



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4947 (as passed by the House)
House Bill 4948 (Substitute H-1 as passed by the House)
House Bills 4949 through 4954 (as passed by the House)
House Bill 4964 (Substitute H-1 as passed by the House)
Sponsor: Representative Peter J. Lucido (H.B. 4947)
Representative Martin Howrylak (H.B. 4948)
Representative Dave Pagel (H.B. 4949)
Representative LaTanya Garrett (H.B. 4950)
Representative Anthony G. Forlini (H.B. 4951)
Representative Michael Webber (H.B. 4952)
Representative Chris Afendoulis (H.B. 4953)
Representative Harvey Santana (H.B. 4954)
Representative Leslie Love (H.B. 4964)

House Committee: Criminal Justice

Senate Committee: Judiciary

Date Completed: 10-18-16

CONTENT

House Bills 4947 through 4954 would amend various statutes to provide for a 17-year-old to be considered a juvenile, rather than treated as an adult in the criminal justice system.

House Bill 4947 would amend the juvenile code; House Bills 4948 (H-1) and 4952 would amend the Code of Criminal Procedure; House Bill 4949 would amend the Juvenile Diversion Act; House Bill 4950 would amend the Youth Rehabilitation Services Act; House Bill 4951 would amend the Mental Health Code; House Bill 4953 would amend the Michigan Indigent Defense Commission Act; and House Bill 4954 would amend the Holmes Youthful Trainee Act (within the Code of Criminal Procedure).

House Bill 4964 (H-1) would amend the Social Welfare Act to require the Department of Health and Human Services to pay 100% of the amount above a determined benchmark amount annually spent by counties to provide juvenile justice services for 17-year-olds who were prosecuted in adult criminal courts.

House Bills 4947 through 4954 are tie-barred. House Bill 4947 also is tie-barred to House Bill 4964. House Bill 4964 (H-1) is tie-barred to all of the other bills. All of the bills would take effect on October 1, 2018.

House Bill 4947

As used in the juvenile code, "juvenile" means 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.

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 juvenile code. Under the bill, the family court's jurisdiction would continue if the juvenile turned 18 after a juvenile petition was filed.

House Bill 4948 (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 court of the county where the offense is alleged to have been committed, and the officer making the arrest must immediately 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

Currently, 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) of the juvenile code, 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 4949

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 the minor becomes 17 years of age. The bill would require destruction of a minor's record within 28 days after he or she turned 18.

House Bill 4950

The Youth Rehabilitation Services Act governs the acceptance, care, and discharge of youths committed as public wards.

The Act defines "public ward" as 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 definition would apply to a youth described above if the act for which the youth was committed occurred before his or her 18th birthday.

House Bill 4951

Under Chapter 10 (Criminal Provisions) of the Mental Health Code, "juvenile" means a person who is under 17 years of age who is the subject of a delinquency petition. Under the bill, that term would mean someone under 18 who is the subject of a delinquency petition.

House Bill 4952

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 (PPO) 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 4953

The Michigan Indigent Defense Commission Act created the Commission and requires it to propose minimum standards for the local delivery of indigent criminal defense services to adults throughout the State. The minimum standards must be approved by the Michigan Supreme Court.

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 1) an individual 17 years of age or older; or 2) an individual less than 17 years old at the time of the commission of a felony if any of the following conditions applies:

- 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 an individual who is 18 years of age or older, or an individual who was under 18 at the time a felony was committed if any of those conditions applies.

(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) of the juvenile code 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 4954

Under the Holmes Youthful Trainee Act, 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 person's 21st birthday, the person may not be assigned to youthful trainee status without the consent of the prosecuting attorney. The Act's provisions also apply to a person 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 a person 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 (CSC) offense. If a person's youthful trainee status is not terminated or revoked, the court must discharge the person and dismiss the proceedings upon final release from youthful trainee status.

Under the bill, a court could assign a person 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.

House Bill 4964 (H-1)

Section 117a of the Social Welfare Act governs how the Department of Health and Human Services (DHHS) provides for the distribution of money appropriated to counties for the cost of juvenile justice services.

Under the bill, subject to appropriations, the DHHS would have to pay 100% of the amount spent above the amount determined in a study commissioned by the Legislature to be the benchmark amount annually spent by the counties to provide juvenile justice services for 17-year-olds who were prosecuted in adult criminal courts.

MCL 712A.1 et al. (H.B. 4947)
 764.27 (H.B. 4948)
 722.822 & 722.828 (H.B. 4949)
 803.302 (H.B. 4950)
 330.2060a (H.B. 4951)
 764.15b (H.B. 4952)
 780.983 (H.B. 4953)
 762.11 (H.B. 4954)
 400.117a (H.B. 4964)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bills 4947 and 4948 (H-1)

The bills would effectively 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 size 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. A 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 State Court Administrative Office (SCAO) indicates that there were 29,959 juvenile cases in Michigan from July 2015 to July 2016. 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. This 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. Table 1 below shows the estimated percentage increase in juvenile case filings for the most affected counties. Table 2 shows the estimated additional filings for the most affected counties.

Table 1

COUNTY	Percentage Increase in Case Filings
ANTRIM	82.1%
IRON	81.8%
OGEMAW	69.0%
HURON	51.4%
KEWEENAW	50.0%
ARENAC	48.5%
SCHOOLCRAFT	48.5%
DICKINSON	45.6%
ONTONAGON	45.5%
WAYNE	40.3%
OAKLAND	40.2%
Statewide	27.3%

Table 2

COUNTY	Estimated Additional Juvenile Filings
WAYNE	1,820
OAKLAND	674
MACOMB	412
KENT	345
OTTAWA	305
GENESEE	299
KALAMAZOO	251
BERRIEN	198
MUSKEGON	184
INGHAM	170
Statewide	7,564

House Bill 4949

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

House Bill 4950

The bill would have an indeterminate fiscal impact on the State and could have a negative fiscal impact on local government. The bill would change the age at which an individual may be considered a "public ward" from a person who was less than 17 years of age to a person who was less than 18 years of age when the act for which the youth was committed occurred. Public wards are considered to be under the supervision of either the court or the State depending on the facts and circumstances of the situation of the individual. Public Wards are also known as "Act 150" cases¹. As of September 1, 2016, there were approximately 450 public wards from the ages of 12 to 22 years of age. Table 3 shows the number of individuals for each age group.

Table 3

Act 150 Youths			
Age of Youth		Cumulative FY 16 YTD*	Cumulative FY 15
12		2	4
13		14	8
14		22	37
15		70	62
16		91	105
17		115	123
18		84	92
19		22	45
20		21	17
21		4	11
22		2	1
Totals		447	505
*As of September 1, 2016			

¹ Public Act 150 of 1974 (the Youth Rehabilitation Services Act)

As the bill would raise the age of a person considered a "public ward", there could be individuals who otherwise would be sentenced to prison no longer being 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 Michigan Department of Health and Human Services and local government.

From fiscal years 2010-11 through 2013-14, an average of 140 individuals were 17 years of age at the time of their disposition to an MDOC facility. While it is unlikely that all 140 of those individuals would have avoided a prison sentence under the changes proposed in the bill, there likely would be a decrease in the number of individuals sentenced to an MDOC facility and an increase in the number of those classified as a public ward.

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, the State serves approximately 250 juveniles in two State-run juvenile facilities. There are also private agency facilities that provide placement options for youths found responsible for their actions. 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 could be higher. 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, where the State pays first and the counties reimburse 50% of the costs.

Additionally, there are also court wards who could be under the supervision of the court or the DHHS. These individuals are also 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. Any 17-year-old who otherwise would have been supervised by the MDOC and instead would be considered a juvenile, would be funded through the SWBC or CCF depending on the outcome of his or her delinquency proceedings.

House Bill 4951

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 years of age from those under 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 4952

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 personal protection order, the penalties for a violation would change. Currently, if the person is less than 17 years of age, he or she would be subject to delinquency proceedings, while anyone 17 or older would be subject to adult penalties. The bill would allow for a 17-year-old to be subject 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 would otherwise lead to a stay in jail could be changed to a dispositional alternative under the bill.

House Bill 4953

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

House Bill 4954

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-olds 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 MDOC would see reduced costs.

There could be a much larger shift in costs regarding HYTA probationers. If a 17-year-old 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-olds 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 DHHS depending on the alternative dispositions that were reached in these cases.

House Bill 4964 (H-1)

Under the bill, there would likely be a cost increase to State government and there could be an increase in costs to local government. The bill refers to a legislatively commissioned study of annual juvenile justice service expenditures by counties, to determine an undefined "benchmark amount" for the provision of juvenile justice services for people who are 17 years of age or less prosecuted in adult criminal court.

The study will attempt to derive the "benchmark amount" from which any additional juvenile justice services provided by the counties will be paid, subject to appropriations, by the Michigan Department of Health and Human Services that would likely increase costs to the State. Depending on the interpretation of "benchmark amount", there could be a determination for each individual county or for the counties in total. Therefore, if an individual county is funding services at an amount less than the determined "benchmark amount", any difference could be funded through the ordinary Child Care Fund procedures. Though juvenile justice services are paid by both the State Ward Board and Care Fund and the Child Care Fund, the bill would apply solely to court wards funded through the CCF for payments made subject to the placement in juvenile justice facilities of any 17-year-old offenders. For CCF cases, the counties pay first and are reimbursed 50% of the costs by the State. In fiscal year 2014-15, \$236.9 million was spent for CCF cases and \$118.4 million for CCF in-home services. Under the bill, any incremental increase in either of these types of expenditures due to the adjudication of 17-year-olds, 100% would be paid by the State. This increase would be exclusive of any other increase that could be paid by local government due to changes for juvenile justice placements as the result of the other bills tie-barred to this proposal.

Fiscal Analyst: Ryan Bergan
John Maxwell

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