

# Legislative Analysis



## RAISE THE AGE: SENTENCING AND WAIVING JUVENILES TO ADULT COURT

**House Bill 4675 as introduced**  
**Sponsor: Rep. Vanessa Guerra**

**House Bill 4793 as introduced**  
**Sponsor: Rep. Jewell Jones**

**Committee: Law and Justice**  
**Complete to 9-24-18**

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### SUMMARY:

House Bills 4675 and 4793 would change the criteria used by a court when determining whether to sentence a juvenile as an adult or as a juvenile and whether to waive certain juveniles to adult criminal court.

**House Bill 4793** would amend the Code of Criminal Procedure. Certain crimes require a court to sentence a juvenile in the same manner as an adult. For other crimes, a judge must conduct a hearing at the time of sentencing to determine, by a preponderance of the evidence, if the best interests of the public would be served by placing the juvenile on probation or committing the juvenile to an institution or agency described in the Youth Rehabilitation Services Act or by imposing any other sentence provided by law for an adult offender. In making the determination, a judge in the Family Division must consider certain listed factors and *give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency*. The bill would delete the highlighted text.

HB 4793 is tie-barred to HB 4675, which means that it cannot become law unless that bill is also enacted. HB 4793 would take effect October 1, 2018.

MCL 769.1

**House Bill 4675** would amend the Probate Code to make a similar change as described above, for when a judge is considering criteria in making a determination whether to waive a juvenile 14 years of age or older to adult criminal court. The bill would take effect 90 days after enactment.

MCL 712A.4

### BACKGROUND INFORMATION:

House Bills 4675 and 4793 are reintroductions of House Bills 4956 and 4955, respectively, of the 2015-2016 legislative session. They are part of a larger bill package known as the "Raise the Age" legislation, which is intended to treat individuals who are 17 years of age as juveniles rather than automatically treating them as adults.

## **BRIEF DISCUSSION:**

The juvenile court process is quite different from 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 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 for (as opposed to "guilty of") 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 who needs 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, similarly 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:*** A traditional waiver applies to a juvenile 14 to 16 years of age who is charged with any felony. The prosecuting attorney may petition the Family Division to ask 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 to 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 from information on juvenile delinquency available on the Clare County Prosecuting Attorney Office website.)

## **FISCAL IMPACT:**

### **Department of Health and Human Services (DHHS)**

House Bills 4675 and 4793 could increase costs to DHHS and to local county governments. By eliminating the requirement that judges consider the seriousness of the alleged offense and the juvenile's prior delinquency history more heavily than other factors when sentencing, the bill's provisions may result in additional juveniles being directed to treatment and services within the juvenile justice system than under current law. 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.

### **Department of Corrections**

House Bills 4675 and 4793 could result in a general fund/general purpose savings to the state Department of Corrections. The amount of savings would depend solely on judicial discretion and case outcomes. It is anticipated that fewer 17-year-olds would be sentenced to prison, meaning a savings to the Department of Corrections. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. The number of 17-year-olds that would not be sentenced to prison is not known. Therefore, it is not possible to assign an amount of savings to be achieved.

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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.