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BILL ANALYSIS

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Senate Bill 688 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Stephanie Chang  
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 7-25-24

### **RATIONALE**

Public Acts 292, 293, 301, and 302 of 2023 enacted various gubernatorial recommendations for Michigan's juvenile justice system and will take effect October 1, 2024 (see **BACKGROUND**). Specifically, the Acts increase eligibility for, and intend to increase participation in, juvenile diversion programs, which attempt to resolve youth criminal offenses without resorting to legal sanctions. Currently, any record pertaining to a minor under the Juvenile Diversion Act must not be used for any purpose except in deciding on whether to divert a minor. It has been suggested that researchers be allowed access to juvenile record data to analyze the effectiveness of such programs and the recent reforms while also protecting the identities of the juveniles involved.

### **CONTENT**

**The bill would amend the Juvenile Diversion Act to allow a researcher to submit a research request for a juvenile record to the State Court Administrative Office (SCAO) or an individual court and prescribe conditions for the use of such information, including redacting personally identifiable information.**

The bill would take effect October 1, 2024.

The Act allows certain minors to be diverted from a family court before formal investigation and released to the custody of a parent, guardian, or custodian, or placement to which the minor and his or her parent, guardian, or custodian agreed for further resolution of the problem that initiated the investigation concerning the minor. If diverted, a minor's record must be destroyed within 28 days after the minor becomes 18 years of age.

Currently, a record kept under the Act must not be used by any person including a court official or law enforcement official for any purpose except in deciding on whether to divert a minor. Under the bill, an individual or organization could submit a research request for a record to the SCAO or an individual court as applicable. If the research request were granted, the applicable parties would have to negotiate the data use agreement that protected personally identifiable information from public disclosure.

"Data use agreement" would mean an agreement between the individual or organization and the SCAO or individual court that outlines the technical standards and other provisions to protect the integrity of the information and personally identifiable information from public disclosure.

"Personally identifiable information" would mean information about an individual that would reveal the individual's identity, including an individual's name, date of birth, Social Security number, address, and other information unique to an individual.

If a data use agreement were entered, the SCAO or an individual court could release records according to the provisions of the agreement. The SCAO could charge the researcher to cover the costs incurred for processing the research request. Data provided under the data use agreement would be exempt from disclosure under Section 13(1)(d) of the Freedom of Information Act (FOIA).<sup>1</sup> The researcher would have to abide by all terms and conditions set forth in the agreement.

Under the bill, the SCAO and each court that received a research request would have to maintain records of all the following:

- Requests that were received and the dates those requests were received.
- Requests that were granted and the dates that each request was granted.
- A description of the data released as a result of a granted request.

MCL 722.829

## **BACKGROUND**

### Juvenile Justice Taskforce Recommendations Generally

Governor Gretchen Whitmer signed Executive Order 2021-6 on June 9, 2021, which, among other things, created the Task Force on Juvenile Justice Reform (Task Force) as a temporary advisory body within the Department of Health and Human Services (DHHS). The Task Force was charged with acting in an advisory capacity with the goal of developing ambitious, innovative, and thorough analysis of Michigan's juvenile justice system, and including recommendations for changes to State law, policy, and appropriations aimed to improve youth outcomes.<sup>2</sup>

The Task Force released its report and recommendations on July 22, 2022. Overall, the report found that the quality of services and case management received by youth, from defense to post-disposition placement, differs across the State. The State lacks uniform judicial justice policies and quality assurance standards, leading to disparities the State cannot address and data it cannot rely upon. Additionally, the lack of State centralization has led to discrepancies in the implementation of research-based, developmentally appropriate practices across the State. Public Acts (PA) 289 through 293 and PAs 297 through 302 of 2023 were enacted based on some of the Task Force's report and recommendations and take effect on October 1, 2024.

### Child Care Fund

The Task Force unanimously suggested that the Child Care Fund (CCF) be enhanced to create a minimum framework of juvenile best practices across the State.<sup>3</sup> These proposed practices would be supported by an increase in the reimbursement rate (from 50% to 75%) to counties and tribes to incentivize the creation of community-based supervision and services. The Task Force also recommended that local courts be required to adopt a validated risk screening tool and mental health screening tool to guide diversion and consent calendar decisions, adopt a validated risk assessment tool for use prior to disposition, adopt a detention screening tool, adhere to best practice probation standards, including officers being certified in these

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<sup>1</sup> Section 13(1)(d) of FOIA allows a public body to exempt from disclosure as a public record records or information specifically described and exempted from disclosure by statute.

<sup>2</sup> Executive Order 2021-6.

<sup>3</sup> *Michigan Task Force on Juvenile Justice Reform Report and Recommendations*. Pp. 12, 14-17, July 22, 2022.

standards every two years, and employ a local quality assurance specialist to support the above practices (excluding counties/tribes that receive the basic grant).

Specifically, PA 297 of 2023 requires the DHHS's CCF to reimburse counties at a rate of 75% of annual expenditures for in-home expenses related to juvenile justice, such as community-based supervision, services, related practices, and per diem rates for the use of respite care and shelter for fewer than 30 days, among other things.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The collection of data is essential to inform public policy and the bill would allow researchers data access while protecting individual privacy. Researchers currently may not request youth data but there is precedent to allow researchers access to sensitive health information and this practice should be extended in this instance. Currently, the Health Insurance Portability and Accountability Act (HIPPA) allows researchers to access and use HIPPA data when necessary to conduct research, subject to the redaction of personally identifiable health information, among other things.<sup>4</sup> Giving researchers access subject to a data use agreement would allow for reports on the effectiveness of the recent juvenile justice reforms and would better inform the Legislature in future juvenile decisions.

Some believe that juvenile diversion programs will expand because of changes to the Childcare Fund Reimbursement formula recently enacted by PA 297 of 2023 (see **BACKGROUND**). According to testimony before the Senate Committee on Civil Rights, Judiciary, and Public Safety, juvenile diversion programs are generally housed within community organizations with no formal connection to the courts which results in courts having little to no information on the use and ongoing engagement of those programs. Any available data on those programs originates from each program and the lack of data integration limits the ability to track success and failure of diversion programs, among other things. Researchers need access to youth data to assess the efficacy of juvenile justice reforms and practices and the bill would offer that access.

### **Opposing Argument**

The information released to researchers should not be exempt from disclosure under FOIA. Once data has appropriately redacted any personally identifiable information, that data should be available to the public upon request. Currently, the State is ranked poorly in transparency with a 2015 report from the Center for Public Integrity ranking Michigan as an "F" and the Coalition for Integrity ranking Michigan 47th out of 50 for anti-corruption measures.<sup>5,6</sup> If this data is being shared with researchers, the SCAO should be transparent and allow independent evaluation of that data.

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<sup>4</sup> "HIPPA Privacy Rules". United States Department of Health and Human Services National Institutes of Health. [https://privacyruleandresearch.nih.gov/pr\\_07.asp](https://privacyruleandresearch.nih.gov/pr_07.asp) Retrieved July 19, 2024.

<sup>5</sup> "Michigan Gets an F Grade in 2015 State Integrity Investigation". Center for Public Policy. <https://publicintegrity.org/politics/state-politics/state-integrity-investigation/michigan-gets-f-grade-in-2015-state-integrity-investigation/> Retrieved July 11, 2024.

<sup>6</sup> "The States with Anti-Corruption Measures Index 2020". Coalition for Integrity. <https://www.coalitionforintegrity.org/swamp2020/> Retrieved July 11, 2024.

## **FISCAL IMPACT**

The bill would likely include indeterminate administrative costs for the SCAO associated with the duty to create data use agreements when providing court records. These costs are indeterminate and are expected to be absorbed by current appropriations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.