



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4037 (Substitute H-4 as passed by the House)
House Bill 4038 (Substitute H-3 as passed by the House)
House Bill 4044 (Substitute H-2 as passed by the House)
House Bill 4371 (Substitute H-3 as passed by the House)
House Bill 4445 (Substitute H-2 as passed by the House)
House Bill 4486 (Substitute H-3 as passed by the House)
House Bill 4487 (Substitute H-3 as passed by the House)
House Bill 4490 (Substitute H-3 as passed by the House)

Sponsor: Representative Beverly Hammerstrom (House Bills 4037, 4038, and 4044)
Representative Jim McBryde (House Bill 4371)
Representative Penny Crissman (House Bill 4445)
Representative David Galloway (House Bill 4486)
Representative James Ryan (House Bill 4487)
Representative Terry London (House Bill 4490)

House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

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CONTENT

House Bills 4037 (H-4), 4038 (H-3), 4044 (H-2), 4371 (H-3), 4445 (H-2), 4486 (H-3), 4487 (H-3), and 4490 (H-3) would amend various acts to do all of the following:

- Reduce the minimum age at which jurisdiction over a juvenile may be waived from the juvenile division of probate court (juvenile court) to a court of general criminal jurisdiction, and at which a juvenile may be charged as an adult for certain offenses, without a juvenile court waiver hearing.
- Expand the list of offenses for which a prosecutor may file criminal charges against a juvenile in the circuit court or Detroit Recorder's Court, without a juvenile court waiver hearing.
- Revise the factors a juvenile court must consider when determining whether to waive jurisdiction over a juvenile.
- Make revisions to various juvenile code provisions to accommodate authorization for the juvenile court to hold criminal proceedings (as proposed by Senate Bill 682 (H-3)).

- Expand the list of offenses that require a juvenile court review hearing before a juvenile may be released from a juvenile facility, and specify that the burden of proof of rehabilitation would be on the juvenile.
- Expand the list of offenses for which a juvenile may be retained in a juvenile facility until 21 years of age.
- Require juvenile commitment of a juvenile adjudicated for a violation in which he or she used a firearm.
- Expand the list of offenses for which the Department of State Police must procure and file information on juveniles who have been adjudicated to have committed a juvenile offense.

The bills would take effect on January 1, 1997, and apply to offenses committed on or after that date.

The bills are tie-barred to each other and to Senate Bills 281, 283, 682, 689, 699, 700, 724, 867, and 870. Among other things, those bills would do all of the following:

- Establish a procedure under which the juvenile court could conduct a criminal hearing and impose a delayed criminal sentence (Senate Bill 682 (H-3)).
- Require that a juvenile, convicted as an adult in a court of general criminal jurisdiction after a direct filing of criminal charges, without a waiver hearing, be sentenced as an adult if the conviction were for certain offenses (Senate Bill 699 (H-3)).
- Provide that a court of general criminal jurisdiction that committed a juvenile tried as an adult to a juvenile facility could impose upon the juvenile any lawful adult sentence at the court's final review of juvenile commitment (Senate Bill 699 (H-3)).
- Allow an alternative sentence of at least 25 years' imprisonment for a juvenile tried as an adult and convicted of manufacturing, delivering, or possessing 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (Senate Bills 281 (H-3) and 283 (H-3)).
- Make escape or an attempt to escape from a juvenile facility a felony, punishable by up to four years' imprisonment and/or a maximum fine of \$2,000 (Senate Bill 870 (H-2)).

House Bill 4037 (H-4)

The bill would amend the juvenile code to expand the list of offenses for which a juvenile court review hearing is required, if a juvenile is committed to a juvenile facility, to determine whether the juvenile has been rehabilitated and whether he or she presents a serious risk to public safety. The bill would add the following offenses to that list:

- Assault with intent to maim (MCL 750.86).
- First-degree home invasion (MCL 750.110a(2)).
- Escape from a juvenile facility (as proposed by Senate Bill 870 (MCL 750.186a)).
- Robbery of a bank, safe, or vault (MCL 750.531).

The bill specifies that, in a review proceeding, the juvenile would have the burden of proving, by a preponderance of the evidence, that he or she had been rehabilitated and was not a serious risk to public safety.

The bill also specifies that this review proceeding would not apply to a juvenile convicted of a crime in juvenile court, as Senate Bill 682 (H-3) would allow, and that a criminal conviction pursuant to

that proposal could not be set aside under the juvenile code's expunction provisions.

House Bill 4038 (H-3)

The bill would amend the juvenile code to exclude a juvenile court criminal hearing, as proposed by Senate Bill 682 (H-3), from the code's authorization for the juvenile court to hold informal hearings. Also, in a juvenile court criminal trial, a jury could be demanded as provided by law, and a jury would have to be summoned and impaneled as provided in the Code of Criminal Procedure.

In addition to any other disposition under the juvenile code, a juvenile, other than a juvenile sentenced in the same manner as an adult after a juvenile court criminal trial, would have to be committed to a juvenile detention facility for a specified period of time, if all of the following circumstances existed:

- The juvenile was under the juvenile court's jurisdiction for a violation of a municipal ordinance or a State or Federal law.
- The juvenile was adjudicated as, or convicted of, violating a criminal municipal ordinance or State or Federal law.
- The juvenile was found to have used a firearm during the criminal violation.

The specified period of time for commitment could not exceed the length of the sentence that could have been imposed if the juvenile had been sentenced as an adult.

The code provides that a disposition of any child or any evidence given in a juvenile court case is not lawful evidence against that child in any civil, criminal, or any other cause or proceeding in any court for any purpose, except in subsequent cases against the same child under the juvenile code. The bill specifies that this provision would not apply to a criminal conviction under the juvenile code, as proposed by Senate Bill 683 (H-3).

House Bills 4044 (H-2) and 4371 (H-3)

The bills would amend the Youth Rehabilitation Services Act to expand the list of offenses for which a juvenile, adjudicated in juvenile court as a juvenile, may be retained in juvenile commitment until the age of 21. The bills would add the following offenses to that list:

- Assault with intent to maim (MCL 750.86).
- First-degree home invasion (MCL

750.110a(2)).

- Escape from a juvenile facility (as proposed by Senate Bill 870 (MCL 750.186a)).
- Robbery of a bank, safe, or vault (MCL 750.531).

House Bill 4371 (H-3) also specifies that, if the juvenile court imposed a delayed sentence after a criminal conviction, as Senate Bill 682 (H-3) would allow, a youth would have to be discharged from State wardship and be committed under the court's order, pursuant to the delayed sentencing provisions of Senate Bill 682 (H-3). If a court of general criminal jurisdiction sentenced a youth, who was tried as an adult and committed to a juvenile facility, to a further adult sanction, as Senate Bill 699 (H-3) would allow, the youth would have to be discharged from State wardship and committed under that court's order.

House Bill 4445 (H-2)

The bill would amend the bureau of criminal identification Act to expand the Act's definition of "juvenile offense" by adding the following offenses:

- Assault with intent to maim (MCL 750.86).
- First-degree home invasion (MCL 750.110a(2)).
- Escape from a juvenile facility (as proposed by Senate Bill 870 (MCL 750.186a)).
- Robbery of a bank, safe, or vault (MCL 750.531).

The Act requires the commanding officer of the Department of State Police central records division to procure and file, for purposes of juvenile identification, juvenile history record information on all juveniles who have been adjudicated to have committed a juvenile offense within Michigan.

House Bills 4486 (H-3) and 4487 (H-3)

House Bills 4486 (H-3) and 4487 (H-3) would amend, respectively, the Revised Judicature Act and Public Act 369 of 1919, which regulates the Detroit Recorder's Court, to reduce from 15 to 14 years of age the minimum age at which a minor may be tried as an adult in a court of general criminal jurisdiction, rather than as a juvenile in juvenile court, for certain offenses. The bills apply to the offenses for which a prosecutor may file criminal charges directly in a court of criminal jurisdiction, and would expand the list of those offenses; include an attempt, conspiracy, or solicitation to commit any of the specified offenses, any lesser included offense of one of those

violations, and any other violation arising out of the same transaction as any of the applicable violations; and refer to any of those offenses as a "specified juvenile violation".

Under current law, a criminal court can gain jurisdiction over a 15- or 16-year-old juvenile in one of two ways. (In Michigan's criminal justice system, a "juvenile" is someone under 17 years of age.) After investigation and examination, upon the motion of the prosecuting attorney, the juvenile court may waive jurisdiction over a minor who is at least 15 and is charged with a felony. In addition, if a prosecuting attorney has reason to believe that a juvenile 15 years of age or older has committed any of the following offenses, the prosecuting attorney may authorize the filing of a criminal complaint and warrant on the charge:

- Assault with intent to murder (MCL 750.83).
- Armed assault with intent to rob and steal (MCL 750.89).
- Attempted murder (MCL 750.91).
- First-degree murder (MCL 750.316).
- Second-degree murder (MCL 750.317).
- First-degree criminal sexual conduct (MCL 750.520b).
- Armed robbery with aggravated assault (MCL 750.529).
- Carjacking (MCL 750.529a).
- Manufacturing, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL 333.7401(2)(a)(i)).
- Possession of 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL 333.7403(2)(a)(i)).

The bills would add all of the following to that list:

- Burning a dwelling house (MCL 750.72).
- Assault with intent to maim (MCL 750.86).
- Kidnapping (MCL 750.349).
- Bank, safe, and vault robbery (MCL 750.531).
- Assault with intent to do great bodily harm or first-degree home invasion, if the juvenile were armed with a "dangerous weapon" (MCL 750.84 or 750.110a(2)).
- Escape from a juvenile facility, as proposed by Senate Bill 870, but only if the facility were a high- or medium-security facility operated by the Family Independence Agency (FIA) (formerly, the Department of Social Services) or a high-security facility operated by a private agency under contract with the FIA.

- Attempt, conspiracy, or solicitation to commit a specified juvenile violation.
- Any lesser included offense of a specified juvenile violation, if the individual were charged with a specified juvenile violation.
- Any other violation arising out of the same transaction as a specified juvenile violation.

("Dangerous weapon" would mean a loaded or unloaded firearm, whether operable or inoperable; a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon; an object that was likely to cause death or bodily injury when used as a weapon and that was used as a weapon or carried or possessed for use as a weapon; or an object or device that was used or fashioned in a manner to lead a person to believe the object or device was a weapon.)

House Bill 4490 (H-3)

The bill would amend the juvenile code to reduce from 15 to 14 years of age the minimum age at which a minor may be waived from the juvenile court to a court of general criminal jurisdiction. The bill also would revise the factors a juvenile court must consider in determining whether to waive jurisdiction over a juvenile, and require the waiver of jurisdiction over a juvenile under certain circumstances.

Under the juvenile code, in determining whether to waive jurisdiction over a juvenile to a court of general criminal jurisdiction, the juvenile court must consider specified criteria, giving each weight as appropriate to the circumstances. The bill would replace those factors. In considering the bill's factors, the juvenile court would have to give greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency than to the other factors.

The current criteria, which the bill would delete, are all of the following:

- The prior record and character of the child, his or her physical and mental maturity, and his or her pattern of living.
- The seriousness of the offense.
- Whether the offense is part of a repetitive pattern of offenses that would lead to a determination either that the child is not amenable to treatment or that, despite the child's potential for treatment, the nature of his or her delinquent behavior is likely to

- disrupt the rehabilitation of other children in the treatment program.
- Whether, despite the child's potential for treatment, the nature of his or her delinquent behavior is likely to render the child dangerous to the public if released at the age of 19 or 21.
- Whether the child is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.
- Whether it is in the best interests of the public welfare and the protection of the public security that the child stand trial as an adult offender.

The bill, instead, would require that the juvenile court consider the following criteria in determining whether to waive jurisdiction over a juvenile:

- The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.
- The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- The juvenile's programming history, including, but not limited to, his or her willingness to participate meaningfully in available programming.
- The adequacy of the punishment or programming available in the juvenile justice system.
- The dispositional options available for the juvenile.

If the juvenile court determined that there was probable cause to believe that an offense had been committed that if committed by an adult would be a felony and that the juvenile committed the offense, the court would have to waive jurisdiction of the juvenile if the court found that he or she had previously been subject to the jurisdiction of the circuit court or the Detroit

Recorder's Court upon a prosecutor's direct filing of criminal charges.

In addition, the code provides that an interested person, at any time while a juvenile is under the jurisdiction of the juvenile court, may file a petition for a rehearing on all matters within the provisions of the juvenile code, and establishes procedures for those actions. The bill specifies that the code's rehearing provisions would not apply to a criminal proceeding under the juvenile code, as Senate Bill 682 (H-3) would allow.

MCL 712A.18d & 712A.18e (H.B. 4037)
712A.17 et al. (H.B. 4038)
803.307 (H.B. 4044)
803.307 (H.B. 4371)
28.241a (H.B. 4445)
600.606 (H.B. 4486)
725.10a (H.B. 4487)
712A.4 & 712A.21 (H.B. 4490)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Department of Corrections. The bills would have an indeterminate fiscal impact on the Department of Corrections. Costs of incarceration would increase to the extent that the new provisions allowing a juvenile court to impose a delayed sentence on a juvenile, after trying him or her as an adult, resulted in an increase in future commitments to the Department of Corrections. In addition, lowering from 15 to 14 the age at which a juvenile may be waived to adult court, could result in increased commitments to the Department of Corrections depending on the increased number of waivers and the disposition of each sentence.

Given that the bills would provide for a number of conditions, options, and other variables through each stage of the process (which way to prosecute, in which court, with a number of different sanctioning options), it is difficult to predict to what extent, if any, these bills would have a fiscal impact on the Department of Corrections. Furthermore, if the bills resulted in a shift in sanctioning practices from the juvenile

system, to the adult system, State costs could in fact decrease, since the costs of juvenile detention are generally significantly greater than the costs of adult-type incarceration.

Family Independence Agency. The bills would have an indeterminate impact on the Family Independence Agency. It is difficult to determine when taken together what the specific impact of the bills would be. It is possible that more juveniles would be committed to the system and for longer periods of time due to the addition of certain offenses, such as crimes that if committed by an adult would be punishable by imprisonment, juveniles adjudicated for criminal violations with the use of a firearm who would have to be committed to a juvenile facility, and, under certain circumstances, cases that would qualify for a change in automatic discharge from State wardship from 19 years to 21 years of age.

The amending language that addresses the sentencing of juveniles as an adult, delayed sentencing sanctions, and not permitting the setting aside of convictions, could reduce the number of juveniles committed to the delinquency services system or the amount of time spent as a State ward. However, this does not include the majority of cases under Family Independence Agency responsibility. An Office of Delinquency Services report on case termination from the system includes some reasons pertaining to the change in case status that these proposed legislative changes also address. The report indicates that of those youths released from the training schools, approximately 5% were moved to higher security level commitment, 5% were terminated from the training schools while they were on truancy status, and 12% were released as youths who had not met all the case planned goals but whom the center believed would not make further progress in a juvenile delinquency program. In cases assigned to residential care, the report indicates that 1% were moved to higher security, generally due to minimal constraints on the juveniles, 33% were truancy status cases, and 20% were at maximum treatment goals benefit.

However, the general cost of cases in the juvenile system is presented below for reference:

AVERAGE ANNUAL STATE COSTS	
<u>Department of Social Services</u>	<u>Department of Corrections</u>
Detention Center. \$ 78,900	Probation. \$ 3,000
Family Group/Shelter Homes. 9,700-9,325	Tether. 2,375
Residential Care Center. 61,600	Boot Camp*. 11,500
Foster Family Homes. 7,264	Secure Confinement. 20,000
*Includes 1-year intensive supervision.	

Probate Courts. The fiscal impact on the probate courts would depend on the number of juveniles who required a formal criminal proceeding. Since the procedures involved in holding criminal proceedings are currently practiced in other courts, the impact of increased formal hearings is expected to be minimal.

State Police. House Bill 4445 (H-2) would have no fiscal impact on the Department of State Police.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.