

Legislative Analysis



RAISE THE AGE: SPECIFIED JUVENILE VIOLATIONS

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House Bill 4141 (proposed substitute H-1)
Sponsor: Rep. Sheldon A. Neeley

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

House Bill 4443 as introduced
Sponsor: Rep. Michele Hoitenga

House Bill 4452 as introduced
Sponsor: LaTanya Garrett

Committee: Judiciary
Complete to 4-15-19

SUMMARY:

The bills would amend provisions in various acts pertaining to commission of a *specified juvenile violation* to apply to juveniles less than 18 years of age (raised from 17).

Specified juvenile violations refers to a list of more serious offenses, such as rape, arson, assault with the intent to commit murder, and armed robbery, among others.

House Bill 4141 would amend the Juvenile Code within the Probate Code to grant the Family Division of Circuit Court exclusive original jurisdiction over a juvenile under 18 years of age (raised from 17) in certain circumstances, including a juvenile over 14 years of age charged with a specified juvenile violation if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant (known as an *automatic waiver*) to waive the juvenile to adult criminal court. (See **Brief Discussion**, below).

MCL 712A.2 and 712A.2d

House Bill 4443 would amend the Code of Criminal Procedure to allow 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*).

MCL 764.1f

House Bill 4452 would amend the Revised Judicature Act to specify that the circuit court has jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 18 (raised from 17) years of age.

MCL 600.606

The bills are tie-barred to each other, meaning that none of them could take effect unless all were enacted. The bills would take effect January 1, 2021.

BACKGROUND INFORMATION:

House Bill 4141 is similar to House Bill 4753 of the 2017-18 legislative session and to House Bill 4962 of the 2015-16 legislative session. House Bills 4443 and 4452 are similar to House Bills 4960 and 4961 of the 2015-16 legislative session. In the earlier versions, the bills also revised the definition of “specified juvenile violation” to remove certain crimes pertaining to escaping from certain juvenile facilities; injuring or maiming another in an attempt to commit larceny from a building, safe, bank, or vault; and manufacturing, delivering, or possessing cocaine or a Schedule 1 or 2 narcotic in an amount of 1,000 grams or more.

House Bills 4141, 4443, and 4452 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 in criminal proceedings 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 Corrections and Judiciary. House Bills 4141, 4443, and 4452 would have an indeterminate fiscal impact on the state Department of Corrections and on local court funding units. The impact would depend on the number of cases involving 17-year-olds who would no longer be tried as adults. A savings could be realized by the Department of Corrections if fewer juveniles are tried as adults and sentenced to adult prisons. It is

difficult to project the actual impact on each local unit due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, and case types. Typically, juvenile proceedings are much more time-consuming than adult proceedings.

DHHS and Counties. House Bills 4443 and 4452 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.

Any increase in costs to DHHS and county governments would depend upon on how many additional juveniles would no longer be tried as adults and 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.

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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.