



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 84, 90, 93, 97, and 99 (as enacted)

Senate Bills 100 and 101 (as enacted)

Senate Bill 102 (as enacted)

House Bills 4133 through 4136 (as enacted)

House Bill 4140 (as enacted)

House Bills 4142, 4143, and 4145 (as enacted)

House Bills 4443 and 4452 (as enacted)

Sponsor: Senator Curtis S. VanderWall (S.B. 84)

Senator Peter J. Lucido (S.B. 90, 100 & 101)

Senator Stephanie Chang (S.B. 93)

Senator Curtis Hertel, Jr. (S.B. 97)

Senator Ruth Johnson (S.B. 99)

Senator Sylvia Santana (S.B. 102)

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 Vanessa Guerra (H.B. 4140)

Representative Brian K. Elder (H.B. 4142)

Representative Leslie Love (H.B. 4143)

Representative Graham Filler (H.B. 4145)

Representative Michele Hoitenga (H.B. 4443)

Representative LaTanya Garrett (H.B. 4452)

Senate Committee: Judiciary and Public Safety

House Committee: Judiciary

Date Completed: 9-30-21

CONTENT

Senate Bill 84 amends the Michigan Indigent Defense Commission Act to revise the definition of "adult".

Senate Bill 90 amends the juvenile code to revise the definition of "adult" to refer to 18, instead of 17, years of age.

Senate Bill 93 amends 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.

Senate Bill 97 amends the juvenile code to modify provisions relating to the custody of a juvenile for violation of a personal protection order (PPO).

Senate Bill 99 amends 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 is 18, instead of 17.

Senate Bill 100 amends the juvenile code to grant a family court exclusive original jurisdiction over a juvenile under 18, instead of 17, years of age.

Senate Bill 101 amends the Social Welfare Act to modify the method of reimbursement for payment of juvenile justice services, beginning October 1, 2021.

Senate Bill 102 amends the Social Welfare Act to do the following:

- Create the "Raise the Age Fund" within the State Treasury.
- Require the Department of Treasury to spend money from the Fund to support the cost of raising the age of criminal responsibility for juveniles for costs not eligible for reimbursement through the Child Care Fund.
- Specify that the costs eligible for reimbursement from the Fund may include the costs listed and associated with a court exercising jurisdiction under Section 2 of the juvenile code over a juvenile who is 17 years of age, but under the age of 18, at the time of offense.
- Require a county, court, or tribe to report expenditures of money for certain costs, including personnel providing direct services to youths and youth placement, care costs, and indirect administrative costs.
- Specify that a request for reimbursement is subject to approval by the Department, and allow a court, tribe, or county to appeal a disapproved reimbursement.

House Bill 4133 amends the juvenile code to specify that if a juvenile reaches his or her 18th, instead of 17th, birthday after a juvenile petition is filed, the family court's jurisdiction may continue and the court may hear and dispose of the petition under the Code.

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

House Bill 4135 amends 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 amends 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 4140 amends the juvenile code to do the following:

- 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 that allowed a court to commit a child to a county jail within the adult population if he or she was at least 17 years of age and was in violation of a PPO.

House Bill 4142 amends 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, is arrested.
- Delete a provision that allowed a court to transfer a case to family court, while a criminal case against a child was pending in a court other than a family court, if it was determined that the child was 17 and certain conditions exist.

House Bill 4143 amends 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 4145 amends 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 4443 amends the Code of Criminal Procedure to modify the age for which a prosecuting attorney may authorize the filing of a complaint and warrant on a specified juvenile violation.

House Bill 4452 amends the Revised Judicature Act to modify the age for which a circuit court has jurisdiction to hear and determine a specified juvenile violation.

The bills will take effect on October 1, 2021.

Each bill, except House Bill 4134, is described in greater detail below.

Senate Bill 84

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.

Instead, under the bill, "adult" means either of the following: 1) an individual who is 18 years of age or older; or 2) an individual less than 18 years of age at the time of the commission of a felony if any of the conditions listed above apply.

(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.)

Senate Bill 90

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, instead, means a person who is less than 18 years of age 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 applies if it is ascertained that the person was *under the age of 18* at the time of the offense.

Senate Bill 93

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 years old 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 years old 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 applies to a youth described above if the act for which the youth was committed occurred before his or her 18th, rather than 17th, birthday.

Senate Bill 97

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. Instead, under the bill, a child under the age of 18 may 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, refers 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 applies the second exception to a child who is at least 18 years of age.

Senate Bill 99

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 applies to a restrained or enjoined person who is 18 or older, and juvenile disposition applies to a restrained or enjoined person who is under 18.

Senate Bill 100

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 applies in the case of a juvenile under the age of 18, rather than 17.

Senate Bill 101

Section 117a of the Social Welfare 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 117a(4)(c), the county amount distributed must equal 50% of the annual expenditures from the county's child care fund. Under the bill, this applies except as provided below.

Beginning October 1, 2021, the State must pay 100% of the cost to provide juvenile justice services when a court exercises jurisdiction over a juvenile who is 17 years of age but under 18 years of age at the time of the offense. The costs must 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 is terminated. There may be no change in funding provided for juveniles who are 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, 2025, the rate of reimbursement paid by the State for all juveniles is equal to the quotient of the following, expressed as a percentage, using actual expenditures for the fiscal years ending September 30, 2022, September 30, 2023, and September 30, 2024:

- The sum of both of the following: a) total State expenditures under the reimbursement rate established under Section 4(c) for juveniles under 17 years of age at the time of offense; and b) total expenditures for juveniles 17 years of age.
- The sum described above divided by total expenditures for all eligible juveniles.

Senate Bill 102

Under the bill, the State Treasurer may receive money or other assets from any source for deposit into the Raise the Age Fund. The State Treasurer must 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 must remain in the Fund and does not lapse to the General Fund.

The Department of Treasury is the administrator of the Raise the Age Fund for auditing purposes. The Department must spend money from the Fund, upon appropriation, to support the cost of raising the age of criminal responsibility for costs not eligible for reimbursement through the Child Care Fund. The costs eligible for reimbursement from the Fund include the costs listed and associated with a court exercising jurisdiction under Section 2 of the juvenile code over a juvenile who is 17 years of age, but under the age of 18, at the time of offense.

A county, court, or tribe must report expenditures of money received from the funds for costs, including the following:

- Personnel costs for county, court, or tribe staff providing direct services to the youth, including full or appropriately prorated salaries and training.
- Contracted staffing, programming, and services.
- Youth placement and care costs, 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.

Any request for reimbursement must be accompanied by substantiating documentation, as determined by the Department. A request for reimbursement is subject to approval by the Department. A court, tribe, or county may appeal a disapproved reimbursement from the Fund made under the Social Welfare Act. The appeal must be conducted according to the Administrative Procedures Act. An appeal from a final order issued in an administrative hearing must be made to the court that has jurisdiction with respect to the cases described above as in nonjury cases under the authority provided in Section 631 of the Revised Judicature Act.

House Bill 4133

The juvenile 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 refers to "biometric data" instead of "fingerprints".

House Bill 4135

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 may 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

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" means an individual less than 18, instead of 17, years of age. Additionally, the bill requires destruction of a minor's record within 28 days after he or she turns 18, instead of 17.

House Bill 4140

Detention & Care of Juveniles

Currently, under the juvenile 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 refers to a juvenile under the age of 18, instead of 17.

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 deletes 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 refers 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 applies to a juvenile under 18, instead of 17, years of age.

House Bill 4142

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 applies if a child who is under 18, instead of 17, is 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, 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 deletes this 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

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 applies to a child under the age of 18. The bill also deletes 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 applies to cases involving the commitment or trial of children under 18, instead of 16, years of age.

A person who violates these provisions is guilty of a misdemeanor, as the Code currently prescribes.

House Bill 4145

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 apply to a juvenile less than 18, instead of 17, years old who is subject to confinement.

House Bill 4443

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 applies to a juvenile 14 years of age or older, but less than 18 years of age who has committed a specified juvenile violation.

House Bill 4452

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 has 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 780.983 (S.B. 84)
712A.1 & 712A.3 (S.B. 90)
803.302 (S.B. 93)

712A.14 & 712A.15 (S.B. 97)
764.15b (S.B. 99)
712A.2 (S.B. 100)
400.117a (S.B. 101)
Proposed MCL 400.117i (S.B. 102)
MCL 712A.11 (H.B. 4133)
330.2060a (H.B. 4134)
762.11 (H.B. 4135)
722.822 & 722.828 (H.B. 4136)
712A.16 et al. (H.B. 4140)
764.27 (H.B. 4142)
750.139 (H.B. 4143)
764.27a (H.B. 4145)
764.1f (H.B. 4443)
600.606 (H.B. 4152)

BACKGROUND

"Raise the Age" is a grassroots campaign aimed at raising the age of juvenile court jurisdiction from 17 to 18 years of age. According to the National Conference of State Legislatures, as of April 2021, Michigan is one of four states that automatically treats 17-year-old offenders as adults. Once the "Raise the Age" legislation goes into effect on October 1, 2021, only three states--Georgia, Texas, and Wisconsin--set the maximum age of juvenile court jurisdiction at age 16. "Raise the Age" is part of a nationwide effort to move away from the "tough on crime" model toward a "smart on crime" approach.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 84

The bill will 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 depends on the number of 17-year-old individuals who use indigent defense services.

Revising the definition of adult means that individuals who are 17 years of age no longer are subject to the Michigan Indigent Defense Commission Act. However, any cost savings to local court systems likely will 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 may 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 will not have a significant fiscal impact on the Department.

Senate Bill 90 and House Bills 4133 & 4142

The bills 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 do 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 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 will be an increase of 7,564 cases from raising the age of the juvenile offenders to less than 18 years of age. There will be a total net zero change in the number of cases as the increase in the juvenile cases are expected to be shifted from the adult courts to the Family Division of the Circuit Court.

Senate Bill 93

As the bill raises the age of a person considered a "public ward", there may 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 Michigan Department of Health and Human Services (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 will 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 may 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, is considered a juvenile, his or her supervision will be funded through the SWBC or CCF, depending on the outcome of his or her delinquency proceedings.

Senate Bill 97 and House Bill 4140

The bills will have an indeterminate fiscal impact on the State and may have a negative fiscal impact on local government, if the current State and local 50%-50% juvenile justice cost sharing methodology are maintained. If there were a change to the allocation in costs, the fiscal impact would be contingent on that methodology. The bill prohibits juveniles 17 years of age and younger from being held in a jail or detention facility that also houses adults unless he or she is an individual 15 years of age or older whose habits or conduct was considered a menace to other juveniles, or who may not otherwise be detained safely is housed in a room or ward separate from adults. The bill prohibits family courts from imposing a jail or prison sentence on an individual who is under 18 years of age. These prohibitions will decrease the demand for prison and jail beds and increase the demand for the use of juvenile-only facilities.

Placement of these individuals is subject to judicial discretion and may 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 is the responsibility of a county, there is 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 is 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) fiscal year 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, will 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 will result in a General Fund/General Purpose (GF/GP) savings for the MDOC, but those savings 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 would be an estimated increase of \$800,000 in total costs. However, under current law for these 30 individuals, there is 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 may 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 may be an increased cost for any increase in the number of individuals supervised as court wards who otherwise would have been 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 will be \$1.4 million.

Senate Bill 99

The bill will have an indeterminate fiscal impact on State and local government. As the bill changes 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 will 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 allows a 17-year-old to be subject to a delinquency proceeding for violating a PPO, which may lead to a decrease in costs to the MDOC if fewer individuals are sentenced to prison. The costs for the DHHS and local government may increase depending on the outcomes of those proceedings. The costs to counties may be offset, as a violation of a PPO that otherwise would lead to a stay in jail may be changed to a dispositional alternative under the bill.

Senate Bill 100

The bill will have an indeterminate fiscal impact on the State and local courts. The impact depends on how many cases will 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 may be increased resource demands on the courts, depending on how many cases remained before the family court.

Senate Bill 101

The bill will 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.

The County Child Care Fund 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 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, 2025, maintains its 50% coverage for CCF services, and beginning October 1, 2021, will provide funding to cover 100% of the incremental costs associated with 17-year-old offenders.

As of October 1, 2025, the reimbursement rate for the CCF is calculated based upon actual expenditures for FY 2021-22, FY 2022-23, and FY 2023-24. The calculated rate, expressed as a percentage, consists of the sum total of reimbursements paid for juveniles under 17 years of age and the sum total expenditures for 17-year-old offenders divided by the total expenditures for all eligible juvenile costs.

As the other bills in the "Raise the Age" legislative package were enacted, and the changes to the CCF apply, the increased cost to the State likely will be considerable. To determine the costs beginning in FY 2020-21, 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. Beginning on October 1, 2025, the blended reimbursement rate will incorporate the cost experience of 17-year-old offenders for the three preceding fiscal years. It is not known until that time what the cost experience will be for 17-year-old offenders, but it is likely it will result in a greater than 50% reimbursement rate to counties and tribal governments.

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 are more uncertain, as each county faces a different set of facts and circumstances. There are 83 counties in Michigan, and it is difficult to predict each county's implementation costs. A fiscal estimate depends on the set of variables that each county uses in caring for 17-year-old offenders' cases.

Senate Bill 102

The bill will have a fiscal impact on the Department of Treasury. Based on the level of estimated revenue within the Raise the Age Fund, the ongoing costs associated with administering and investing the fund will be less than \$100 and within current appropriations. The department will experience additional costs associated with approving reimbursements and administering appeals to disapproved reimbursements. This may result in additional FTEs and appropriations.

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.

The bill also will have minor fiscal impact on the Judiciary and local units of government. A county, court, or tribe will incur additional costs to collect and report on expenditures for certain costs, including personnel providing direct services to youths and youth placement, care costs, and indirect administrative costs. The reporting costs likely will be minor and will be covered by current appropriations.

House Bill 4134

The bill may have a negative fiscal impact on State and local government. As the bill expands 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 may increase costs to local governments, as this will be a cost to the delinquency proceedings. If a competency evaluation resulted in the provision of additional mental health treatment, there would be an increase in costs to State and local government.

House Bill 4135

The bill will have an indeterminate fiscal impact on the State and may 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 removes 17-year-olds from eligibility. It is unclear whether this will 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 may 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 may be increased for local governments and the Department of Health and Human Services (DHHS) depending on the alternative dispositions that are reached in these cases.

House Bills 4136 and 4443

The bills will have no fiscal impact on State or local government.

House Bill 4143

The bill may have a negative fiscal impact on State and local government. The bill bars 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 must be implemented, which may lead to an increased cost to the transportation provider.

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

The bill will result in a GF/GP savings for the MDOC but depends 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 4145

The bill may have a negative fiscal impact on the State and may have an indeterminate fiscal impact on local government. Since the bill prohibits anyone less than 18 years of age from being confined in a county jail pending trial, alternative confinement arrangements may be used for these individuals. The alternative arrangements likely will be in a county juvenile detention facility, a State juvenile justice residential treatment facility, or a private juvenile justice residential foster care facility. This means increased expenses for the Department of Health and Human Services. Counties no longer have the option to confine these individuals in the county jail, so there may be fiscal savings, but the net cost or savings depends on where the individuals are 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 prohibits individuals under 18 from being housed at these and other locally run lock-ups. There may be a decrease in costs for the lock-ups, but there would be a corresponding increase for local governments as they are responsible for detaining these individuals consistent with the bill's requirements.

House Bill 4452

The bill will have an indeterminate negative impact on circuit court systems that likely will 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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