

# Legislative Analysis

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## JUVENILE MENTAL HEALTH COURT

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<http://www.house.mi.gov/hfa>

**House Bill 5806 (H-2) as reported from committee**  
**House Bill 5807 as reported from committee**  
**House Bill 5808 as reported from committee**  
**Sponsor: Rep. Julie Calley**  
**Committee: Judiciary**  
**Complete to 12-4-18**

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

## BRIEF SUMMARY:

House Bill 5806 would concentrate provisions pertaining to the establishment of juvenile mental health courts within a new Chapter 10C of the Revised Judicature Act (RJA).

House Bill 5807 would delete references and provisions pertaining only to juvenile mental health courts from Chapter 10B of the RJA.

House Bill 5808 would authorize the Family Division of Circuit Court to have jurisdiction over adults as provided in Chapter 10C of the RJA (proposed by HB 5806).

Each bill would take effect 90 days after its enactment.

House Bill 5806 is tie-barred to House Bill 5807, and House Bills 5807 and 5808 are tie-barred to House Bill 5806. A bill that is tie-barred to another cannot become law unless the bill to which it is tie-barred is also enacted.

## DETAILED SUMMARY:

Currently, Chapter 10B of the Revised Judicature Act, entitled “Mental Health Court,” provides for a circuit court or the district court in any judicial circuit or a district court in any judicial district to adopt or institute a mental health court under statute or court rules, including authorizing the family division of circuit court to adopt or institute a juvenile mental health court, and establishes the framework for mental health courts for adults and juveniles.

House Bill 5806 would create a separate chapter within the RJA for provisions pertaining to juvenile mental health courts. The new Chapter 10C would contain provisions similar to those currently in Chapter 10B that apply to mental health courts in general as well as those that apply specifically to juvenile mental health courts (JMHCs), and also would revise or add new language as appropriate to tailor the provisions to the juvenile justice system and juvenile offenders. Defined in the Juvenile Code portion of the Probate Code as a person less than 17 years of age, a juvenile who is delinquent or commits a criminal offense is typically adjudicated in the Family Division of Circuit Court. (See **Background Information**, below, for more detail.)

Following are the substantive additions or deletions to provisions currently governing JMHCs under Chapter 10B as reproduced and relocated to Chapter 10C. The bill would:

- Continue to allow a JMHC to accept participants from any other jurisdiction based upon the residence of the participant in the receiving jurisdiction or refuse to accept participants from other jurisdictions. (However, basing acceptance of a participant on the nonavailability of a mental health court in the charging jurisdiction, or the availability of financial resources for the mental health court program and treatment services, would not apply to a JMHC but would still apply to adults under Chapter 10B.)
- Require a JMHC to comply with the Seven Common Characteristics of a Juvenile Mental Health Court, published by Policy Research Associates. This would include all of the following:
  - Regularly scheduled special docket.
  - Less formal style of interaction among court officials and participants.
  - Age-appropriate screening and assessment for trauma, substance use, and mental disorder.
  - Team management of juvenile mental health court participant's treatment and supervision.
  - System-wide accountability enforced by the JMHC.
  - Use of graduated incentives and sanctions.
  - Defined criteria for program success.
- Beginning January 1, 2019, require a JMHC operating in the state, or a circuit court or district court seeking to adopt or institute a JMHC, to be certified by the State Court Administrative Office (SCAO). [Note: Under the bill, only the Family Division of Circuit Court could institute a juvenile mental health court.]
- Require, rather than allow as under Chapter 10B, a JMHC to hire, contract, or work in conjunction with mental health professionals, in consultation with the local community mental health service provider, and other appropriate persons to assist the JMHC in fulfilling its requirements under Chapter 10C.
- Specify that no juvenile has a right to be admitted into a JMHC and that admission is at the discretion of the court based on the juvenile's legal and clinical eligibility. Under the bill, a court would have the discretion to consider a juvenile's prior participation or completion status in a JMHC. Though a juvenile could be admitted to JMHC regardless of prior participation or prior completion status, a juvenile who had failed two or more times in his or participation in or completion of a JMHC program could not be readmitted into JMHC within three years of a prior adjudication.
- Prohibit a violent offender from being admitted into a JMHC. In addition, though a judge would have discretion to terminate a juvenile's participation in a JMHC program if accused of a new offense, the juvenile would have to be immediately discharged from the program as unsuccessful if he or she were adjudicated of one or more offenses constituting a **violent offender** for an offense committed after he or she was admitted into the JMHC program.

***Violent offender*** would be defined to mean a juvenile who is adjudicated on or has been, within the preceding five years, adjudicated on one or more of the following offenses:

- First degree murder.
  - Second degree murder.
  - Criminal sexual conduct in the first, second, or third degree.
  - Assault with intent to do great bodily harm less than murder.
- Specify that admission to a JMHC does not disqualify a juvenile for any other dispositional options available under state law or court rule.
  - Require the preadmission screening and assessment for admittance to a JMHC to also include:
    - A review of the juvenile’s delinquency history.
    - The mental health assessment to be performed by a mental health professional, for an evaluation of a serious emotional disturbance, co-occurring disorder, or development disability. [**Note:** A reference to “serious mental illness” is not made here, though it is included in the similar provision contained in Chapter 10B.]
    - A review of the juvenile’s family situation, special needs, or circumstances with a potential to affect the juvenile’s ability to receive mental health or substance abuse treatment and follow the court’s orders, including input from family, caregivers, or other collateral supports.
  - Specify that the process for admission to juvenile mental court for a juvenile alleged to have engaged in activity that would constitute a criminal act if committed by an adult, which entails admitting responsibility and signing a written agreement, would not apply to status offenses (e.g., running away from home).
  - Allow a JMHC to require a juvenile’s parent, legal guardian, or legal custodian, in addition to the juvenile, to pay a reasonable JMHC fee reasonably related to the cost to the court for administering the JMHC program.
  - Require a JMHC to provide a participant with periodic *judicial reviews* of his or her circumstances and progress in the program as well as *individualized* and graduated individual rewards for compliance and sanctions for noncompliance, including the possibility of *detainment*.
  - Include in the definition of “domestic violence offense” any crime alleged to have been committed by a juvenile against a *family member*, rather than a *spouse or former spouse*.
  - Include in the definition of “juvenile mental health court” programs designed to adhere to the seven common characteristics of a juvenile mental health court and include references to “juvenile justice” where appropriate.

**House Bill 5807** would amend numerous provisions within Chapter 10B of the RJA to delete references pertaining to juveniles and juvenile mental health courts. The bill would also include a reference to the new Chapter 10C created by House Bill 5806 in the definition of “state-certified treatment court” in Chapter 10A (Drug Treatment Courts).

MCL 600.1088 et al.

**House Bill 5808** would amend the juvenile code within the Probate Code to include a reference to the new Chapter 10C created by House Bill 5806 in a provision granting jurisdiction of the Family Division of Circuit Court over adults to make orders necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under the court’s jurisdiction.

MCL 712A.6

## **BACKGROUND INFORMATION:**

The juvenile court process is quite different from the process in place for adults. 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 to 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 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 information on juvenile delinquency available on the Clare County Prosecuting Attorney’s Office website.]

## **BRIEF DISCUSSION:**

The juvenile justice system is all about rehabilitation, addressing the root cause of a juvenile’s conduct, and reducing recidivism. Research continues to support the idea that youth are particularly amenable to being rehabilitated, especially so when steered into appropriate services or punishments. However, if a juvenile is committing crimes due to an underlying, and often undiagnosed or undertreated, mental illness or emotional disturbance, it is important to appropriately treat that underlying condition. Juvenile mental health courts (JMHCs) are particularly suited to do just that.

Current law already enables the establishment of JMHCs. However, the provisions are intertwined with provisions pertaining to adult mental health courts. Though many of the provisions are the same, there are some very important differences. Stating often that this provision or that provision does or does not apply to a JMHC or an adult mental health code simply makes the current statute difficult to read and implement. Further, the adjudication

process for juveniles is very different from the criminal justice system in place for adults and juveniles being tried as adults.

The bills address the issue by placing all provisions pertinent to a JMHC into a separate chapter within the Mental Health Code and revising references to the provisions in other statutes. House Bill 5806 as reported from committee would make several important revisions, however. Primarily, the bill would prohibit certain juveniles from entering a JMHC program if they are currently being adjudicated on, or had been within the previous five years, adjudicated on one or more very serious crimes listed in the bill. The bill makes an allowance for a child who had committed one or more of these offenses, e.g., incest, when very young, but who perhaps had been rehabilitated at the time and now, due to mental illness, has committed a lesser offense and could benefit from participation in a JMHC program. The bill would also exclude from participation in a JMHC program a juvenile who had previously failed in his or her participation or completion of a JMHC program. It is believed that such failure is indicative that the juvenile may need more intensive mental health services or may be better suited in a residential or more comprehensive out-patient mental health services program than what a JMHC program could provide.

**FISCAL IMPACT:**

The bills would have no fiscal impact on the state or on local units of government.

**POSITIONS:**

Representatives of the Supreme Court Administrative Office (SCAO) testified in support of the bills. (5-22-18 and 11-27-18)

The following entities indicated support for the bills:

- State Bar of Michigan (11-27-18)
- Prosecuting Attorneys Association of Michigan (5-22-18)
- Michigan Council on Crime and Delinquency (5-22-18)
- ACLU of Michigan (5-22-18)

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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.