

Legislative Analysis



CONSIDERATIONS FOR WAIVERS AND DESIGNATIONS

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House Bill 4633 as enacted
Public Act 291 of 2023
Sponsor: Rep. Kelly Breen
House Committee: Criminal Justice
Senate Committee: Committee of the Whole
Complete to 1-20-24

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

SUMMARY:

House Bill 4633 amends 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 six months.¹

The bill takes effect October 1, 2024.

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 instead requires 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.)

¹ Note that 2023 PA 301, also taking effect October 1, 2024, but enacted after HB 4633, changes this to three months.

- 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 provides that the period for a juvenile to complete the terms of a consent calendar plan must not exceed six 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 Services² 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,³ 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, 2022.⁴

² <https://www.legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2021-EO-06.pdf>

³ <https://micounties.org/wp-content/uploads/Michigan-Taskforce-on-Juvenile-Justice-Reform-Final-Report.pdf>

⁴ <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.

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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.