

# Legislative Analysis



## HOLMES YOUTHFUL TRAINEE ACT REVISIONS

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### House Bill 4206 (Substitute H-5)

Sponsor: Rep. Harvey Santana

Committee: Criminal Justice

### House Bill 5582 without amendment

Sponsor: Rep. Joe Haveman

### House Bill 5585 without amendment

Sponsor: Rep. Kurt Heise

Complete to 12-2-14

## A SUMMARY OF HOUSE BILLS 4206, 5582 AND 5585 AS REPORTED BY COMMITTEE 11-12-14

The bills all amend the Holmes Youthful Trainee Act. Generally speaking, House Bill 4206 would expand the ages of offenders eligible for trainee status to include 21-23 year olds; require the consent of the prosecutor for assignment of youths aged 21-23 years of age; restrict eligibility to just one assignment; and allow a court to require a trainee to work, attend school, or wear an electronic monitor during any term of probation.

House Bill 5582 would eliminate the option to send a trainee to prison.

House Bill 5585 would require a court to no longer consider an individual for trainee status, and to revoke trainee status, if the individual were convicted of certain crimes.

The Department of Corrections describes the Holmes Youthful Trainee Act as a state law that *allows a judge to place a youth between 17 and 20 who is alleged to have committed a crime and who has pleaded guilty to that crime to be placed in prison or on probation without a conviction to avoid a criminal record. Excluded from this program are youth who are charged with a felony for which the maximum punishment is life imprisonment, a major controlled substance offense or a traffic offense. This action protects the privacy of the offender while on trainee status. If the youth successfully completes the program, there is no criminal record. Imprisonment or probation cannot exceed three years.*

House Bill 4206 would amend the section of the Code of Criminal Procedure known as the Holmes Youthful Trainee Act (MCL 762.11) to do the following:

- ❖ Expand eligibility so that it applies to youths from 17 years of age through 23 years of age.
- ❖ Require the consent of the prosecuting attorney if the criminal offense occurred on or after the individual's 21<sup>st</sup> birthday but before the 24<sup>th</sup> birthday. "Criminal

offense" would mean one or more adjudications arising out of a series of acts that were in a continuous time sequence of 12 hours or less and that displayed a single intent and goal.

- ❖ Prohibit a court from assigning an individual to youthful trainee status if the individual had previously been assigned to youthful trainee status.
- ❖ Allow a court to require a person assigned to youthful trainee status to maintain employment or attend a high school, high school equivalency program, community college, college, university, or trade school. If the person is not employed or attending school, the court could require the individual to actively seek employment or entry into one of the listed educational institutions.
- ❖ Allow a court to subject the trainee to electronic monitoring during the probationary term if the offense had been committed on or after the individual's 21<sup>st</sup> birthday.
- ❖ Require compliance with conditions of probation to be verified monthly by a probation officer. Verification of employment status or school attendance must include a review of employment and school records.

**House Bill 5582:** Under the Holmes Youthful Trainee Act, if the underlying charge is an offense punishable by imprisonment for a maximum term of more than one year, the court is required to do one of the following:

- a) Send the trainee to prison for not more than three years;
- b) Place the trainee on probation for not more than three years subject to probation conditions as provided in Section 3 of Chapter XI of the Code; **or**,
- c) Commit the trainee to the county jail for not more than one year.

The bill would amend the act (HYTA), MCL 762.13, to eliminate the first option cited above ["a"] and require the court to instead place the trainee on probation or commit the trainee to the county jail for not more than one year.

Further, the bill would delete an obsolete provision requiring the Department of Corrections, a sheriff, or the trainee's probation office to register, or accept a registration of, a trainee whose offense is a listed offense requiring registration as a sex offender. A person sentenced under HYTA after October 1, 2004, no longer has to register as a sex offender unless the person loses trainee status under HYTA.

**House Bill 5585:** Currently, under the act, court may, at its discretion, terminate its consideration of an individual as a youthful trainee or, once assigned, revoke the status of a trainee at any time before the individual's final release from the program.

The bill would require a court to terminate its consideration of the individual as a youthful trainee and, once having assigned the individual to the status of youthful trainee,

revoke that status, if – during the period of consideration or assignment – the individual is convicted of any of the following:

- ❖ A felony for which the maximum penalty is imprisonment for life.
- ❖ A major controlled substance offense.
- ❖ A violation, attempted violation, or conspiracy to violate:
  - Felonious assault.
  - Assault with intent to do great bodily harm less than murder.
  - Rob and steal, unarmed.
  - Home invasion, 1<sup>st</sup>-3<sup>rd</sup> degrees.
  - Possession of firearm or distribution of ammunition by person convicted of felony.
  - Carrying a firearm or dangerous weapon with unlawful intent.
  - Carrying a concealed weapon.
  - Unlawful possession of a pistol.
  - Possession of firearm during commission of a felony.
  - Criminal sexual conduct in the 1<sup>st</sup>-4<sup>th</sup> degrees.
  - Carjacking.
  - Using force or violence during commission of a larceny.
  
- ❖ A violation, attempted violation, or conspiracy to violate the prohibition on assault with intent to commit criminal sexual conduct, with some exceptions.

#### **FISCAL IMPACT:**

House Bill 4206: Under the bill, there would be an indeterminate amount of savings to the state's correctional system. The amount of savings would depend on the number of offenders actually diverted from prison sentences to Holmes Youthful Trainee Act probation terms. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. Also, there could be additional community supervision costs depending on the increased number of offenders diverted to probation terms. Costs for probation supervision average about \$3,600 per supervised offender per year.

House Bill 5582: Under the bill, there would be an indeterminate amount of savings to the state's correctional system. The amount of savings would depend on the number of offenders actually committed to county jail that would have otherwise been committed to prison for not more than three years. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. Also, there could be additional costs for county jails depending on the increased number of offenders committed to jail instead of to prison. The costs of local incarceration in a county jail vary by jurisdiction

House Bill 5583: Under the bill, there could be increased costs to the state and to local correctional systems. Costs would depend on the number of offenders who are convicted of crimes set forth in the bill, have their youthful trainee status revoked, and are sent to

either prison or to county jail. The average cost of prison incarceration in a state facility is roughly \$35,600 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail vary by jurisdiction.

## **BRIEF DISCUSSION OF THE ISSUES:**

Proponents say that expanding eligibility for assignment to youthful trainee status to include 21-23 year olds fits with recent scientific evidence that the brain doesn't reach full maturity until closer to age 25. Young adults also are more amenable to rehabilitation. Assignment to youthful trainee status enables a person who made a mistake when young to avoid having a felony record and increases the person's chance of finding employment. Since employment reduces the risk for reoffending, expanding the pool of eligible youthful offenders may in turn enable more persons to turn their lives around and become productive members of society. In addition, the bills have the potential to decrease prison populations and thus save taxpayers money by shortening incarceration periods and lowering recidivism rates.

The bills are not soft on crime, say advocates. Though House Bill 5582 would eliminate a prison sentence for a youthful trainee, it instead makes it more likely that trainees would have a period of community supervision to help make the transition to a crime-free life. House Bill 5585 would add many new crimes that would render a person ineligible to be considered for assignment as a youthful trainee. And committing one of the listed offenses while on assignment as a youthful trainee would be grounds for revocation. House Bill 4206 clarifies that a person could only receive trainee assignment once and requires the consent of the prosecutor for offenders whose crimes were committed when the person was 21, 22, or 23 years of age.

The bills have provoked some criticisms. Though purported to expand eligibility into the program by increasing the age to include 21-23 year olds, House Bill 5585 greatly reduces the pool of youthful offenders who would be eligible by listing many crimes for which a judge could not even consider offering youthful trainee status. House Bill 4206 would give a prosecutor veto power over a judge's discretion to offer trainee status to offenders 21-23 years of age. Moreover, sometimes a youth, especially if part of the "wrong crowd," might commit multiple offenses in a short period of time. Under the bills, such multiple offenses would exclude the youth from consideration unless they had been committed within 12 hours of each other and had had a single intent or goal. Thus, critics say, as written, the bill package could increase the numbers of people living with the stigma of a criminal record from acts committed when young rather than reduce such numbers.

## **POSITIONS:**

A representative of the Prosecuting Attorneys Association testified in support of HB 4602. (9-24-14 and 11-12-14)

Coalition for a Useful Registry indicated opposition to HB 4206 and support for HB 5582 and 5585. (9-24-14)

ACLU of Michigan indicated support for House Bill 5582. (11-12-14)

The Criminal Defense Attorneys of Michigan submitted written testimony indicating a position of neutrality on the package of bills, but expressing concern over provisions in the bills that would restrict eligibility into youthful trainee status (on 9-24-14). They indicated support for House Bill 5582 on 11-12-14.

Department of Corrections indicated a position of neutrality. (9-24-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.