

SENATE BILL NO. 419

June 28, 2023, Introduced by Senators SANTANA, CHANG, BAYER, WOJNO, SHINK and GEISS and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1988 PA 13, entitled "Juvenile diversion act," by amending sections 2, 3, 6, and 9 (MCL 722.822, 722.823, 722.826, and 722.829), section 2 as amended by 2019 PA 101 and section 6 as amended by 1996 PA 137.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 ~~(a) "Assaultive crime" means an offense that, if committed by~~
- 3 ~~an adult, would constitute an offense against a person described in~~

1 ~~section 82, 83, 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350,~~
 2 ~~397, 520b, 520c, 520d, 520e, 520g, 529, 529a, or 530 of the~~
 3 ~~Michigan penal code, 1931 PA 328, MCL 750.82, 750.83, 750.84,~~
 4 ~~750.86, 750.87, 750.88, 750.89, 750.316, 750.317, 750.321, 750.349,~~
 5 ~~750.349a, 750.350, 750.397, 750.520b, 750.520c, 750.520d, 750.520e,~~
 6 ~~750.520g, 750.529, 750.529a, and 750.530.~~

7 (a) ~~(b)~~—"Court" means the family division of circuit court.

8 (b) ~~(e)~~—"Divert" or "diversion" means the placement that
 9 occurs when a ~~formally recorded apprehension is made by a law~~
 10 enforcement agency **makes a formally recorded investigation or**
 11 **apprehension** for an act by a minor that if a petition were filed
 12 with the court would bring that minor within section 2(a) of
 13 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2,
 14 and instead of petitioning the court or authorizing a petition,
 15 either of the following occurs:

16 (i) The minor is released into the custody of ~~his or her~~ **the**
 17 **minor's** parent, guardian, or custodian and the investigation is
 18 discontinued.

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

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

27 (d) ~~(e)~~—"Minor" means an individual less than 18 years of age.

28 (e) **"Specified juvenile violation" means that term as defined**
 29 **in section 2 of chapter XIIIA of the probate code of 1939, 1939 PA**

1 288, MCL 712A.2.

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

6 (a) Release the minor into the custody of ~~his or her~~ **the**
7 **minor's** parent, guardian, or custodian and discontinue the
8 investigation.

9 (b) ~~Divert~~ **Subject to subsections (4) and (5), divert** the
10 matter by making an agreement ~~pursuant to~~ **under** section 5 with the
11 minor and the minor's parent, guardian, or custodian to refer the
12 minor to a person or public or private organization or agency that
13 will assist the minor and the minor's family in resolving the
14 problem that initiated the investigation.

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

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

19 (3) A minor accused or charged with ~~an assaultive offense~~
20 ~~shall~~ **a specified juvenile violation must** not be diverted.

21 (4) **Except as otherwise provided in this subsection, before a**
22 **diversion decision is made for a minor, a risk screening tool and a**
23 **mental health screening tool must be conducted on the minor. A risk**
24 **screening tool and a mental health screening tool must not be**
25 **conducted on a minor who meets any of the following criteria:**

26 (a) **Is accused or charged with a specified juvenile violation.**

27 (b) **Is currently under supervision in the juvenile justice**
28 **system by the court or the department of health and human services.**

29 (5) **A minor must not be diverted under subsection (1)(b)**

1 unless both of the following requirements are met:

2 (a) The law enforcement official or court intake worker
3 receives the results of a risk screening tool and a mental health
4 screening tool for the minor conducted by a designated court
5 officer who is trained in those screening tools.

6 (b) The law enforcement official or court intake worker uses
7 the results of the risk screening tool and the mental health
8 screening tool, and the best interests of public safety and the
9 minor, to inform the decision to divert the minor.

10 (6) A risk screening tool and a mental health screening tool
11 described in subsections (4) and (5) must meet both of the
12 following requirements:

13 (a) Is research based and nationally validated for use with
14 minors.

15 (b) Complies with the guidelines created under subsection (7).

16 (7) The supreme court shall create guidelines on the use of
17 risk screening tools and mental health screening tools described in
18 subsections (4) and (5).

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

23 (a) The minor's name, address, and date of birth.

24 (b) The act or offense for which the minor was apprehended.

25 (c) The date and place of the act or offense for which the
26 minor was apprehended.

27 (d) The diversion decision made, whether referred or released.

28 (e) The nature of the minor's compliance with the diversion
29 agreement.

1 **(f) If the diversion is under section 3(1)(b), the results of**
 2 **the minor's risk screening tool and mental health screening tool.**

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

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

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

15 **(3) A risk screening tool and a mental health screening tool**
 16 **conducted as part of a proceeding under this act and any**
 17 **information obtained from a minor in the course of those screenings**
 18 **or provided by the minor in order to participate in a diversion**
 19 **program, including, but not limited to, any admission, confession,**
 20 **or incriminating evidence, are not admissible into evidence in any**
 21 **adjudicatory hearing in which the minor is accused and are not**
 22 **subject to subpoena or any other court process for use in any other**
 23 **proceeding or for any other purpose.**

24 Enacting section 1. This amendatory act does not take effect
 25 unless Senate Bill No. 418 of the 102nd Legislature is enacted into
 26 law.