

## JUVENILE DIVERSION ACT

### Act 13 of 1988

AN ACT to permit certain minors to be diverted from the court system having jurisdiction over minors; 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 minors and of law enforcement agencies; and to prescribe certain penalties.

**History:** 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 415, Eff. Jan. 1, 1998.

*The People of the State of Michigan enact:*

#### **722.821 Short title.**

Sec. 1. This act shall be known and may be cited as the "juvenile diversion act".

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

#### **722.822 Definitions.**

Sec. 2. As used in this act:

(a) "Assaultive crime" means an offense that, if committed by an adult, would constitute an offense against a person described in section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA 328, MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520e, 750.520g, 750.529, 750.529a, and 750.530.

(b) "Court" means the family division of circuit court.

(c) "Divert" or "diversion" means the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor that if a petition were filed with the court would bring that minor within section 2(a) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, and instead of petitioning the court or authorizing a petition, either of the following occurs:

(i) The minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued.

(ii) The minor and the minor's parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.

(d) "Law enforcement agency" means a police department of a city, village, or township, a sheriff's department, the department of state police, or any other governmental law enforcement agency in this state.

(e) "Minor" means an individual less than 18 years of age.

**History:** 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1994, Act 197, Eff. Oct. 1, 1994;—Am. 1996, Act 415, Eff. Jan. 1, 1998;—Am. 2019, Act 101, Eff. Oct. 1, 2021.

#### **722.823 Powers of law enforcement official or court intake worker where petition not filed or authorized; diversion of minor.**

Sec. 3. (1) If in the course of investigating an alleged offense by a minor a petition has not been filed with the court, or if a petition has not been authorized, a law enforcement official or court intake worker may do 1 of the following:

(a) Release the minor into the custody of his or her parent, guardian, or custodian and discontinue the investigation.

(b) Divert the matter by making an agreement pursuant to section 5 with the minor and the minor's parent, guardian, or custodian to refer the minor to a person or public or private organization or agency that will assist the minor and the minor's family in resolving the problem that initiated the investigation.

(c) File a petition with the court or authorize a petition that has been filed.

(2) A minor may be diverted only as provided in subsection (1)(a) or (b) and subsection (3).

(3) A minor accused or charged with an assaultive offense shall not be diverted.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

#### **722.824 Decision to divert minor; factors to be examined.**

Sec. 4. Before a decision is made to divert a minor, all of the following factors shall be examined:

(a) The nature of the alleged offense.

(b) The minor's age.

(c) The nature of the problem that led to the alleged offense.

- (d) The minor's character and conduct.
- (e) The minor's behavior in school, family, and group settings.
- (f) Any prior diversion decisions made concerning the minor and the nature of the minor's compliance with the diversion agreement.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

#### **722.825 Conference; notice; time; prohibitions; diversion agreement; filing petition; noncompliance with terms of agreement or plan.**

Sec. 5. (1) If a decision is made to divert a minor with a referral under section 3(1)(b), a conference with the minor and the minor's parent, guardian, or custodian shall be held to consider alternatives to the filing of a petition with the court or to the authorization of a petition. The law enforcement official or intake worker shall notify the minor and the minor's parent, guardian, or custodian of the proposed conference and shall inform the minor, and the minor's parent, guardian, or custodian of all of the following:

- (a) That participation in the conference or resulting referral plan is voluntary.
- (b) That an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference.
- (c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.
- (d) That if diversion is agreed to and the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.

(2) The conference to consider alternatives to the filing of a petition with the court or to consider alternatives to the authorization of a petition shall not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with the court or has been authorized, shall not be used against the minor.

(3) If a conference held under this section results in diversion that imposes conditions on the minor and that will prevent the filing of a petition with the court or the authorization of a petition, the terms of the diversion agreement shall be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian.

(4) If a conference is held under this section and an agreement under subsection (3) is not reached, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law. If an agreement under subsection (3) is not reached and a petition is to be filed, the petition shall be filed with the court not later than 30 days after the conference.

(5) If the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or the court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law.

**History:** 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 137, Eff. May 1, 1996.

#### **722.826 Decision to divert minor; information to be filed; revocation.**

Sec. 6. (1) When a decision is made to divert a minor, the law enforcement official or court intake worker shall file with the court in the county in which the minor resides or is found all of the following information:

- (a) The minor's name, address, and date of birth.
- (b) The act or offense for which the minor was apprehended.
- (c) The date and place of the act or offense for which the minor was apprehended.
- (d) The diversion decision made, whether referred or released.
- (e) The nature of the minor's compliance with the diversion agreement.

(2) If a diversion agreement is revoked pursuant to section 5(5), the law enforcement official or court intake worker shall file with the court in which the information described in subsection (1) is filed the fact of and reasons for the revocation.

**History:** 1988, Act 13, Eff. Apr. 1, 1988;—Am. 1996, Act 137, Eff. May 1, 1996.

#### **722.827 Separate diversion record.**

Sec. 7. The court in the county in which a diverted minor resides or is found shall keep a separate diversion record for that minor.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

**722.828 Opening record; destruction of record.**

Sec. 8. (1) Except as otherwise required in subsection (2), a record required to be kept under this act shall be open only by order of the court to a person who has a legitimate interest.

(2) A record required to be kept under this act shall be open to a law enforcement agency or court intake worker for only the purpose of deciding whether to divert a minor.

(3) A minor's record kept under this act shall be destroyed within 28 days after the minor becomes 18 years of age.

**History:** 1988, Act 13, Eff. Apr. 1, 1988;—Am. 2019, Act 101, Eff. Oct. 1, 2021.

**722.829 Use of record; violation as misdemeanor; penalty.**

Sec. 9. (1) A record kept under this act shall not be used by any person, including a court official or law enforcement official, for any purpose except in making a decision on whether to divert a minor.

(2) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 180 days, or a fine of not more than \$1,000.00, or both.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

**722.830 Conditional effective date.**

Sec. 10. This act shall not take effect unless Senate Bill No. 602 of the 84th Legislature is enacted into law.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

**722.831 Effective date.**

Sec. 11. This act shall take effect April 1, 1988.

**History:** 1988, Act 13, Eff. Apr. 1, 1988.

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