



**House  
Legislative  
Analysis  
Section**

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**JUVENILE WAIVER PACKAGE**

1988

House Bill 4731 as enrolled

Sponsor: Rep. Virgil Smith, Jr. Mich. State Law Library

✓ House Bill 4733 as enrolled

Sponsor: Rep. David Honigman

✓ House Bill 4741 as enrolled

Sponsor: Rep. Burton Leland

✓ House Bill 4748 as enrolled

Sponsor: Rep. Michael J. Bennane

✓ House Bill 4750 as enrolled

Sponsor: Rep. Teola P. Hunter

✓ House Bill 5203 as enrolled

Sponsor: Rep. John G. Strand

✓ Senate Bill 137 as enrolled

Sponsor: Senator John F. Kelly

✓ Senate Bill 601 as enrolled

Sponsor: Senator Connie Binsfeld

✓ Senate Bill 604 as enrolled

Sponsor: Senator Joe Conroy

✓ Senate Bill 605 as enrolled

Sponsor: Senator Lana Pollack

✓ Senate Bill 607 as enrolled

Sponsor: Senator Norman D. Shinkle

✓ Senate Bill 608 as enrolled

Sponsor: Senator William Sederburg

✓ Senate Bill 609 as enrolled

Sponsor: Rudy J. Nichols

House Committee: Judiciary

Senate Committee: Judiciary

Third Analysis (7-26-88)

H.B. 4731 et al (7-26-88)

***THE APPARENT PROBLEM:***

Many believe that while juvenile crime may be down overall, the numbers of hardened juvenile offenders are higher than ever. One way for society to deal with serious juvenile offenders is to have them tried and sentenced as adults. The juvenile code provides for this by authorizing the juvenile court to, upon the motion of the prosecuting attorney, waive to criminal court a juvenile at least 15 years old for whom there was probable cause to believe that he or she had committed an offense which if committed by an adult would be a felony. In deciding whether to waive a juvenile to adult court, the court must determine whether the best interests of the child and the public would be served by granting the waiver of jurisdiction.

In making that determination, the court must consider various criteria, among them the relative suitability of programs and facilities available to the juvenile and criminal courts, and whether the offense is part of a pattern that would lead to a determination that the juvenile may be beyond rehabilitation by the juvenile system. The meaning of the criterion regarding relative suitability of programs has figured in waiver appeals. The other criterion presents problems because of the difficulty in determining that an individual is beyond rehabilitation. Both of these criteria have been refined by the Supreme Court, but apparently continue to create impediments to waiver,

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according to testimony before the House Ad-Hoc Special Committee on Youthful Offenders, and the House Judiciary Subcommittee on Juvenile Justice.

Criticisms of waiver procedures are not confined to matters of criteria interpretation, however. Many believe that certain violent offenders should automatically be tried and sentenced as adults. Adult sentencing can provide for longer incarceration and treatment of a violent criminal the juvenile system must release at age 19. Automatic waiver to the adult criminal justice system would induce juveniles to take the consequences of their actions more seriously, for all too many know the limitations of the juvenile system and work those limitations to their advantage. The need to deal with such hardened young criminals is perceived to be the greatest in Wayne County, where juvenile crime is the highest, but the percentage of waiver petitions granted has been, incongruously, substantially lower than elsewhere in the state.

Others maintain that automatic trial and sentencing as adults is a simplistic solution to a complex problem. Although the adult system may provide for better due process of law, automatic waiver for certain offenses would fail to accommodate mitigating circumstances and could lead to a salvageable young person being imprisoned for life. Further, reports are that prison overcrowding has led some criminal court judges to sentence juveniles to probation or to shorter terms than might be expected. A more sensible way to adjudicate delinquents, some argue, would be to automatically try certain violent offenders as adults, but allow the criminal court to place them in the juvenile system following trial, if that was the best way to deal with the individual. That way, the decision on placement would follow a thorough fact-finding process.

However, delays associated with a criminal trial, especially where dockets are crowded, may mean that a young offender who otherwise could receive prompt treatment through the juvenile system does not receive treatment until much later—probably after trial. Automatically proceeding in criminal court, even with juvenile placement as a dispositional alternative, may impair efforts to rehabilitate a salvageable youth. To meet this need for flexibility, some have suggested the local prosecutor as an appropriate decision-maker for the matter of whether action on a given youth should proceed in juvenile or criminal court.

It has been proposed that the structure described above (e.g., prosecutorial discretion to proceed in criminal court on certain serious offenses with return to the juvenile system as a dispositional option) be adopted, coupled with a revision of the waiver criteria that would continue to apply to other offenders, and an extension of jurisdiction to age 21 for serious offenders who entered the criminal justice system as juveniles. However, these proposals alone would ignore another criticism levied against the juvenile justice system: that relinquishing to the Department of Social Services (DSS) authority over delinquents committed to state institutions fragments the juvenile justice system and complicates efforts to deal effectively and consistently with delinquent youth. State facilities are overcrowded, and sometimes the department releases delinquent youth to their parents because of lack of space. It has been suggested that in addition to the above proposals, the state ensure that the approval of the adjudicating court be obtained before a delinquent can be released from state placement prior to attaining age 21.

## THE CONTENT OF THE BILLS:

The bills constitute a package that would authorize the prosecutor to proceed in either juvenile or criminal court when a juvenile was charged with any of a number of specified serious felonies, give the adult criminal court and the juvenile court the requisite jurisdiction over such juveniles, authorize the criminal court to place a juvenile with the DSS following trial, revise the criteria that the juvenile court applies in making a decision to waive a juvenile to criminal court (these criteria basically would apply in cases other than the designated serious felonies), and extend the age of continuing jurisdiction for the juvenile court from age 19 to age 21 for youths who had committed certain offenses, including the serious felonies to which the jurisdiction revisions would apply. The criminal court's jurisdiction over a juvenile it committed to the DSS would similarly extend to age 21. (For a brief chart of the serious felonies over which either the criminal or the juvenile court could have jurisdiction and the other offenses for which the age of continuing jurisdiction would be raised, see Background Information.)

Each bill in the package is tie-barred to every other bill in the package. Except for House Bill 5203, which carries an effective date of October 1, 1988, the bills provide for an effective date of June 1, 1988. That June effective date was postponed to October 1, 1988 by subsequent legislation. Thus, the package will take effect October 1, 1988.

(Note: House Bill 4741 includes provisions that were originally in House Bill 4716 as passed by the House on June 23, 1987. Those provisions would limit the juvenile court's authority over "status offenders," juveniles whose offenses such as truancy or running away would not be offenses if committed by an adult. This analysis describes those provisions in its explanation of House Bill 4741; for a more detailed discussion of them, please refer to the analysis of House Bill 4716 issued by the House Legislative Analysis Section on July 28, 1987.)

A detailed bill-by-bill description of the package follows.

House Bill 5203 would amend the juvenile code to revise the criteria that the court must consider in deciding whether to waive to criminal court a juvenile charged with what would be a felony if committed by an adult. Those criteria are at present (1) the prior record and character of the child; (2) the seriousness of the offense; (3) whether the offense, even if less serious, is part of a repetitive pattern indicating that the child may be beyond rehabilitation under existing juvenile programs and statutory procedures; (4) the relative suitability of programs and facilities available to the juvenile and the adult criminal courts; and (5) 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 would retain the first, second and fifth criteria and replace the others with the following:

- whether the offense was part of a repetitive pattern that would lead to a determination that the child was not amenable to treatment or that despite the child's potential for treatment, the nature of the child's delinquent behavior was likely to disrupt the rehabilitation of other children in the treatment program;
- whether, despite the child's potential for treatment, the nature of the child's delinquent behavior was likely to render the child dangerous to the public if released at the age of 19 or 21; and,
- whether the child was more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile ones.

The court's granting or denial of a waiver motion would have to be in writing. Its findings of fact and conclusions of law would have to be stated on the record or in a written opinion. A copy of the findings would be sent to the criminal court if the juvenile was waived. If he or she was not waived, copies of the findings would be made available upon request to the prosecutor, juvenile, or juvenile's attorney.

The bill would allow the probable cause hearing held in juvenile court prior to waiver to be substituted for the preliminary examination in criminal court. Thus, the probable cause hearing would determine not only whether there is probable cause to believe that a felony had been committed, but also whether there was probable cause to believe that the juvenile committed the offense. Before a juvenile could waive this probable cause hearing, the court would have to inform him or her that that action would constitute a waiver of the preliminary examination that otherwise would be required under the Code of Criminal Procedure.

#### MCL 712A.4

House Bill 4741 would amend the juvenile code to condition the juvenile court's jurisdiction over certain juveniles on whether the prosecutor filed a petition in juvenile court instead of proceeding in criminal court. Those juveniles would be those who were 15 years of age or older and charged with any of the following: assault with intent to murder; assault with intent to rob, armed; attempted murder; first degree murder; second degree murder; first degree criminal sexual conduct; armed robbery; and manufacture, delivery, or possession of more than 650 grams of cocaine or a schedule 1 or 2 narcotic. If it operated a detention home or other facility for delinquents, the juvenile court would place a juvenile charged with one of the listed crimes at that facility if ordered to do so by the adult criminal court.

The bill would amend the juvenile code to require the juvenile court to make certain findings on the record before exercising the exclusive and original jurisdiction that it has over status offenders under 17 years old. The bill would limit the court's jurisdiction in the following ways:

- when the child was a runaway, the court would have to find that the child had been placed or refused alternative placement or the child and his or her parent, guardian, or custodian had exhausted or refused family counseling;
- when the child was repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, the court would have to find by clear and convincing evidence that court-accessed services were necessary;
- when the child was a truant or repeatedly broke school rules, the court would have to find that the child, parent and school officials had met on the child's school problems, and educational counseling and alternative agency help had been sought.

The bill would delete provisions for juvenile court jurisdiction over a child who repeatedly associated with immoral persons, or who was leading an immoral life, or was found on premises occupied or used for illegal purposes; who habitually idled away his or her time; or who repeatedly patronized any place where the principal purpose of the business conducted was the sale of alcoholic liquors.

The court's concurrent jurisdiction over status offenders between 17 and 18 years old would be limited to situations where the court found on the record that voluntary services had been exhausted or refused.

In addition, the bill would amend truancy and neglect provisions to recognize truancy from learning programs other than school, and to delete "as required by law" from a provision that lists failure to provide education as required by law among the things that constitute parental neglect. The bill would define "education" as learning based on an organized educational program that is appropriate, given the age, intelligence, ability and any psychological limitations of a child, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar.

#### MCL 712A.2

House Bill 4748 would amend the Code of Criminal Procedure to authorize the prosecutor to file a complaint and warrant in criminal court when a juvenile fifteen years of age or older was charged with any of the serious felonies designated by House Bill 4741. Before trial, it would be prohibited to detain a juvenile with adults, under language paralleling that which exists in the juvenile code for juvenile detention. Time served in a juvenile facility would be applied to any sentence imposed following trial.

At the conclusion of the preliminary examination, a juvenile's case would be transferred to the juvenile court if the magistrate found that none of the listed violations occurred or that there was not probable cause to believe that the juvenile committed the violation, but that there was probable cause to believe that the juvenile had committed some other offense. This transfer would not prevent the juvenile court from subsequently waiving jurisdiction and sending the juvenile to criminal court.

#### MCL 761.1 et al.

Senate Bill 609 would amend the Code of Criminal Procedure to accommodate the criminal court's disposition of a juvenile who had been found guilty of any of the designated serious felonies. At sentencing, the court would hold a hearing to determine whether the best interests of the juvenile and the public would be served by committing him or her to the DSS or by imposing any other sentence provided by law for an adult offender. The rules of evidence would not apply at this hearing. In making the determination, the court would employ criteria virtually identical to those to be used by the juvenile court when deciding whether to waive a juvenile to adult court. The Department of Social Services would prepare the equivalent of a presentence investigation report for use by the court; this report would be in addition to the presentence investigation report prepared by the Department of Corrections for all felony convictions.

The court could waive the sentencing hearing if the prosecutor and the defendant consented, but if it did so, it could not sentence the defendant as an adult offender. If the court ordered commitment to the DSS, it would order reimbursement to the DSS from those responsible for the juvenile. Reimbursement provisions would parallel those in the juvenile code. Reimbursement for the costs of court-ordered legal representation also would be as provided in the juvenile code.

The court would retain jurisdiction over a juvenile placed on probation and committed to the DSS, and would annually review that juvenile's placement and progress, using an annual report to be prepared by the DSS under the Juvenile Facilities Act to be created by Senate Bill 601. The court could order changes in placement or the treatment plan based on the review.

As near as possible to the juvenile's nineteenth birthday, the court would conduct a review hearing to determine

whether the juvenile had been rehabilitated and whether the juvenile presented a serious risk to public safety. If the juvenile had not been rehabilitated or presented a serious risk to public safety, the court's jurisdiction would continue. In making the determination, the court would consider: the juvenile's participation in education, counseling and work programs; the juvenile's willingness to accept responsibility for prior behavior; the juvenile's behavior in the current placement; the prior record and character of the juvenile and his or her physical and mental maturity; the juvenile's potential for violent conduct as demonstrated by prior behavior; the recommendations of the DSS; and other information submitted by the prosecutor or the juvenile. The DSS could at any time petition for a review hearing if it believed that a juvenile under the bill had been rehabilitated and did not present a serious risk to the public. The bill would include provisions for timely notice of hearing to prosecutors, juveniles, and parents, and for appointment of counsel.

If a juvenile placed on probation and committed to the DSS violated probation by committing a felony or misdemeanor punishable by more than one year's imprisonment, the court would revoke probation and commit the juvenile to the Department of Corrections. The prison term could not exceed that which could have been imposed for the original felony, less the time spent on probation. For other probation violations, the court would continue probation and could order any of a number of dispositional alternatives, including incarceration in a county jail for not more than 30 days. Juveniles placed on probation under the bill would be exempted from various probation provisions designed for adult probationers.

MCL 769.1 et al.

The juvenile court's jurisdiction generally ends at age seventeen. However, when the court has exercised its jurisdiction, it may retain it until the youth turns 19. House Bill 4750 would allow the court to retain jurisdiction to age 21 for delinquents who committed any of the designated serious felonies or any of the following: arson of a dwelling; assault with intent to do great bodily harm less than murder; assault with intent to rob, unarmed; kidnapping; second or third degree criminal sexual conduct; attempt to commit criminal sexual conduct; and unarmed robbery.

The juvenile court would retain jurisdiction over juveniles who had committed felonies and were committed to a juvenile facility, irrespective of whether the facility was a state facility (at present, commitment to a state facility puts the juvenile under the jurisdiction of the Department of Social Services). As of June 1, 1991, the court would retain jurisdiction over all adjudicated delinquents. The court would annually review the juvenile's placement and progress, and could order changes in the juvenile's placement or treatment plan. A juvenile could be released only with the approval of the court.

Generally, a delinquent committed to a state facility would continue to be released automatically at age 19. However, for those juveniles who had committed offenses for which the court could retain jurisdiction until age 21, the court would conduct a review hearing as close as possible to the juvenile's nineteenth birthday. If the court determined that the juvenile had not been rehabilitated or presented a serious risk to public safety (the same determinations which the criminal court would make with regard to juveniles under its jurisdiction), the court would continue its jurisdiction over the juvenile. In making its determinations, the court would consider the same factors weighed by the criminal court under Senate Bill 609. Provisions for notice, appointment of counsel, and commitment reports would parallel those in Senate Bill 609.

MCL 712A.2a

House Bill 4731 would amend Public Act 369 of 1919 to give the Detroit Recorder's Court jurisdiction over the offenses listed by House Bill 4741, if committed by a juvenile between 15 and 17 years old.

MCL 725.10a

House Bill 4733 would amend the Revised Judicature Act to give the circuit court jurisdiction over the offenses listed by House Bill 4741 if committed by a juvenile between 15 and 17 years old.

MCL 600.606

Senate Bill 137 would amend the Code of Criminal Procedure to make the provision for scheduling preliminary examinations inapplicable to juveniles who had been sent to criminal court from juvenile court (House Bill 5203 would substitute the probable cause hearing in juvenile court for the criminal preliminary examination).

MCL 766.4

Senate Bill 601 would create the Juvenile Facilities Act to require the DSS to prepare reports required by other bills in the package and to authorize the department to petition the court for a review hearing to release a juvenile. However, the department could enter into contracts necessary to carry out the duties and responsibilities of the bill. "Juvenile facility" would be defined as a county facility, an institution operated as an agency of the county or the juvenile court, or a state institution or agency described in the Youth Rehabilitation Services Act to which a delinquent had been committed.

Senate Bill 604 would amend Public Act 84 of 1949 to extend to juveniles committed by criminal court provisions for transfer of juveniles between state institutions or agencies under the Departments of Mental Health, Corrections, or Social Services.

MCL 720.601

Senate Bill 605 would amend the Social Welfare Act to include the criminal court and juveniles tried in criminal court in provisions for the regional facilities plan; to include services provided to juveniles under criminal court jurisdiction within the definition of "juvenile services" for which the state juvenile justice funding system, including the child care fund, may be used; to exclude from the authority of the Youth Parole and Review Board youths adjudicated in juvenile court for felonies and youths tried in criminal court; and to abolish the Youth Parole and Review Board as of June 1, 1991.

MCL 400.115 et al.

Senate Bill 607 would amend the Youth Rehabilitation Services Act to include delinquents committed by the criminal court within the definition of "state ward" and to specifically authorize the DSS to contract with the juvenile court for the care and rehabilitation of state wards. A delinquent that the juvenile court committed to the DSS for an offense that constituted a felony could not be released from institutional placement without the court's approval. A delinquent committed by the criminal court could not be released without that court's approval. As of June 1, 1991, no delinquent committed by the juvenile court could be released without that court's approval. The approval of the Youth Parole and Review Board would not be necessary for the delinquents who had committed felonies or who had been sent from the criminal court, and as of June 1, 1991 would no longer be necessary for other delinquents (this is the date that the board would be abolished under Senate Bill 605).

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Automatic discharge from state wardship, which at present happens at age 19 for all, would not happen until age 21 for youths who had been committed for any of the crimes for which House Bill 4750 would extend the age of continuing jurisdiction to age 21.

MCL 803.302

Senate Bill 608 would amend Public Act 214 of 1963 to permit regional detention facilities to accept juveniles detained by the criminal court.

MCL 720.651

### **BACKGROUND INFORMATION:**

The following chart lists the serious felonies for which the package would authorize proceeding in either juvenile or criminal court, along with the additional offenses for which the package would extend the age of continuing jurisdiction from age 19 to age 21. (The age of continuing jurisdiction is the age up to which the juvenile justice system may hold a person committed as a juvenile.) The Michigan Compiled Laws references are the sections of the penal code and the public health code that establish the offenses to which the package refers.

MCL	Offense	"Serious Felony"	Continuing Jurisdiction
750.72	arson of a dwelling		X
750.83	assault with intent to murder	X	X
750.84	assault/intent of great bodily harm		X
750.88	assault/intent to rob, unarmed		X
750.89	assault/intent to rob, armed	X	X
750.91	attempted murder	X	X
750.316	murder, first degree	X	X
750.317	murder, second degree	X	X
750.349	kidnapping		X
750.520b	criminal sexual conduct, 1st degree	X	X
750.520c	criminal sexual conduct, 2nd degree		X
750.520d	criminal sexual conduct, 3rd degree		X
750.520g	assault/intent of crimnl. sex. conduct		X
750.529	armed robbery	X	X
750.530	unarmed robbery		X
333.7401-(2)(a)(i)	manufacture, delivery of more than 650 grams of narcotics	X	X
333.7403-(2)(a)(i)	possession of more than 650 grams of narcotics	X	X

### **FISCAL IMPLICATIONS:**

The Department of Management and Budget estimates that over the next three years the general fund cost of the juvenile waiver package would be about \$70 million. (7-21-88)

### **ARGUMENTS:**

#### **For:**

The package offers a reasonable solution to the problem of how to effectively deal with violent and hardened juvenile criminals without sacrificing the opportunity to rehabilitate salvageable delinquents within the juvenile justice system. The public would be protected without the law becoming overly rigid. Juveniles accused of particularly violent crimes could be tried as adults, but could be placed in the juvenile system rather than sent to adult prison, if that was the appropriate thing to do. Because speedier treatment or swifter justice is sometimes available under the juvenile justice system, the package does well to allow the prosecutor to decide whether to

proceed in juvenile or criminal court, rather than mandating criminal trial.

Serious juvenile offenders would no longer automatically be released from the juvenile system at age 19, but rather could be kept for further confinement and treatment until age 21, if the public safety would be threatened by the juvenile's release. Juveniles could not be discharged from institutions without the approval of the adjudicating court, thus protecting the public from the premature release of dangerous juveniles from an overcrowded system, and providing for better continuity in the treatment of delinquents. Finally, the criteria for standard waiver from the juvenile to the criminal court would be refined along the lines elucidated by the Supreme Court and made more explicit, which should resolve any lingering problems of interpretation.

#### **Against:**

The bills leave unresolved issues of funding, of finding adequate facilities to house and treat delinquents, of the propriety of allowing the criminal court to order a juvenile detained pending trial in a facility under the authority of the juvenile court, and of fragmentation and availability of services. They make no special provision for repeat offenders or serious crimes against property such as breaking and entering of a dwelling, which can all too easily end in violence. Their potential effect is uncertain, in part because their scope is so dependent on prosecutorial discretion, which would extend not only to the charge that a juvenile faces, but also to the forum in which proceedings were brought.

#### **Against:**

Although it may be a good idea to allow a serious juvenile offender to be committed to either the juvenile system or the adult correctional system, the package should place that decision with the juvenile judge rather than the criminal court. It is the juvenile court that will almost invariably have the greater expertise in the wide range of programs available for juveniles. Further, the juvenile court not only can promise speedier disposition, but can order treatment to commence immediately, so that a drug-dependant or sexually abusive youth can start benefiting from effective programs prior to final disposition of his or her case. It would be better to maintain the current law's presumption for adjudication as a juvenile, with the package's innovative approach on dispositional options applying in juvenile court rather than criminal court.