys of Michigan (6-20-23)
- Safe and Just Michigan (6-20-23)
- Michigan League for Public Policy (6-20-23)
- Michigan Association of Counties (9-26-23)
- Michigan Catholic Conference (9-26-23)
- ACLU of Michigan (9-19-23)
- Michigan Federation for Children and Families (7-11-23)
- Council of State Governments Justice Center (7-11-23)
- Coalition for Juvenile Justice (6-7-23)
- Michigan Association of Circuit Court Administrators (7-11-23)
- Student Advocacy Center of Michigan (9-11-23)
- Michigan Sheriffs’ Association (6-16-23)

Legislative Analyst: Rick Yuille  
Fiscal Analyst: Robin Risko

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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.