



Senate Fiscal Agency
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BILL ANALYSIS



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House Bills 4133 through 4143 (Substitute H-1 as passed by the House)
House Bill 4144 (Substitute H-2 as passed by the House)
House Bill 4145 (Substitute H-1 as passed by the House)
House Bill 4146 (Substitute H-1 as passed by the House)
House Bill 4443 (Substitute H-1 as passed by the House)
House Bill 4452 (Substitute H-1 as passed by the House)
Sponsor: Representative Roger Hauck (H.B. 4133)
Representative Douglas C. Wozniak (H.B. 4134)
Representative Julie Calley (H.B. 4135)
Representative Ryan Berman (H.B. 4136)
Representative Michael Webber (H.B. 4137)
Representative Daire Rendon (H.B. 4138)
Representative David LaGrand (H.B. 4139)
Representative Vanessa Guerra (H.B. 4140)
Representative Sheldon Neeley (H.B. 4141)
Representative Brian K. Elder (H.B. 4142)
Representative Leslie Love (H.B. 4143)
Representative Tommy Brann (H.B. 4144)
Representative Graham Filler (H.B. 4145)
Representative Mary Whiteford (H.B. 4146)
Representative Michele Hoitenga (H.B. 4443)
Representative LaTanya Garrett (H.B. 4452)

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 10-9-19

CONTENT

House Bill 4133 (H-1) would amend the juvenile code to revise the definition of "adult" to refer to 18, instead of 17, years of age.

House Bill 4134 (H-1) would amend Chapter 10 (Criminal Provisions) of the Mental Health Code to revise the definition of "juvenile" to refer to a person who was under 18, instead of 17, years of age who was the subject of a delinquency petition.

House Bill 4135 (H-1) would amend the Code of Criminal Procedure to refer to an offense committed on or after a person's 18th, rather than 17th, birthday for a court's determination to assign the person to youthful trainee status.

House Bill 4136 (H-1) would amend the Juvenile Diversion Act to revise the definition of "minor" to refer to an individual less than 18, instead of 17, years of age.

House Bill 4137 (H-1) would amend the Michigan Indigent Defense Commission Act to revise the definition of "adult".

House Bill 4138 (H-1) would amend the Youth Rehabilitation Services Act to revise the definition of "public ward" to refer to acts committed before a youth's 18th, rather than 17th, birthday.

House Bill 4139 (H-1) would amend the Code of Criminal Procedure to modify provisions pertaining to a PPO issued to enjoin domestic violence or stalking to refer to an individual who was 18, instead of 17.

House Bill 4140 (H-1) would amend the juvenile code to do the following:

- Modify provisions relating to the custody of a juvenile for violation of a personal protection order (PPO).
- Prohibit a juvenile under 18 years of age taken into custody from being confined with or transported with criminal or dissolute people.
- Delete a provision allowing a court to commit a child to a county jail within the adult population if he or she is at least 17 years of age and is in violation of a PPO.

House Bill 4141 (H-1) would amend the juvenile code to grant a family court exclusive original jurisdiction over a juvenile under 18, instead of 17, years of age.

House Bill 4142 (H-1) would amend the Code of Criminal Procedure to do the following:

- Modify a provision pertaining to filing a juvenile petition to refer to if a child under 18, instead of 17, were arrested.
- Delete a provision allowing a court to transfer a case to family court, while a criminal case against a child is pending in a court other than a family court, if it is determined that the child is 17 and certain conditions exist.

House Bill 4143 (H-1) would amend the Michigan Penal Code to prohibit a child under 18, rather than 16, years of age, while under arrest, confinement, or conviction, from being placed in a place of confinement or transported with an adult who has been charged or convicted of a crime.

House Bill 4144 (H-2) would amend the Social Welfare Act to modify the method of reimbursement for payment of juvenile justice services, beginning October 1, 2021. The bill also would require the Department of Health and Human Services (DHHS) to provide quarterly reports to the Legislature and the State Court Administrative Office (SCAO) regarding certain reimbursement requests.

House Bill 4145 (H-1) would amend the Code of Criminal Procedure to do allow a court, upon motion, to order a juvenile or individual less than 18, instead of 17, years of age to be confined as otherwise provided by law.

House Bill 4146 (H-1) would amend the Social Welfare Act to do the following:

- Create the "Raise the Age Fund" within the State Treasury.
- Require SCAO to create and administer a grant program to disburse money from the Fund for costs to adjudicate and for services provided for juveniles who were 17 years old at the time of the offense.
- Require a county, court, or tribe to report to SCAO regarding expenditures of money for costs, such as personnel providing direct services to youths and youth placement and care costs.

- **Require SCAO to provide to the Legislature relevant data regarding juvenile offenders who were 17 years old at the time of the offense, for fiscal years 2020 and 2021.**
- **Require SCAO to provide to the Legislature relevant data regarding juvenile offenders who were 17 years old at the time of the offense who received juvenile justice services provided with the assistance of funds from the grant program, for fiscal years 2022 and 2023.**

House Bill 4443 (H-1) would amend the Code of Criminal Procedure to modify the age for which a prosecuting attorney could authorize the filing of a complaint and warrant on a specified juvenile violation.

House Bill 4452 (H-1) would amend the Revised Judicature Act to modify the age for which a circuit court would have jurisdiction to hear and determine a specified juvenile violation.

Each bill, except House Bill 4146 (H-1), would take effect on October 1, 2021. House Bill 4146 (H-1) would take effect 90 days after its enactment. House Bill 4139 (H-1) is tie-barred to House Bills 4133, 4134, 4137, 4142, and 4145. House Bills 4140 (H-1) and 4143 (H-1) are tie-barred, and both bills are tie-barred to House Bill 4145. House Bill 4141 (H-1), 4443 (H-1) and 4452 (H-1) are tie-barred.

Each bill, except House Bill 4134 (H-1), is described in greater detail below.

House Bill 4133 (H-1)

The juvenile code defines a "juvenile" as a person who is less than 17 years of age who is the subject of a delinquency petition. Under the bill, the term would mean a person who is under 18 and is the subject of a petition.

Under the code, while a criminal charge against a person is pending, if it is ascertained that he or she was under the age of 17 at the time the offense was committed, the court must transfer the case without delay to the family court. Under the bill, that provision would apply if it were ascertained that the person was under 18 at the time of the offense.

The code specifies that if a juvenile reaches his or her 17th birthday after a juvenile petition is filed, the family court's jurisdiction continues and the court may hear and dispose of the petition under the Code. Under the bill, the family court's jurisdiction would continue if the juvenile turned 18 after a juvenile petition was filed.

When a petition is authorized, the court must examine the court file to determine if a juvenile has had his or her fingerprints taken. If they have not been taken, the court must order either of the following:

- Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so his or her fingerprints can be taken.
- Order the juvenile committed to the sheriff's custody for taking his or her fingerprints.

The bill would refer to "biometric data" instead of "fingerprints".

House Bill 4135 (H-1)

Under the Chapter 2 (Courts) of the Code of Criminal Procedure, if an individual pleads guilty to a criminal offense committed on or after his or her 17th birthday, but before his or her 24th

birthday, the court may, without entering a judgment of conviction and with the individual's consent, consider and assign that individual to youthful trainee status. (If the offense was committed on or after the individual's 21st birthday, he or she may not be assigned to youthful trainee status without the consent of the prosecuting attorney. The Act's provisions also apply to an individual over 14 who is charged with a felony if jurisdiction has been waived to a court of general criminal jurisdiction.)

The court may not assign an individual to youthful trainee status for a felony for which the maximum punishment is life imprisonment, a major controlled substance offense, a traffic offense, or, with certain exceptions, a criminal sexual conduct offense. If an individual's youthful trainee status is not terminated or revoked, the court must discharge the individual and dismiss the proceedings upon final release from youthful trainee status.

Under the bill, a court could assign an individual to youthful trainee status, under the conditions and with the exceptions described above, if he or she committed the offense on or after his or her 18th, rather than 17th, birthday, but before his or her 24th birthday.

House Bill 4136 (H-1)

The Juvenile Diversion Act allows certain minors to be diverted from family court and released to the custody of a parent, guardian, or custodian, or a placement that occurs when the minor and his or her parent, guardian, or custodian agree to work with a person or agency that will assist them. A minor's record kept under the Act must be destroyed within 28 days after he or she becomes 17 years of age. "Minor" means an individual less than 17 years of age.

Under the bill, "minor" would mean an individual less than 18, instead of 17, years of age. Additionally, the bill would require destruction of a minor's record within 28 days after he or she turned 18, instead of 17.

House Bill 4137 (H-1)

The Michigan Indigent Defense Commission Act created the Michigan Indigent Defense Commission, and requires it to propose minimum standards, rules, and procedures for the delivery of indigent criminal defense services providing effective assistance of counsel to indigent adults throughout Michigan.

The Act requires all adults, except those with retained counsel or those who have made an informed waiver of counsel, to be screened for eligibility for indigent criminal defense services. It also requires counsel to be assigned as soon as an indigent adult is determined to be eligible.

"Adult" means either of the following: 1) an individual 17 years of age or older; or 2) an individual less than 17 years of age at the time of the commission of a felony if any of the following conditions apply:

- During consideration of a petition filed under Section 4 of the juvenile Code to waive jurisdiction to try the individual as an adult and upon granting a waiver of jurisdiction.
- The prosecuting attorney designates the case under Section 2d(1) of the juvenile Code as a case in which the juvenile is to be tried in the same manner as an adult.
- During consideration of a request by the prosecuting attorney under Section 2d(2) of the juvenile Code that the court designate the case as one in which the juvenile is to be tried in the same manner as an adult.
- The prosecutor authorizes the filing of a complaint and warrant for a specified juvenile violation under Section 1f of the Code of Criminal Procedure.

Under the bill, "adult" would mean either of the following: 1) an individual who was 18 years of age or older; or 2) an individual who was under 18 at the time a felony was committed if any of the conditions listed above applied.

(Under Section 4 of the juvenile Code, if a juvenile 14 years old or older is accused of an act that would be a felony if committed by an adult, the family court judge may waive jurisdiction to a court having general criminal jurisdiction, upon motion of the prosecuting attorney.

Section 2d(1) allows the prosecuting attorney to designate a case as one in which the juvenile is to be tried as an adult, and request the family court to make this designation, if a petition alleges that a juvenile is within the court's jurisdiction for a "specified juvenile violation".

Section 2d(2) allows the prosecuting attorney to designate a case as one in which the juvenile is to be tried as an adult, and request the family court to make this designation, if a petition alleges that a juvenile is within the court's jurisdiction for an offense other than a specified juvenile violation.

Under Section 1f of the Code of Criminal Procedure, if the prosecuting attorney believes that a juvenile aged 14 or older has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint with a magistrate.)

House Bill 4138 (H-1)

The Youth Rehabilitation Services Act governs the acceptance, care, and discharge of youths committed as public wards. "Public ward" means either of the following:

- A youth accepted for care by a youth agency who is at least 12 when committed to the agency by the family court if the act for which the youth was committed occurred before his or her 17th birthday.
- A youth accepted for care by a youth agency who is at least 14 when committed to the agency by the court, if the act for which the youth is committed occurred before his or her 17th birthday.

Under the bill, the term would apply to a youth described above if the act for which the youth was committed occurred before his or her 18th, rather than 17th, birthday.

House Bill 4139 (H-1)

The Code of Criminal Procedure allows a peace officer to make an arrest without a warrant if he or she has, or receives positive information that another peace officer has, reasonable cause to believe that a person has violated a personal protection order and certain conditions apply.

Under one of those conditions, if the PPO was issued to enjoin domestic violence or stalking, the PPO must state on its face that a violation of its terms subjects the individual to immediate arrest and either of the following:

- Criminal contempt punishable by up to 93 days' imprisonment and/or a maximum fine of \$500, if the individual restrained or enjoined is 17 or older.
- Juvenile disposition under the juvenile code, if the individual restrained or enjoined is under 17.

Under the bill, the criminal contempt penalty would apply to a restrained or enjoined person who was 18 or older, and juvenile disposition would apply to a restrained or enjoined person who was under 18.

House Bill 4140 (H-1)

Detention of Child Taken into Custody

The juvenile code allows a local police officer, sheriff or deputy sheriff, State Police officer, county agent or probation officer of any court, without a court order, to take into custody a child who is found violating a law or ordinance, or for whom there is reasonable cause to believe is violating or has violated a PPO. The officer who takes the child into custody must attempt to notify the parent, guardian, or custodian.

While awaiting the arrival of the parent, guardian, or custodian, a child under the age of 17 taken into custody may not be held in a detention facility unless he or she is completely isolated so as to prevent any verbal, visual, or physical contact with an adult prisoner. Under the bill, instead, a child under the age of 18 could not be held in a jail or any other detention facility except under the isolation conditions described above.

Custody of Certain Children

A child taken into custody under Section 2(a)(2) to (4) of the juvenile code, or for running away from home, may not be detained in a secure facility designed to physically restrict the movements and activities of alleged or adjudicated juvenile offenders unless the court (the Family Division of Circuit Court) finds that the child willfully violated a court order and that there is not a less restrictive alternative more appropriate to the child's needs. This provision does not apply to a child under the jurisdiction of the court for having violated a municipal ordinance, State law, or Federal law, or a child at least 17 years old and under the jurisdiction of the court pursuant to a supplemental petition for a PPO. The bill, instead, would refer to a child at least 18 years old.

(Section 2(a) generally provides for the circumstances under which the family court has exclusive original jurisdiction in proceedings concerning juveniles under 17 years of age who are found within the county. Sections 2(a)(2) to 2(a)(4) specify that the family court has exclusive original jurisdiction in proceedings concerning a minor who has deserted his or her home without sufficient cause and has refused alternative placement, a minor who is repeatedly disobedient to a parent's or guardian's reasonable commands, or a minor who willfully and repeatedly absents himself or herself from school or other learning programs or repeatedly violates rules and regulations of the school or learning program.)

Under the code, a child taken into custody as described above may not be detained in a cell or other secure area of a secure facility designed to incarcerate adults unless a) the child is under the court's jurisdiction for having violated a municipal ordinance, State law, or Federal law which, if committed by an adult, would be a felony; or b) the child is at least 17 years old and under the court's jurisdiction under a supplemental petition for a PPO. The bill would apply the second exception to a child who was at least 18 years of age.

Detention & Care of Juveniles

Currently, under the code, if a juvenile under the age of 17 is taken into custody or detained, the juvenile may not be confined in a police station, prison, jail, lock-up, or reformatory or transported with, or permitted to associate with criminal or dissolute people. The bill, instead, would refer to a juvenile under the age of 18.

Orders of Disposition

Under Section 18 of the code, if the court finds that a juvenile concerning whom a petition is filed is not within the code, the court must enter an order dismissing the petition. Except as otherwise provided, if the court finds that a juvenile is within the code, it must order the juvenile returned to his or her parent if his or her return would not cause a substantial risk of harm to the juvenile or society. The court also may enter an order of disposition that is appropriate for the welfare of the juvenile and society, including an order to commit the juvenile to a public institution, the Department of Health and Human Services, or other facility or agency, subject to the code's requirements.

The bill would delete a provision allowing a court to commit a child to a county jail within the adult population if he or she is at least 17 years of age and is in violation of a PPO.

If a juvenile placed on probation under an order of disposition delaying imposition of sentence is found by the court to have violated probation, other than by having been convicted of a felony or a misdemeanor, the court may impose sentence or order any of the following for the juvenile:

- A change of placement.
- Community service
- Substance abuse counseling.
- Mental health counseling.
- Participation in vocational-technical education program.

Instead of "substance abuse counseling", the bill would refer to "substance use disorder counseling".

A court also may order incarceration in a county jail for not more than 30 days as provided in the juvenile Code. If a juvenile is under 17 years of age, the juvenile must be placed in a room or ward out of sight and sound from adult prisoners. Under the bill, this provision would apply to a juvenile under 18, instead of 17, years of age.

House Bill 4141 (H-1)

Under the juvenile code, as a rule, the family court has exclusive original jurisdiction in proceedings concerning a juvenile under 17 years of age who has violated any municipal ordinance or State or Federal law. In the case of a juvenile who is at least 14 years old and who is charged with a specified juvenile violation, however, the family court has jurisdiction only if the prosecuting attorney files a petition in the court instead of authorizing a complaint and warrant.

Under the bill, family court jurisdiction would apply in the case of a juvenile under the age of 18, rather than 17.

House Bill 4142 (H-1)

Filing of a Juvenile Petition

Under the Code of Criminal Procedure, except as otherwise provided under Section 606 of the Revised Judicature Act, if a child under 17 years of age is arrested, he or she must be taken immediately before the Family Division of Circuit Court of the county where the offense is alleged to have been committed, and the officer making the arrest immediately must file a

juvenile petition as provided in the juvenile code or cause a juvenile petition to be filed. Under the bill, that provision would apply if a child who was under 18 were arrested.

(Section 606 of the Revised Judicature Act gives the circuit court jurisdiction to hear and determine a "specified juvenile violation", if committed by a juvenile who is 14 or older.)

Transfer to Family Court

Under the Code, while a criminal case against a child in a court of record other than the family court is pending, if it is determined that the child is 17 and certain conditions exist as outlined in Section 2(d) of the juvenile code, the court may transfer the case to the family court. The bill would delete that provision.

(Under Section 2(d), the family court has concurrent jurisdiction if it finds that voluntary services have been exhausted or refused, and the proceedings concern a juvenile between the ages of 17 and 18 to whom one or more of the following apply:

- He or she is repeatedly addicted to the use of drugs or the intemperate use of alcohol.
- He or she repeatedly associates with criminal, dissolute, or disorderly persons.
- He or she is found of his or her own free will and knowledge in a house of prostitution, assignation, or ill-fame.
- He or she repeatedly associates with thieves, prostitutes, pimps, or procurers.
- He or she is willfully disobedient to the reasonable and lawful commands of his or her parents, guardian, or other custodian and is in danger of becoming morally depraved.)

House Bill 4143 (H-1)

The Penal Code specifies that, except for prisoners being transported to or from, or confined in a youth correction facility, a child under 16 years of age while under arrest, confinement, or conviction for a crime, may not be placed in an apartment or cell of a prison or place of confinement with an adult who is under arrest, confinement, or conviction for a crime, or be permitted to remain in a courtroom during the trial of adults, or be transported in a vehicle in company with adults charged with or convicted of a crime.

Under the bill, this provision would apply to a child under the age of 18. The bill also would delete the provision under which juveniles may not be permitted to remain in a courtroom during the trial of an adult.

The Code requires all cases involving the commitment or trial of children under 16 years of age for a crime or misdemeanor, before any court, to be heard and determined by the court at a suitable time, designated by it, separate and apart from the trial of other criminal cases. Under the bill, this provision would apply to cases involving the commitment or trial of children under 18 years of age.

A person who violated these provisions would be guilty of a misdemeanor, as the Code currently prescribes.

House Bill 4144 (H-2)

Section 117a of the Act governs how the Department of Health and Human Services provides for the distribution of money appropriated to counties for the cost of juvenile justice services. Generally, under Section 4(c), the county amount distributed must equal 50% of the annual expenditures from the county's child care fund. Under the bill, this would apply until October 1, 2023, and except as provided below.

Beginning October 1, 2021, the State would have to pay 100% of the cost to provide juvenile justice services when a court exercised jurisdiction over a juvenile who was 17 years old but under 18 years old at the time of the offense. The costs would include all expenditures for children not placed with the DHHS for care, supervision, or placement, including children who are under the court's jurisdiction under Sections 2(a) and 2(d) of the juvenile code, until jurisdiction was terminated. There could be no change in funding provided for juveniles who were under 17 years of age at the time of the offense.

(Section 2(a) of the juvenile code generally provides for the circumstances under which the family court has exclusive original jurisdiction in proceedings concerning juveniles under 17 years of age who are found within the county. Under Section 2(d), the family court has concurrent jurisdiction if it finds that voluntary services have been exhausted or refused, and the proceedings concern a juvenile between the ages of 17 and 18 to whom certain conditions apply.)

Beginning October 1, 2023, the percentage rate of reimbursement for all juveniles would have to be equal to the sum of both of the following:

- The reimbursement established under Section 4(c) for juveniles under 17 years of age at the time of offense.
- The average cost equal to 100% of the total expenditures for 17-year-olds for the fiscal years 2021 and 2022, and then established as a percentage spread over the average of all eligible juveniles during the fiscal years 2021 and 2022.

For fiscal years 2021 and 2022, in addition to any other audits or reviews required by State law or rule, the DHHS would have to perform a fiscal and programmatic review of all monthly reimbursements to counties to validate the expenditures for providing juveniles justice services to juveniles who were placed under the court's jurisdiction at 17 years of age, but under age 18 at the time of the offense, to ensure compliance with the Child Care Fund reimbursement program.

The Department would have to provide quarterly reports to the Legislature and the State Court Administrative Office regarding reimbursement requests related to juveniles who were 17 years of age at the time of the offense and for reimbursement requests for juveniles who were under 17 years of age at the time of the offense. The quarterly reports would have to include an assessment of whether the county child care fund program recorded and reported direct expenditures and revenues related to juveniles 17 years of age that were accurate, allowable, or appropriate according to State law, rules, and DHHS policy, and a comparison of expenditures and revenues between juveniles 17 years of age and juveniles under 17 years of age.

House Bill 4145 (H-1)

Under the Code of Criminal Procedure, a juvenile, other than a juvenile under 17 confined for committing a felony, may not be confined in a police station, prison, jail, lock-up, or reformatory, or be transported with, or compelled or permitted to associate or mingle with, a criminal person while awaiting trial. A juvenile whose conduct or habits are considered a menace to other children, or who may not otherwise be safely detained, may be placed in a jail or other place of detention for adults, but in a room or ward out of sight and sound from adults.

A juvenile under 17 under the jurisdiction of the circuit court or recorder's court of the City of Detroit for committing a felony may be confined in a county jail pending trial, or confined in a county jail pending trial if the case is designated by the court as one in which the individual

is to be tried in the same manner as an adult and the court has determined that there is probable cause to believe that the felony was committed and that there is probable cause to believe the individual committed the felony. If an individual under 17 is confined in county jail, he or she must be held separately from adult prisoners. An individual under 17 may not be confined in county jail without the prior approval of the county sheriff.

The court, upon motion of a juvenile less than 17 years old who is subject to confinement for the commission of a felony, for good cause shown, order the juvenile to be confined as otherwise provided by law.

Under the bill, these provisions would apply to a juvenile less than 18, instead of 17, years old who was subject to confinement.

House Bill 4146 (H-1)

The bill would create the Raise the Age Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of a fiscal year would have to remain in the Fund and could not lapse to the General Fund.

The State Court Administrative Office would be the administrator of the Raise the Age Fund for auditing purposes. The State Court Administrative Office would have to create and administer a grant program to disburse money from the Fund as appropriated by the Legislature. Expenditures under the Fund would have to be used only to administer the grant program and for costs to adjudicate and for services provided to juveniles who were 17 years old at the time of the offense. Any request for reimbursement would have to be accompanied by substantiating documentation, as determined by SCAO.

A county, court, or tribe receiving money from the Fund would have to report to SCAO regarding expenditures made with that money. The report would have to include expenditures on all of the following:

- Personnel costs for county, court, or tribe staff providing direct services to the juveniles who were under 17 years old at the time of the offense, including full or appropriately prorated salaries and training.
- Contracted staffing, programming, and services.
- Placement and care costs for juveniles who were under 17 years old at the time of the offense, including room and board, clothing, incidentals, incentives, transportation, and treatment.
- Indirect administrative costs, including judicial staff and operational expenditures necessary to carry out the judicial process for juveniles who were 17 years old at the time of the offense.

For fiscal years 2020 and 2021, SCAO would have to provide to the Legislature relevant data regarding juvenile offenders who were 17 years old at the time of the offense. The data would have to include the number of juveniles who were under 17 years old at the time of the offense, the number of petitions filed and adjudicated, and the types of dispositions.

For fiscal years 2022 and 2023, SCAO would have to provide to the Legislature relevant data regarding juveniles offenders who were under 17 years old at the time of the offense who received juvenile justice services provided with the assistance of funds from the grant program. The data would have to include the number of juveniles served under the grant

program who were under 17 years old at the time of the offense, the number of petitions filed and adjudicated, and the types of dispositions.

House Bill 4443 (H-1)

Under the Code of Criminal Procedure, if a prosecuting attorney has reason to believe that a juvenile 14 years of age or older, but less than 17 years of age has committed a specified juvenile violation, the prosecuting attorney may authorize the filing of a complaint and warrant on the charge with a magistrate concerning the juvenile. "Specified juvenile violation" means certain offenses prescribed in the Code. Under the bill, this provision would apply to a juvenile 14 years of age or older, but less than 18 years of age who had committed a specified juvenile violation.

House Bill 4452 (H-1)

The Revised Judicature Act specifies that a 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 17 years of age.

Instead, under the bill, a circuit court would have jurisdiction to hear and determine a specified juvenile violation if committed by a juvenile 14 years of age or older and less than 18 years of age.

MCL 712A.1 et al. (H.B. 4133)
330.2060a (H.B. 4134)
762.11 (H.B. 4135)
722.822 & 722.828 (H.B. 4136)
780.983 (H.B. 4137)
803.302 (H.B. 4138)
764.15b (H.B. 4139)
712A.14 et al. (H.B. 4140)
712A.2 (H.B. 4141)
764.27 (H.B. 4142)
750.139 (H.B. 4143)
400.711a (H.B. 4144)
764.27a (H.B. 4145)
Proposed MCL 400.117i (H.B. 4146)
MCL 764.1f (H.B. 4443)
600.606 (H.B. 4152)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bills 4135 (H-1) & 4142 (H-1)

The bills effectively would raise the age from 16 to 17 for an individual to have his or her case adjudicated in the Family Division of Circuit Court. The bills would not create new offenses or increase the number of potential defendants in total, so there should not be a net increase in the number of cases. Any increase in juvenile cases would be offset by a corresponding decrease in the number of adult cases. Any change in costs would be due to the difference in the cost between the case types, magnitude of the shift in defendants, and intensity of judicial involvement.

Information provided by the SCAO indicates that there were 29,959 juvenile cases in Michigan from July 2015 to July 2016, the last year for which data are available. It is expected that there would be an increase of 7,564 cases from raising the age of the juvenile offenders to

less than 18 years of age. There would be a total net zero change in the number of cases as the increase in the juvenile cases would be expected to be shifted from the adult courts to the Family Division of the Circuit Court.

House Bill 4134 (H-1)

The bill could have a negative fiscal impact on State and local government. As the bill would expand the definition of juvenile to those under 18, instead of 17, years of age, there is a potential for an increase in the number of juvenile competency evaluations. An increase in competency evaluations could increase costs to local governments, as this would be a cost to the delinquency proceedings. If a competency evaluation resulted in the provision of additional mental health treatment, there could be an increase in costs to State and local government.

House Bill 4135 (H-1)

The bill would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government. Currently, 17- to 23-year-old offenders who are sentenced to prison or probation may be granted Holmes Youthful Trainee Act (HYTA) status at the discretion of prosecutors and the courts. The bill would remove 17-year-olds from eligibility. It is unclear whether this would make prosecutors and courts less likely to sentence 17-year-olds to prison, but if there were a reduction in prison sentences, the Michigan Department of Corrections (MDOC) would see reduced costs.

There could be a much larger shift in costs regarding HYTA probationers. If a 17-year-old offender is on felony probation with HYTA status, the costs of that probation are the responsibility of the MDOC. There are between 300 and 450 17-year-old offenders on HYTA probation at any given time. The average cost for felony probation supervision is approximately \$3,000 per probationer per year. Costs could be increased for local governments and the Department of Health and Human Services depending on the alternative dispositions that were reached in these cases.

House Bill 4136 (H-1)

The bill would have no fiscal impact on State or local government.

House Bill 4137 (H-1)

The bill would have an indeterminate, but likely minimal, fiscal impact on the Department of Licensing and Regulatory Affairs and on local government. The magnitude of the fiscal impact on the Department and to local court systems would depend on the number of 17-year-old individuals who used indigent defense services.

Revising the definition of adult would mean that individuals who are 17 years of age no longer would be subject to the Michigan Indigent Defense Commission Act. However, any cost savings to local court systems likely would not result in cost savings for the Department because of the likely minimal effect on compliance plans submitted to the Michigan Indigent Defense Commission by local systems. The Department could see decreased remittances of funds collected by locals from partially indigent defendants, depending on the number of 17-year-old individuals who are subject to these collections. While data are currently unavailable, this number likely is small and would not have a significant fiscal impact on the Department.

House Bill 4138 (H-1)

As the bill would raise the age of a person considered a "public ward", there could be a decrease in the number of individuals who would be remanded to prison. If there were fewer dispositions to prison and an increase in county-level supervision, there would be a decrease in costs to the Michigan Department of Corrections (MDOC) with an offsetting increase in costs to the DHHS and local government.

For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the decreased intake of prisoners reduced the total prisoner population enough to allow the MDOC to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year. For DHHS facilities, over the course of a fiscal year, the State serves approximately 250 juveniles in two State-run juvenile facilities. There also are private agency facilities that provide placement options for youths found responsible for their offenses. The marginal cost for placement in these facilities is not known, but since the fixed costs of these facilities are spread over a much smaller population base compared to the MDOC facilities, these marginal costs likely would be higher than for placements in a larger adult correctional facility. If there is a larger cost for placement in the MDOC facilities than in the DHHS or private facilities, then there would be savings to the State. If the DHHS or private placements are more expensive than the MDOC placement, there would be a cost to the State. The solely DHHS-supervised individuals are considered State ward board and care (SWBC) cases and the costs are shared between the counties and State. In this arrangement, the State pays first and the counties are reimbursed 50% of the costs, if there is no cost allocation methodology change.

Additionally, there are court wards who could be under the supervision of the court or the DHHS. These individuals also are funded through a cost-sharing regime between the State and local government similar to the SWBC individuals, except in the case of the court wards, the counties pay first and are reimbursed 50% of the costs by the State under the Child Care Fund (CCF) payment system, if there is no cost allocation methodology change. Any 17-year-old offender who otherwise would have been supervised by the MDOC and, under the bill, would be considered a juvenile, his or her supervision would be funded through the SWBC or CCF, depending on the outcome of his or her delinquency proceedings.

House Bill 4139 (H-1)

The bill would have an indeterminate fiscal impact on State and local government. As the bill would change the age, from less than 17 years of age to less than 18 years of age, for a person to be subject to criminal contempt of court for violating a PPO, the penalties for a violation would change. Currently, if the person is less than 17 years of age, he or she is subject to delinquency proceedings, while anyone 17 or older is subject to adult penalties. The bill would allow a 17-year-old to be subject to a delinquency proceeding for violating a PPO, which could lead to a decrease in costs to the MDOC if fewer individuals were sentenced to prison. The costs for the DHHS and local government could increase depending on the outcomes of those delinquency proceedings. The costs to counties could be offset, as a violation of a PPO that otherwise would lead to a stay in jail could be changed to a dispositional alternative under the bill.

House Bill 4140 (H-1)

The bill would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government, if the current State and local 50%-50% juvenile justice cost sharing methodology were maintained. If there were a change to the allocation in costs,

the fiscal impact would be contingent on that methodology. The bill would prohibit juveniles 17 years of age and younger from being held in a jail or detention facility that also housed adults unless he or she was an individual 15 years of age or older whose habits or conduct was considered a menace to other juveniles, or who could not otherwise be detained safely and was housed in a room or ward separate from adults. The bill would prohibit family courts from imposing a jail or prison sentence on an individual who was under 18 years of age. These prohibitions would decrease the demand for prison and jail beds and increase the demand for the use of juvenile-only facilities. Placement of these individuals would be subject to judicial discretion and could result in an increase in the use of county juvenile detention facilities, State juvenile justice residential treatment facilities, and private juvenile justice residential foster care facilities. If an individual under 18 years old were the responsibility of a county, there would be a 50%-50% cost sharing arrangement between the State and county, either through the State Ward Board and Care (SWBC) Fund or the Child Care Fund (CCF) payment system.

The total cost of the changes proposed by the bill would be subject to judicial placement decisions. Since it is unknown how many individuals would be affected by the proposed changes, one way to analyze the potential impact of the proposed changes is to examine the current number of individuals in MDOC facilities who are under 18 years of age and the per diem rates of the various juvenile facilities.

The following tables give some context to the per diem expenses. As shown in [Table 1](#), county juvenile detention facilities have rates that range between \$160 and \$180. The total capacity of these facilities is not known. These rates are from FY 2014-15, the fiscal year for which the most recent data are available. [Table 2](#) displays the cost and capacity for State juvenile justice residential facilities with a per diem cost of approximately \$300 and a total capacity of 80 beds per day between the two facilities. [Table 3](#) has the current per diem rates and number of licensed beds (as of February 15, 2019) with a total of 43 contracted private juvenile residential foster care facilities in the State and a total licensed bed capacity of 3,412.

Table 1

Five Most Populous Counties' Juvenile Detention Facilities Per Diem Rates	
County	Per Diem Rates
Wayne	N/A
Oakland	\$170
Macomb	\$170
Kent	\$180
Genesee	\$160

Table 2

State Juvenile Justice Residential Treatment Facilities' Per Diem Costs FY 2016-17			
Facility	Annual Youths Served	Bed Capacity	Per Diem Costs
Bay Pines Center	93	45	\$301
Shawono Center	57	40	\$312

Table 3

Private Juvenile Justice Residential Foster Care Per Diem Rates FY 2018-19		
Range of Per Diem Rates	Number of Facilities	Total Number of Licensed Beds
\$209	18	1,518
\$291-\$299.50	11	915
\$305-\$321	14	979

It is not known how many individuals who are currently placed in county jails who, under the bill, would no longer be allowed in the same facility as adults; however, there is information available concerning those individuals under 18 who are supervised in MDOC facilities. The bill would result in a General Fund/General Purpose (GF/GP) savings for the MDOC, but those savings would depend solely on judicial placement decisions. As of March 2019, the MDOC houses 30 prisoners under the age of 17. If the Department did not house any offenders until they reached the age of 18, the Department could close half of one housing unit that houses this population, which would save just under \$2.0 million GF/GP.

Using the MDOC figures, these individuals cost approximately \$183 per diem. For a determination of the cost shift impact on the DHHS and local government (assuming all individuals are placed in residential care), a blended weighted average per diem cost was used to reach an estimate. A \$263 per diem for a blend of the three types of facilities would cost \$2.8 million for 30 responsible juveniles no longer held in an MDOC facility. This is an estimated increase of \$800,000 in total costs. However, under current law for these 30 individuals, there would be a 50% share in costs for DHHS and local government. Both State and local government would be responsible for \$1.4 million under current funding mechanisms. The State would save \$600,000 in total, though it would be a \$2.0 million savings for the MDOC and a \$1.4 million cost increase for the DHHS. As this is an estimate, if the per diem costs ended up higher than those in this scenario, any savings to the State would be lessened. As these estimates depend on the assumptions made above, this cost estimate is uncertain. Some factors that could change these cost estimates include an increase in caseload, a change in judicial placement decisions, more intensive/restrictive placements, a lack of bed capacity, or a change in the cost allocation methodology.

For local government, there would be an increased cost for any increase in the number of individuals supervised as court wards who otherwise would be supervised in an MDOC facility. For instance, given the current cost allocation methodology, under the example described above, the increased cost to the counties for those 30 individuals would be \$1.4 million.

House Bill 4141 (H-1)

The bill would have an indeterminate fiscal impact on the State and local courts. The impact would depend on how many cases would be heard in the Family Division of Circuit Court instead of a court for adult cases. Since juvenile proceedings typically require more time to adjudicate, there could be increased resource demands on the courts, depending on how many cases remained before the family court.

House Bill 4143 (H-1)

The bill could have a negative fiscal impact on State and local government. It would bar the DHHS and local governments from transporting juveniles under the age of 18 with adults charged with or convicted of a crime. Alternative transportation measures would need to be implemented, which could lead to an increased cost to the transportation provider.

The bill would have no fiscal impact on the MDOC since the provisions of the bill reflect the Department's current policy. The fiscal impact on local government would depend on the extent of the changes needed in order to separately house 16- and 17-year-olds.

The bill would result in a GF/GP savings for the Department of Corrections but would depend solely on judicial placement decisions. Currently, the Department houses 30 prisoners aged 17 and under. If the Department did not house any offenders until they reached the age of 18, the Department could close half of one housing unit that houses this population, saving just under \$2.0 million GF/GP.

House Bill 4144 (H-2)

The bill would have a significant fiscal impact on State and local government. Under current law, the State and each county government share the cost of juvenile justice services on a 50% split. For children placed with the courts for care, supervision, or placement, the county spends the funds for services and then submits a request to the DHHS for 50% reimbursement of allowed expenditures. Under the bill, beginning on September 30, 2023, the 50% reimbursement requirement paid to counties for annual expenditures would expire.

The County Child Care Fund (CCF) is an annually appropriated item in the DHHS budget, and is the mechanism that funds both abuse and neglect cases, as well as juvenile justice cases. For fiscal year (FY) 2019-20, the total amount appropriated in the CCF is approximately \$228.2 million. For year-to-date FY 2018-19, the total amount spent in the CCF is approximately, \$156.0 million. This amount represents approximately 50% of the total State and local expenditures for the CCF. Under the bill, by amending the Social Welfare Act, the State, until September 30, 2023, would maintain its 50% coverage for CCF services and, beginning October 1, 2021, would provide funding to cover 100% of the incremental costs associated with 17-year-old offenders. As of October 1, 2023, the reimbursement rate for the CCF would be a blended formula calculated based upon sum of the reimbursements paid for juveniles under 17 years of age and the average cost, expressed as a percentage, of 100% of the total expenditures for 17-year-old offenders compared to all eligible juvenile costs for FY 2020-21 and FY 2021-22.

As a practical matter, the other bills in the "Raise the Age" legislative package would need to be enacted, otherwise 17-year-old offenders would not be covered by the CCF and the proposed changes to the CCF would not apply.

Assuming that the other bills in the package were enacted, the increased cost to the State likely would be considerable. To determine the costs for FY 2020-21 and FY 2021-22, it is necessary to calculate the costs for 17-year-old offenders. Since there is a lack of comprehensive statewide juvenile justice data, the best cost estimates can be taken from a report contracted by the State of Michigan Legislative Council Criminal Justice Policy Commission.¹ The report noted that on a statewide basis, the costs to provide services to 17-year-old offenders could increase total child care fund costs from 5.0% to 14.0%, based on FY 2015-16 child care costs. If these percentages are applied in the FY 2019-20 budget, for a 5.0% increase in CCF expenditures, the total estimated 100% State-funded costs would be \$19.3 million. On the high end, a 14.0% increase to cover 17-year-old offenders would be \$54.3 million for 100% State costs. The calculation of the fiscal impact beginning on October 1, 2023 becomes more difficult than for FY 2020-21 and FY 2021-22. Since under the bill, the

¹ State of Michigan Legislative Council Criminal Justice Policy Commission, "The Cost of Raising the Age of Juvenile Justice in Michigan Final Report", March 2018. Retrieved on 10-9-19.

50% reimbursement percentage for those under 17 years of age expires September 30, 2023, it is uncertain how first portion of the blended reimbursement rate percentage would be calculated.

Additionally, the State would bear the costs for performing fiscal and programmatic reviews for all monthly reimbursements to counties to validate the expenditures for juveniles who are 17-year-old offenders. The total fiscal costs for these reviews are uncertain, but the Department may have to add staff to the Bureau of Audit, Reimbursement, and Quality Assurance to perform these reviews.

This is a high-level estimate using the percentages cited in the report and does not include various factors such as judicial and prosecutorial discretion, the type and security level of the residential placement required for each juvenile, and length of stay. For local governments, the costs would be more uncertain, as each county would face a different set of facts and circumstances. There are 83 counties in Michigan and it would be quite difficult to predict each county's implementation costs. A fiscal estimate would depend on the set of variables that each county would use in caring for 17-year-old offenders' cases.

House Bill 4145 (H-1)

The bill could have a negative fiscal impact on the State and would have an indeterminate fiscal impact on local government. Since the bill would prohibit anyone less than 18 years of age from being confined in a county jail pending trial, alternative confinement arrangements could be used for these individuals. The alternative arrangements likely would be in a county juvenile detention facility, a State juvenile justice residential treatment facility, or a private juvenile justice residential foster care facility. This would mean increased expenses for the Department of Health and Human Services. Counties would no longer have the option to confine these individuals in the county jail, so there could be fiscal savings, but the net cost or savings would depend on where the individuals were housed pending trial and the incremental difference in cost between a juvenile justice facility and the county jail.

The Michigan Department of Corrections is paid by the City of Detroit to operate the Detroit Detention Center, which serves as the city's lock-up center and houses up to 200 offenders. The Department also funds and operates the lock-up for the City of Flint. The bill would prohibit individuals under 18 from being housed at these and other locally-run lock-ups. There could be a decrease in costs for the lock-ups, but there would be a corresponding increase for local governments as they would be responsible for detaining these individuals consistent with the bill's requirements.

House Bill 4146 (H-1)

The bill would have no fiscal impact on the SCAO and local units of government, including circuit courts, counties, and tribal courts, assuming an annual appropriation fully covered increased costs for implementation of the bill.

The bill would require SCAO to administer a program to provide local units with grants to cover the increased costs of adjudicating as juveniles those offenses committed by person who were 17 years old at the time of the offense. The State Court Administrative Office would be authorized to cover its own expenses from the Raise the Age Fund to administer the program, which could include additional staffing, programming and services. It also would have to provide information to the Legislature for the next four years regarding juvenile adjudications by offenders who were 17 at the time of the offense. Currently, SCAO does not have these data, and would have to coordinate with circuit courts statewide in order to get it.

The bill also would have a minimal fiscal impact on the Department of Treasury, which would be covered within current appropriations.

House Bill 4443 (H-1)

The bill would have no fiscal impact on State or local government.

House Bill 4452 (H-1)

The bill would have an indeterminate negative impact on circuit court systems that likely would be absorbed by current funding levels. Raising the age for juvenile proceedings increases the frequency of those proceedings at the circuit court level. Typically, fewer juvenile proceedings end in a plea agreement than in adult criminal proceedings, meaning the average costs of juvenile proceedings exceed those of adult criminal proceedings. For this reason, increased numbers of juvenile proceedings in circuit courts is expected to increase costs, but it is not known by how much.

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