

Legislative Analysis



SPECIFIED JUVENILE VIOLATIONS

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

House Bill 4960 (reported without amendment)

House Bill 4961 (reported as Substitute H-1)

Sponsor: Rep. Klint Kesto

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

House Bill 4962 (reported without amendment)

Sponsor: Rep. Robert L. Kosowski

Committee: Criminal Justice

Complete to 4-26-16

SUMMARY:

House Bills 4960-4962 are tie-barred to each other and amend various acts to revise the definition of "specified juvenile violations" and to raise the age of a juvenile subject to an automatic waiver to adult court from 16 to 17 years of age. Specified juvenile violations refer to a list of more serious offenses such as rape, arson, assault with the intent to commit murder, and armed robbery, to name a few. The bills are part of the legislative package to reform juvenile justice. Other bills in the package include HB 4947-4959 and 4963-4966. The bills take effect 90 days after enactment.

House Bill 4960 amends the Code of Criminal Procedure (MCL 764.1f and 766.14). The bill does the following:

- Allows a prosecutor to file a complaint and warrant with a magistrate in district court (adult criminal court) charging a juvenile 14 years or older but less than 18 (raised from less than 17) believed to have committed a specified juvenile violation (known as an automatic waiver).
- Amends the definition of "specified juvenile violation" to eliminate the inclusion of:
 - The crime of threatening to or injuring or maiming another in an attempt to commit larceny from a building, safe, bank or vault (MCL 750.531).
 - Escaping from certain juvenile facilities (MCL 750.186a).
 - Manufacture/delivery or possession of a Schedule 1 or 2 narcotic or cocaine of 1,000 grams or more [MCL 333.7404(2)(a)(i) or 333.7403(2)(a)(i)].

House Bill 4961 amends the Revised Judicature Act to make similar changes as above to the definition of "specified juvenile violation" (MCL 600.606).

House Bill 4962 amends the Juvenile Code within the Probate Code (MCL 712A.2 and 712A.2d) to do the following:

- Grant the Family Division of Circuit Court exclusive original jurisdiction over a juvenile under 18 years of age (raised from 17) in certain circumstances.

- Revise the definition of "specified juvenile violation" as in House Bills 4960-4961.

FISCAL IMPACT:

House Bills 4960 and 4961

Corrections. As introduced, HB 4960 and HB 4961 would have an indeterminate fiscal impact on the state Department of Corrections. A savings could be recognized as a result of fewer juveniles being tried as adults and sentenced to adult prison for committing specific crimes which, under the bills, would be eliminated from the list of specified juvenile violations. It is not known how many juveniles will commit the specific crimes eliminated, and, currently, there are no juveniles housed at state prisons for committing the specific crimes eliminated. Therefore, it is not possible to assign an amount of savings to be achieved.

DHHS and Counties. House Bills 4960 and 4961 could increase costs to the Department of Health and Human Services (DHHS) and to local county governments by an unknown amount. The bills are part of a larger package of legislative bills which, if enacted, would increase the maximum age of juvenile court jurisdiction from 17 to 18.

Current law provides that prosecutors can initiate automatic waiver proceeding to bypass family court and file directly to the adult criminal court for cases in which a youth is charged with one of 18 "specified juvenile violations." By eliminating three of these specified offenses, fewer juveniles may be tried as adults and more may be directed to treatment and services within the juvenile justice system than would have been under current law. A juvenile may still be tried as an adult when being charged of one of these three offenses; however, it would no longer be mandatory. Any increase in costs to DHHS and county governments would depend upon on how many additional juveniles would now be placed under DHHS or local court supervision through judicial discretion in the disposition of their cases and what placements or services might be ordered by the court.

House Bill 4962

As introduced, HB 4962 would have an indeterminate fiscal impact on local courts. The impact would depend on the number of cases involving 17-year-olds who would no longer be tried as adults for commission of specific crimes which would be eliminated from the list of specified juvenile violations. It is difficult to project the actual impact on each local unit due to variables such as law enforcement practices, prosecutorial practices, and judicial discretion.

BACKGROUND INFORMATION:

The juvenile court process is quite different than the process in place for adults. Currently defined as a person less than 17 years of age, a juvenile who commits a criminal offense is typically adjudicated in the Family Division of Circuit Court. If the juvenile committed a felony, depending on the nature or seriousness of the offense, the juvenile may receive a

typical juvenile disposition in Family Division (referred to as a delinquency proceeding), receive an adult sentence in Family Division, or may be waived to adult criminal court and tried and sentenced as an adult.

Delinquency proceeding: An adjudication in the Family Division of Circuit Court, also referred to as a *delinquency proceeding*, is not considered to be criminal and the philosophy of the court is rehabilitation and treatment for the delinquent youth rather than punishment. The judge has wide discretion and can dismiss the petition against the juvenile, refer the juvenile for counseling, place the juvenile on probation (diversion), or place the case on the court's formal calendar or docket and allow charges to go forward. If the juvenile admits responsibility or is found responsible (as opposed to "guilty") for committing the offense, the terms of *disposition* (similar to "sentencing" for adults) may include, among other things, probation, counseling, participation in programs such as drug or alcohol treatment, placement in a juvenile boot camp, restitution to victims, community service, placement in foster care, and/or payment of a crime victim rights assessment fee and reimbursement of court appointed attorney fees and other court services expenses.

A juvenile being adjudicated in a delinquency proceeding is often made a temporary ward of the county and supervised by the court's probation department. A juvenile needing more intensive services may be made a ward of the state and supervised by the Michigan Department of Health and Human Services; known as an "Act 150" case, the juvenile may be placed in a residential treatment program. Upon completion of the term of residential care, the juvenile is often placed on "aftercare" where his or her progress and behavior can be monitored by the juvenile corrections department for a period of time similar to the role parole plays for an adult offender.

Juvenile charged as adult: A juvenile who is charged with a felony may be treated and sentenced as an adult. This happens in three ways:

Traditional waiver: Applies to a juvenile 14-16 years of age who is charged with any felony. The prosecuting attorney may petition the Family Division asking that the court waive its delinquency jurisdiction and allow the child to be tried as an adult in a court of general criminal jurisdiction (adult criminal court). The Family Division retains discretion to waive the case to adult court or to proceed as a delinquency proceeding. If waived to adult court and convicted, the juvenile must be sentenced as an adult.

Designated proceedings: Some more serious offenses are known as "specified juvenile violations" and include such crimes as arson, rape, assault with attempt to commit murder, and armed robbery. If a juvenile is charged with a specified juvenile violation, the prosecutor has the authority to designate the case to be tried in the Family Division but in the same manner as for an adult (this includes sentencing the juvenile as an adult).

The prosecutor can also ask the Family Division to designate a case that does not involve a specified juvenile violation for trial in the Family Division; this requires the juvenile to be tried in the same manner as an adult, and a guilty plea or verdict results in a criminal conviction. However, the court retains discretion to issue a typical juvenile disposition

order, impose any sentence that could be imposed on an adult if convicted of the same offense, or delay sentencing and place the juvenile on probation.

Automatic waiver: If a juvenile who is 14-16 years old commits a specified juvenile violation, the prosecutor has the discretion to initiate automatic waiver proceedings to waive the juvenile to adult criminal court by filing a complaint and warrant in District Court, rather than petitioning the Family Division. A preliminary hearing must be held to determine probable cause that the juvenile committed the offense or offenses; if so, the case is bound over to adult criminal court. If the juvenile is convicted of one or more very serious specified juvenile violations, the juvenile must be sentenced in the same manner as an adult; if the juvenile is convicted of an offense that does not require an adult sentence, the court must hold a juvenile sentencing hearing to determine whether to impose an adult sentence or to place the juvenile on probation and make the juvenile an Act 150 ward of the state.

(Information derived from the *Juvenile Justice Benchbook*, 3rd Edition, Michigan Judicial Institute and information on juvenile delinquency available on the Clare County Prosecuting Attorney Office website.)

BRIEF DISCUSSION:

The bills are part of the "Raise the Age" legislation amending various statutes to no longer automatically prosecute 17-year-olds as adults. Michigan is one of the few states still treating this population as adults. Based on the experiences of other states and research showing that there is little difference in brain development and maturity between 16 and 17-year-olds, many feel Michigan should amend its laws. Again, the experience of other states is that raising the age is a cost-effective measure that is fair and has benefits to public safety.

Further, under the bills, a juvenile charged with certain offenses would no longer be automatically waived to adult court. Instead, the Family Division of Circuit Court would determine whether justice is served by waiving the juvenile to adult court or keeping the proceeding in the juvenile justice system.

POSITIONS:

The following entities expressed *support* for the bills:

Michigan Council on Crime and Delinquency
Michigan Catholic Conference
Michigan United
Governors' Committee on Juvenile Justice
Hope Network
Michigan Legislative Black Caucus
Family Advisory Board, Family Participation Program
First Unitarian Universalist Church of Ann Arbor

Coalition Against Mass Incarceration
Michigan's Children
Michigan Probate Judges Association (in concept)
National Association of Social Workers-MI
Citizens Alliance on Prisons & Public Spending (CAPPS)
A.R.R.O. (Advocacy, Reentry, Resources, & Outreach)
Criminal Defense Attorneys of Michigan (in concept)
Citizens for Prison Reform
American Friends Service Committee
ACLU of Michigan

The Michigan Department of Corrections is *neutral* on the bills.

The following entities expressed *opposition* to the bills:

Michigan Association of Counties
Ottawa County
Livingston County
Wayne County
Prosecuting Attorney Association of Michigan

Legislative Analyst: Susan Stutzky
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.