

Legislative Analysis



JUVENILES: “RAISE THE AGE”

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House Bill 4133 as introduced
Sponsor: Rep. Roger Hauck

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

House Bill 4134 as introduced
Sponsor: Rep. Douglas C. Wozniak

House Bill 4135 as introduced
Sponsor: Rep. Julie Calley

House Bill 4138 as introduced
Sponsor: Rep. Daire Rendon

House Bill 4136 as introduced
Sponsor: Rep. Ryan Berman

House Bill 4139 as introduced
Sponsor: Rep. David LaGrand

House Bill 4137 as introduced
Sponsor: Rep. Michael Webber

House Bill 4142 as introduced
Sponsor: Rep. Brian K. Elder

Committee: Judiciary
Revised 4-10-19

SUMMARY:

The bills would amend existing provisions or add new sections to various acts to “raise the age” of who is considered to be a juvenile for purposes of adjudication or prosecution of criminal offenses, and which determines where a juvenile is to be detained, from children under 17 years of age to those under 18.

The bills would take effect January 1, 2021, except for House Bill 4135 (which would take effect October 1, 2019) and House Bill 4137 (which would take effect 90 days after its enactment).

House Bill 4133 would amend the Juvenile Code within the Probate Code to do the following:

- Raise the age in the definition of “juvenile.” “Juvenile” would mean a person who is less than 18 years of age (rather than less than 17) who is the subject of a delinquency petition. (The term does not include a juvenile who has been waived to adult criminal court to be tried and sentenced as an adult.)
- Raise the age (from 16 to 17) of a person whose criminal case must be transferred to the Family Division of Circuit Court. Currently if, while being charged with a crime in a court other than Family Division, the person is found to be under the age of 17, the case must be transferred to the Family Division without delay. The bill would apply this provision to a person under *18 years of age*.
- Allow the Family Division to continue to have jurisdiction over a person who is the subject of a juvenile petition (delinquency petition), and to hear and dispose of that petition, even after the person’s eighteenth birthday (raised from 17).
- Change references to the collection of a juvenile’s “fingerprints” to “biometric data.”

MCL 712A.1, 712A.3, and 712A.11

House Bill 4134 would amend the Mental Health Code to revise the definition of “juvenile” to mean a person who is less than 18 years of age (instead of less than 17 years of age) who is the subject of a delinquency petition.

MCL 330.2060a

House Bill 4135 would amend the Code of Criminal Procedure. Currently, eligibility for placement under the Holmes Youthful Trainee Act (HYTA) is limited to an individual who committed a crime on or after his or her seventeenth birthday but before his or her twenty-fourth birthday. The bill would instead limit eligibility to an individual who committed a crime on or after his or her eighteenth birthday but before his or her twenty-fourth birthday. (Thus, a juvenile who committed a crime on or after his or her seventeenth birthday but before his or her eighteenth birthday would no longer be eligible for youthful trainee status.)

Further, a court may not assign an individual to youthful trainee status if the court determines that the offense involved certain factors that constitute the criminal sexual conduct offenses. The bill would amend the factors listed for criminal sexual conduct in the third or fourth degree to include an offense in which the victim is between 16 and 26 years old and receiving special education services and the actor is a teacher or other school employee or the actor is a volunteer or governmental employee assigned to provide services to the school and used that position to gain access to or establish a relationship with the victim.

(Under the HYTA, though an eligible individual must plead guilty to the criminal charge, he or she may have that charge dismissed upon successful completion of any sentence or conditions of probation imposed by the court. Youthful trainee status allows a young person to avoid having a criminal conviction on his or her record.)

MCL 762.11

House Bill 4136 would amend the Juvenile Diversion Act. Currently, the term “minor” means an individual less than 17 years of age. The bill would define “minor” to mean an individual less than 18 years of age. The bill would also require the record of a minor to be destroyed within 28 days after the minor reaches 18 (rather than 17).

MCL 722.822 and 722.828

House Bill 4137 would amend the Michigan Indigent Defense Commission Act to change references to an individual “17 years of age or older” to “18 years of age or older” and “less than 17 years of age” to “less than 18 years of age” contained in the definition of “adult.”

MCL 780.983

House Bill 4138 would amend the Youth Rehabilitation Act. Currently, to meet the definition of “public ward,” a court must acquire jurisdiction over the youth, and the act for which the youth is being committed must occur, before the youth’s seventeenth birthday. The bill would raise the age to apply to the court obtaining jurisdiction over the youth, and acts committed, before the youth’s eighteenth birthday.

MCL 803.302

House Bill 4139 would amend the Code of Criminal Procedure. Under the bill, for violations of a personal protection order related to domestic violence or stalking, a person less than 18 (instead of less than 17) who is the subject of the PPO would be subject to dispositional alternatives listed in the Juvenile Code. An individual 18 years of age and older (instead of 17 years of age and older) would be subject to criminal contempt of court.

[The bill is tie-barred to House Bills 4133, 4134, 4137, and 4142, and also to 4145 (which, among other things, would eliminate a provision allowing a juvenile or person less than 17 from being held in a jail if separated from adult offenders). A tie-bar means that a bill cannot become law unless each bill to which it is tie-barred is also enacted into law.]

MCL 764.15b

House Bill 4142 would amend the Code of Criminal Procedure. In general, the Code requires that a child less than 17 years of age be taken immediately before the Family Division when arrested. If during the pendency of a criminal case it is learned that the child is less than 17 years of age, the case must be transferred immediately to the Family Division in the county where the offense is alleged to have been committed. The bill would raise the age to *less than 18 years of age* to apply the provisions to 17-year-olds.

Currently, if during the pendency of a criminal case in a court other than the Family Division it is determined that the child is 17 years of age, the case may be transferred to the Family Division upon a motion by the prosecuting attorney, the child, or his or her representative—but only if the court finds that any of the conditions exist as outlined in Section 2(d) of the Juvenile Code. The bill would eliminate this provision.

[Section 2(d) of the Juvenile Code allows Family Division concurrent jurisdiction with an adult criminal court of a child between 17 and 18 years old for whom voluntary services have been exhausted or refused for certain delinquent conduct on the part of the child; for example, repeated addiction to drugs or alcohol or associating with certain types of people.]

MCL 764.27

BACKGROUND INFORMATION:

The bills are reintroductions of House Bills 4607, 4653, 4659, 4662, 4664, 4676, 4685, and 4850 of the 2017-18 legislative session and House Bills 4947 through 4954 of the 2015-16 legislative session. They are part of a 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:

Overall, the “Raise the Age” legislative package would increase both state and local costs. A report commissioned by the State of Michigan Legislative Council Criminal Justice Policy Commission was released on March 14, 2018 (the “Report”).¹ The Report presents an overall range in net cost increases from \$27.0 million to \$61.0 million annually. The House Fiscal Agency forecasts that these net costs would increase over a 3- to 5-year period and would plateau thereafter, as the applicable population phases in due to the Probate Code’s provision that the circuit court family division maintains jurisdiction over juveniles for 2 years beyond the maximum age of when the offense occurred.

There are three primary factors that inhibit a precise fiscal impact estimate of the bills:

- State statute still would allow for judicial discretion to move juvenile cases under the age of 18 to adult circuit and district courts. If a moderate percentage of these cases are moved, then the fiscal impact would lessen.
- State statute still would allow for prosecuting attorneys to request that a juvenile case be tried in the same manner as an adult in a court of general criminal jurisdiction. Again, if a moderate percentage of these cases are moved, then the fiscal impact would lessen.
- State statute allows for a variety of placement discretion for juveniles. Juveniles can be placed in secure child caring institutions, which have annual costs of \$75,000 to \$120,000, or can be referred to less expensive in-home services.

Department of Health and Human Services (DHHS)

According to the Report, the bills would increase costs to DHHS and to county Child Care Funds by between \$19.0 million and \$54.0 million in the first full fiscal year, which equates to as much as 20% of current costs. These Child Care Fund costs would increase over a 3- to 5-year period and would plateau thereafter, as the applicable population phases in.

The expenses, such as probation, foster care placement, or institutional placement, for many of these 17-year-old offenders could now qualify for child care funding under the provisions of the bills as cases under the authority of the Probate Code are funded by DHHS and counties. For children who are court wards, county courts initially pay for the required care and treatment, and DHHS reimburses 50% of those eligible expenditures back to the county through the Child Care Fund (50/50 state-local cost share). The increased cost to DHHS and

¹ Hornby Zeller Associates, Inc. *The Cost of Raising the Age of Juvenile Justice in Michigan: Final Report*. March 14, 2018. <http://council.legislature.mi.gov/Content/Files/cjpc/MIRaisetheAgeFinalReport03.14.2018.pdf>

county governments would depend upon the number of 17-year-old offenders who now fall under the authority of the family division of the circuit court and on the placement decisions made by the court.

Currently, if 17-year-old offenders are tried in criminal courts, found guilty, and incarcerated by the Department of Corrections (DOC), their care and treatment is funded by DOC. However, if under the bills these 17-year-old juveniles are categorized public wards of either the family division of the circuit court or DHHS, the expenses for their care and treatment would shift to DHHS and county governments. In most cases, the expenses of the youth's care and treatment would be paid through 50/50 state-local cost sharing.

While the specific amount of these additional costs is unknown, the Report suggests that the increased cost to the Child Care Fund state share (under the current 50/50 state-local cost sharing model) could be between \$9.6 million and \$26.8 million annually, while the increased cost to Child Care Fund local share could be expected to range between \$16.9 million and \$34.1 million annually.

It should be noted that the larger "Raise the Age" legislative package includes House Bill 4144, which would revise the current 50/50 state-local cost sharing for the Child Care Fund and require a county to choose between two different reimbursement options from DHHS. The first option would require that DHHS pay 100% of the costs of juvenile justice services for 17-year-olds who are under a circuit court's Family Division's jurisdiction for a criminal charge or are under concurrent jurisdiction with an adult criminal court for certain delinquency activities. The other juvenile justice services would remain at the current 50/50 state-local cost sharing. The second option would require DHHS to pay 68% of the cost to provide juvenile justice services for all eligible juveniles, including 17-year-olds.

Department of Corrections

The bills could produce marginal general fund/general purpose savings for DOC. Under House Bill 4135, there would be fewer 17-year-olds under HYTA probation supervision and prison status. In 2018, there were fewer than 200 HYTA probationers at any given time. Under House Bill 4135, the DOC would no longer be responsible for supervising these youth, which, in FY 2018, cost roughly \$3,600 per supervised offender.

The impact from the number of 17-year-old HYTA prisoners would be minimal, as there were only 4 as of January 1, 2019. Also, as of that same date, DOC was housing 29 prisoners aged 17 and under, so any DOC savings from housing fewer prisoners would be nominal. If DOC did not house any offenders until they reached the age of 18, the department could potentially close half of one housing unit that houses this population, saving approximately \$2.5 million GF/GP.

Courts

These bills would have an indeterminate fiscal impact on local units of government. The impact on courts would depend on the number of cases transferred from adult circuit and district courts to juvenile circuit courts (Family Division of Circuit Court). It is anticipated that adult circuit and district court costs would be reduced, while juvenile circuit court costs would be increased. An increase or decrease in the number of arraignments and the number of hearings affects processing, scheduling, and the overall management of court caseloads. Also, juvenile matters tend to be more time-consuming than adult proceedings. While there is an anticipated decrease

in adult circuit and district court caseloads, and a corresponding increase in juvenile circuit court caseloads, there is also potential for shifting court resources, which could mean a cost-neutral situation for local units that have the ability to shift. Incremental costs would be incurred by prosecuting attorneys for handling juvenile cases versus adult cases, and county jails should see a decrease in the number of jail inmates. 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. The impact of the bills would be unique to each local jurisdiction, and some jurisdictions would be affected more than others.

According to the Report, cost increases to courts, prosecuting attorneys, and jails could be \$4.7 million annually, detailed as follows:

Estimated Court Costs	
District Court	(\$397,153)
Circuit Court	\$6,363,677
Prosecuting Attorneys	\$1,027,240
Sheriff	(\$2,289,040)
TOTAL	\$4,704,723

The Report estimated the size of the population that would be re-classified, as well as the type of destination to which each one would be assigned as a juvenile. Based on the number of 17-year-olds charged over calendar years 2014 through 2016, and on Michigan law and past experience in trying juvenile offenders as adults, the Report projected the number of 17-year-old offenders expected to be treated as juveniles and the number expected to be waived to adult court. (Throughout the Report, population figures represent 2016.)

According to the Report, it is estimated there were 7,253 17-year-old defendants in 2016 statewide. If those defendants had been treated as juveniles, as the bill package proposes, 763, or 11%, would likely have been waived over to adult courts; 4,081, or 56%, would likely have been tried as juveniles. The remaining 2,409 of those 17-year-old defendants, or 33%, had traffic violations. Of those with traffic violations, only 7% would likely have proceeded further into the juvenile system, with the balance likely to have exited the system entirely. The percentage of 17-year-olds who likely would have been treated as adults involved in circuit courts ranged from 4% for Kent County to 40% for Macomb County; Oakland County would likely have had 14%, and Wayne County 4%. It was stated in the Report that the numbers for future years could be quite different, because the overall trend in arrests of both 17-year-olds and juvenile offenders has been declining steadily over several years.

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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.